

Promises Supported by Reliance: Promissory Estoppel

Contract doctrine requires a party seeking to enforce a promise to meet certain requirements. Specifically, enforceable promises are characterized by agreement and bargained-for consideration. But despite those requirements, courts sometimes enforce promises that lack consideration because the promisee has reasonably relied on the promise. The promisee's reliance will prevent (or estop) the promisor from claiming the contract is unenforceable for lack of consideration. The following case highlights early efforts to describe how and when reasonable reliance is sufficient to make a promise enforceable.

Ricketts v. Scothorn

77 N.W. 365 (Nebraska Supreme Court 1898)

SULLIVAN, Judge:

In the district court of Lancaster county the plaintiff, Katie Scothorn, recovered judgment against the defendant, Andrew D. Ricketts, as executor of the last will and testament of John C. Ricketts, deceased. The action was based upon a promissory note, of which the following is a copy: "May the first, 1891. I promise to pay to Katie Scothorn on demand, \$2,000, to be at 6 per cent. per annum. J. C. Ricketts." In the petition the plaintiff alleges that the consideration for the execution of the note was that she should surrender her employment as bookkeeper for Mayer Bros., and cease to work for a living. She also alleges that the note was given to induce her to abandon her occupation, and that, relying on it, and on the annual interest, as a means of support, she gave up the employment in which she was then engaged. These allegations of the petition are denied by the administrator.

The material facts are undisputed. They are as follows: John C. Ricketts, the maker of the note, was the grandfather of the plaintiff. Early in May—presumably on the day the note bears date—he called on her at the store where she was working. What transpired between them is thus described by Mr. Flodene, one of the plaintiff's witnesses: "A. Well, the old gentleman came in there one morning about nine o'clock, probably a little before or a little after, but early in the morning, and he unbuttoned his vest, and took out a piece of paper in the shape of a note; that is the way it looked to me; and he says to Miss Scothorn, 'I have fixed out something that you have not got to work any more.' He says, none of my grandchildren work, and you don't have to. Q. Where was she? A. She took the piece of paper and kissed him, and kissed the old gentleman, and commenced to cry." It seems Miss Scothorn immediately notified her employer of her intention to quit work, and that she did soon after abandon her occupation.

The mother of the plaintiff was a witness, and testified that she had a conversation with her father, Mr. Ricketts, shortly after the note was executed, in which he informed her that he had given the note to the plaintiff to enable her to quit work; that none of his grandchildren worked, and he did not think she ought to. For something more than a year the plaintiff was without an occupation, but in September, 1892, with the consent of her grandfather, and by his assistance, she secured a position as bookkeeper with Messrs. Funke & Ogden. On June 8, 1894, Mr. Ricketts died. He had paid one year's interest on the note, and a short time before his death expressed regret that he had not been able to pay the balance. In the summer or fall of 1892 he stated to his daughter, Mrs. Scothorn, that if he could sell his farm in Ohio he would pay the note out of the proceeds. He at no time repudiated the obligation.

We quite agree with counsel for the defendant that upon this evidence there was nothing to submit to the jury, and that a verdict should have been directed peremptorily for one of the parties. The testimony of Flodene and Mrs. Scothorn, taken together, conclusively establishes the fact that the note was not given in consideration of the plaintiff pursuing, or agreeing to pursue, any particular line of conduct. There was no promise on the part of the plaintiff to do, or refrain from doing, anything. Her right to the money promised in the note was not made to depend upon an abandonment of her employment with Mayer Bros., and future abstention from like service. Mr. Ricketts made no condition, requirement, or request. He exacted no quid pro quo. He gave the note as a gratuity, and looked for nothing in return. So far as the evidence discloses, it was his purpose to place the plaintiff in a position of independence, where she could work or remain idle, as she might choose. The abandonment of Miss Scothorn of her position as bookkeeper was altogether voluntary. It was not an act done in fulfillment of any contract obligation assumed when she accepted the note. The instrument in suit, being given without any valuable consideration, was nothing more than a promise to make a gift in the future of the sum of money therein named. Ordinarily, such promises are not enforceable, even when put in the form of a promissory note. *Kirkpatrick v. Taylor*, 43 Ill. 207; *Phelps v. Phelps*, 28 Barb. 121; *Johnston v. Griest*, 85 Ind. 503; *Fink v. Cox*, 18 Johns. 145.

But it has often been held that an action on a note given to a church, college, or other like institution, upon the faith of which money has been expended or obligations incurred, could not be successfully defended on the ground of a want of consideration. *Barnes v. Perine*, 12 N. Y. 18 (1854); *Philomath College v. Hartless*, 6 Or. 158 (1876); *Thompson v. Bd. of Sup'rs of Mercer Cnty.* 40 Ill. 379 (1866); *Irwin v. Lombard Univ.*, 56 Ohio St. 9, 46 N. E. 63 (1897). In this class of cases the note in suit is nearly always spoken of as a gift or donation, but the decision is generally put on the ground that the expenditure of money or assumption of liability by the donee on the faith of the promise constitutes a valuable and sufficient consideration. It seems

to us that the true reason is the preclusion of the defendant, under the doctrine of estoppel, to deny the consideration. Such seems to be the view of the matter taken by the supreme court of Iowa in the case of *Simpson Centenary College v. Tuttle*, 71 Iowa, 596, 33 N. W. 74, where Rothrock, J., speaking for the court, said: "Where a note, however, is based on a promise to give for the support of the objects referred to, it may still be open to this defense [want of consideration], unless it shall appear that the donee has, prior to any revocation, entered into engagements, or made expenditures based on such promise, so that he must suffer loss or injury if the note is not paid. This is based on the equitable principle that, after allowing the donee to incur obligations on the faith that the note would be paid, the donor would be estopped from pleading want of consideration." And in the case of *Reimensnyder v. Gans*, 110 Pa. St. 17, 2 Atl. 425, which was an action on a note given as a donation to a charitable object, the court said: "The fact is that, as we may see from the case of *Ryers v. Trustees*, 33 Pa. St. 114, a contract of the kind here involved is enforceable rather by way of estoppel than on the ground of consideration in the original undertaking." It has been held that a note given in expectation of the payee performing certain services, but without any contract binding him to serve, will not support an action. *Hulse v. Hulse*, 84 E. C. L. 709. But when the payee changes his position to his disadvantage in reliance on the promise, a right of action does arise. *McClure v. Wilson*, 43 Ill. 356 (1867); *Trustees v. Garvey*, 53 Ill. 401 (1870).

Under the circumstances of this case, is there an equitable estoppel which ought to preclude the defendant from alleging that the note in controversy is lacking in one of the essential elements of a valid contract? We think there is. An estoppel in pais is defined to be "a right arising from acts, admissions, or conduct which have induced a change of position in accordance with the real or apparent intention of the party against whom they are alleged." Mr. Pomeroy has formulated the following definition: "Equitable estoppel is the effect of the voluntary conduct of a party whereby he is absolutely precluded, both at law and in equity, from asserting rights which might, perhaps, have otherwise existed, either of property, of contract, or of remedy, as against another person who in good faith relied upon such conduct, and has been led thereby to change his position for the worse, and who on his part acquires some corresponding right, either of property, of contract, or of remedy." 2 Pom. Eq. Jur. 804. According to the undisputed proof, as shown by the record before us, the plaintiff was a working girl, holding a position in which she earned a salary of \$10 per week. Her grandfather, desiring to put her in a position of independence, gave her the note, accompanying it with the remark that his other grandchildren did not work, and that she would not be obliged to work any longer. In effect, he suggested that she might abandon her employment, and rely in the future upon the bounty which he promised. He doubtless desired that she should give up her occupation, but, whether he did or not, it is entirely certain that he contemplated such action

on her part as a reasonable and probable consequence of his gift. Having intentionally influenced the plaintiff to alter her position for the worse on the faith of the note being paid when due, it would be grossly inequitable to permit the maker, or his executor, to resist payment on the ground that the promise was given without consideration. The petition charges the elements of an equitable estoppel, and the evidence conclusively establishes them. If errors intervened at the trial, they could not have been prejudicial. A verdict for the defendant would be unwarranted. The judgment is right, and is affirmed.

Notes and Questions

1. Compare *Ricketts* to *Hamer v. Sidway*. Could you argue that there is a bargain in *Ricketts*? What are the benefits of each side of the bargain?
2. The court in *Ricketts* asserts Katie Scythorn “alter[ed] her position for the worse.” What do you take the court to mean by that phrase?
3. Compare the following facts taken from a case that cites *Ricketts*: A grandfather promised in writing to give \$17,000 to his granddaughter to purchase an available home for that sum. She subsequently made a payment of \$2,000 from her own savings for an “option contract” that would allow her to decide to buy the property. The court cited *Ricketts* for the proposition that under “the equitable doctrine of estoppel, ... a gift of the donor’s own note may be sustained if the donee, in reliance on the note, has expended money or incurred liabilities which will, by legal necessity, cause loss or injury to the donee if the note is not paid.” *In re Estate of Bucci*, 488 P.2d 216, 219 (Colo. Ct. App. 1971).
4. The Restatement adopted a cause of action based on reliance, known as promissory estoppel:

§ 90. Promise Reasonably Inducing Action or Forbearance

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.

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

Restatement (Second) of Contracts § 90. This provision, which was included in the First Restatement as well, is considered one of the most important contributions of the Restatement to the development of contract law. Professor Peter Linzer, for example, called this inclusion “the most important event in twentieth century American contract law.” PETER LINZER, A CONTRACTS ANTHOLOGY 221 (1989).

What are the elements of a promissory estoppel claim as articulated in the Restatement?

5. What is the difference between a promissory estoppel claim and an equitable estoppel claim or a claim of estoppel in pais (the phrase used in *Ricketts*)?
6. How should a court distinguish between those cases where injustice can be avoided only by enforcement of the promise and those cases where it might be unjust to enforce the promise?
7. Notice that the Restatement states that the remedy in cases of promissory estoppel “may be limited as justice requires.” As a practical matter, courts often limit the remedies in promissory estoppel cases to reliance damages, aiming to put the plaintiff in as good of a position as if the promise was not made. That limitation does not exist for claims for breach of promises supported by consideration, where the common remedy is expectation damages, intending to give the plaintiff the full benefits of the promise. What is the remedy in *Ricketts*? Do you think that’s the right result?

Congregation Kadimah Toras-Moshe v. DeLeo

540 N.E.2d 691 (Massachusetts Supreme Judicial Court 1989)

LIACOS, Chief Justice.

Congregation Kadimah Toras–Moshe (Congregation), an Orthodox Jewish synagogue, commenced this action in the Superior Court to compel the administrator of an estate (estate) to fulfil the oral promise of the decedent to give the Congregation \$25,000. The Superior Court transferred the case to the Boston Municipal Court, which rendered summary judgment for the estate. The case was then transferred back to the Superior Court, which also rendered

summary judgment for the estate and dismissed the Congregation's complaint. We granted the Congregation's application for direct appellate review. We now affirm.

The facts are not contested. The decedent suffered a prolonged illness, throughout which he was visited by the Congregation's spiritual leader, Rabbi Abraham Halbfinger. During four or five of these visits, and in the presence of witnesses, the decedent made an oral promise to give the Congregation \$25,000. The Congregation planned to use the \$25,000 to transform a storage room in the synagogue into a library named after the decedent. The oral promise was never reduced to writing. The decedent died intestate in September, 1985. He had no children, but was survived by his wife.

The Congregation asserts that the decedent's oral promise is an enforceable contract under our case law, because the promise is allegedly supported either by consideration and bargain, or by reliance. See *Loranger Constr. Corp. v. E.F. Hauserman Co.*, 376 Mass. 757, 761, 763, 384 N.E.2d 176 (1978) (distinguishing consideration and bargain from reliance in the absence of consideration). We disagree.

The Superior Court judge determined that "[t]his was an oral gratuitous pledge, with no indication as to how the money should be used, or what [the Congregation] was required to do if anything in return for this promise." There was no legal benefit to the promisor nor detriment to the promisee, and thus no consideration. See *Marine Contractors Co. v. Hurley*, 365 Mass. 280, 286, 310 N.E.2d 915 (1974); *Gishen v. Dura Corp.*, 362 Mass. 177, 186, 285 N.E.2d 117 (1972) (moral obligation is not legal obligation). Furthermore, there is no evidence in the record that the Congregation's plans to name a library after the decedent induced him to make or to renew his promise. Contrast *Allegheny College v. National Chautauqua County Bank*, 246 N.Y. 369, 377–379, 159 N.E. 173 (1927) (subscriber's promise became binding when charity implicitly promised to commemorate subscriber).

As to the lack of reliance, the judge stated that the Congregation's "allocation of \$25,000 in its budget[,] for the purpose of renovating a storage room, is insufficient to find reliance or an enforceable obligation." We agree. The inclusion of the promised \$25,000 in the budget, by itself, merely reduced to writing the Congregation's expectation that it would have additional funds. A hope or expectation, even though well founded, is not equivalent to either legal detriment or reliance.

The Congregation cites several of our cases in which charitable subscriptions were enforced. These cases are distinguishable because they involved written, as distinguished from oral, promises and also involved substantial consideration or reliance. See, e.g., *Trustees of Amherst*

Academy v. Cowls, 6 Pick. 427, 434 (1828) (subscribers to written agreement could not withdraw “after the execution or during the progress of the work which they themselves set in motion”); *Trustees of Farmington Academy v. Allen*, 14 Mass. 172, 176 (1817) (trustees justifiably “proceed[ed] to incur expense, on the faith of the defendant’s subscription”).³ Conversely, in the case of *Cottage St. Methodist Episcopal Church v. Kendall*, 121 Mass. 528 (1877), we refused to enforce a promise in favor of a charity where there was no showing of any consideration or reliance.

The Congregation asks us to abandon the requirement of consideration or reliance in the case of charitable subscriptions. The Congregation cites the Restatement (Second) of Contracts § 90 (1981), which provides, in subsection (2): “A charitable subscription ... is binding under Subsection (1) without proof that the promise induced action or forbearance.” Subsection (1), as modified in pertinent part by subsection (2), provides: “A promise which the promisor should reasonably expect to induce action or forbearance on the part of the promisee or a third person ... is binding if injustice can be avoided only by enforcement of the promise....”

Assuming without deciding that this court would apply § 90, we are of the opinion that in this case there is no injustice in declining to enforce the decedent’s promise. Although § 90 dispenses with the absolute requirement of consideration or reliance, the official comments illustrate that these are relevant considerations. Restatement (Second) of Contracts, *supra* at § 90 comment f. The promise to the Congregation is entirely unsupported by consideration or reliance. Furthermore, it is an oral promise sought to be enforced against an estate. To enforce such a promise would be against public policy.

Judgment affirmed.

King v. Trustees of Boston University

647 N.E.2d 1196 (Massachusetts Supreme Judicial Court 1995)

ABRAMS, Justice.

A jury determined that Dr. Martin Luther King, Jr., made a charitable pledge to Boston University (BU) of certain papers he had deposited with BU. The plaintiff, Coretta Scott King, in her capacity as administratrix of the estate of her late husband, and in her individual capacity, appeals from that judgment. The plaintiff sued BU for conversion, alleging that the estate and not BU held title to Dr. King’s papers, which have been housed in BU’s library’s special collection since they were delivered to BU at Dr. King’s request in July, 1964.

The case was submitted to the jury [which] determined that Dr. King made a promise to give absolute title to his papers to BU in a letter signed by him and dated July 16, 1964, and that the promise to give the papers was enforceable as a charitable pledge supported by consideration or reliance. The jury also determined that the letter promising the papers was not a contract.... The trial judge denied the plaintiff's motion for judgment notwithstanding the verdict or for a new trial. The plaintiff appealed. We granted the plaintiff's application for direct appellate review. We affirm.

I. Facts. In reviewing the judge's denial of the plaintiff's motion for directed verdict on the affirmative defense of charitable pledge, we summarize the evidence in a light favorable to the nonmoving party, BU. In 1963, BU commenced plans to expand its library's special collections. Once plans for construction of a library to house new holdings were firm, the newly appointed director of special collections, Dr. Howard Gotlieb, began his efforts to obtain Dr. King's papers. Dr. King, an alumnus of BU's graduate school program, was one of the first individuals BU officials sought to induce to deposit documents in the archives.

Around the same time, Dr. King was approached regarding his papers by other universities, including his undergraduate alma mater, Morehouse College. Mrs. King testified that, although her late husband thought "Boston seemed to be the only place, the best place, for safety," he was concerned that depositing his papers with BU would evoke criticism that he was "taking them away from a black institution in the South." However, the volatile circumstances during the 1960s in the South led Dr. King to deposit some of his papers with BU pursuant to a letter, which is the centerpiece of this litigation and is set forth herewith:

563 Johnson Ave. NE
Atlanta, Georgia
July 16, 1964

Boston University Library
725 Commonwealth Ave.
Boston 15, Massachusetts

Dear Sirs:

On this 16th day of July, 1964, I name the Boston University Library the Repository of my correspondence, manuscripts and other papers, along with a few of my awards and other materials which may come to be of interest in historical or other research.

In accordance with this action I have authorized the removal of most of the above-mentioned papers and other objects to Boston University, including most correspondence through 1961, at once. It is my intention that after the end of each calendar year, similar files of materials for an additional year should be sent to Boston University.

All papers and other objects which thus pass into the custody of Boston University remain my legal property until otherwise indicated, according to the statements below. However, if, despite scrupulous care, any such materials are damaged or lost while in custody of Boston University, I absolve Boston University of responsibility to me for such damage or loss.

I intend each year to indicate a portion of the materials deposited with Boston University to become the absolute property of Boston University as an outright gift from me, until all shall have been thus given to the University. In the event of my death, all such materials deposited with the University shall become from that date the absolute property of Boston University.

Sincerely yours,

Martin Luther King, Jr. /s/”

At issue is whether the evidence at trial was sufficient to submit the question of charitable pledge to the jury. BU asserts that the evidence was sufficient to raise a question of fact for the jury as to whether there was a promise by Dr. King to transfer title to his papers to BU and whether any such promise was supported by consideration or reliance by BU. We agree.

II. Evidence of an enforceable charitable pledge. Because the jury found that BU had acquired rightful ownership of the papers via a charitable pledge, but not a contract, we review the case on that basis. We note at the outset that there is scant Massachusetts case law in the area of charitable pledges and subscriptions.

A charitable subscription is “an oral or written promise to do certain acts or to give real or personal property to a charity or for a charitable purpose.” See generally E.L. Fisch, D.J. Freed, & E.R. Schacter, *Charities and Charitable Foundations* § 63, at 77 (1974). To enforce a charitable subscription or a charitable pledge in Massachusetts, a party must establish that there was a promise to give some property to a charitable institution and that the promise was

supported by consideration or reliance. *Congregation Kadimah Toras–Moshe v. DeLeo*, 405 Mass. 365, 367 & n. 3, 540 N.E.2d 691 (1989), and cases cited therein.⁴

The jurors were asked two special questions regarding BU’s affirmative defense of rightful ownership by way of a charitable pledge: (1) “Does the letter, dated July 16, 1964, from Martin Luther King, Jr., to [BU], set forth a promise by Dr. King to transfer ownership of his papers to [BU]?”; and (2) “Did [BU] take action in reliance on that promise or was that promise supported by consideration?” In determining whether the case properly was submitted to the jury, we consider first, whether the evidence was sufficient to sustain a conclusion that the letter contained a promise to make a gift and second, whether the evidence was sufficient to support a determination that any promise found was supported by consideration or reliance.

[The court finds that the letter includes a promise “to make a gift of all of the papers deposited with it at some point between the first day of deposit and at the very latest, on Dr. King’s death.”]

Evidence of consideration or reliance. The judge did not err in submitting the second question on charitable pledge, regarding whether there was consideration for or reliance on the promise, to the jury.... There was evidence that BU undertook indexing of the papers, made the papers available to researchers, and provided trained staff to care for the papers and assist researchers. BU held a convocation to commemorate receipt of the papers. Dr. King spoke at the convocation. In a speech at that time, he explained why he chose BU as the repository for his papers.

As we explained above, the letter established that so long as BU, as bailee, attended the papers with “scrupulous care,” Dr. King, as bailor, would release them from liability for “any such materials ... damaged or lost while in [its] custody.” The jury could conclude that certain actions of BU, including indexing of the papers, went beyond the obligations BU assumed as a bailee to attend the papers with “scrupulous care” and constituted reliance or consideration for the

⁴ ... [In *Congregation Kadimah Toras–Moshe v. DeLeo*] By requiring that a promise to make a charitable subscription be supported by consideration or reliance, we declined to adopt the standard for enforceable charitable subscriptions set forth in the Restatement (Second) of Contracts § 90 (1981).... See *Arrowsmith v. Mercantile–Safe Deposit & Trust Co.*, supra 313 Md. at 353–354, 545 A.2d 674 (rejecting argument that court should adopt Restatement [Second] of Contracts § 90[2]); *Jordan v. Mount Sinai Hosp. of Greater Miami, Inc.*, supra at 108 (“Courts should act with restraint in respect to the public policy arguments endeavoring to sustain a mere charitable subscription. To ascribe consideration where there is none, or to adopt any other theory which affords charities a different legal rationale than other entities, is to approve fiction”).

promises Dr. King included in the letter to transfer ownership of all bailed papers to BU at some future date or at his death....

The issue before us is not whether we agree with the jury's verdict but whether the case was properly submitted to the jury. We conclude that the letter could have been read to contain a promise supported by consideration or reliance; "[t]he issue [of whether transfer of ownership to BU was transferred by way of a charitable pledge by Dr. King] was, therefore, properly submitted to the jury, and their verdicts, unless otherwise untenable, must stand." Carr v. Arthur D. Little, Inc., 348 Mass. 469, 474, 204 N.E.2d 466 (1965) (evidence sufficient as matter of contract law to raise question of fact for jury as to existence of common employment)....

Judgment affirmed.

Notes and Questions

1. Is the decision in *King* best explained under the doctrine of consideration or reliance? Can you explain the difference between it and *DeLeo*?
2. Both courts mentioned that under Restatement (Second) of Contracts § 90(2), "a charitable subscription ... is binding ... without proof that the promise induced action or forbearance," but they refused to adopt this rule. While there is limited caselaw on this matter, most courts similarly rejected this proposed rule. What can be the arguments for and against the Restatement's approach?
3. Although courts are generally unwilling to waive the requirement of consideration or reliance, they have shown flexibility in cases involving charitable organizations seeking to enforce pledges. A notable example is Judge Cardozo's opinion for the New York Court of Appeals in *Allegheny College v. National Chautauqua County Bank*, 159 N.E. 173 (1927), where he upheld a donor's promise to support a college after her death, even though she had revoked it during her lifetime. Cardozo reasoned that the college's implied promise to memorialize the donor's name provided sufficient consideration. In dicta (a statement that is not necessary to the court's decision and, therefore, is not legally binding as precedent), he also suggested that promissory estoppel could apply to enforce promises when a charity relies on them, noting that public policy supports the enforceability of such charitable commitments.
4. As we come to the end of our discussion on promissory estoppel (although the topic will come up again in other contexts), we can reflect on the doctrine and its importance.

Starting with the cautionary words of Justice Oliver Wendall Holmes, Jr., then seated on the Massachusetts Supreme Court, that evading the doctrine of consideration by allowing a promisee “to make a gratuitous promise binding by subsequently acting in reliance on it . . . would cut up the doctrine of consideration by the roots.” *Commonwealth v. Scituate Savings Bank*, 137 Mass. 301, 302 (1884). Is this a good argument against the adoption of promissory estoppel? Why or why not?

Now consider the account of Professor Grant Gilmore, the former dean of Yale Law School, in a famous 1974 book entitled *The Death of Contract*. Gilmore placed the rise of the doctrine in the context of overall resistance to formalism. He noted that a reader looking back on nineteenth century contract theories might be surprised by “the narrow scope of social duty which they implicitly assumed. No man is his brother’s keeper; the race is to the swift; let the devil take the hindmost.” In comparison, twentieth century law was marked by a “transition from nineteenth century individualism to the welfare state and beyond.” As part of that shift, courts have arguably become less formalistic and more sensitive to the contexts of various bargains.

Gilmore colorfully described promissory estoppel as “anti-Contract,” comparing it to “matter and anti-matter” in relation to consideration. He further predicted that “these two contradictory propositions cannot live comfortably together: in the end one must swallow the other up.” In fact, he expected that over time, promissory estoppel would swallow contract law and be the main theory for enforcing promises.

Fifty years later, this prediction did not seem to come to fruition. In fact, in a study of promissory estoppel cases from the mid-1990s, Professor Robert Hillman reports that the doctrine rarely leads to victory in reported cases. Robert A. Hillman, *Questioning the “New Consensus” on Promissory Estoppel: An Empirical and Theoretical Study*, 98 COLUM. L. REV. 580 (1998). Hillman reported that out of 362 cases, promissory estoppel claims succeeded on the merits only 8% of the time (n=29) but failed on the merits nearly 75% of the time (n=270). *Id.* at 589. Comparing win rates in promissory estoppel cases in published state court and federal district court cases (n=110) to contracts disputes in federal district court cases (n=26,126) revealed that plaintiffs rarely prevailed on promissory estoppel claims (5.45%, n=6) but prevailed on other contract claims more often than not (54.77%, n=14,308). What does this evidence suggest about the adoption of promissory estoppel as an alternative ground to enforcing contracts?

