

## Gift Promises/Promissory Estoppel

1. Gift promises: a promise to make gift, not usually enforceable in contract due to lack of consideration (Kirksey – moving to live on brother's land).

*LB: Just to suggest another way to do this – you don't need another rule from the case if your rule statement is really from Kirksey. I removed the language below about Kirksey because I found it a bit repetitive. Remember, you want to streamline as much as you can to make your outline easy to memorize.*

*Also, sometimes for me (because I am terrible with names) I need to give myself a reminder of the case in the outline. So as you can see above, I included a little note to myself on what Kirksey was about.*

- a. A promise is supported by consideration if:
    - i. The promisee gave up something of value or circumscribed her liberty in some way
    - ii. The promisor made his promise as part of a bargain, in exchange for the promisee's giving of value or circumscribing of liberty
  - b. If a transaction is a mixture of bargain and gift, it satisfies the consideration requirement, making the generous party's promise enforceable
2. Promissory Estoppel: A doctrine used by courts to enforce promises which are not supported by consideration, but induce detrimental reliance by the promisee *LB: Nice rule statement!*
    - a. *Restatement 90*
      - i. A promise which the promisor should reasonably expect to induce action or forbearance on the part of the promisee or a third person
      - ii. and which does induce such action or forbearance
      - iii. is binding if injustice can be avoided only by enforcement of the promise.
      - iv. The remedy granted for breach may be limited as justice requires.

*LB: When possible, I like to break long rules like this into elements. If you need to memorize the material, it really helps you memorize because it is easy to make a mnemonic. If you are writing out an answer, it also is helpful because you can structure your analysis element by element. This is just something to think about as you continue to study and work on your outlines for your classes.*

- b. A promise will be enforced without consideration if:
  - i. The promisee acts or forbears in reliance on the promise (Feinberg v. Pfeiffer) and
  - ii. This action or forbearance was reasonably foreseeable by the promisor

*One thing you would want to clarify with your professor if this was an outline for a class, was which rule you should apply on an exam for Promissory Estoppel. Should you apply the two-part rule above (that you pulled from Feinberg) or Restatement 90? This would be what you would put in your "attack plan."*

- c. Doctrine's scope has been broadened by some courts to bind promisors even where the promisee has not relied detrimentally

*As we mentioned in class yesterday, you may want to include mentions of policy if that is something that your professor were to talk about in class.*

*Great job, though. You seemed to really get the picture of how to synthesize the material into outline form.*

*If you have any questions on my comments, please let me know.*

*Lee*