



- Lee Burgess: Welcome to the Law School Toolbox podcast. Today, we are talking about promissory estoppel, as part of our series called “Listen and Learn”. Your Law School Toolbox hosts are Alison Monahan and Lee Burgess, that’s me. We’re here to demystify the law school and early legal career experience, so you’ll be the best law student and lawyer you can be.
- Lee Burgess: We’re the co-creators of the [Law School Toolbox](#), the [Bar Exam Toolbox](#), and the career related website [CareerDicta](#). Alison also runs [The Girl’s Guide to Law School](#). If you enjoy the show, please leave a review on your favorite listening app. And if you have any questions, don’t hesitate to reach out to us. You can reach us via the [contact form](#) on LawSchoolToolBox.com, and we’d love to hear from you. And with that, let’s get started.
- Lee Burgess: Welcome back to the “Listen and Learn” series on the Law School Toolbox podcast! We’ve all heard it before – in the grocery store, on the sidewalk, during a meal at a restaurant: a child insisting to an exasperated parent, “But you promised!”
- Lee Burgess: “You promised if I finished my dinner we could get ice cream.” “You promised we could go to the movies once I did all of my homework.” “You promised if I didn’t hit my brother for a full week you would buy me that toy.” It’s the job of contract law to determine which of these promises, and all of the promises we seem to make and break regularly, are actually enforceable. When is a promise breakable, and when is it a contract?
- Lee Burgess: At this point in your Contract Law class, you may already know the answer. A promise is enforceable when it is made as part of a bargained-for exchange, which has been accompanied by an offer and acceptance.
- Lee Burgess: Today, we’ll be focusing on that bargained-for exchange part, also known as consideration. Specifically, we’ll explore what a person can do when there was a promise for a promise, but it didn’t amount to consideration. What if a person acted in reliance on that promise, only to find at the end of performance that they didn’t have a contract to begin with?
- Lee Burgess: Say you’ve got a really savvy kid who is looking to sue her parents for one of those promises we mentioned above. We’ll deal with children’s capacity to contract some other time. But for the purpose of this example, according to this promise, her parents promised her that if she completed her math homework, they would all go out to the movies.
- Lee Burgess: Now let’s go back and review inadequate consideration. You’ll find things like moral consideration, past consideration, illusory promise, and other scenarios you should get familiar with. Under consideration rules, a pre-existing duty is not consideration, meaning that if you are being promised something in



exchange for something you were obligated to do anyway, then there is no consideration. A kid is obligated to do homework, and this kid would be obligated to do her math homework whether or not there was a movie on the other side of that work. Would she have skipped out on doing her homework entirely if her parents hadn't promised her a movie? Well, maybe she would have. Maybe she completed her homework despite the fact that math breaks her out into hives, exclusively in reliance on the promise that her family would go to the movies after, regardless of the fact that she would have been obligated to do her homework without that promise. Could she claim promissory estoppel?

Lee Burgess: Well, because promissory estoppel stretches the bounds of contract law, the stakes typically have to be a bit higher for a court to apply it. But we're starting to paint a picture of when a person could claim promissory estoppel should apply: when a promisor made a promise that's induced the promisee to act in a reasonable and detrimental reliance on that promise. So, let's break that out into elements.

Lee Burgess: First, we have a promise, and this promise will be made in exchange for something that is not enforceable as consideration, or will itself be inadequate consideration.

Lee Burgess: Second, we have inducement of an act – this promise will call upon the promisee to act in a particular way, or the promisee will take it upon themselves to act a certain way in response to the promise.

Lee Burgess: Third, we have the most important and testable element – relying on the promise that is both reasonable and detrimental. The promisee must have actually relied on this promise when they took action, and that reliance has to be reasonable based on the promisor's representations. Additionally, that reliance must have cost them in some other way – whether financially, emotionally, or some other way that indicates detriment that needs to be compensated.

Lee Burgess: So, let's move out of the realm of math homework and raise the stakes a little bit to see how this would play out in a court of law. This question is from the [July 2002 bar exam](#). We've edited the call of the question slightly, just to narrow the scope to promissory estoppel:

Lee Burgess: "Travelco ran a promotional advertisement which included a contest, promising to fly the contest winner to Scotland for a one-week vacation. Travelco's advertisement stated: 'The winner's name will be picked at random from the telephone book for this trip to Golfer's Heaven. If you're in the book, you will be eligible for this dream vacation!'



- Lee Burgess: After reading Travelco’s advertisement, Polly had the telephone company change her unlisted number to a listed one just in time for it to appear in the telephone book that Travelco used to select the winner. Luckily for Polly, her name was picked, and Travelco notified her.
- Lee Burgess: That night Polly celebrated her good fortune by buying and drinking an expensive bottle of champagne. The next day Polly bought new luggage and costly new golfing clothes for her trip. When her boss refused to give her a week’s unpaid leave so she could take the trip, she quit, thinking that she could just look for a new job when she returned from Scotland. After it was too late for Polly to retract her job resignation, Travelco advised her that it was no longer financially able to award the free trip that it had promised.
- Lee Burgess: Polly sues for breach of contract and seeks to recover damages for the following: (1) the cost of listing her telephone number; (2) the champagne; (3) the luggage and clothing; and (4) the loss of her job.”
- Lee Burgess: Now, let’s see what poor Polly’s options are in terms of recovering damages for these losses by going back to our steps. First, was there a promise that would be enforceable as a contract? Because this podcast episode is about promissory estoppel, we will conclude that the answer is “Yes”, because we’re going to have defective consideration. What’s the problem with the consideration here?
- Lee Burgess: The facts say that Travelco ran an ad promising to fly a contest winner to Scotland, and that the contest winner would be picked at random from the telephone book. The issue is that Travelco is not asking for anything in return. This is what’s called a gratuitous promise, which is not consideration.
- Lee Burgess: Polly will of course argue that she wasn’t in the phone book in the first place, so she had to pay – to her detriment – in order to have her number listed, in order to be eligible to win the contest. But Travelco didn’t say, “Hey, Polly, list your number in exchange for being a contest winner.” It didn’t even offer the trip in exchange for newly bought listings. Polly opted into the contract by listing her number in response to what was just a promise to send someone on a trip if they were in the phone book and happened to be picked. So, we don’t have consideration, but we do have a promise to send Polly to Scotland for a trip to Golfer’s Heaven on Travelco’s dime, because she was the lucky winner.
- Lee Burgess: Second, did the promise induce action? While we know that Travelco didn’t explicitly ask Polly to do anything, it is safe to assume that a person would take some action in preparation for an international trip. So the actions Polly took were listing her phone number, drinking expensive celebratory champagne, buying luggage and clothes, and quitting her job.



Lee Burgess: Now, this brings us to our third element, which is Polly's reasonable and detrimental reliance. Were the detrimental actions Polly took reasonable in light of the promise? Let's move through them one by one.

Lee Burgess: First, she paid to have her phone number listed in the phone book. This sort of action isn't one that Polly would expect compensation for, because Travelco didn't make any guarantees that if Polly listed her number, she would win. The winner's name was randomly selected from the phone book, so at the time Polly put herself in the running, she didn't have any reason to expect that she would get anything in return. That she won was just pure luck. So, Polly would not be entitled to damages for this listing, because she could not reasonably rely on getting anything in return.

Lee Burgess: So then Polly does win, and she does what any reasonable person would do and buys an expensive bottle of champagne. It's probable that Polly wouldn't have bought this champagne if she just hadn't won a free trip to Scotland, and indeed the purchase was specifically intended to celebrate this win once Travelco notified her that she was the winner. But others may argue that while Polly is exercising her free will to celebrate as she pleases, that choice shouldn't be Travelco's responsibility. There was nothing in Travelco's representation that she won the trip that specifically was intended to induce her to get drunk on some Dom Perignon in reliance on a promise. Reasonable minds can differ about whether Polly could recover for her reliance on Travelco's promise to send her to Scotland when she bought the bottle of champagne. The important thing is to argue it in a couple of different ways.

Lee Burgess: Did Polly reasonably rely on Travelco's promise when she bought luggage and costly golfing clothes? Again, test-takers could land in different places here. It's probably reasonable that if Polly didn't have sufficient luggage to begin with, she would have to buy some in order to go on the trip. I think a court could feel comfortable finding that she bought the luggage in reliance on Travelco's representation that she would soon be headed to Scotland.

Lee Burgess: Additionally, she was going on a golfing trip, so it would make sense for her to buy appropriate clothes, although a court could take issue with the amount she decided to spend and perhaps settle on a reasonable amount that didn't fully match the costliness of what she purchased. But yes, the clothes and the luggage are fairly appropriate purchases Polly made in anticipation of her golfing trip to Scotland, and it was reasonable for her to rely on Travelco's representation that the trip was happening when she bought these items.

Lee Burgess: But then there is quitting her job. Really, Polly? Don't be distracted by the fact that this is one of the most detrimental actions Polly took. It is also quite possibly the least reasonable, and the actions need to both be reasonable and detrimental. Winning a free trip does not always necessitate blowing up your



life, and here, Polly made a long-term choice in exchange for a short-term opportunity. The fact that Polly's boss sounds pretty crappy does not mean Travelco will be held responsible for inducing Polly's choice to resign.

Lee Burgess: So, would you come out the same way? Can you make an argument for the reasonableness of any of these that we didn't make? We welcome you to come to your own conclusions and let us know what you think. Remember, being successful on a law school exam is less about how you conclude and more about the reasoning steps you need to take to get to the conclusion. We've done that with promissory estoppel today, and we invite you to continue practicing on your own.

Lee Burgess: And with that, we are out of time. If you enjoyed this episode of the Law School Toolbox podcast, please take a second to leave a review and rating on your favorite listening app. We'd really appreciate it. And be sure to subscribe so you don't miss anything. If you have any questions or comments, please don't hesitate to reach out to myself or Alison at [lee@lawschooltoolbox.com](mailto:lee@lawschooltoolbox.com) or [alison@lawschooltoolbox.com](mailto:alison@lawschooltoolbox.com). Or you can always contact us via our website [contact form](https://www.lawschooltoolbox.com/contact-form) at LawSchoolToolbox.com. Thanks for listening, and we'll talk soon!

### **RESOURCES:**

[Start Law School Right course](#)

[California Bar Examination – Essay Questions and Selected Answers, July 2002](#)

[Podcast Episode 215: Listen and Learn – The Commerce Clause](#)

[Podcast Episode 218: Listen and Learn – Supplemental Jurisdiction \(Civ Pro\)](#)

[Podcast Episode 244: Listen and Learn – Negligence Per Se](#)