

KERN COUNTY COLLEGE OF LAW

CONTRACTS

FALL SEMESTER 2024

PROFESSOR T. GOLDNER

Instructions:

Answer Three (3) Essay Questions.

Total Time Allotted: Three (3) Hours

QUESTION ONE

Pat's cousin is a member of Political Party A and is a candidate for a State Assembly position. Political Party A gave Pat two tickets to a fundraising event that Political Party A is hosting for Pat's campaign. Pat gave the tickets to his Grandma and Grandpa. The event consists of a reception and dinner. The day before the event, Grandpa fell ill and gave his ticket to Pat's 21-year-old cousin Ronnie, with the understanding that Ronnie would accompany Grandma to the fundraiser. Neither Ronnie nor Grandma have ever attended a political fundraiser before. Ronnie and Grandma belong to Political Party B.

During the reception, a fundraising committee member approaches Ronnie to buy ten raffle tickets for a total of one-hundred dollars (\$100). "What is the raffle prize?" Ronnie asks. "It's the red convertible car parked outside next to the front door" replies the committee member. Ronnie walks to the front door and sees a shiny new red Mercedes convertible sports car (the "convertible") next to a large sign that reads: "Marty's Mercedes is proud to be a sponsor of this fundraiser. Buy the winning raffle ticket and you will be the owner of this beautiful car. The winning ticket will be drawn during the dinner tonight. Must be present to win." Ronnie purchases 20 tickets for \$200, attends the dinner with Granny, and wins the raffle.

After dinner, Ronnie walks to the prize table at the back of the room to claim his prize. The fundraising committee chairman and Marty, the owner of Marty's Mercedes, are sitting at the table. The chairman, Marty, and Ronnie introduce themselves, and the chairman and Marty congratulate Ronnie for winning the convertible. The chairman hands Ronnie a few documents and tells him: "As soon as you complete and return this paperwork, Marty will give you the keys." Ronnie immediately completes and returns the documents. One of the documents asks: "Are you a member of Political Party A?" Ronnie answers by writing "No."

The chairman reviews the documents and tells Ronnie "I'm sorry, but we can't award you the convertible because the raffle is limited to members of Political Party A, and you are not eligible because you are not a member of Political Party A. Ronnie becomes visibly upset. He walks outside to the parked convertible, grabs the sign, takes it to the chairman and Marty, and says: "Look at this. It doesn't say anything about being limited to members of any political party." The chairman replies: "That's because everyone here knows that's how political fundraisers work."

QUESTION:

If Ronnie sues for the convertible, will he win? Please explain.

Go to the next page for Question Two.

QUESTION TWO

Bob is Sissy's older brother. Bob is 35 years old, lives in South Lake Tahoe, California, and is a retired software engineer. Sissy is 25 years old, lives in Stowe, Vermont, and works as a snow ski instructor at the Stowe Mountain Resort. Bob is also an avid snow skier, and he also likes to gamble in casinos. Bob lives in South Lake Tahoe because it is close to several ski resorts and casinos.

On October 1, Bob asks Sissy to buy a house in South Lake Tahoe so they can ski together on the weekends. Sissy replies that she would like to move near him, but doubts that she can afford the downpayment for a house. Bob promises to give Sissy money for a downpayment, and also to pay the homeowners' insurance premiums on the house for the first two years. Sissy accepts Bob's offer but worries that he might not keep his promise because she knows that he has a gambling addiction and often is unable to pay his bills on time. Sissy keeps those worries to herself and does not mention them to anyone, including Bob.

On November 1, Bob sends Sissy \$50,000 for a downpayment on a house. Sissy finds a job as a member of the Heavenly Mountain Ski Resort ski patrol team in South Lake Tahoe, and purchases a nearby condominium for \$250,000. She uses the \$50,000 from Bob as a downpayment and finances the \$200,000 balance with a loan from Haste Bank. The loan is evidenced by a promissory note secured by a deed of trust. The promissory note requires Sissy to obtain homeowners insurance, pay the monthly insurance premiums, and stay current on the note. Sissy obtains the insurance and instructs the insurance company to bill Bob directly for the premiums.

On December 1, Sissy moves from Stowe to South Lake Tahoe, and by December 16, she is spending her weekdays working at the Heavenly Mountain Ski Resort and her weekends skiing with Bob.

Four months after moving, Sissy loses her job but has enough savings to make the monthly note payments but not enough to pay the homeowners insurance premiums.

Five months after moving, Sissy receives a letter from the homeowners' insurance company notifying her that her homeowners' insurance was cancelled for non-payment. Sissy jumps in her car and drives to Bob's house to discuss the letter. During the drive, a major earthquake hits South Lake Tahoe and completely destroys Sissy's house. After the earthquake, Sissy discovers that Bob failed to pay the insurance premiums, and the insurance policy does not cover earthquakes.

QUESTION:

What claims or causes of action, if any, does Sissy have against Bob? Please explain.

Go to the next page for Question Three.

QUESTION THREE

Question Three is based on the same facts as Question Two but asks a different question.

QUESTION:

What damages, if any, can Sissy recover from Bob? Please explain.

End of Exam.

**Contracts Examination
Fall 2024
Professor Goldner
ANSWER OUTLINE**

QUESTION ONE ANSWER

Question: If Ronnie sues for the convertible, will he win? Please explain.

Answer:

Reception

Ronnie did not communicate with anyone about the convertible until he was approached by the fundraising committee member during the reception to buy 10 raffle tickets. The member who approached him told him only that there was a raffle for the red convertible parked by the front door and asked him to buy tickets. The parties did not make a contract during the reception.

Offer

The convertible and the sign next to it constitute an offer made by Political Party A to the reception and dinner attendees. The terms of the offer are stated clearly on the sign, which proposes to exchange the convertible for the winning raffle ticket presented at the dinner. The sign communicates that the offer can be accepted by performing a specific action (holding the winning ticket) and being present at dinner when the winning ticket is drawn.

Acceptance

The offeror is the master of his offer. The offeror decides the manner and mode of acceptance. Here, the offer communicates that it can be accepted by buying a raffle ticket and being present during the dinner when the winning ticket is drawn. Buying the winning ticket is an action and being present is a condition, which mean that the happening of that act and the satisfaction of that condition create a unilateral contract, i.e. the offer can be accepted by the performance of purchasing the winning and being present during dinner.

Consideration

Consideration is a bargained-for exchange where the parties exchange either a promise for a promise, or a promise for a performance. Here, the consideration is a promise (to deliver the convertible) for a performance (purchasing the winning ticket and being present during the dinner).

Unexpressed Terms

Political Party A's chairman contends that Ronnie cannot accept the offer because he does not belong to Political Party A. The sign that communicates the offer does not restrict the offer to members of Political Party A. The test to determine the terms of an offer is an objective test. Here, the test is whether a reasonable objective person in the Ronnie's position would conclude that the offer is limited to members of Political Party A. However, if a term is not expressly communicated in an offer but the offeree nevertheless knows or has reason to know about that term, the offeree is deemed to have knowledge of it, including when the term is customary in the industry, community, or the parties' prior dealings or usage.

Ronnie Wins

The facts do not state or suggest that membership in any particular political party is either required to win the convertible or customary in the political fundraising industry, community, or the parties' prior dealings or usage. Further, since the chairman contends that "everyone here knows that's how political fundraisers work," the chairman has the burden to prove it. If the dinner attendees were not informed of that membership in Political Party A was required to win the raffle, the chairman and Marty are obligated to deliver the convertible to Ronnie.

QUESTION TWO ANSWER

Question:

What claims or causes of action, if any, does Sissy have against Bob? Please explain.

Answer:

1. Breach of Contract

Was there a contract?

(offer, acceptance, consideration)

Offer - an offer is the manifestation of willingness to enter into a bargain, so made as to justify another person in understanding that his assent to that bargain is invited and will conclude it.

Acceptance - Acceptance of an offer is a manifestation of assent to the terms of the offer made by the offeree in a manner invited or required by the offer. Acceptance by performance requires that at least part of what the offer requests be performed or tendered and includes acceptance by a performance which operates as a return promise. Acceptance by a promise requires that the offeree complete every act essential to the making of the promise.

Consideration - Consideration is a bargained-for exchange where the parties exchange either a promise for a promise, or a promise for a performance.

The primary issue is whether Sissy provided consideration for Bob's promise to provide a \$50,000 downpayment and pay the first two years of insurance premiums. Possible consideration includes strengthening the parties' sibling relationship by living in proximity to each other and being able to ski together on the weekends, the \$50,000 downpayment, and the promise to pay the first two years of premiums.

If Sissy did not provide consideration for Bob's promise to pay the downpayment and the insurance premiums, his promise was a gift. A gift is not enforceable as a contract. If Sissy provided consideration and there was a mutual assent, there is a contract, and Bob breached the contract by failing to pay the premiums.

2. Promissory Estoppel

If there is no contract, Bob's promise can be enforced under the doctrine of estoppel. There are two kinds of estoppel: promissory estoppel and equitable estoppel. Here, the issue is promissory estoppel, which allows a gratuitous promise to be enforced when the promisee reasonably relies on the promise to the promisee's detriment.

The elements promissory estoppel are:

1. A promise
2. which the promisor should reasonably expect to induce action or forbearance on the part of the promisee or a third person
3. and which does induce such action or forbearance
4. is binding if injustice can be avoided only by enforcement of the promise.

Promise

Bob made a promise to Sissy when he communicated his willingness to pay the downpayment and the first two years of insurance premiums. Bob should have reasonably anticipated that Sissy would rely on his promise, because Sissy told him she could not afford to buy a home in South Lake Tahoe without his financial help. Sissy relied on Bob's promise when she quit her job in Vermont, bought a house in South Lake Tahoe, and moved there.

Forbearance

Sissy used the \$50,000 for a downpayment but she did not pay the insurance premiums. While it is possible that Sissy might have been able to pay the premiums, the facts state that she told Bob she could not pay them. If Sissy could not afford to pay the premiums, she did not forbear (refrain from acting) on Bob's promise when she failed to pay them. Conversely, if Sissy could afford to pay the premiums, she did forbear making those payments.

Justifiable Reliance

If Sissy relied on Bob's promise, her reliance must have been justified. The fact that Bob is Sissy's brother suggests it was reasonable for her to trust that he would keep his promise. However, the fact that Sissy silently questioned whether Bob's gambling addiction would leave him financially unable to keep his promise suggests that her reliance was not completely justified.

Can injustice be avoided only by enforcing Bob's promise?

In other words, does justice require the court to enforce Bob's promise? The only part of Bob's promise that he did not fulfill is the promise to pay the insurance premiums. If there was no forbearance or justified reliance, justice does not require enforcement of Bob's promise. Conversely, if there was forbearance or justified reliance, justice requires that Bob's promise be enforced.

QUESTION THREE ANSWER

Question: What damages, if any, can Sissy recover from Bob? Please explain.

Answer:

1. Damages for breach of contract

If Bob's promise can be enforced as a contract, there are three types of damages to consider: expectation, reliance, and restitution damages.

Expectation damages are calculated as the amount of money that will, to the extent possible, put the non-breaching party in as good a position as that party would have been in if the contract been fully performed. Here, the expectation damages are the damages caused by Bob's failure to pay the insurance premiums - the loss of Sissy's home.

Reliance damages are calculated as the amount of money that will, to the extent possible, put the injured party in the position the injured party would have been in if the contract had not been performed. Reliance damages include expenditures made in preparation for performance or in performance, less any loss that the party in breach can prove with reasonable certainty the injured party would have suffered if the contract had been performed. Here, Sissy's only reliance expenses are her relocation costs.

Restitution damages are calculated as the amount necessary to prevent unjust enrichment, i.e., to allow the injured party to recover for the benefit the injured party conferred on the other party. Here, the issue is whether Sissy conferred a benefit on Bob by moving to South Lake Tahoe, buying a home, and skiing with Bob on the weekends. If that conduct conferred a benefit that can be reduced to a money amount, the restitution damages equal that amount. It is unlikely that Sissy's conduct can be reduced to a money amount to Bob.

2. Promissory Estoppel

The remedy for breach may be limited as justice requires (Restatement 2d §90).

The doctrine of promissory estoppel requires the court to weigh all of the equities and consider awarding damages or other relief as appropriate, e.g. specific performance or injunctive relief. The call of Question Three is limited to damages, so there is no need to discuss other remedies.

Expectation Damages

An award of expectation damages is the most appropriate relief. The amount of damages ranges from the value of Bob's performance - the total cost of the unpaid premiums - (at the low end of the range), to the value of the loss of Sissy's home - at least \$250,000 - (near the high end of the range). The value of Bob's performance is too small to fairly compensate Sissy because it fails to put her anywhere near the position she would have been in if Bob had paid the insurance premiums.

To determine whether a greater damage award is warranted, the court will weigh the equities, including whether the elements of promissory estoppel are strong or weak, whether Bob's promise was easy to understand, how much Sissy relied on Bob's promise to pay the premiums, and the relative hardships of the parties depending on whether Bob's promise is partially enforced or fully enforced. Based on the foregoing, an award of at least \$250,000 is appropriate.

End of document.

Excellent!

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fast

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Question 1:

If Ronnie sues for the convertible, will he win?

✓ **Governing Law:** *Because this agreement is for the sale of goods (raffle tickets, convertible) it is governed under the Uniform Commercial Code.* why?

✓ *The elements of an enforceable contract are: offer, acceptance, and consideration.*

Was there a valid offer from the offeror?

✓ *A valid offer is a manifestation of the offeror's (the party who made the offer) intent to enter into an agreement for a bargained-for exchange. The offeror is the master of the offer, meaning that acceptance is determined by the offeror, and the offeree (the party who receives the offer) must accept the offer as determined by the offeror, or through a reasonable means if it is not made clear by the offeror.*

The offeror in this fact pattern is the fundraising committee and the offer was communicated to Ronnie (the offeree) by a member of the fundraising committee. The initial offer was made by the member of the fundraising committee when he approached Ronnie to purchase raffle tickets. As Ronnie continued to ask about the details of the raffle, the full details of the offer were revealed to be: in exchange for the purchase of the winning raffle ticket, and the holder's presence at the time of the raffle, you will win ownership of the red Mercedes convertible out front. There were no other terms mentioned. It was made clear by the offer that the contract could be accepted by the offeree through his purchase of the winning raffle ticket and his presence at the fundraising venue when the winning ticket is called. It is likely that the communication of the Fundraising Committee member and the sign outside the venue next to the car constituted valid offers.

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- **Was being a member of Political Party A a valid part of the offer.**
 - *An offer must be definite and clear with regards to what is being offered, and a reasonable person must have ^{thought} thought that there was an offer on the table, otherwise there is not an enforceable contract. The offer and acceptance can be implied, but such implication must be rooted either in past dealings or well-known custom. An example is that though there is no express offer and acceptance to purchase food in the drive through line, it is nonetheless understood that ordering in the drive through line constitutes an offer to pay for whatever items are ordered.*

After Ronnie purchased the winning ticket, and he was instructed to fill out some paperwork to state whether or not he was a member of Political Party A, in order to be able to take possession of the car.

- **The Fundraising Committee** would likely argue that through the very nature of the political fundraiser, it is understood that the one must be a member of Political Party A to be able to win the convertible, as the purpose of the fundraiser is to advance the interests of Political Party A, which they would likely argue is part of the exchange that is bargained-for. They would further argue that any reasonable person should have been able to see that being a member of Political Party A was an implied part of the offer.
- **Ronnie** would likely argue that this is not a reasonable inference, and that the sign on the car stated that if you "Buy the winning raffle ticket, you will be the winner of this beautiful car" and that "You must be present to win," and that because there was no statement saying anything near to "must be a member of Political Party A to win" written on the sign, that membership in the political party was not a valid part of the offer.

Good!

✓ It is unlikely that being a member of the political party is a valid part of the offer. Based on the communication Ronnie received, not only from the member of the fundraising committee, but also the sign out front, there was no indication that being a member of Political Party A was part of the terms. Because the sign by the car contained extra terms such as "must be present to win" it stands to reason that a reasonable person would conclude that the sign constituted the full offer. Furthermore, it is unlikely that a reasonable person would conclude from the nature of the event that having to be a member of Political Party A was an implied term of the offer. It might be the case that if the fundraising event was open only to members of Political Party A, that a reasonable person might conclude that party membership was part of the terms, but that was not the case at the fundraising event that Ronnie Attended.

✓ **It is likely that there was a valid offer, and that membership in Political Party A was not a valid term.**

✓ **Did the offeree provide a valid acceptance.**

An acceptance to the contract is a manifestation of an intent on the part of the offeree to be bound by the terms of set forth by the offeror, who is the master of the offer. Unilateral contracts consist of a promise for performance, and the contract is validly accepted by the offeree when he performs or begins to perform.

There is no mirror image rule under the U.C.C.

The offer stated that the offeree may accept the contract by purchasing the winning raffle ticket, which is, of course, given out at random as part of the raffle. Ronnie accepted the fundraising committee's offer and

created a unilateral agreement when he performed his end of the agreement, which constituted the lucky purchase of the winning raffle ticket.

✓ **It is likely that there was a valid acceptance on the part of the offeree.**

✓ **Was there valid consideration?**

Consideration is the bargained-for exchange within the agreement. Valid consideration can consist of the tendering of goods, the performance of some sort of actions as services, or the refraining from a certain action, such as drinking or smoking. There must be valid consideration on both sides of the agreement, otherwise the agreement is a gratuitous promise (gift) and the agreement is therefore not enforceable.

The consideration on the side of the Fundraising Committee was first and foremost the purchase of the winning raffle ticket. The secondary consideration would be the purchases of all of the non-winning raffle tickets that serve to subsidize the existence of the raffle in the first place. **The fundraising committee** might also argue that another part of the consideration is the advancement of the interests of Political Party A that holding a raffle that may attract members of Political Party A to pay into the raffle and therefore advance the party's interests, and that in this way, one must be a member of Political Party A to validly give all of the required consideration. **Ronnie** would likely argue that paying into the raffle advances the interests of the party and constitutes the valid consideration whether or not the purchase came from a member of the opposing political party or not. Marty still loses possession of his car in the raffle, regardless of whether or not it ends up in the hands of a member of the opposing political party (so long as he purchased the winning raffle ticket).

The consideration on the side of Ronnie is the convertible, which is a valuable item that one may receive at an exponential discount should he be lucky enough to win purchase the winning raffle ticket.

✓ **It is likely that there was valid consideration on both sides of the agreement.**

✓ **Conclusion: If Ronnie sues the Fundraising Committee for the convertible, it is likely that he will prevail, as the offer stated nothing about needing to be a member of Political Party A.**

Great Job! (95%)

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Question 2:

What claims or causes of action, if any, does Sissy have against Bob?

✓ **Governing Law:** Because the agreement was for services and not goods (Sissy moving to South Lake Tahoe), it is governed by Common Law.

The elements of an enforceable contract are: offer, acceptance, and consideration.

Was there a valid offer?

A valid offer is a manifestation of the offeror's (the party who made the offer) intent to enter into an agreement for a bargained-for exchange. The offeror is the master of the offer, meaning that acceptance is determined by the offeror, and the offeree (the party who receives the offer) must accept the offer as determined by the offeror, or through a reasonable means if it is not made clear by the offeror.

Bob was the offeror who offered that if Sissy moves to South Lake Tahoe, he will provide the money for a down-payment on the house, and pay the premiums for the homeowner's insurance. The terms were communicated expressly to Sissy, meaning that there was likely no confusion as to the terms of the offer.

✓ **It is likely that there was a valid offer.**

Was there a valid acceptance?

An acceptance to the contract is a manifestation of an intent on the part of the offeree to be bound by the terms of set forth by the offeror, who is the master of the offer. Unilateral contracts consist of a promise for performance, and the contract is validly accepted by the offeree when he performs or begins to perform.

Under the common law, there exists the mirror image rule, which states that the offer and the acceptance must "mirror" each other with the same terms for there to be valid mutual assent to form the contract.

Sissy accepted Bob's offer through performance. Sissy's performance which constituted her valid acceptance of Bob's offer was her moving from Vermont to South Lake Tahoe and her starting the process of buying a house. It is likely that Sissy accepted the terms of the contract exactly as Bob laid them out.

- **Does the fact that Sissy knew that Bob was a gambling addict mean that bob's potential non-payment of the insurance premiums in the future invalidate the contract on either side?**

✓

- *A grumbling acceptance, where the offeree still has or manifests reservations about the agreement is still an agreement. Terms implied through conduct are subject to a reasonable person standard, i.e. would a reasonable person conclude from the party's actions that the terms were communicated?*
- Sissy did not express her worries about Bob's gambling addiction to Bob, and even if she had, this would not have invalidated the contract, because it would have constituted a valid acceptance of the offer as a grumbling acceptance. It is unlikely that a reasonable person would conclude that an implied term in the contract that was part of Sissy's acceptance was the fact that Bob's gambling addiction may cause him to miss payments on the insurance premiums or the down payment on the house. If no reasonable person would uproot their life, quitting their job and committing to a mortgage if they believed and agreed to the fact that the person guaranteeing certain parts of the financial investment required to make the move happen would renege on the deal.
- ✓ ◦ **Even if there was an implied grumbling acceptance, a grumbling acceptance is still a valid acceptance to an offer.**

✓ **It is likely that there was a valid acceptance.**

Was there valid consideration?

Consideration is the bargained-for exchange within the agreement. Valid consideration can consist of the tendering of goods, the performance of some sort of actions as services, or the refraining from a certain action, such as drinking or smoking. Disproportionate levels of monetary value on each side does not invalidate the consideration. There must be valid consideration on both sides of the agreement, otherwise the agreement is a gratuitous promise (gift) and the agreement is therefore not enforceable.

On the side of Bob the consideration was that his sister Sissy is moving to be closer to him, so that they can ski together on the weekends.

On the side of Sissy the consideration was that Bob will provide her with the down-payment on her house and that he will pay the homeowner's insurance premiums.

✓ **It is likely that there was valid consideration.**

Was this a gift? And if so, is it enforceable?

Even if it was found that there was not a valid contract, could Sissy use the Doctrine of Promissory Estoppel to recover from Bob?

For a party to recover using the doctrine of promissory estoppel, there must have been: (1) a promise from the offeror to the offeree (2) the intent on the part of the offeror that the agreement would produce some sort of action in the offeree, (3) that the offeree detrimentally relied on the promise of the offeror, and (4) that it would be unjust not to enforce the agreement.

Sissy quit her job in Stowe, Vermont, to travel across the country and purchase a house in South Lake Tahoe to be near her brother. It is likely that Bob understood that his offer to pay for Sissy's down-payment and insurance premiums would lead to the action of her moving across the country and purchasing a house. Sissy incurred quite a bit of detriment to herself by leaving her job and incurring responsibility that comes with being a homeowner, and it would likely be unjust for Bob to no longer pay her homeowner's insurance premiums because of his gambling addiction, because Sissy detrimentally relied on his promise.

✓ It is likely that Sissy would be able to recover using the doctrine of Promissory Estoppel.

oral! Conclusion: Because there was a valid offer, acceptance, and consideration, there is likely an enforceable contract between Sissy and Bob. Even if it was found that there was not a valid contract under the normal means of formation, the doctrine of Promissory Estoppel would likely still find that there was an enforceable agreement between the two of them that Sissy could use as a cause of action for a suit against Bob.

Good Job!

(90) fast

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Question 3:

What damages, if any can Sissy recover from Bob?

Governing Law: Because the agreement was for services and not goods (Sissy moving to South Lake Tahoe), it is governed by Common Law.

Did Bob breach the contract?

For a party to have breached a contract, he must have failed to abide by the terms of the contract in some way as to repudiate it.

Bob agreed to pay for a Sissy's down-payment and the premiums for the homeowner's insurance. It is likely that his failure to pay for the homeowner's agreement constitutes a breach, as there was a valid contract, and Sissy is therefore entitled to recover damages from Bob.

It is likely that Bob breached the contract.

What are the extent of the damages that Sissy could likely recover as a result of Bob's breach?

Did Sissy Fail to mitigate damages by ensuring that Bob was not acting on his gambling addiction?

A non-breaching party must do his best to mitigate the damages once he is aware that the other party has repudiated the contract. The non-breaching party need-not be successful in mitigating the damages, he must only make a reasonable effort to do so.

Bob may argue that Sissy failed to mitigate her damages from the breach by not checking to see whether Bob was acting on his gambling addiction and failing to pay the premiums for the homeowner's insurance policy, and that since Sissy had prior knowledge of his proclivities, that she should have thought to check.

However, there is nothing in the fact pattern to suggest that Sissy should have known that Bob was going to not pay the premiums. Additionally, Sissy did not know that Bob had repudiated the contract until five months after she moved to South Lake Tahoe where she received the letter in the mail from the company stating that her policy was cancelled due to non-payment. Sissy instructed the insurance company to bill Bob, and at no point before Sissy received the letter, did Bob indicate his repudiation of the contract. Additionally, as soon as Sissy received the letter, she "jump[ed]" into her car to speak to Bob about it, indicating that she intended to mitigate her own damages in a timely manner.

It is unlikely that Sissy failed to mitigate her damages after Bob's breach.

Can Sissy Recover reliance damages from Bob?

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Reliance Damages cover the costs incurred by the non-breaching party in an effort to fulfill his side of the agreement, such as travel or preparation expenses. These damages seek to put the non-breaching party in the same position that he was in before the agreement had been made. It is the responsibility of the non-breaching party to mitigate damages to the best of his ability.

Sissy incurred the costs of leaving her job and moving from Vermont. It is likely that because of this, she would likely be able to recover reliance damages from Bob, which would consist of the salary she would have earned from her previous job in Stowe, the costs she incurred while moving to South Lake Tahoe, and whatever money she paid into the mortgage while she was unaware that Bob had repudiated the contract by failing to pay the insurance premiums. Because Sissy did not know of Bob's repudiation of the contract until the insurance was cancelled, it is likely that she did her due diligence in ensuring that

It is likely that Sissy would be able to recover reliance damages from Bob.

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Restitution Damages cover the losses that the non-breaching party incurred as a result of the breach of the contract. These damages seek to restore what was lost to the non-breaching party as a result of the breach. It is the responsibility of the non-breaching party to mitigate damages to the best of his ability.

However, it is unlikely that Sissy would be able to recover restitution damages from Bob, which would likely consist of the insurance payout on her destroyed house, minus Bob's down-payment which would amount to \$200,000. Because the homeowner's insurance policy did not cover earthquakes, it means that even if Bob had paid the insurance premiums and the policy was not cancelled, Sissy would still not have been able to make a claim from the insurance company.

It is unlikely that Sissy would be able to recover restitution damages from Bob. ✓

Is it likely that Sissy would be able to recover expectation damages?

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Expectation damages are the benefits that the non-breaching party expected to have gained as a result of the contract. The non-breaching party must prove the extent of his expectation damages to the trier of fact. Damages are reduced by the amount that the party would not have had to pay had the contract not been repudiated by the breaching party.

Sissy may argue that now that she no longer has a house in South Lake Tahoe, that she must relocate elsewhere and as a result, is no longer able to do her job as a member of the ski patrol team at the Heavenly Mountain Ski Resort. The argued-for damages would likely be the salary that she would have earned during at least the duration of the mortgage to her house. If she was successful in recovering expectation damages, they would be reduced by the amount that she would have had to pay into the mortgage of her house. However, it is likely that because Sissy lost her job at the Ski Patrol 4 months after moving, and that she was not aware of Bob's repudiation of the contract until after she had lost her job, she likely would not be able to recover expectation damages, as she would have lost her job regardless of whether Bob was paying the insurance premiums or not.

It is unlikely that Sissy would be able to recover expectation damages from Bob.

Is it likely that Sissy would be able to be awarded specific performance from Bob?

Specific performance is a manner of contract remedy where the breaching party is ordered to render a specific action in order to remedy his breach. Specific performance is generally not awarded, due to the difficulty of its enforcement, however, in cases where the monetary value of the breach isn't quantifiable, such as in the destruction of a rare item, the court may order the breaching party to specifically perform in order to remedy the breach.

It is likely that if Sissy were to attempt to have specific performance awarded to her as a result of Bob's breach, that the specific performance would be for Bob to rebuild her house that she lost as a result of Bob's non-payment of the insurance premiums. However, because the insurance policy did not cover earthquakes, and the house was destroyed by an earthquake, even if Bob had paid the insurance premiums like he was obligated to, Sissy would still not have the payout from the insurance company to be able to rebuild her house. Additionally, because the house is a piece of real-estate that the fact pattern does not indicate is rare or significant in any way, the value of the house is very much quantifiable, as it was valued at \$250,000 when she purchased it, precluding any award of specific performance.

It is unlikely that Sissy would be awarded specific performance as a result of Bob's breach of the contract.

Conclusion: It is likely that Bob breached the contract, and that Sissy can recover reliance damages from Bob.

END OF EXAM
