

Superbowl Question: Outline answer:

1. Theories of damages:

a. Restitution damages

Restatement 2d. § 344(c) states that the promisee's "restitution interest," "is his interest in having restored to him any benefit that he has conferred on the other party." This would be the price the ticketholder paid to the NFL (i.e. the other party) for the ticket. This theory would not allow the recovery of a higher price the ticketholder paid to anyone other than the NFL, for example if the ticketholder bought the ticket online.

b. Reliance damages

Restatement 2d. § 344(b) states that the promisee's "reliance interest," "is his interest in being reimbursed for loss caused by reliance on the contract by being put in as good a position as he would have been in had the contract not been made." So we think about unwinding the contract. Expenses the ticketholder incurred in going to the game: the ticket cost (whether the ticket was bought from the NFL or someone else), airfares/train ticket costs, hotels etc are expenses the ticketholder was prepared to incur to see the game but are wasted if the ticketholder does not get to see the game.

The amount recoverable on this theory is likely to be greater than the amount recoverable on an expectation damages theory (ticket price plus expenses rather than ticket price - see below).

c. Expectation damages

Restatement 2d. § 344(a) : states that the promisee's "expectation interest," "is his interest in having the benefit of his bargain by being put in as good a position as he would have been in had the contract been performed." Valuing the expectation interest in an experience like attending the superbowl is complicated because it would seem that the benefit the ticketholder expects to derive is not really an economic benefit (cf. the discussion in *Sullivan v O'Connor* about distress and other emotional components of damages, Casebook p. 19). It would be possible to claim the price paid for the ticket under this theory even if the ticket was bought online from someone other than the NFL.¹ The price the ticketholder paid for the ticket represents that ticketholder's economic valuation of the contract. Expenses incurred in going to the game would not be obtainable on an expectation damages theory as they would have been spent anyway if the contract had been performed. Any extra expenses flowing from the breach could be recovered though I don't know what these could be. For example, if the ticketholder decided to stay an extra couple of days to have fun doing something else to get over the disappointment it isn't clear why that should be recoverable.

Expectation damages for the limited view would reflect the difference in value between being able to see the game properly and being able to have only a limited view.

2. The NFL offer

The options available were:

1. \$2,400 (three times the face value of the ticket) plus one free, transferable ticket for a non-temporary seat at the next NFL Super Bowl game;
2. One free, non-transferable ticket for a non-temporary seat at any future SuperBowl game of the

¹ If the ticket was bought from a scalper in a state where scalping is illegal there could be an issue about whether the illegality might prevent recovery of the amount paid - at least the amount over the official price of the ticket.

fan's choice, plus round trip airfare and hotel accommodations provided by the NFL; or
3. the greater of (i) \$5,000 or (ii) an amount equal to the aggregate total of the actual, documented expenses incurred by the ticketholder, including (a) the actual price paid for the Super Bowl XLV game ticket, (b) airfare or other expenses incurred related to travel to/from the Dallas – Ft. Worth area, (c) a per diem for food, tips and ancillary charges at a daily rate of \$100 a day for up to five days actually spent in the DFW area, (d) hotel lodging costs for room, internet, parking and tax for up to four nights, (e) ground transportation and parking costs incurred, and (f) expenses for renting a car in the DFW area and gas for up to a maximum of five days rental.

1 gives the ticketholder an expectation damages type remedy that is likely more generous than the ticketholder would get in a lawsuit (3x face value reflects the fact that tickets have a higher price in the secondary market than face value and the future ticket helps with the disappointment which is hard to establish in a lawsuit. The difference between 1 and 2 is the game to which the substitute ticket relates (plus the fact it is non-transferable) and the expenses rather than the \$2400. Again we could see this as a way of addressing expectation damages. 3 is about reliance damages. A ticketholder who did not keep receipts or who incurred expenses under \$5000 would be better off under this offer than if they were to bring a lawsuit. A ticketholder who spent more than \$5000 in expenses could recover actual; reliance damages.