

Consolidated contracts outline essay



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What ought to matter is freedom with which promises are made, not whether it is part of a bargain or exchange of economic values.

Limiting class of enforceable contracts is an unacceptable limitation on individual self-determination, which is ground for all promissory obligations.

Consideration as a Function of the Type of Offer Made: Allegheny: Key was determining whether it was a unilateral or bilateral contract. Majority found it was a bilateral contract, created an implied promise in fact by the college when they accepted the first bit of the money.

Conditions set forth were not just conditions to a gift, but was enough to say the exchange was bargained for and constituted consideration. Key to distinction is to look at the intent of the parties. What would a reasonable person have wanted in the situation had they thought about it? Would they want the ability to sue in case of breach? Allegheny compared with Hammer).

3. Benefit Restatement S 86: Promise made in recognition of a benefit previously received (past consideration) by the promisee from the promisee is binding to the extent necessary to prevent injustice.

Contradictory Conceptions of Benefit Previously Received (Past Consideration) Mills: Moral obligation can only form valid consideration when involves Debts barred by statutes of limitations Benefits to minors Debts previously discharged by bankruptcy Webb: Courts created a legal fiction that there was an earlier request, past consideration was enforceable. Key difference is the certainty that the promisee would have wanted what was

performed. In Mills, unsure what father would have taken care of son. In Webb, no doubt he would have wanted his life saved.

Additionally, performed contract while he was alive showing how serious he was about contract (not seen in Mills). However, contrast Webb with Harrington, where humanitarian acts ruled not valid consideration. Promises performs with expectation of being paid Edison: No indication he had built well voluntarily, added value to the land, sufficient consideration to make promise after its completion enforceable Mir: Moral obligation to pay, written clause after performance was valid. Similar to a debt barred by statute of limitations (consistent with Mills and Edison).

Moral Obligation for a Gratuitous Promise In Re Congressman's Estate: Household services presumed gratuitous, but can be overcome by express contracts or other evidence of promise. Act that induced promise does not itself need to be legally enforceable, subsequent promise coupled with acknowledged moral obligation enough to make it enforceable.

Promise Never Makes Promise? General Rule: A person who performs unrequited services doesn't get right to compensation/restitution even though performance entailed cost to him ND benefit to another.

Exception: Doctors rendering emergency services In Re Crisis: Implied contract formed when woman unconsciously admitted to hospital for 11 months. Implied promise at law, differs from implied contract in fact. In order for person to receive help in medical emergency. Inconsistent with In Re Shoemaker? Partial recovery with express promise vs.

. Full recovery with no promise. Response: Public policy takes front seat here: It is good public policy to incentive emergency actions and thus we should enable full recovery. Could also argue that contract in Shoemaker was not a contract but a gratuitous remises.

Restatement S 86: “ Extent Necessary to Prevent Injustice” Ambiguous, courts have significant discretion, have ruled in multiple ways. 4. Reliance Big in contracts/torts distinction/merger. Reliance replacing consideration for values of justice. But to what extent? Reliance/Promissory Estoppels: Seems to be backward looking, providing an ex post remedy to put the person in the place they would have been had they not relied on the promise (very tort-like). Dillies Cup: Promise was too indefinite to be promissory estoppels, but might be tort of misrepresentation.

Arguable that in this instance promissory stopple was closer to a tort action than to consideration and bargained-for exchange in contract world.

Restatement 90: Promise which the promise should reasonably expect to induce action or forbearance on the promises or some third person is binding if injustice can be avoided only by the enforcement of the promise. The remedy for the breach may be limited as justice requires it. Difference Between Consideration and Reliance: Kirks Majority: Promise to stay was a mere gratuity, even though plaintiffs suffered actual harm and relied on promise.

Dissent: urged court to look at loss and detriment as adequate consideration. Interesting that consideration considers giving up legal right to be

consideration (Hammer), but not when a person relies on the promise and harm results.

Rickets: Daughter quit job, court held that there was a right of action when the promisee relies on the promise to their disadvantage. Promisee saw the detriment as a reasonable and probable consequence of his gift. Allegheny

Dicta: Suggests assumption of a legal duty constitutes reliance, even if it wouldn't constitute consideration.

Promise attached to another purely gratuitous promise: Although initial promise may lack consideration, subsequent promises are enforceable if promisee relies on the promise. Siegel: Storing furniture was gratuitous but promisee to get insurance altered behavior of plaintiff and induced reasonable reliance. Huge change to his position because of violation, more credible that he relied on it.

“ If Justice Requires It” Looks at specifics of situation and type of harm suffered Fingers: No consideration, but woman relied on promise to her detriment by retiring and not seeking work.

Promise reasonably induced her to retire early, sufficient to institute a reliance claim because unjust otherwise (highly unlikely she could find another job at her age). B. Defective Consideration 1. The Problem of Inadequate Consideration I-J. C.

C. S 2-302 and Restatement 5 208 When evaluating a contract, especially standardized ones created under statutes, courts will use purposes underlying statute in decision of whether to enforce contract or not.

American Home: Invalidated contract because it did not comport with underlying values Intersection of statutes with common law governing contract terms an ongoing tension.

Adequacy of Consideration: Courts will not look into adequacy of consideration Batiks: Adequate consideration even though value of what was exchanged was extremely disparate.

Unconscionably: Although courts will not invalidate a contract for inadequate consideration, may use it as evidence that a contract is unconscionable.

Needs both substantive and procedural irregularities. Ex: Waters, where woman was taken advantage of for her annuity. Terms were substantively improper (too high interest rates, etc.) Procedural Irregularities

Competency: Was the party competent to enter contract?

In Waters, arguable she was not.

Monopoly of Bargaining Power Information: What info did parties have at formation? How much was necessary? In Waters, concerned with her lack of information. Substantive issues are probative of procedural issues, and vice versa. Unconscionably and Role of Judges: Is it the judges role to decide consideration is inadequate and that a contract is unconscionable? Is this too subjective? Is court being overly paternalistic? Perhaps reason why procedural and substantive issues both need to be present. .

Contract Revisions and the Legal-Duty Rule U. C. C. S 2-209: Modification, Rescission, and Waiver To modify a contract, you don't need new consideration.

But if the modification is unconscionable it won't stand. Need modification to be made in good faith and for a legitimate commercial reason. Restatement S 89 and IS. C. C.

52-209 provides that a promise modifying a contract will be binding on the promise if the modification is fair and equitable in view of the circumstances not anticipated when the contract was made.

Essentially a good faith requirement. Contract Modification – Determining Good Faith: The Lack of Duress Contracting parties acted without coercion Was there a pre-existing duty? Yes, then no consideration (Alaska Packers) Exception: Modification due to a reasonable response to unexpected circumstance (not opportunistic behavior) Alaska Packers: Modification was to a reasonable response to unexpected circumstance. Use ex-ante analysis: If parties had agreed to the changes under the circumstances prior to contract formation, most likely reasonable response.

Otherwise, opportunistic behavior and modification made under duress.

Gobble: No opportunistic behavior, changed circumstances at ice factory were legitimate. Ice crop failed, modification in both parties interest.

Circumstances outside their control (contrast with Alaska Packers, although that is arguable (nets)). Both parties would have agreed under ex-ante analysis. Contract Rescission Can escape pre-existing duty rule by rescinding the contract and then immediately and simultaneously entering into a new one.

Characteristic: Employment contract implicitly rescinded and new one entered into simultaneously. Contrast with Alaska Packers: No argument that

the contract was rescinded, worker was also negotiating in good faith.

Difference between simple modification and rescission important: If the change is opportunistic, then courts inclined toward modification. If change is reasonable, perhaps rescission. Rescission requires mutual consent, and if one party is coerced into new terms, there is no mutual consent.

Judges determination, but modification must still be reasonable response to circumstances. 3. “ Illusory” Promises and Related Fairness Issues

Restatement S 77: Illusory and Alternative Promises and U. C. C.

S 1-203: Obligation of Good Faith Illusory promise: Appears to assure a performance and form a contract but leaves the speaker the choice of performance or non-performance. Speaker has no legal obligation to do anything. Agreement so indefinite, can’t differentiate between what is optional and mandatory. No mutuality of obligation.

Hickman – Requirement contract, but no express promise to buy anything
Contrast with output contract, where implied that seller has to produce something or else they would go out of business. Binding Other party To Performance: Have mutuality of obligation when one party has right at some point to bind other party to a contract; not illusory. Gruffer: Seller could have trumped buyers right to cancel by sending goods, creates consideration. Small amount of consideration here different than lack of consideration in Hickman.

Reasonable” or “ Best Efforts” Contracts Courts have created implied promises to make such contracts enforceable. Wood: Promise was implied because otherwise contract would not make ensue for either party and Lady

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Duff would be at mercy of Wood. Had consideration and mutuality of obligation. Reflects perception that people prefer certainty in contracts that stretch out over an extended period, why this wouldn't be a series of unilateral contracts. Counter: No consideration, implied promise is too much off stretch.

Contracts as Promise would find a contract here, though. Do these contracts actually protect the promises? How easy is it to prove that they didn't use "best efforts? How could she prove damages? Subjective Conditions to be Satisfied Prior to Contract Formation Uses good oath requirement Contracts with personal satisfaction clauses are enforceable because the promise has an implied obligation to use its personal satisfaction clause in good faith. Promise to use good faith is consideration for the clause.

Omni: Seemed to have a lot of discretion, but was using power in good faith. Called condition precedents.

Not illusory unless the option becomes so great that original promise looks illusory. Different than Wood in that we are not creating a promise, just using good faith to interpret one. Limitations on Good Faith Requirement Indefinite Contracts -? Terminate for Any Reason Good faith obligation overruled by U. C.

C. 2-309(2) which states that indefinite contracts may be terminated at any time by either party unless specified.

Cortisone: Express, unambiguous terms can't be overwritten by good faith because terms are clear. Unconscionably to Invalidate Indefinite Contracts

Look at relative bargaining power, etc. , but do not invoke good faith doctrine (Giant - small fashion designer store).

4. Freedom of Contract and Public Policy Traditional contract principles are subject to qualification Of Other counter principles from the rest of society. Parties are free to choose the terms of a interact, but terms are subject to qualification that unfair contracts will not be enforced.

Traditional contract principles can be overturned by different policy concerns. Public policy can be derived from statutes In Re Baby M: Invokes numerous policy concerns to show that a society would not want this contract to be enforced.

Didn't look at just one statute, but whole statutory scheme. Sheets: Traditional employment contract rule/rights overruled when use is shown to be improper. Drawing policy out of statutes to create a tort. Contrast with Carjack: Read statute narrowly (statute targeted at businesses, to individuals) to not overrule contract principles.

Multiple ways to draw out public policy from these statutes, and the way that they do so could influence how they are interpreted. Sheets: Suggested that statutes are not the only source of policy that can be turned to.

Is this appropriate? Should judges do this? Do we trust them to make these decisions? Shouldn't legislature create causes of action, not courts? See Carjack where interpretation of public policy could have come out the opposite way. Sheets Dissent: Public policy mandates need to be extremely

clear, because otherwise inappropriate agree of judicial activism. Part II:
Formation A.

The Making of Agreements 1.

Intention to Be Bound There is no contract formed when neither party has any intention of entering into a deal. Keller: Whole transaction deemed to be “frolic and banter,” subjective intent of parties showed no intention of making deal, thus no contract. Intention to be Bound: Advertisements Advertisements generally not considered offers. Must look for evidence that company intended to be bound by advertisement.

Quantity is often a major issue; when quantity or action promised is vague and notice/circular is widely disseminated, unlikely company had intention to be bound.

Milton: Indeterminate quantity for salt, way too open ended, unlikely that they would have opened themselves up to selling unlimited quantities. Even if order deemed reasonable under prior business circumstances, would mean that the reasonableness question would have to go to jury in every circumstance. Too inflexible a holding.

Contracts as Promise: Offer as a Promise Sharp: An offer which is significant, that is, distinguished from a mere statement of intention or invitation to a deal, is a promise which should be enforced.

Conflicting Accounts of Subjective Intent When accounts of subjective intent differ, the court must look to objective outward manifestations of intent.

Emperor: Looked at letter of intent, deemed it to be too open-ended,

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indefinite, and subject to too many clauses. Could only look at how a reasonable person would evaluate and view the letter of intent. Differs from Keller in that the subjective intent of both parties was not concrete, if it were it would serve as sufficient for determining whether there was an intention to be bound. 2.

Indefiniteness Intent to be bound is different than indefiniteness.

A contract could be both, or it could be just one or the other. However, indefiniteness COULD indicate no intent to be bound. Court must first determine if there is indefiniteness, and then decide how to deal with it: Restatement 533: Certainty Even though a manifestation of intention is intended to be understood as an offer, it cannot be accepted so as to form contract unless the terms of the contract are reasonably certain. Terms are reasonably certain if they provide basis for determining existence of breach and for giving appropriate remedy. .

E. , contract upheld if only minor terms missing. The fact that one or more arms of a proposed bargain are left open or uncertain may show that a manifestation of intent not intended to be an offer or an acceptance. I-J.

C. C. 52-204: Formation in General Contract for sale of goods may be made in any manner sufficient to show agreement, including conduct by both parties which recognizes the existence of such a contract. Contract for sale of goods may be found even though the moment of its making is undetermined.

Even though one or more terms are left open contract not indefinite if parties intended to make contract and there is reasonably certain basis for giving an appropriate remedy IS. C.

C. 52-305: Open Price Term Subsection 1: The parties if they so intend can conclude a contract for sale even though the price is not settled. If left unsettled, price is a reasonable price at the time for delivery Subsection 4: Where, however, parties intend not to be bound unless price be fixed or agreed and it is not fixed or agreed C no contract.

Buyer must return any goods already received or if cannot, must pay reasonable value at time of delivery; seller must return any money paid.

Common Law vs.

. IS. C. C.

In common law, we think of it as the contract would have been valid but for indefiniteness In LLC. C. C. , there are two issues: Was the contract sufficiently indefinite? Was there an intent to be bound? IS.

C. C. Open Terms C] 52-204(3) While certain items within an agreement may not be agreed upon, the I-J. C. C.

Tolerates some level of indefiniteness within its terms. U. C. C.

Tastes that any sale of goods over \$500 needs to be in writing, and that writing only needs to have three definite things: Contract for sale of goods Signed or authenticated Specifies quantity Southwest Engineering Co: Points to the omission of a suggestion to exclude only minor terms to mean that

even the exclusion of important terms would to invalidate a contract as long as the other elements were present. Open price Terms Restatement vs.. LLC. C. C.

The Restatement and the LIE. C. C. Treat lack of price somewhat differently. Restatement very concerned with price while I-J.

C. C. Less so. Common Law Example: Joseph Martin: Term of the lease was indefinite, contract said at the end of five years the tenant could renew the lease at a rate to be agreed upon.

Rule: Even if there is an intent to be bound, the rent to be paid was still to indefinite (“ at a rate to be agreed upon”) IS. C. C. Example: Lafayette place Associates: Contingencies in contract left open but method to determine price afterwards Rule: Contingencies in contracts are allowed as long as there are definite procedures for resolving the indefiniteness. Revisions included in an agreement can be sufficient to narrow potential indefiniteness.

Compared: Lafayette opposite of Joseph Martin where there was a procedure to renew the lease but the court said that it was unenforceable. Here, the parties are bound to an external procedure (arbitration) whereas in Joseph Martin the promise to agree was pretty much illusory, no commitment to do anything by either party. Expansion of Reliance into Indefinite Contracts Promissory Estoppels was originally just a substitute for consideration, making a gratuitous promise into a contract under certain conditions.

Courts have expanded the reliance doctrine into situations where there may not have even been a promise, but only misrepresentations/predictions of things that might happen in the future (I. E.

Creating a tort). Reliance now broader cause of action, substitute for other contractual deficiencies. Wheeler: Court ruled there was no contract because its terms were too indefinite, but the plaintiff could still recover via promissory estoppels. Promissory estoppels does not rate a contract where there isn't one but serves a defensive function.