Equitable Claims

I. **Query**: What claims are available to a plaintiff who cannot prove one or more of the elements required to prove an enforceable contract?

A. A plaintiff that can establish offer, acceptance, and consideration, but not a writing satisfying the SOF, may claim **promissory estoppel (R2 § 139)**, if

   1. the defendant’s promise induced the plaintiff’s detrimental reliance, and
   2. injustice would result from not enforcing the promise.

B. A plaintiff that can establish offer and acceptance, but not consideration necessary to support enforcement of a promise as a contract,

   1. may claim **promissory estoppel (R2 § 90)**, if the defendant’s promise induced the plaintiff’s detrimental reliance and injustice would result from not enforcing the promise; or
   2. may claim **promissory restitution (R2 § 86)**, if the defendant’s promise did not induce the plaintiff’s detrimental reliance, but injustice would result from not enforcing the promise.

C. Where the plaintiff can establish an offer and detrimental reliance on that offer prior to acceptance, the plaintiff’s **pre-acceptance reliance** may make the defendant’s promise enforceable even though the plaintiff did not accept it.

D. In the absence of even an offer, where the plaintiff can establish that

   1. she performed acts necessary to prevent or to mitigate serious bodily harm to the defendant, or
   2. she performed acts necessary to prevent or to mitigate damage to or destruction of the defendant’s property, or
   3. she conferred an uncompensated material benefit on the defendant (on some third party at the defendant’s request),

the plaintiff may have a **restitution** or **quasi-contract** claim in order to prevent the defendant from being unjustly enriched.
II. Promissory Estoppel

A. **R2 § 90:** In order to establish her entitlement to promissory estoppel notwithstanding the lack of consideration or of an acceptance, a promisee must prove

1. that the promisor made a **promise,**
2. which the promisor could **reasonably foresee** would induce action or forbearance (reliance) by the promisee,
3. which, in fact, **induced** the promisee to (reasonably) rely
4. to the promisee’s **detriment,** and
5. **injustice** can be avoided only by enforcement of the promise.

B. **§ 139 Elements:** In order to establish her entitlement to promissory estoppel notwithstanding the lack of a writing satisfying an applicable statute of frauds, a promisee must prove the same elements required to satisfy § 90.

C. **Avoiding Injustice:** R2 § 139(2) identifies five “significant” factors a court may consider when determining whether injustice may be avoided only by enforcing the promise. While R2 § 90 provides no parallel list, nor does it explicitly incorporate – either in the text of the section or in the comments – the factors identified in R2 § 139(2), a good argument can be made that the R2 § 139(2) factors can be used to satisfy the injustice element of R2 § 90. *See id. cmt. a.*

III. Unjust Enrichment Claims

A. **Promissory Restitution (R2 § 86):** A promise, made in recognition of a benefit already received, is binding to the extent necessary to prevent injustice, as long as

1. the promisee did **not** render the benefit **gratuitously** (*i.e.*, the promisee expected to be compensated in some way for her services),
2. not enforcing the promise would **unjustly enrich** the promisor, and
3. the promise is **not disproportionate** to the benefit the promisor received.

B. **Non-Promissory Restitution Under the Restatement of Restitution**

1. **Preventing or Mitigating Bodily Harm (§ 116):** A party may recover for services rendered to prevent (or treat) serious bodily harm, pain, or death, *undertaken without the beneficiary’s knowledge or consent,* as long as
a. the benefactor acted **unofficiously and with intent to charge** for the services,

b. the benefactor had **no reason to know the beneficiary would not consent** to the services if asked, and

c. the beneficiary’s **condition prevented consent**.

2. **Preventing Property Damage or Destruction (§ 117(1))**: A party may recover the value of services rendered to prevent the loss, damage, or destruction of another’s property as long as

a. the benefactor acted **lawfully and without any pre-existing duty** owed to the beneficiary as a result of

   i. their **relationship** or

   ii. the **benefactor’s own acts or omissions**;

b. the benefactor acted without the beneficiary’s permission out of **necessity**;

c. the benefactor had **no reason to believe that the beneficiary would not consent** if asked;

d. the benefactor **intended to be compensated** for his services; and

e. the **beneficiary accepted** the property when the benefactor returned it to her, or otherwise ratified the benefactor’s actions.

C. **Quasi-Contract**: A proper claim for unjust enrichment not falling under either R2 § 86 or the foregoing provisions of the *Restatement of Restitution* requires that the plaintiff show that

1. she conferred a **material benefit** on the defendant (or on some third party on the defendant’s behalf);

2. the defendant **knew of or appreciated** the benefit conferred; and

3. permitting the defendant (or the third party) to retain the benefit conferred without compensating the plaintiff would be **unjust**.