An attorney received a document at his office with an attached note from a client for whom he had just finished drafting a will. The note read as follows: "Do you think this contract of sale for my boat complies with state law? I would have talked to you in person about this, but I'm on my way out of town. I will be back next week."

The attorney reviewed the document and wrote a one-page letter to the client stating that the document complied with state law. The lawyer included a bill for $500, which was a reasonable fee.

The client refused to pay the attorney anything, arguing that she had never agreed to retain the attorney and that she had received nothing of value from the attorney because the sales transaction was never concluded.

Assume that there is no applicable statute or rule governing the formation of attorney-client relationships in the jurisdiction.

If the attorney sues the client for the $500, will the attorney be likely to prevail?

A. No, because even if the parties had an agreement, that agreement was discharged under the doctrine of frustration of purpose.

B. No, because the attorney and the client never agreed on the essential terms of a contract.

C. Yes, because the attorney took action on the client's note to his detriment.

D. Yes, because the client's note and the attorney's performance created an implied-in-fact contract.

Explanation:

To form a contract (ie, a legally enforceable agreement), there must be **mutual assent** (also called a meeting of the minds). This requires both:

offer – a communication that creates an objectively reasonable expectation in the offeree that the offeror is willing to enter into a binding contract *and*

acceptance – an objective manifestation of the offeree's assent to the terms of the offer that is made by the offeree in any reasonable manner, unless the offer requires a particular method of acceptance.

Mutual assent can be manifested by written or spoken **words** (creating an **express contract**) OR by **conduct** (creating an **implied-in-fact contract**).

Here, the client's note asked the attorney whether the contract for the sale of her boat complied with state law. The parties already had an attorney-client relationship, so the attorney reasonably understood that the client was offering to hire him to review the contract and provide her with an opinion. The attorney's conduct in reviewing the contract and writing back to the client was a reasonable method of acceptance—especially since the client was headed out of town. Therefore, an implied-in-fact contract was created, and the attorney is likely to prevail.

(Choice A) The doctrine of frustration of purpose only applies when the purpose of a contract becomes worthless due to an unexpected event. But the sales transaction's failure to conclude is *not* an unexpected event that would render the attorney's advice on the matter worthless.

(Choice B) Even if an essential term is missing, a contract may be formed if it appears that the parties intended to form a contract and the court can supply the term with reasonable certainty. Here, the facts stipulate that $500 was a reasonable fee.

(Choice C) The doctrine of promissory estoppel allows a party to enforce a promise on which it reasonably and detrimentally relied when *no* valid contract was formed. A contract was formed here, so the attorney's reliance is irrelevant.

Educational objective:

The mutual assent required to form a binding contract can be manifested by written or spoken words (express) OR by conduct (implied-in-fact).

References

Restatement (Second) of Contracts §§ 4, 19 (Am. Law Inst. 1981) (conduct as manifestation of assent).

Examples of implied-in-fact contracts