AMERICAN CONTRACT LAW

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Fall 2017

Topic 1: Contract as Promise

Basic Concepts

The core of the study of contracts:

Since some promises are enforced and others are not, *what promises are enforced and why?*

Different systematization or codification efforts of American contract law under the common law tradition:

- *R2d*: The Restatement (Second) of Contracts - 1979
  - Purpose: restating the complicated common law and assisting courts in determining precedents.
  - A particular Restatement provision does not carry the force of law unless and until it is adopted as an authoritative statement by courts deciding contested cases.
- *UCC*: The Uniform Commercial Code (Article 2) - 1940s
  - Purpose: reducing the common law to statutory form.
  - Governing certain kinds of contracts: the sale of goods.
  - Need adoption by state legislatures.
- *CISG*: The United Nations Convention on Contracts for the International Sale of Goods - 1980
  - Purpose: governing international sales contract.
  - Self-executing treaty.

Selection of source of law: UCC or Common law?

- UCC governs contracts for the sale of goods.
  - 49 states adopt UCC Article 2 – the exception is Louisiana.
  - Common law (the principles of law and equity) supplements UCC where UCC don't cover. – § 1-103
- Common law governs other contracts.
  - R2d as a persuasive authority – but if adopted by state courts, one provision will become mandatory authority.
- Mixed-purpose contract: predominant purpose test – TB pp. 531-532, seems not covered in class

Different functions of various contract rules and doctrines:

- Sorting: deciding what behavior constitutes a "promise" and which of them have enforceability.
  - Related doctrines: "objective" theory; consideration; promissory estoppel.
- Gap-filling: setting default rules about changed circumstances if promises don't say about them.
  - Related doctrines: mistake; excuse; impossibility.
- Interpretation: determining meaning of promises.
  - Related doctrines: the parol evidence rule; interpretation rule.
- Line-drawing: deciding which rules (default rules) can be altered by parties and which cannot.
  - Related doctrines: duress; fraud; unconscionability.

Main Rules

Contract defined

R2d § 1: *A contract is a promise or a set of promises* for the breach of which the law gives a remedy, or the performance of which the law in some way recognizes as a duty.

* In another word, *a contract is a legally enforceable promise*.

Promise

R2d § 2: *A promise is a manifestation of intention to act or refrain from acting* in a specified way, so made as to justify a promisee in understanding that a commitment has been made.

- Element 1: a promisor manifests an intention;
- Element 2: a promisee forms a belief of a commitment;
- Element 3: the relationship between the two: the manifestation *justifies* the understanding.
  - For example, Prof. Kraus's joke of selling his car to me for $100 can't justify my understanding.
  - The standard of justification is objective: it's the perspective of a reasonable person under the circumstances.

* To explain what is a contract and promise, Prof. Kraus didn't resort to concepts like "mutual consent" or "meeting of minds". He used the precise expression of R2d.

How a promise may be made

R2d § 4: A promise may be stated in words either oral or written, or may be inferred wholly or partly from conduct.

Case Study – Bailey v. West

Court's Finding

Facts

- Defendant (Δ) West, accompanied by his horse trainer, bought a horse "Bascom's Folly" (the horse) from seller Dr. Strauss (the seller). Upon arrival, Δ and his trainer found the horse was lame. Δ asked his trainer to arrange a reshipment to the seller. A van driver Kelly shipped the horse back, but the seller refused to accept.
- Kelly called the trainer. The trainer told Kelly "he would have to do whatever he wanted to do" but Δ wouldn't be responsible for boarding the horse on any farm (fact-finding of the trial judge – It was a bench trial here, no jury).
- Kelly brought the horse to plaintiff (π) Bailey's farm and they had a conversation. Kelly said "Dr. Strauss made a deal and that's all I know". It seems π knew the horse was lame and the ownership of it was disputed or unclear. π didn't know the trainer's instruction to Kelly (fact-finding).
- Then, π signed a uniform livestock bill of lading and took the delivery of the horse. The bill of lading said the horse was consigned by the trainer of Δ to the trainer of the seller, Dr. Strauss.
- π boarded and maintained the horse. About 2 or 3 months later he sent bills for its feed and board to both Δ and the seller. Once receiving the bill, Δ replied that he was not the owner and wouldn't pay the bill.
- π always boarded the horse. After 4 years, π sold the horse to a third party. π sued Δ for his service fee, on the theory of a contract "implied in law."
- In another case about the dispute over the transaction between Δ and the seller, the court found Δ was the owner of the horse and needed to purchase price of the horse to the seller.

Contract implied in fact

- "*A contract implied in fact must contain all the elements of an express contract.*" Essential elements: mutual agreement and intent to promise, both of which are not made in words but implied from the facts.
  - Prior transactions can be one circumstance.
- The trial court's decision was based on this theory, though π didn't mention it. The court supported a relief of 4 months (before Δ's notice that it wasn't his horse) and 1 month of reasonable disposition.

- The supreme court reversed the trial court's finding and held that there was no mutual agreement and intent to promise, thus there was no contract implied in fact.
  - π had knowledge about the dispute over the ownership of the horse. He couldn't sign a contract without a definite opposite party.
  - Many evidence show that Δ didn't have the intention to reach an agreement about boarding the horse.
  - π and Δ didn't have any prior transactions.

Contract implied in law: quasi-contract

- Quasi-contract doesn't arise from promises. Essential elements:
  - A benefit conferred upon Δ by π;
  - Appreciation by Δ of such benefit; and
  - Acceptance and retention by Δ of such benefit under such circumstances that it would be inequitable to retain without payment of the value thereof.
- The act of the π should be voluntary. Thus he cannot go against Δ's opposite declaration.
  - The Restatement of Restitution, § 2 (1937): "A person who officiously confers a benefit upon another is not entitled to restitution therefor."
  - The one conferring the benefit is usually not entitled to a restitution, unless he had a valid reason for so doing.
- No quasi-contract here: π knew the dispute over the ownership of the horse; the bill of lading is a proof. And Δ had expressly noticed that he was not the owner upon receipt of plaintiff's first bill.

Kraus Comments

About quasi-contract

Quasi means not. *A quasi-contract is not a contract.* It's actually unjust enrichment, in the area of law called restitution, which is actually the fourth leg of the common law (other three: contracts, torts, property).
To define a quasi-contract, the vague concepts like "duty implied in law" or "law of natural immutable justice and equity" are useless. The elements summarized in this case are useful.

The distinction between contract implied in fact and express contract

To a certain degree they are the same thing. But if both are selectable, we usually prefer to choose express contract because it is more likely to win. Besides the probability of winning, another reason why express contract matters is that it is related to the doctrine of statute of fraud.

π's choice of theory, and the length of the time of π's possible recovery

Generally, what a plaintiff really wants in a lawsuit is money, instead of other reliefs. He hopes to get recovery as much as possible. Maybe this is the reason why π's attorney always tried to select the quasi-contract theory.

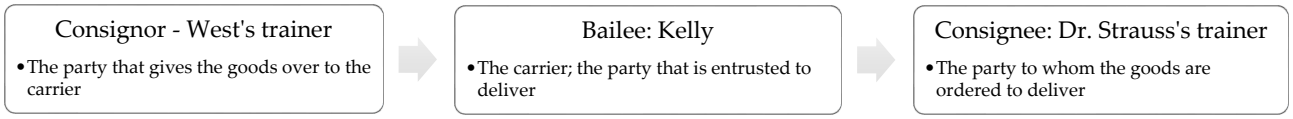
- Under the theory of contract implied in fact, π can only get a recovery of the first 5 months at most (before time of Δ's letter of notice adding a grace period).
  π actually alleged a breach of contract (implied in fact) under this theory. Here the implied contract is that π takes care of the horse and Δ pays for the service. The period of the contract should start when the horse was dropped off, but terminate when Δ expressly announced that it wasn't his horse. Because at that time Δ manifested his opposite intention and the initial hypothesized intention would be devastated. There is no question that π can't get a recovery of more than 5 months under the contract analysis above.
- Under the theory of quasi-contract, however, π may allege a recovery of all these 4 years (though more debates and π's position may be difficult to be supported).
  Because this theory here is related to the ownership (see more detailed discussion below) but not related to Δ's letter of notice. π brought quasi-contract in the first place, and on the appeal they also wanted to return to the quasi-contract theory and try to get more recovery.

How to interpret the supreme court's expression "the trial justice overlooked and misconceived material evidence"?

Definitely what the supreme court did was not to overturn the facts found by the trial court. Nor did it say the trial court misunderstood the law itself. What it said here is that the trial court applied the facts incorrectly, or it misunderstood the importance of certain facts. That is, the trial court said Fact A+C+D = Contract, while the supreme court said A+B+C+D+E = Contract, and the Trial court didn't take B & E into account.

The agent issue：Did π had any way to know that Kelly was manifesting on behalf of Δ?

- From the context, π must have known that Kelly was speaking on behalf of somebody else. This inference is too obvious to be discussed on the court. But on whose behalf?
- The legal relationship between West, Kelly and Dr. Strauss:



The bill of lading shows this relationship. π signed it, so he knew Kelly was instructed by Δ's trainer, and thus was on behalf of Δ.

* Investopedia: A bill of lading is a legal document between the shipper of goods and the carrier detailing the type, quantity and destination of the goods being carried. The bill of lading also serves as a receipt of shipment when the goods are delivered at the predetermined destination.

The interpretation of the supreme court's decision, and rethink of it (if you were π's attorney)

The trial court determined that there was a contract (implied in fact) but the supreme court rejected. That is to say, the supreme court thought one or more elements of R2d § 2 are not satisfied, while the trial court thought they are satisfied.

The supreme court indicated that the trail court overlooked several facts. We analyze which of the three elements of R2d § 2 do these facts undercut. Then we analyze whether the supreme court's theory really makes sense: if you were π's attorney, how to refute them?

Fact	Element	Supreme Court's Argument	π's Rebuttal
π knew of the dispute over the ownership of this horse: he sent bills to both Δ and the seller.	E3 justification	π seemed to think both of Δ and the seller might own the horse. The supreme court was doubtful about the reasonableness of π's belief that he would be paid for boarding the horse by somebody who didn't own it.	π was unsure about the ownership of the horse, but ownership issue is irrelevant to the contract analysis in Bailey v. West. The real question is who manifested an intent. R2d § 2 tells us that promises of promisors constitute a contract. It's possible for somebody to promise to pay for the boarding of a horse that he doesn't own.
π signed the bill of lading which said the seller was the consignee.	E3 justification	π could be justified to believe the horse was delivered to the original seller from this fact but couldn't be justified to believe Δ intended him to board the horse.	The name of consignee on the bill of lading was based on the assumption that Dr. Strauss would accept the horse. It couldn't reflect the subsequent development. π knew the dispute, so under this circumstances he could reasonably assume that Δ had given Kelly new oral direction to bring the horse to π. This reasonable assumption made him sign the bill of lading.
π had no prior course of dealing with Δ.	E3 justification	No prior transactions gave π a reasonable presumption that Δ intended him to board this horse.	So what? Prior business relation is one but not the only reason making π believe Δ had the intention.
Δ's trainer told Kelly that Δ won't pay for boarding	E1 manifestation of intention	Δ manifested the opposite intention. The supreme court said this is the most	The supreme court's analysis actually violated the agency law. Based on apparent authority, Kelly was the agent of Δ. So Δ as the principle should be liable for

the horse.	important reason.	Kelly's action, unless he had expressed opposite intention to the third party π. The trial court found "plaintiff was not aware of the telephone conversation between Kelly and defendant's trainer." The supreme court also overlooked this material evidence.

- Besides these rebuttal, π also needs to establish that he can satisfy the three elements of a promise, and one key point is to justify his understanding that Δ would pay the service fee. One argument for him is like this: as a professional who operates a boarding farm, it's a common understanding that his service is for a fee. Just like a repair store, if you leave a pair of shoes there without a word, then the store can understand that you will pay a fee for repairing it.

More discussions about the agency relationship: apparent authority

Δ and π didn't have direct contact. The only way that Δ could be liable to π is that Kelly acted on his behalf under the agency law. π might not allege actual authority, but could allege apparent authority. Apparent authority is the authority a reasonable third party would believe the agent have based on the manifestation of the agent. It doesn't mean anyone's announcement of being an agent of others can establish an apparent authority. Some acts on the part of the principal are needed. Apparent authority mostly stands for actual authority.

In the case of TB p.10, Michael will win under apparent authority. If John wins, all agents will be unreliable and you will need to transact directly with the principals, which will make agents and agency law useless. You can't even find a principal when making a deal with a company, where the principal is the abstract entitle of the corporation.

If a principal has selected an agent and made a third party know of the agency relation, the risk of fraud of the agent should be allocated to the principal. He is the one in the position to decide whether to have an agent or not and had the best opportunity to avoid the damages.

More discussions about the relationship between the ownership issue (Strauss v. West) and this case

The trial court's logic here is that π had a contract with whoever the owner is. Luckily in the case Strauss v. West Δ had been found as the owner, so it can be justified that π had a contract with Δ. However, based on our analysis above, the trial court's theory is incorrect. According to the definition of contract and promise, the issue of ownership is irrelevant to this case under the contract implied in fact theory.

Under the contract implied in law (quasi-contract) theory, however, the ownership problem is relevant and dispositive. Look at the first element of quasi-contract. It was the owner who was benefited, thus he can be a defendant under the quasi-contract theory. π initially brought suit in the quasi-contract theory, which made the ownership become an issue in this case. Then the trial court got confused.

Possible court debates under the quasi-contract theory

π and Δ might debate under the 3 elements of quasi-contract:

- Element 1: The enrichment to the horse really exists. The question is how to calculate the enrichment (see below).
- Element 2&3: they might have tit-for-tat debates:
  - Obviously Δ will allege that he doesn't want the horse, so he doesn't appreciate this benefit. π can argue that "talk is cheap." If Δ doesn't appreciate it, he should have come to get it, picked it up and took it back. π, as a bailee, only has the duty to take care of the goods and doesn't have the authority to dispose of it.
  - Then Δ may say π could have "self-helped", like sold or disposed of the horse. And π can argue Δ as the owner could help himself but he couldn't because he is not the owner.

Different methods of measuring damages under the two theories

Besides the different length of time of π's possible recovery, the application of the two theories will also lead to different methods of measuring damages.

- Under the contract implied in fact, you look into the contract for the price of this particular service, namely what π charges for his service (expectancy damage award, R2d § 344). The value or cost of services doesn't really matter.
- Under the quasi-contract theory, the remedy is defendant-oriented, not plaintiff-oriented. To decide the remedy, a measurement of enrichment (the value of the care given to this horse) is needed. But how to measure it? This question can be pretty controversial. π might introduce several possible methods of measurement:
  - Method 1: If π hadn't taken care of the horse, obviously the horse would have died and the value of it would have become 0. π preserved the value for the owner. And the value equals to the market price of the horse.
  - Method 2: If π hadn't taken care of the horse, owner would have taken care of the horse by himself or hired another boarding farm, which would have generated some expenses. Because of π's action, the owner saved this expenses. Thus the value can be evaluated at the average market price of this services. This amount may or may not correspond to what π charges, and may or may not correspond to what π's real expenses were.

So the remedy of quasi-contract can be much more complicated and subjective than the contract analysis.

What went wrong in this case, or how did the dispute arise?

When receiving the equivocal directive from Δ's trainer, Kelly's common practice was to return the horse back to the trainer, the consignor. But he didn't. Nor did he clarify this issue to π. He knew more than what he told π. Without more instructions, a boarding farm usually takes care of a horse left there, for a fee of course. So it seems that Kelly was trying to take advantage of π and lead π to make a mistake.

The legal status of π's sale of the horse

Finally, π disposed of the horse: he sold it. This action can be justified by common law. Δ's action falls in the scope of abandonment. He may abandon it from disuse, lack of making a claim, etc. And then π can get the property. Of course if that happens, π won't be able to allege the quasi-contract claim.

Topic 2: Consideration

Basic Concepts

Three principal doctrines to distinguish between enforceable promises (contracts) and nonenforceable promises:

- The consideration doctrine - R2d § 71;
- Promissory estoppel - R2d § 90;
- The material benefit rule - R2d § 86.

The switch of theory of consideration:

R2d § 71 sets out the so-called "bargain theory" of consideration, which replaced its predecessor, the so-called "benefit-detriment" theory (First Restatement §75) of consideration.

- "Bargain theory" suggests that "bargained for" promises *are supported by* consideration, but "gift promises" are not.

Location in R2d:

This part is mainly provided in Chapter 4: Formation of Contracts - Consideration.

Main Rules

Requirement of a Bargain

R2d §17: (1) Except as stated in Subsection (2), the formation of a contract requires a bargain in which

there is a manifestation of mutual assent to the exchange and a consideration.

…

Requirement of Exchange; Types of Exchange

R2d §71:

(1) To constitute consideration, a performance or a return promise must *be bargained for*.

* Don't be confused by the English word "consideration". It has nothing to do with the legal concept.

(2) A performance or return promise is bargained for if it is sought by the promisor in exchange for his promise and is given by the promisee in exchange f or that promise.

* That is, here, a promise is made as a result of a bargain. The bargain produces the promise. A potential exchange *induces* the promisor to make the promise. Thus, this promise is conditional and requires the other party to give the promisor something: "If/only if…, then…" An unconditional promise is a gift, which is not supported by consideration. Only promises *supported by consideration* can be contracts.
* Usually each one of the parties is trying to induce the other to act or refrain from acting in a particular way. They promise in exchange of a promise of the other party.
* All contracts are promises; but not all promises are contracts. That is, using a math term, a promissory liability is a necessary but not sufficient condition of a contractual liability.

(3) The performance may consist of

(a) an act other than a promise, or

(b) a forbearance, or

(c) the creation, modification, or destruction of a legal relation.

(4) The performance or return promise may be given to the promisor or to some other person. It may be given by the promisee or by some other person.

Adequacy of Consideration; Mutuality of Obligation

R2d §79: If the requirement of consideration is met, there is no additional requirement of

(a) a gain, advantage, or benefit to the promisor or a loss, disadvantage, or detriment to the promisee; or

(b) equivalence in the values exchanged; or

(c) "mutuality of obligation."

- The principle of mutuality of obligation is commonly expressed as requiring that "both parties are bound, or neither is bound."

* **(Nominality Doctrine)** Comment d: Disparity in value, with or without other circumstances, sometimes indicates that the purported consideration was not in fact bargained for but was a mere formality or pretense. Such sham or 'nominal' consideration does not satisfy the requirement of § 71.

Settlement of Claim

R2d §74

(1) Forbearance to assert or the surrender of a claim or defense which proves to be invalid is not consideration unless

(a) the claim or defense is in fact doubtful because of the uncertainty as to the facts or the law, or

(b) the forbearing or surrendering party believes that the claim or defense may be fairly determined to be valid.

…

Case Study – In re Greene

Court's Finding

Facts

- Greene, a rich man, had lived in adultery with the claimant Trudel (π), and π knew Greene was married. After they ended their relationship, they wrote an instrument (the alleged contract).
- In this instrument, Greene agreed to pay a large amount of money to π for several items such as rent. π needs to pay $1 to Greene and has some other liabilities such as releasing her claim of asking Greene to marry her (see the court's analysis).
- The preamble to the instrument recites as consideration the payment of $1 by the claimant to Greene, "and other good and valuable consideration."
- Two years later, Greene went bankrupt and failed to make payment thereafter. The bankrupt's estate (Δ) was founded according to bankruptcy law, and π asked for $375,700 based on this instrument, which was rejected by Δ. So π sued to enforce promises that Greene made in the instrument.

The basis of court's holding

- The court decided that the issue here is not the illegality but the existence of consideration of the bankrupt's promises. The court adjudicated that there was no consideration, thus no contract.
  - Past consideration is not good consideration. A promise to pay a woman on account of cohabitation which has ceased is void, not for illegality, but for want of consideration.

The court's analysis of π's proposed considerations in the alleged contract

- The $1 consideration recited in the paper – it's just nominal.
- "Other good and valuable consideration" – it's a hallow expression and can only be supported with facts.
- π's release of claims – it doesn't constitute a consideration because π had no lawful claims.
  - Because of his existing marriage, Greene's promise to marry π as soon as he was divorced was illegal. So π doesn't have lawful claim based on this promise. Thus she can't release a nonexistent claim as a consideration.
- Greene's immunity from liability for taxes and other charges on the Long Island house – the bankrupt never owned this house, thus he was never chargeable for these expenses.
  - His previous payment for the house and other expenses was a gift to π.
- Parties' intention to make a valid agreement – can't prove the existence of consideration.
  - Greene's real intention was to make financial contribution to π. His promise was to make a gift and thus unenforceable.

Kraus Comments

No Bailey defense here

There is no question about whether there was a promise because there was a written instrument. So no arguments in Bailey case here. The question here is whether the promise should be enforced, or *whether the promise is supported by consideration*.

Adequacy doctrine and nominality doctrine

- The court said the $1 is nominal. It sounds like that the court scrutinized the value of consideration and thought the alleged contract is lopsided. It seems that the court start going down the road towards the legal principle of equality in contract. If that's how the court understood, its understanding would go against R2d §79, the adequacy doctrine.

  Opposite to the apparent meaning of the name of this doctrine, it tells us the adequacy of consideration or mutuality of obligation is not required, if the bargain doctrine in R2d §71 is satisfied.
- However, the adequacy doctrine is not the case here. It's absurd that Greene made the promise because an exchange of $1 induced him to promise. So the court didn't mean the exchange was unfair. It thought there was no bargain at all. The $1 is trying to make a non-bargain look like a bargain. It can't justify the promises to be enforceable.

  This is the nominality doctrine (TB p.148), which is also called the sham consideration doctrine.

π's potential argument of past cohabitation as the consideration

- π may argue that their past cohabitation is the consideration. This argument cannot success because past consideration is not good consideration.
    - A promisor makes a promise in order to make the promisee to do something back. Think of the "If… then…" structure. Consideration is inducing the subsequent promise, rather than the opposite. That is, his promise now obviously can't be conditional on something he already has. Therefore, the thing that he already has can't be the consideration supporting the promise.

More comments about Greene's purpose of making contribution to π

- We can say they really wanted the instrument to be legally enforceable when signing the instrument. They did everything they knew: they put a seal on the written instrument; they said "in good and valuable consideration", and she promised to pay him a dollar as consideration.
- We can guess Greene's thoughts. Maybe he made the promise out of gratitude. Maybe he made the promise out of love, though maybe not enough for him to leave his wife. Maybe he was trying to do the right thing here. He saw she relied on him. He knew she was in difficult position. Can these thoughts be enforceable? Maybe in a general sense this question is complicated and open for discussion.
- But as a legal rule, it's just a gift instead of an enforceable promise. The consideration requirement of an enforceable contract cannot be circumvented though the parties "shout consideration to the housetops".

π's potential argument that they really believed she had the claim

- π may raise another argument against the court's third analysis – her release of her claim cannot constitute a consideration because this alleged claim doesn't legally exist. Her attorney can argue that π and Greene genuinely believed that she had the lawful claim. Whether they made a mistake here shouldn't influence the viability of their potential contracts. Actually, this argument is valid.
- Look at R2d §74 (1). They were actually unsure whether she had the lawful claim, but they could still use it as a condition in a bargain.
    - Suppose two drives who had a traffic accident decide to sign a contract to solve the issue and waive their claims. This is a valid contract, though the legality of their claims is unclear when signing it.

Another possibility under this circumstance – paying for her silence

- Besides love, Greene might have other purposes under this circumstance. He hoped to avoid her from disclosing their affair to others, such as her wife. This is usually not a consideration. It may even lead to criminal liability – blackmail or extorting.
- If she just said, "I hate you so much. On Thursday I'm gonna disclose this affair and call up the New York Times and go on CNN," that is not illegal. But if she threatened to do that, "I hate you so much. On Thursday I 'm gonna… Chew on that." And they signed an agreement and he paid some money to her, it became illegal.
    - Here is a puzzle about this criminal liability. It's putting a bunch of things that perfectly legal to do together and they suddenly become illegal:
        - Nothing wrong with a promise about getting paid for silence (just like non-disclosure agreement, NDA);
        - Nothing wrong with disclosing everything you know about your personal affairs to the world;
        - Nothing wrong with threatening to do something lawful.

      But if you threaten to do something that you're perfectly permitted to do unless the other person agrees your condition on their payment, you go to jail. That's a puzzle. People have worked on this puzzle for 50 or 60 years.

  Anyway, that bargain could not save the day here.

The real intent of the court's judgement – its concern of public policy

The court didn't talk about π's valid argument that they really believed π had a claim of marriage. Maybe what the court really wanted to do is to protect the institution of marriage. If the court had made the opposite decision, it might have jeopardized the institution of marriage in two ways:

- It is like allowing a cohabitation or prostitution contract. The relationship here almost certainly involved sexual activities, which happened before the alleged contract. If it is allowed, this contract amounts to an ex post compensation for their sexual relationship.
- It may also encourage efforts trying to make her quiet. It will provide a smooth glide path out of a failed long-term adulterous relationship.

So an opposite decision may incentivize adultery, though such a judgement would only talk about contracts and wouldn't talk about marriage directly. The court might have a larger consideration of society – it hoped to make marriage secure. It gave a contract solution to make fidelity more attractive and less risky. That's why they didn't consider the rationale behind R2d §74.

Case Study - Batsakis v. Demotsis

Court's Finding

Facts

- In war-torn Greece of 1942, Demotsis (Δ) borrowed the equivalent of $25 from Batsakis (π) in exchange for a note which said that she had borrowed $2,000 and would repay him that amount together with 8% interest on the loan.
- On appeal, the defendant argued that the agreement lacked adequate consideration.

Holding

- The transaction amounted to a sale by plaintiff of the 500,000 drachmas in consideration of the execution of the instrument. The plea of want of consideration was unavailing. Mere inadequacy of consideration will not void a contract.
- Thus the court decided that Δ should pay $2,000 plus interest.

Kraus Comments

Could Δ invoke the nominality doctrine?

If Δ argued that the $25 was nominal, just like the $1 in In re Greene, it means that Δ was promising to give a gift, which was obviously not the case.

Analogy to an analysis of interest rates

The justification of this contract is analogous to an analysis of interest rates. How do lenders determine interest rates? The risk of default or breach. Under the circumstances in Greece at that time, people were dying like flies. And Δ used this money to get the hell out of Greece and go to the United States. She might go into the melting pot and she did. So for π, the likelihood of getting paid back is pretty low. Actually Δ charged a pretty high interest rate like 1780% for the $25. You could say that's a reasonable interest to charge under this circumstances.

π might give many $25s and expect 2 or 3 can be paid back in the amount of $2000. To a certain degree he saved lives.

Why didn't they just set a pretty high interest rate like 1780%?

That is usury rates and not allowed. It goes against unconscionability doctrine and will be deemed as a morally outrageous contract. It's void against public policy. To make the contract enforceable, he needed to select another way capturing the same economic value.

Case Study - Wolford v. Powers

Facts

- This case happened in 1882.
- Charles Lehman was an elderly widower who was a friend with Wolford (π). Before his death, Lehman

entered into an agreement where he was going generously benefit Wolford's newborn son in exchange Wolford naming this son after Lehman. Lehman also requested and received care from Wolford when he was sick. When the Wolford boy was five months old, Lehman executed a note in favor of Wolford for $10,000.

- After Lehman's death, Wolford brought suit against Lehman's estate (Δ) to recover on the note. The trial court ruled in favor of Δ. π appealed.

Holding

- The Supreme Court held for π.
- "The value of all things contracted for is measured by the appetite of the contractors." If there is a bargain, the court won't intervene too much in it and challenge the real value, especially when the contract is not a pure monetary contract.

Topic 3: Promissory Estoppel

Basic Concepts

Promissory Estoppel as another type of enforceable promises

The doctrine of consideration is no longer the sole tenet underlying the enforcement of promises. The set of enforceable promises was expanded to include those that are based on reliance. Promises may be enforced if the promisee has incurred costs, or conferred benefits, on the reasonable expectation that the promise would be fulfilled.

Instead of a bargain inducing a promise, we have the promise inducing subsequent reliance. Promise itself causes reliance.

The contradiction between consideration doctrine and promissory estoppel

R2d § 71 and R2d § 90 do have some conflicts. The restaters found that the consideration doctrine cannot cover all circumstances and common law cases, even though the Holmesian definition of contract (bargain theory of consideration) defeated the Cardozoean definition in the Restatement group. In many cases judges resorted to the concept of estoppel, where no consideration was found. Finally, the restaters created §90 to incorporate the estoppel idea. However, their inherent contradiction wasn't resolved.

Historical origin: Court of King's Bench (Common law) and Court of Chancery (Equity)

- During the development of English common law, people found that sometimes legal rules lead to unjust results, or can't provide appropriate relief. So people created another court system.
- Wiki: The Judicature Reforms in the 1870s effected a procedural fusion of the two bodies of law, ending their institutional separation. The reforms did not effect any substantive fusion, however.

King's Bench: Courthouse		Chancery: Court of Equity
"At law"		"In equity"
Judges		Chancellors
Adjudicate disputes	*v.*	"Chancer" disputes
Legal rules – *ex ante* regulation		Equitable principles – *ex post* adjustment
Remedy: available "at law" – money damages Jus + Compensation		Remedy: non-money remedies Injunctive relief

The meaning of estoppel

- Ordinarily, exercising legal rights is consistent with justice and fairness.
- On occasion, it's unjust for somebody to exercise their legal rights. Equity will *estop*, or prevent him from exercising their rights.

The expanded bargain theory

- Enforcing promises in contexts in which promisors are likely to have intended them to be legally enforceable enhances the reliability of such promises without deterring individuals from making such promises in the future.
- Enforcing promises in contexts in which promisors are likely not to have intended them to be legally enforceable significantly decreases the incentives for individuals in the future to make promises in these contexts.

Main Rules

Promise Reasonably Inducing Action or Forbearance

R2d § 90:

(1) A promise which the promisor should reasonably expect to induce action or forbearance on the part of the promisee or a third person and which does induce such action or forbearance is binding if injustice can be avoided only by enforcement of the promise. The remedy granted for breach may be limited as justice requires.

- Element 1: promisor's reasonable expectation of promisee's reliance
- Element 2: promisee's actual reliance
- Element 3: enforcement is the only way to avoid injustice

(2) A charitable subscription or a marriage settlement is binding under Subsection (1) without proof that the promise induced action or forbearance.

Case Study - Haase v. Cardoza

Court's Finding

Facts

- At first, Alice Cardoza (Δ) and her husband Tony set an inter vivos trust (生前信托) which was funded by all their assets owned by them at that time. So this trust was separated from their own estates. They decided no matter who dies first, the other will receive all the estate.
- Sometime later Tony made will, which meant after his death he wanted his sister Rose Haase (π) to get $2,500 from his estate on the assumption that he would acquire some assets after the time when the inter vivos trust was set. After Tony's death, it was found no estate was left so no money could be given to π.
- Before Tony's death, he had told Δ in private that he hoped to leave $10,000 to π, and $3000 to π's daughter Loretta Haase. Δ did not tell π about this directive.
- When Δ was in illness, she told π about this instruction and offered to give her $50 monthly. These payments lasted for eight months. When π asked Δ for a note on the remaining balance of the alleged money owed, Δ ceased the payment.
- π had not made any changes in reliance on this amount of money. π brought suit to recover the balance.

Holding

- The court thought there is no merit in π's claim and this promise is not enforceable.
  - No good or valuable consideration ever existed between any of the parties
  - No prior debts between π and Δ or the deceased. And there was no *change of position* on the part of π which could give rise to an estoppel as a substitute for consideration, so this informal promise to make a gift is not binding.
    - That is to say, element 2 of R2d § 90(1) isn't satisfied.

Case Study - Feinberg v. Pfeiffer Co.

Court's Finding

Facts

- Feinberg (π) had worked for her employer (Δ) for a long time. The board of directors of Δ adopted a resolution in recognition of π's longtime and valuable service. The resolution provided π with an increase in salary and retirement benefits in the amount of $200 per month for life, available to her whenever she should see fit to retire.
- π continued to work for two more years, then she retired and Δ began paying the benefit. Then the management of Δ changed. New chairman thought this retirement plan was just a gift and discontinued the payment. π later developed cancer and became unemployable. π sued.

π's contentions

- She continued to work for years after the time when the retirement plan was made;
- Her change of position - her retirement and the abandonment of her opportunity to continue in gainful employment were made in reliance on Δ's promise.

The court's analysis

- π' first contention cannot be supported by evidence because Δ's promise was not conditional on her continuation of work;
- π's second contention is valid because it falls within the range of promissory estoppel.

Case Study - Hayes v. Plantations Steel Co.

Court's Finding

Facts

- Hayes (π) worked for defendant company (Δ) for about 25 years. In January of 1972 he announced his retirement effective July of same year. A week before his actual retirement, an officer and shareholder of the company said they "would take care of" plaintiff. They had never talked about the sum.
- Δ started paying four installments per year of $5,000 each to π. Each year, π came to the business to say hello. He would thank the office for the checks, and inquire how long they would continue.
- In 1976, the control of the business changed hands and Δ discontinued making payment to Plaintiff. Hayes brought suit. The trial court held for π.

π' contentions

- His voluntary retirement was consideration;
- The work he performed during the week between the promise and the date of his retirement constituted sufficient consideration. π raised a precedent to support this argument.
- The doctrine of promissory estoppel can be applied here. He retired because he expected to receive the pension. He changed his position because of this position.

The supreme court's analysis

- π's voluntary retirement was not consideration of Δ's promise because he announced his retirement before the conversation between π and the officer. Thus no consideration about π's retirement induced Δ to make the promise. Plus, Δ didn't want π to retire.
- π's second argument is not valid. Δ didn't require him to perform the work. The real consideration in the precedent is the employee's consent not to compete with his employer.
- Promissory estoppel is not applicable here. Retirement was π's own desire and π made the decision first. Here the employer's decision didn't shape the thinking of π, which is different from Feinberg v. Pfeiffer Co. So we can't say π changed his position because of this promise. No actual reliance can be proved.

Topic 5: Statute of Frauds

Main Rules

§ 131. General Requisites of a Memorandum

Unless additional requirements are prescribed by the particular statute, a contract within the Statute of Frauds is enforceable if it is evidenced by any writing, signed by or on behalf of the party to be charged, which

(a) reasonably identifies the subject matter of the contract,

(b) is sufficient to indicate that a contract with respect thereto has been made between the parties or offered by the signer to the other party, and

(c) states with reasonable certainty the essential terms of the unperformed promises in the contract.

§ 139. Enforcement by Virtue of Action in Reliance

(1) A promise which the promisor should reasonably expect to induce action or forbearance on the part of the promisee or a third person and which does induce the action or forbearance is enforceable notwithstanding the Statute of Frauds if injustice can be avoided only by enforcement of the promise. The remedy granted for breach is to be limited as justice requires.

(2) In determining whether injustice can be avoided only by enforcement of the promise, the following circumstances are significant:

(a) the availability and adequacy of other remedies, particularly cancellation and restitution;

(b) the definite and substantial character of the action or forbearance in relation to the remedy sought;

(c) the extent to which the action or forbearance corroborates evidence of the making and terms of the promise, or the making and terms are otherwise established by clear and convincing evidence;

(d) the reasonableness of the action or forbearance;

(e) the extent to which the action or forbearance was foreseeable by the promisor.

- § 2-201. Formal Requirements; Statute of Frauds

(1) Except as otherwise provided in this section a contract for the sale of goods for the price of $500 or more is not enforceable by way of action or defense unless there is some writing sufficient to indicate that a contract for sale has been made between the parties and signed by the party against whom enforcement is sought or by his authorized agent or broker. A writing is not insufficient because it omits or incorrectly states a term agreed upon but the contract is not enforceable under this paragraph beyond the quantity of goods shown in such writing.

(2) Between merchants if within a reasonable time a writing in confirmation of the contract and sufficient against the sender is received and the party receiving it has reason to know its contents, it satisfies the requirements of subsection (1) against such party unless written notice of objection to its contents is given within 10 days after it is received.

(3) A contract which does not satisfy the requirements of subsection (1) but which is valid in other respects is enforceable

(a) if the goods are to be specially manufactured for the buyer and are not suitable for sale to others in the ordinary course of the seller's business and the seller, before notice of repudiation is received and under circumstances which reasonably indicate that the goods are for the buyer, has made either a substantial beginning of their manufacture or commitments for their procurement; or

(b) if the party against whom enforcement is sought admits in his pleading, testimony or otherwise in court that a contract for sale was made, but the contract is not enforceable under this provision beyond the quantity of goods admitted; or

(c) with respect to goods for which payment has been made and accepted or which have been received and accepted (Sec. 2-606).