

Torts (Paul vs. Transco)

Question 1: Theories of Liability and Defenses In Paul v. Transco

The issue here is what theories of liability can Paul recover damages from and what defenses may reasonably be raised in an action by Paul against Transco.

A. Strict Liability Based on Ultrahazardous or Abnormally Dangerous Activities

One theory Paul could pursue his case under would be a theory strict liability based on ultrahazardous or abnormally dangerous activities.

Prima Facie Case of Strict Liability

To establish a prima facie case of strict liability, a plaintiff must show: the existence of an absolute duty on the part of the defendant to make safe; breach of that duty that was the actual proximate cause of plaintiff's injury and damage to the plaintiff's person or property. The elements and how they apply to these facts are discussed in detail below.

Additional Requirements For Determining Ultrahazardous or Abnormally Dangerous Activity

In addition, for strict liability based on ultrahazardous or abnormally dangerous activities, Note that there are NO other theories which you can get strict liability. So my approach would be FIRST to assess whether the two situations where strict liability trigger a discussion of "strict liability." Here's how I may have approached it... :

Strict Liability (Ultrahazardous Activity)

For a prima facie case for strict liability, there must exist the following elements: 1) absolute duty on the part of defendant to make safe; 2) breach of that duty; 3) causation (actual and proximate); and 4) damage. There are certain types of situations where strict liability is imposed: 1) liability for animals and 2) ultrahazardous/dangerous activities.

Generally, an activity may be ultrahazardous or abnormally dangerous if it involves a substantial risk of serious harm to person or property, no matter how carefully exercised. In order to assess whether an activity is "ultrahazardous" we look to the following factors: 1) activity involves risk of serious harm; 2) activity cannot be performed without risk of serious harm; 3) not commonly engaged in activity.

Ultrahazardous Activity?

three additional elements must be present to determine if the activity can be considered under strict liability. The activity must involve risk of serious harm to persons or property. 2. the activity must be one that cannot be performed without risk of serious harm no matter how much care is taken and 3. the activity is not commonly engaged in the particular community. In

this case, because Transco was hauling toxic chemicals which can be extremely dangerous, it is likely a court will find that they were engaged in an ultrahazardous or abnormally dangerous activity. Do a little more than just easily conclude.. this is how I would've handled it... (your statement is too conclusory – unfold, but note that it's a quick unfold.. because there's not much argument here: In reviewing the circumstances we see that the nature of the product transported “toxic” chemicals, if exposed to the public is considered something that can pose “risk of serious harm” to person or property. To transport the toxic chemicals, there really appears to be no “safe” way to do it. Finally, the transportation of toxic chemicals is not something that others are generally engaged in. Judging the nature of the action, it appears that hauling toxic chemicals would fall under the category of “ultrahazardous”.

Duty

In cases where the defendant is engaged in an ultrahazardous or abnormally dangerous activity, the duty owed is an absolute duty to make safe the normally dangerous characteristic of the activity. This is a duty that is owed to all foreseeable plaintiffs. In this case, Paul will argue that he is owed a duty because Transco was engaged in the abnormally dangerous activity of transporting toxic chemicals. And because Paul, a person living in the path of the railway would be possible victim of any issues caused during transport.

Paul will likely also argue that because Transco is a common carrier, he is a foreseeable plaintiff.

Paul will also argue that he is a foreseeable plaintiff since he owned a greenhouse in the area where the train passed through and the spillage occurred. Paul will also argue that he is a foreseeable plaintiff because it was foreseeable that if a spillage occurred someone could be fearful for their health and have to leave the premises where the spill occurred. This all was unnecessary, you could've said something simple about him being a foreseeable plaintiff. There's not much ISSUE here and you're wasting time. Get rid of QUICK Issues, and concentrate on the meatier ones. Also, stop with the Paul will argue.. for the winning argument, just say this is the way it is... For weaker counter arguments, go into “Transco may argue... but they will fail”

Breach of the Absolute Duty to Make Safe

In strict liability cases, the defendant has an absolute duty and any breach of that duty would satisfy the breach requirement. In this case, Paul could argue that Transco breached its absolute duty because it did not make the dangerous condition of the spill of toxic chemicals safe. Paul will argue that the accident which caused the train to derail and spill the chemicals was a result of Transco's breach of its absolute duty. Transco will argue that it did not breach its duty because it was concerned about the risk of spillage and that is why it took the precaution of hiring Diana to assess the risks. However, since this duty is an absolute one, Transco's arguments are likely weak. All you really need to say is that the derailment and spill are per se evidence of the breach and while Transco took precautions, this breach exists if any incident occurs, which it did.

Causation

Actual Causation

Paul must prove that “but for” Transco’s breach for this it’s more the incident itself, because there is a strict liability – and the breach is the fact that the incident even happened... of their absolute duty his injuries would not have occurred. Under this element, Paul will argue that but for Transco failing to make the abnormally dangerous condition of transporting toxic chemicals safe, the spill would have never occurred and he would never have suffered damages. You came up with the right analysis.. but note for “strict” liability – it’s just that – strict.

Proximate Causation

Paul must prove that Transco’s breach of their absolute duty is the proximate cause of his damages. Transco will likely argue that Diana’s incorrect assessment of the risk to neighbors was the intervening superseding cause of Paul’s injuries. However, even if Diana was negligent, because her negligence was foreseeable, Transco’s actions were likely still be found to be the proximate cause of Paul’s damages and Transco will still be held liable. Yah, but you didn’t make the link yet.. you talked about the intervening issue, but not about the actual “proximate” cause – here is what you could’ve said: Generally, a chemical toxic spill in an area where you work and reside, and the potential adverse effects would cause you to want to move away and the looming fear of the adverse effects, while not immediately visible. Arguably, these fears and actions by Paul were a foreseeable result of the spill and the only factor in Paul’s actions, thereby a foreseeable result of the toxic spill.

Damages:

In a strict liability action, a plaintiff must prove damage to their person or property. Damages generally must be reasonable. In this case, there was no actual lasting damage to the greenhouse so Paul would not be able to claim damages to the property. However, Paul could try to argue that he had damage to his person because he suffered severe anxiety and depression because of his fear. I think there may be a thin-skulled plaintiff analysis as well.

Conclusion and Negligence As A Theory of Liability

The standards for proving strict liability are high, Paul may have difficulty proving negligence based on strict liability. There’s no such thing as “negligence based on strict liability.” Don’t get “negligence based on products liability confused.” If so, Paul may want to argue his case based on negligence. Yes, negligence by itself.. but not “on strict liability.” To prove negligence he would have to make a prima facie case based on duty, breach, causation and damages and the analysis would be as in any general negligence claim. The elements of negligence are discussed more thoroughly below. Why not do an entire negligence analysis?

B. Defenses to Strict Liability

Contributory Negligence

Contributory Negligence is negligence on the part of the plaintiff that contributes to their injury. In a contributory negligence state, contributory negligence is a defense where the plaintiff knew of the danger and his unreasonable conduct caused the ultrahazardous activity miscarrying. This defense would likely not apply to the facts in this case since Paul was not aware of the danger.

Comparative Negligence

In comparative negligence states, the Plaintiff's negligence is not a complete bar to their recovery. Most comparative negligence states apply comparative negligence rules to strict liability cases. This defense would likely not apply to the facts in this case since Paul was not aware of the danger.

Assumption of the Risk

Assumption of the Risk is a defense to strict liability where the plaintiff knew of the risk and willingly undertook it. In this case, Transco may argue that when Paul moved back 6 months after the spill occurred and his fear for his health continued, he assumed the risk by moving back in. If the court agrees with Transco's argument, then Paul may be barred from recovering for any damages he incurred when he moved back into the greenhouse space. Are there really facts to assert that Paul did anything wrong here? I think you're stretching it and you could've spent your time doing a complete NEGLIGENCE analysis for Transco...

Why do you think the facts had all those facts about the train engineer having a heart attack, etc... sometimes you HAVE To look at the facts to see what issues they want you to draw out... it's not just about reading the question itself, but seeing where the facts want you to go... they're not out to trick you... they may be TRICKY to deal with, but the intent isn't let's put 5 paragraphs to throw Funmi off!

There is possibly even VICARIOUS LIABILITY...

Joint Liability with Diana

Transco would likely argue that it should be absolved of some responsibility because Diana also negligently contributed to Paul's damages. The case against Diana is set forth below.

Question 2: Theories of Liability and Defenses in Paul v. Diana

The issue here is what theories of liability can Paul recover damages from and what defenses may reasonably be raised in an action by Paul against Diana.

A. Negligence

Paul can likely pursue a negligence claim against Diana. To establish a prima facie case of negligence, Paul must show duty, breach, causation damages.

Duty:

A duty of care is owed to foreseeable plaintiff. **Not exactly, a duty of care is owed to prevent others from unreasonable risk of harm (MEMORIZE THIS).** Under the Cardozo view, a duty is owed to all persons located within the foreseeable zone of danger. Under the Andrews view, a duty is owed to all foreseeable plaintiffs.

Professional Standard of Care:

As a professional consultant, Diana had a duty to act as a reasonably prudent consultant in her same similar circumstances.

In this case, Paul will argue that he is a foreseeable plaintiff because it was foreseeable that he could suffer damages as a result of a spill. Paul will argue that he was a foreseeable plaintiff given the fact that Diana was hired to assess the risks of the spill. **Don't professionals have heightened standard of care?**

Breach

Breach occurs when the defendant's conduct falls below the standard of care. In this case, Paul will argue that Diana breached her duty **standard of care** because Diana was hired to assess the risks of spillage and she failed to properly assess the risks that eventually caused Paul's damages. Diana will argue that she did not breach her duty because she acted reasonably and no reasonably person in her professional would have assessed the risk to include Paul's fear. **So who wins? We now know what both sides argues so what? What's the answer? See the problem with he said /she said, is that it's not conclusory... do as I request. Don't do he said she said.. do this for breach: DIANA'S STANDARD OF CARE WOULD HAVE REQUIRED HER TO DO THIS... DIANA DID THIS... THEREFORE SHE BREACHED... P MAY ARGUE DIANA DIDD BREACH BECAUSE... BUT IT WOULD FAIL. See below:**

Causation

Actual Causation

Arguably, but for Paul will argue that "but for" Diana's negligent assessment of the risk, he would never have suffered damages. Diana will likely argue that she is not the "but for" cause of Paul's injuries, because she did not cause the train to spill.

Proximate Causation

A defendant is only liable for the foreseeable results of their actions. In this case, Paul will argue that Diana's failure to properly assess the risks was the proximate cause of his injuries because it was foreseeable that failure to assess all the risks of a possible spillage might lead to a neighbor being damaged. Diane will likely argue that Paul suffering from fear, anxiety and

depression are not foreseeable results of her actions. Similarly, Diana would argue that Transco's actions, were the proximate cause of Paul's damages.

Damages

Paul's damages against Diana would be the same as against Transco.

B. Defenses to Negligence

Contributory Negligence

In a contributory negligence state, contributory negligence is a defense. This will likely not apply here because there is no evidence Paul was negligent.

Comparative Negligence

If this case is brought in a comparative negligence state, comparative negligence would be a defense. However, This will likely not apply here because there is no evidence Paul was negligent. There are simply no facts for this issue...

Joint Liability with Transco

Diana would be able to argue that she should be absolved of some liability because of Transco's negligent actions. Diana may argue that Transco was negligent in allowing the engineer to operate the train that derailed given his history of a past heart attack. Hmm... this is a little too late... you needed to talk about Transco's negligence in full... that was the bigger issue in this essay.

Assumption of the Risk

Assumption of the Risk is a defense to negligence where the plaintiff knew of the risk and willingly undertook it. In this case, Diana may argue that when Paul moved back 6 months after the spill occurred and his fear for his health continued, he assumed the risk by moving back in. If the court agrees with Diana's argument, then Paul may be barred from recovering for any damages he incurred when he moved back into the greenhouse space.

Contracts (Owner vs. Ace)

Owner (O) and Ace (A) entered into a valid **written** contract on June 1, 1994 to paint the exterior of O's house by September 1, 1994.

1.

A) Claims **by O**

BREACH OF K: O will claim that A breached the K entered into on 6/1/94

When a promisor is under an absolute duty to perform, and the duty has not been discharged or excused, failure to perform in accordance with the terms of the contract constitute a breach.

DUTY TO PERFORM

I think it's important here to assess what the **TERMS** of the agreement so we can assess whether the duty was properly performed. After all, how are we supposed to assess the duty without knowing the terms.

There is an issue here with the terms because we don't know the impact of the July 1 call, and how it impacted the terms of the agreement.

So under a duty to perform, I'd start with a section entitled: Terms (talk here about what terms of the contract were: - A is to paint the house by September 1, 1994 for \$4700. however, we need to assess what impact the July 1, 1994 call had to the "terms" so Under terms I'd put a section entitled "Modification"...

TERMS

Pursuant to the terms assented to the parties, A was to complete the painting job at O's property by September 1, 1994. O was to pay A \$4,700.

MODIFICATION – July 1, 1994 Call?

Contracts generally can be modified pursuant to additional consideration or by performance in conformance with the modification. Here, pursuant to the July 1, 1994 call, Owner called to assert that since he was being transferred and was putting up his house for sale, it was important that the house be painted by September 1. While the call did not offer or make additional promises or consideration, it was arguably a proposed modification to the agreement.

Arguably, Owner's call changed the nature of the agreement, in that the original contract, if breached by reason of a late completion date, only subjected Ace to minimal damages, as the difference between a target completion date and a date thereafter would subject Owner to minimal damages. Here, Owner's additional explanation of the need to complete the paint job by a certain time added potential damages upon a tardy completion of the work. This element of

damages was something that Ace arguably did not bargain for originally and could be seen as an attempt to modify the terms (or at least consequences).

Since the call did not subject either party to additional promises (thereby no additional consideration was exchanged), arguably the call did not modify the contract (or its consequences). However, Owner would certainly argue that since Ace understood the additional risk and still undertook to perform the task, he accepted the additional risk and consequences by performing.

PERFORMANCE (you see how you missed the extra issue here) – because you can't really talk about performance unless you know what the parties are to perform.

O will argue that A had a duty to perform as they entered into a valid contract on June 1, 1994. The contract was in writing and it was for the paid services of A. A had a duty to paint the exterior of O's house by September 1.

DUTY NOT DISCHARGED OR EXCUSED I'm not sure this is the best place for this.. I'd rather leave defenses of discharge AFTER my discussion of whether there was a breach ... but that is your preference style.. to me it makes more sense at the end.

O will argue that there is no evidence of a discharge or excuse. A was still under the duty of completing his work by September 1. O and A never made modifications to the agreement and the agreement was enforceable. While true, you never discussed this... you just make the assumption and leap... BUT that is not enough.

A's Defense: Impracticability

Impracticability is a subjective test that a party has encountered an extreme and unreasonable difficulty or expense that was not anticipated.

A will argue that his performance was excused as it was impractical for A to have performed in accordance with the terms of the contract. Yes we know this, that's why you raised this... don't waste time for statements like this. Go to the heart of your argument... The weather was unusually rainy which had caused A to fall behind schedule on all of its painting jobs, not just this particular job with O. Therefore, A could not have anticipated bad weather to cause such a delay on all of his jobs. A will argue that if he did subcontract the work or hire additional painters to stay on schedule, it would have caused him to lose money on several jobs. A will argue that it would have been an extreme and unreasonable difficulty or expense to complete the work by September 1. If he were to complete the work by September 1, he would have suffered unreasonable expense. Unreasonable expense is not enough to trigger this defense.. if so, everyone would do it... it has to be extreme...

However, O will argue that bad weather is not an unforeseeable event. While this may be a good argument, the weather this year was *unusually* rainy. O will need to show that, even so, A could have hired additional workers for some of the jobs, including O's, that were behind schedule. If he hired only a few additional workers for a few of the jobs, the expense would not

have been that unreasonable. So what's your conclusion. I see what you're saying and you raise some good points... so how do you finish... was his duty discharged or not?

FAILURE TO PERFORM IN ACCORDANCE WITH TERMS

O will argue that the terms of the contract were very clear and definite. In fact, on July 1, O contacted A by telephone and told A that it was particularly important that the house be painted by September 1 because his employer had transferred him and he wanted to put the house up for sale. Yeah, so what is the impact? Are these part of the terms or not? Why do you bring it up now? On July 1, no additional terms were stated... just reasons for getting it done... does it do anything? The importance of this terms, was therefore, reiterated to A. What's the impact of this? As such, A did not complete painting until September 21.

Material or Minor Breach Doesn't this fall under performance? Shouldn't it be indented to make it part of performance?

A material breach when the non-breaching party does not receive the substantial benefit of the bargain. To determine if it is a minor or material breach O will argue that the date of the completion of A's work was a term in which O bargained for since the date had particular importance for O. But that was not asserted until AFTER. Therefore, O will claim that the breach was a material breach as O wanted to gain the benefit of selling the house in time for his move. But when the contract was made, the substantial benefit was PAINTING not to sell.. did this somehow change? That's why it's so important to assess the July 1 conversation....

A's defense Is this really A's defense? Or is it his counter argument to minor vs. major breach? Let's be accurate here.. defenses seem to be contractual defenses...

A will argue that the purpose of the contract was to paint the house, and A performed the services, therefore the breach was only a minor breach. In fact, A will argue that he did perform the services contracted; therefore, the date as to completion was minor in the contract as a whole.

Failure to perform by the time stated in the contract is generally not a materially breach if performance is rendered within a reasonable time. Here, performance was rendered 20 days after it was due. However, the date was an essential term of the contract, which O reiterated by telephone in July. Yes, but you state above the June contract was formed.. did the July add terms? Modify? That's the only way it would even matter here... Since time was of the essence, O will have a strong argument that it was a material breach.

Here's what I would've said: Material or minor breaches are distinguished by whether the party gains the substantial benefit of the bargain as a result of the performance. Here, Owner had bargained for the painting of his home. The question therefore is whether the September 1 date was a material and significant term to the agreement. Arguably, as previously discussed, had the additional "risk" or "consequence" been added as a term, the late performance could be seen as material breach and should the court consider the lack of consideration, the breach may be considered to be minor. While Owner would certainly argue that the original terms called for the job to be completed by September 1, and that subject to the call regarding its importance,

Ace still performed and did not assert any objection to the important term, Ace would argue that generally, being late was a natural consequence of the industry and the small delay was not a material breach as Owner still got his home completed.

O'S REMEDIES

COMPENSATORY DAMAGES

Compensatory damages put the non-breaching party into as good a position as the party would have been if the other party fully performed.

Here, if the house was completed in time O would have been able to post the house for sale on September 1. O will claim that he should be entitled to the cost of the house not selling since time was of the essence and he would have posted the house sooner. **This is all assuming time was of the essence and there was a major breach, right?**

In fact, O will argue that most realtors in the area agree that the selling season in the area runs from May 1 to October 1, and that A's failure to complete in time caused him to miss the selling season. As such O will want to recover for that time period. In this case, O is trying to recover \$6,000 which is the interest payment for the time between completion and when he finally sold the house.

A's defense

A will argue that this amount is not a certain calculation of damages. Since A completed his services by September 20, the house was already posted during the time period that the realtors consider to be the selling season. A will argue then that O did not miss the selling season because his house was listed for the last ten days of the season. Furthermore, A will argue that O only missed out on 20 days of the selling season as he was planning on posting the house very close to the end of the season (October 1).

Isn't this an uncertainty of damages argument? - how do we even know it would've sold?

A will also argue that O had a **duty to mitigate** his damages. Since the house stood empty and O did not make any effort to rent or otherwise make use of it, A will argue that O should not be entitled to his damages for the full amount of interest. O was able to mitigate his amount of damages but did nothing to that extent. **Mitigation would also go towards the fact that O could've hired another painter on Sept. 2 when there was a breach.**

CONSEQUENTIAL DAMAGES

O will argue that his damages are also consequential damages, if a reasonable person would have foreseen at the time of entering into the contract that such damages would result if A did not complete the painting until September 20. Since O placed significance on the date of completion, O will argue that it would have been foreseeable that timing was important and failure to complete the work in time would have caused O to not sell the house. **Again, only if the modification or some sort of reliance occurred as to the July 1 telephone call...**

A's Defense

However, A will argue that O should not be awarded any consequential damages, as it was unforeseeable that the weather was unusually rainy, and that a 20 day delay would have caused the house to not sell for a period of 8 months (September to May). Since market conditions always are changing, and O was not going to place the house for sale until September (the last month of the selling season), it is not foreseeable that the house would not sell for such a time period

So what's your conclusion?

What about your defenses for the contract?

Are there any?

B) Claims by A against O

BREACH: O DID NOT PAY FOR SERVICES

A breach occurs when a promisor under absolute duty fails to perform in accordance with the terms of the contract, where the duty has not been discharged or excused.

DUTY TO PERFORM

A will claim that based on the valid contract entered into on June 1, 1994, O had a duty to pay for the services that A rendered in painting his house. This was not a contract where acceptance was based on performance. It wasn't? I thought it was... You paint, I pay... both are independent duties or is one contingent on the other? Here both parties entered into a contract with consideration that O would pay A for his services. Since O did not pay A for his services he did not perform his duty as specified in the contract. Well, that depends on whether there's an excuse to performance.

TERMS OF THE CONTRACT

The contract itself required O to pay for services. Therefore, O's failure to pay is not in accordance with the terms of the contract

DUTY NOT DISCHARGED OR EXCUSED

A will argue that O's duty was never discharged or excused, therefore, O is required to fulfill his part of the bargained for exchange that the parties entered into on June 1, 1994. As such, A will argue that his failure to perform constitutes a breach. I think there's more to it than this... remember when A failed to perform its duty on time, O may have an excuse to performing his end... "Generally, a parties' obligation to pay may be excused by another parties' breach. However, the breach must be material for the obligation to be excused. Here, the question is whether Ace's breach excused Owner's obligation to pay. As previously asserted, while Owner would argue the breach to have been material since he asserted the timing of the completion was of the essence, Ace would counter argue that in general painting situations, a delay in the completion date is hardly material. As discussed above, the Court would likely find the breach to be only minor as the subsequent phone call did not change the original terms of the

agreement. As such, the Owner would still have a duty to pay the \$4,700 minus any damages resulting from Ace's breach."

Minor or Material Breach

A will argue that O's failure to pay for A's services is a material breach of the contract since it was an essential element of the bargained for exchange when the parties entered into the contract. Since A completed his service to O, he should be compensated for his services. In fact, O's **willful** withholding of A's payment may make the courts find this to be a material breach.

Based on the facts in this situation, O's promise to pay A for his services is an important term of the contract. The court will mostly likely find this to be a material breach since it goes to the consideration given by O to enter into the contract in the first place. **Even when A failed to perform on time??**

O's Defense

O will argue that his nonpayment is not a breach of the contract. In fact, as A did not complete the painting in time, and time was of the essence, A had already breached the contract. Therefore, O was excused from payment since the contract was breached when A did not complete the job in time.

Frustration of Purpose

O may also argue that the contract's purpose was frustrated. A duty to discharge O from paying would arise if (1) a supervening event (2) that was not reasonably foreseeable at the time they entered into the contract (3) which destroyed the purpose of the contract, (4) as understood by both parties.

Under this argument, O will have to prove that the date was of such importance, that it frustrated the entire purpose of the contract. To prove this, O would need to show that the supervening event (unusual rain) was not reasonably foreseeable, and that the rain caused the delay, which destroyed the purpose of the contract (to have the house painted by September 1).

This will be a hard argument to prove, as A will argue that the purpose of the contract was to paint the house, and the date was a term of the services. O will most likely lose on this argument. **I'm not sure if this is really applicable...**

What about remedies under UNJUST ENRICHMENT – QUASI CONTRACT?

A'S REMEDIES

COMPENSATORY DAMAGES

(See rule above)

If O had paid for his services, thereby, performing on his part of the contract, then A would have obtained the payment of \$4700 for his services. That would place A to the position he would have been if the contract were fully performed by O.

SPECIFIC PERFORMANCE

If A is unsuccessful in obtaining a legal remedy, A will argue that damages are not an adequate remedy. Essentially, A will ask the court to order performance since A has completed

his side on the agreement and did not materially breach the contract. The court would be ordering O to pay for the services rendered, so the specific performance is as to the payment. However, courts do not order specific performance for service contracts. However, since A is seeking performance of O's payment, the specific performance does not pertain to the actual service rendered (painting) but to the price due for the services (\$4,700). These are money damages.. there IS an adequate remedy at law – payment of the \$4700.

QUASI CONTRACT RELIEF

If A is unsuccessful in obtaining the cost of his services, he may also seek relief under quasi contract relief. If the court finds that there is an unenforceable contract since A delayed his completion by a material term of date of completion, then A will seek quasi contractual relief as O would be unjustly enriched as his house was painted and sold, while A was never paid for his services. Ah, yes, her eit is, but I need a better statement than what you have... Even if the parties found there to be a material breach thus not obligating the payment, considering Ace still completed the painting work at Owner's house, Owner may still be obligated to pay Ace for the benefit received as a result of Ace's work. The concept of unjust enrichment does not allow a party to be unjustly enriched despite the failure of a contract. Here, Owner still received the benefits from Ace's work and thus Ace should be compensated according to the fair value of the work provided. To do otherwise would unjustly enrich Owner due to Ace's delay.