

A man and a woman were the parents of an adult son. The son aspired to become a successful music producer but was having difficulty balancing his full-time job with his musical aspirations. As a result, the man and woman agreed in a signed writing that on the last day of January and each succeeding month, each would give the son \$3,000 to cover his living expenses and allow him the freedom to pursue his dream. According to the signed writing, the payments to the son were to continue until the son was named "Music Producer of the Year" at a national music awards show.

The man and the woman made the agreed payments in January, February, and March. In April, however, fed up with the son's lack of progress, the man refused to make any payment and notified the woman and the son that he would make no further payments.

Assume that there is a valid contract between the man and woman and that the son has declined to sue the man.

Will the woman succeed in an action against the man in which she asks the court to order the man to continue to make his payments to the son under the terms of the contract?

- A. No, because a court will not grant specific performance of a promise to pay money.
- B. No, because the man's breach of contract has caused no economic harm to the woman.
- C. Yes, because the woman's burden of supporting her son will be increased if the man does not contribute his share.
- D. Yes, because the woman's remedy at law is inadequate.

## Explanation:

### Third-party beneficiary contract enforcement

(promisee v. promisor)

Type of beneficiary	Cause of action	Remedies
<b>Donee</b> (recipient of gift)	Promisee (ie, party wishing to make gift of performance) has cause of action for promisor's nonperformance	Promisee entitled to: actual damages (rare) nominal damages OR specific performance if other remedies inadequate
<b>Creditor</b> (satisfaction of debt)	Promisee (ie, party wishing to satisfy debt to beneficiary) has cause of action for promisor's nonperformance	Promisee entitled to: reimbursement in amount of debt (if promisee paid debt) OR specific performance (if promisee has not paid debt)

A party to a contract with an **intended beneficiary** can sue the other party for breach of that contract. But in some cases, the party's **remedy at law** (ie, monetary damages) is **inadequate**. For example, when the breaching party's performance is a gift to the intended beneficiary, the nonbreaching party typically cannot show actual damages and can therefore recover only nominal damages (eg, \$1). In that situation, the court may order **specific performance**—ie, an **equitable remedy** whereby the **court orders the breaching party to perform**.

Here, the man and the woman agreed that each would give \$3,000 per month to their adult son—the intended beneficiary of the contract. The man breached that contract when he prematurely stopped making monthly payments. Because the man's performance was a gift to the son, the woman is unlikely to prove actual damages. Additionally, nominal damages would be inadequate to protect her interests under the contract (ie, giving the son financial freedom). Therefore, she will succeed in her action for specific performance (**Choice A**).

**(Choice B)** The woman need not prove that she suffered economic harm for the court to grant her specific performance. She need only show that money damages are inadequate to protect her interests.

**(Choice C)** The woman's burden of supporting her son *may* increase if the man does not contribute his share (eg, if she pays his share). But this is no basis for granting her specific performance. Instead, a finding that her legal remedy is inadequate is required.

**Educational objective:**

Specific performance is an equitable remedy whereby the court orders the breaching party to perform a contractual duty. This remedy is appropriate when the nonbreaching party's remedy at law (ie, money damages) is inadequate—eg, in a suit between parties to a contract that gives a gift to an intended beneficiary.

**References**

Restatement (Second) of Contracts § 357 (Am. Law Inst. 1981) (specific performance).

Restatement (Second) of Contracts § 302 (Am. Law Inst. 1981) (intended and incidental beneficiaries).

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