

University of Utah
College of Law
Examination Cover Sheet

Student Examination Number: _____

Contracts
Professor Tony Anghie

December 19, 2000

Fall Semester 2000

Time Allowed: Pick up exam between 8:00-8:30 a.m.
Return by 5:00 p.m.

Special Examination Instructions:

- 1) Please check to see that your exam copy has 6 pages, excluding this one.
- 2) You may use all class-related materials. You may not, however, use any computerized research tools, such as Lexis or Westlaw. Although you may use commercial outlines or treatises, I encourage you to focus on the materials that were assigned for class.
- 3) Do not discuss the questions or your answers or anything else related to this exam with anyone until after 5:00 p.m. on December 19, 2000
- 4) This exam consists of 3 questions. Each question is worth one-third of the exam.
- 5) **Please note carefully the page limitations specified with each question.** Each answer should be no longer than 4 pages. You should use 12-point type. The lines should be double-spaced and the margins should be one inch. **I will not read any part of any question that exceeds the limits.**
- 6) The purpose of this exam is for you to demonstrate your ability to analyze thoroughly and thoughtfully issues and situations that we have studied in this course. I encourage you to take time to think things through before you write.
- 7) Please write your exam number on each page of your answer.
- 8) The exam is due exactly by 5:00 p.m. You will be penalized if you turn it in late. If you turn it in late and the registrar's office is already closed, your exam will not be accepted.
- 9) Remember to turn in your copy of the exam questions.
- 10) Happy Holidays!

Question 1

In 1993, Art Ish began his position as a tenure-track professor in the Art Department of Cow Town University, located in a small farming community and college town in the Midwest. His focus was sculpture, and the primary material with which he worked was pig iron. Ish received \$40,000/year and was scheduled to come up for tenure in December 1999. Although he was undisputably one of the most successful teachers in his department, as Ish's tenure date neared, some of his colleagues became concerned that he was neither publishing nor showing his work as much as most members of the department. If Ish received tenure, he would essentially have job security for life because he could only be dismissed for immoral or illegal conduct. He would also receive a raise to \$50,000/year. If he did not receive tenure, he would be dismissed as of January 1, 2000.

In late 1997, Ish had several discussions with his tenure committee about what he would need to do to maximize his chances of receiving tenure. The members of the committee advised him that, although there was no guarantee, they believed his best chance would be to get a grant to put on an exhibition on the uses of crude material in sculpture. His art should be displayed in the exhibition but should only be a small part of it. He should bring in the works of major sculptors in the field, and his task would be to write a program that would situate the work in the history and development of fine arts.

In March 1998, Ish met with a local museum, and together they agreed to submit a grant to the National Endowment for the Arts. To complete the show in time for his tenure decision, Ish realized he would have to get his proposal in by the May 1, 1998 deadline. (Decisions would be made in September, and successful grants would receive funding beginning January 1999.) He had little time and decided to hire a professional to write the grant. He searched for several days and finally found Carrie Grant, a young grant writer who had written several successful grants for herself and had just formed her own business.

Because time was of the essence, Grant produced an agreement for Ish to sign. It was based on a standard form that she borrowed from another grant writer. Under the agreement, Grant would "write and submit a \$75,000 grant to the NEA by May 1, 1998." She would be paid \$2,500 when the grant was submitted and would receive an additional \$2,500 if and when Ish received the grant. The agreement contained the following standard merger clause: "This document constitutes the entire agreement of the parties." Ish looked through the agreement, and said he was basically satisfied with it. He then added, "I assume that you will let me put together the budget." She responded: "Of course. That's the one section I will not be able to finalize on my own. Indeed, I expect you to write it." "Good," Ish replied, "I'll get started on it now." Ish and Grant then signed the agreement.

Grant worked hard on the grant, and delivered a draft to Ish on April 16. Attached to the draft was the following note:

Dear Art,

Here is the draft of the grant. Because I knew you were planning to do the budget, I have left it blank for now. Everything else is final. Please put the budget together and get this draft back to me ASAP so that we can make the deadline.

*Yours,
Carrie*

Ish received the note and draft moments after he finished filing his taxes. He was too exhausted to think about it and put it aside without even reading the note. On April 26, he left town for a week, assuming the grant was taken care of. On the afternoon of April 29, Grant telephoned Ish at home to get his final changes. She left him a message saying she needed the budget by the next morning, as she was planning to put the application in overnight mail by 8 p.m. on the 30th. At 5:00 p.m. on the evening of April 30, Ish received the message and called Grant back. He left a message saying that he was unreachable and that he would have to count on her to fill in the budget numbers. Although he would have liked to have had input on the budget, he added, he had full trust in her ability. When Grant received the message at 7:00 p.m. that evening, she was shocked. She had assumed that Ish had decided not to get the application in, but it was clear he now expected her to submit it. Although she had hoped to make a few final edits to the grant, she printed out what she had done and mailed it. She added a note saying that, although the budget was not attached, she would send it in an addendum during the next thirty days. At least, she thought, she would ensure payment of her \$2,500 fee.

On May 15, Ish received a notice from the NEA saying that his grant proposal could not be considered for the 1999 funding cycle due to the lack of a budget. The letter encouraged him to send a completed application for the 2000 cycle. Ish was furious and called Grant to ask why she hadn't sent in something for the budget. She explained to him that she had done all she could without his help, and that he was supposed to have provided the budget. Even had she known he was not going to give her a budget, she maintained that it would have been unethical for her to make up numbers at the last minute, and might have only gotten him into trouble down the road. She had written the grant and submitted it, as promised, but he had to take some responsibility for it as well. He responded that the contract said nothing about him writing the budget. It was just something that he said he would do to help her out. He hired her, however, to do the work. She had failed him and he would not pay her. Moreover, he was sure that she had ruined his chances of receiving an NEA grant in the future.

Ish spent much of the next few weeks looking for alternative funding sources. All the deadlines

had passed for any entity that could issue the large grant he requested. The museum was unable to afford the exhibition without outside funding. Ish then requested a one-year extension of his tenure decision from the University, but it was denied. The chair of his tenure committee told him that, although she would have done everything in her power to push him through the process had he succeeded with the exhibition, it would have been a close call. Without the exhibition, it was hopeless. Upon her advice, he announced his resignation to take effect January 1, 2000 to avoid being denied tenure.

During the ensuing fall and winter, Ish sent his resume to universities and colleges throughout the country. He finally received a job at a junior college beginning September 1999. The job was not tenure-track, and only paid \$30,000/year. It was guaranteed for three years, however, and might be renewable for a second three-year term. Even though the job was a huge step down, Ish announced in March that he would resign his position July 1, 1999, six months earlier than initially anticipated, to take the job. The new job was in Chicago, 300 miles from Cow Town. He had to pay his own moving expenses, which totaled \$2,500.

Meanwhile, Ish put together a budget and resubmitted the NEA grant. The only change he made to Grant's document was that, rather than submitting it with the Cow Town museum, he proposed that the exhibition be displayed at an up-and-coming crude art museum in Chicago. In September, 1999, after moving to his new job, he learned he received the grant. In the summer of 2000, the exhibition opened to great critical acclaim. Indeed, it was so successful that Ish began selling some of his pig iron sculptures. As of the beginning of December, he had made \$10,000 profit on the sale of his artwork. Still, Ish missed the academic life of a university. He spent the fall applying for jobs all over the country again, but was unsuccessful.

Ish comes to your law office seeking advice. Carrie Grant has just sued him in small claims court in Cow Town for not having paid her the \$2,500 she believes she is owed for her work. He is wondering whether he needs to pay her and, if not, whether he can sue her for the damage she has caused him.

Write an essay answering Ish's questions, but focusing on the strengths and weaknesses of any breach of contract claim that he might have against her. Be sure to address what possible damages he might be able to recover if he could successfully argue that she breached the contract.

Your answer should not exceed **four pages**.

Question 2

Five years ago, John Smith retired from his job, intending to start his own business with his savings and his retirement package. He soon entered into negotiations over a franchise agreement with Harry's Hamburgers (HH) a large hamburger chain that produced a variety of fast foods including hamburgers, cheeseburgers and bacon burgers. HH takes great pride in its distinctive charbroiled hamburgers, and exercises tight control over the activities of its franchisees in order to protect its reputation.

HH (the franchisor) granted Smith (the franchisee) a franchise for three years commencing August 1, 1997. Under the agreement, Smith undertook to use the particular ingredients required by HH in its hamburgers, to sell the range of foods specified by HH, and to prepare the food according to methods prescribed by HH. In addition, Smith was to publicize his HH outlet (the 'Market Garden' outlet) using advertising services provided by HH. A further provision granted Smith an exclusive HH franchise for a 4 mile radius. The agreement required Smith to pay HH an initial franchise fee, fees for all the services the franchise was required to purchase from HH, and weekly franchise fees based on gross sales.

The agreement contained a clause which specified that:

5. This agreement may be renewed by the Franchisee upon terms and conditions to be agreed upon by the parties through negotiations in good faith which will be based on prevailing market factors and terms and conditions applicable in other HH Franchises. Should the Franchisee intend to renew this contract it must inform the franchisor in writing by June 1, 2000. The Franchisee will pay the Franchisor \$100 in consideration for this option.

Furthermore, the contract prescribed that:

8. Franchisee agrees that in order to preserve the distinctive value of the Harry's Hamburger system to the parties hereto and to all other franchisees thereunder, the Franchisor must establish and maintain uniform standards of quality, cleanliness, appearance and efficiency of operation, which standards must be complied with by the Franchisee to the satisfaction of the Franchisor.

* * * *

10. HH reserves the right to terminate this contract upon giving 14 days notice in the event that:

c. The operations and premises of the franchise are not maintained in accordance with the standards prescribed by clause 8 of this Contract, as determined by HH.

Smith had a difficult time operating the franchise. Relations between himself and HH were not particularly good. Tensions began increasing between the parties in February 2000 because of the opening of a large mall a mile away from Market Garden. The mall contained a large food court which began to attract many of Smith's regular customers. Smith was convinced that he could build up a strong customer base if he could offer a variety of vegetarian foods since the Market Garden branch was located in a neighborhood where customers favored vegetarian foods as demonstrated by the fact that the nearby shop, 'Julio's Hamburgers', which sold its own brand of veggie burgers, was doing extremely good business despite the mall.

In March, a dispute arose between HH and Smith because HH refused to allow Smith's branch to sell the latest HH product, the 'Tofu Hamburger' line. HH also commented on the somewhat slovenly appearance of the Market Garden premises and, on a number of occasions since then, asked Smith to take action. Smith agreed that appearance was a problem, but thought that everything could be improved if he were permitted to sell tofu hamburgers, as this would improve profits. The financial problems also caused Smith to be late in some of his payments to HH.

Despite these disputes, Smith sought to renew the franchise. On May 15th, he reported this intention to a visiting representative of HH, Maria Perez, with whom he was on fairly friendly terms. Perez responded: "Thanks for letting me know your plans. I'll make sure that head office is informed and can get the new contract underway." Smith then added: "Also, this whole thing will only work if I can sell tofu hamburgers. Can that be included in the new arrangement?" Perez replied, "Yes, the head office is aware of your request and has been discussing it for some time; in fact, I feel certain that they will be giving you that permission." Smith was delighted to hear the news, and, despite his financial problems, hired an architect for \$5,000 to design a new look for the Market Garden shop.

Nothing transpired, however, and on June 15th, Smith received a notice saying that HH regarded the franchise at an end. When Smith contacted HH in consternation, he was informed that the franchise had ended, and that, in any event, HH had intended to terminate any agreement that did exist between the two parties on the grounds that the Market Garden premises were not maintained according to proper standards and that Smith had been late in making payments. HH acknowledged that they had heard from Maria Perez that Smith wanted to renew the contract. Smith later learned that HH had already begun negotiations with a party who wanted to open an HH shop in the new mall. When he confronted one of the HH managers with this information, the manager simply responded: "Oh yes, that's another reason we can't continue with you. We can do much better with a shop in the mall than we are doing with you. The market has changed and your store was simply not viable. And anyway, you never paid us the \$100 mentioned in clause 5 of the contract."

Discuss any contractual claims that Smith might have against HH, together with the likely success of any arguments that HH might make to legally justify its actions.

Your answer should not exceed **four pages**.

Question 3

“[D]espite occasional protests that the law should put its weight behind all promises that are seriously made, there seems to be widespread agreement that informal unrelayed-upon donative promises should not be legally enforced”. (Eisenberg, in casebook, p.115). But why? Isn't an important function of contract law the enforcement of promissory obligations? As Charles Fried writes, “....But why is my promise to sell my brother in law my automobile less sterile than my promise to give it to my nephew? (casebook, p. 126). Drawing on at least three of the cases you have read in this course, explain whether you agree with the view that donative promises should not be legally enforced, agree with Fried, or disagree with both these positions. Be sure to explain why you take the position you do.

Your answer should not exceed **four pages**

1. There is no doubt that there was a contract in effect between Ish and Grant, evidenced by the standard form signed by both parties in March, 1998. The contract was made for the purpose of submitting a grant; since the grant was not submitted in accord with the requirements, we can likely conclude that one of the parties breached the contract. If Ish breached, he will have to pay Grant the \$2500. If Grant breached, she may have to reimburse him for expectation damages, as discussed below. Since the grant's failure was due to its lacking a budget, whoever was responsible for the budget would be the one who breached the contract. This court's decision on this matter will be based on how it interprets the contract, which most likely depends on what evidence it permits to be introduced.

The form does not mention who is responsible for preparing the budget; however, if no other evidence is allowed to be considered by the court, the court may agree that because Grant was responsible for writing and submitting the grant, it can be implied that she was responsible for the budget, a required part of the grant (see *Wood v. Lucy, Lady Duff-Gordon*). There is however parol evidence that contradicts this implication; namely, the oral agreement that Ish would write the budget, which Ish and Grant made immediately before they signed the form, as well as the note that Grant wrote to Ish indicating her understanding that Ish would write the budget. Whether the court will agree to admit this parol evidence depends on its application of the parol evidence rule (RSC §213). Under the parol evidence rule, evidence of prior inconsistent agreements is barred from consideration if there is a written contract that is integrated, and evidence of consistent additional terms is barred if the written contract is completely integrated, unless there is ambiguity in the contract (RSC §216). There is no doubt that there is a written contract here. The other issues to be considered are thus whether the written contract is integrated, if so whether it is completely integrated, if not whether the prior oral agreement is

inconsistent with the written contract, whether the contract is ambiguous, and what effect Grant's note, which is admissible since it was not prior to the written contract, will have on the court's decision. Under the classical system's "four corners" rule, the court would likely not consider evidence beyond the document itself to decide these issues (see *Thompson v. Libby*); however, under the modified approach espoused by Corbin, the judge may agree to review other evidence first and then decide if it should be submitted to the factfinder (see *Taylor v. State Farm*).

There is strong evidence that the written document is a completely integrated agreement (a "final expression" and "complete and exclusive statement" of the agreement's terms, RSC §§209, 210) because it contains a merger clause. Without the merger clause the court would probably allow evidence to show that the writing is not integrated (RSC §§209(3), 214(a)) or not complete (RSC §214(b)). Since the merger clause here is part of a standard form, the court may agree to hear such evidence, but it may not because the evidence would directly contradict the merger clause. If the court allows evidence of the oral agreement, it may find that the contract is integrated but not completely integrated and that the allocation of responsibility for the budget to Ish is a consistent additional term of the contract since the written contract does not explicitly mention the budget. Alternatively, the court may find that the written contract is completely integrated but that because it doesn't mention the budget, parol evidence can be admitted to resolve this ambiguity. Grant's note may increase the court's willingness to find ambiguity in the written contract. Although it does not explicitly say that Ish's doing the budget was part of their agreement, it demonstrates that Grant understood that he would do the budget, thus calling into question the basis of her understanding. Grant's argument could be further strengthened by introducing evidence that she did not have access to the necessary information to prepare a budget. Thus, if the court adopts Corbin's 2-step process and examines any evidence outside the

written contract to determine whether the contract is either ambiguous or completely integrated, it is likely to find that Ish was responsible for the budget and thus should pay Grant the \$2500. It is however possible that Ish could prevail, simply because of the contract's merger clause.

Even if the court finds that Grant was responsible for the budget, it may find that her duty was suspended because Ish failed to provide her with the information she needed to do it. Grant gave Ish notice that she thought Ish would do the budget in her April 16 note. If Ish had read the note and then told Grant he expected her to do the budget, giving her the necessary information, she would clearly have breached the contract if she then failed to do the budget. Since he did not, and made himself unavailable to Grant even after she left him a phone message on April 29, the court may consider this a breach of an implied condition precedent, discharging Grant's responsibility and constituting a total material breach that would allow her to recover her \$2500 expectation damages (RSC §243(1)).

If on the other hand the court finds that Grant has breached the contract (perhaps because Grant should have known how to get the necessary information to do the budget on her own), it will have to determine the nature of the breach before it decides what damages are appropriate. Because Grant's failure to do a budget and attach it to her prepared grant proposal in effect made the proposal worthless and deprived Ish of any chance to obtain his expected benefit, her breach would almost certainly be considered both material and total (see RSC §§241, 243). Although Grant did everything besides the budget, the court would not consider this substantial performance because the budget was crucial to the grant's being considered. Ish would therefore be entitled to expectation damages. (While expectation damages can be calculated here and are thus the appropriate remedy, restitutionary damages would not be appropriate since Grant was not unjustly enriched; reliance damages are probably also not appropriate because although Ish

relied on Grant to do the grant, he did not expend anything in reliance but merely waited to receive the benefit that he "expected".) Following the Farnsworth formula, RSC §347, Ish's potential expectation damages are loss in value (= \$75,000, value of the grant not received in September 1998) + other loss (= \$50,000/year, indefinitely, loss in salary + \$5000 reduction in salary for six months + \$2500 moving expenses) – cost avoided (= \$5000, the fee Ish would have paid to Grant) – loss avoided (= \$30,000 / year for 3 years, new salary - \$75,000, value of grant received in September 1999). However, although Ish expected his contract with Grant to result not only in the NEA grant but also in his continued tenured employment at the university, Grant is only responsible for the damages that were within her reasonable contemplation at the time the contract was made (RSC §351, see *Hadley v. Baxendale*), and there is no evidence that she knew that Ish's employment depended on a successful grant application. Any loss associated with Ish's change in jobs, including his reduction in salary and moving expenses, would therefore probably not be assigned to Grant. Although the fact that Ish was successful in his grant application the following year indicates that he would likely have gotten the grant before if Grant had not breached, Ish's mitigation of damages by applying for the grant again and receiving the \$75,000 also reduces the amount Grant will have to pay. Although there is some evidence that Ish may have sold a year's worth more of artwork if he had gotten the grant a year earlier, the instability of the art market and the change in location to a more prominent museum would make it difficult to establish this. If Ish would have spent the \$75,000 if he had received it a year before, he would also not be entitled to a year's interest on that amount; even if he is entitled to interest, he would have to subtract the \$5000 cost avoided, so the actual damages he could recover from Grant are likely to be virtually nothing. Even if Grant knew Ish's job depended on the grant, it is likely the court would refuse to assign such disproportionate damages to Grant (RSC §351(3)).

2. Smith's first claim should be that HH breached its contract with Smith by (1) violating the termination clause by not giving 14 days notice that it would terminate the contract and perhaps not having adequate grounds to terminate, (2) violating the option contract clause by not honoring Smith's option to renew the franchise contract and (3) violating its duty to act in good faith. Smith can also claim (4) that he is entitled to damages to reimburse the cost of hiring an architect in reliance on Perez's assurances. HH can counter Smith's claims by arguing that (1) Smith failed to keep the premises clean and had been given notice by HH that HH considered this a problem (2) Smith failed to pay the necessary consideration to keep the renewal option open, (3) Smith failed to give written notice of his intention to renew, and (4) it would be impracticable to keep the Market Garden store open. The likely success of each of these claims is discussed below.

First, Smith can argue that HH breached its agreement with Smith by terminating the franchise without notice on June 15. Clause 10 of the contract specifies that HH must give 14 days notice before terminating the contract due to Smith's failure to maintain the franchise in accord with clause 8. HH can argue that it had asked Smith to improve the "slovenly appearance" of the franchise several times and Smith had failed to do so, so Smith should have considered himself on notice that HH might terminate the franchise at any time after that. Although the court may find that HH should have complied with the express 14-day notice requirement, this may not help Smith very much because whether his franchise is terminated now or 14 days from now will not have a great impact on him. A more advantageous argument for Smith would be that HH had no grounds to terminate the contract at all. (Since we only have one of the possible grounds (10(c)) specified in the contract that would justify HH in terminating the contract, I address only that.) Smith could therefore argue that he had told HH he could not

afford to maintain the premises but had suggested he could remedy the situation if he were allowed to sell tofu burgers, and HH had not agreed. Smith could also argue that HH should not be allowed to use its own discretion in determining whether the premises are adequately maintained because this should be judged by an objective standard, as in *Morin Building Products Co. v. Baystone Construction*. The court may not accept either of these arguments, however, because the contract specifically gives HH the power to make these decisions and makes it clear that HH has a strong interest in regulating its' franchisees' businesses in order to maintain its reputation.

Second, Smith can also argue that HH violated Smith's option to renew the franchise contract by terminating the franchise after it knew that Smith intended to renew. Clause 5 indicates that Smith may have an option to renew, and Smith did tell Perez that he intended to renew and HH admits that it received this information from Perez. However, HH will argue in response that the option expressed in clause 5 of the agreement does not constitute a valid option contract, either because it is too vague or because Smith failed to pay the \$100 consideration and did not provide any other consideration to make the contract binding, and that even if it is binding, Smith did not comply with the requirements. First, although the court in *Walker v. Keith* found that an option contract may be too vague to be enforceable if it doesn't adequately say how the rent is to be decided, the clause here does give some indication of the method to be used, so the court may not find it too vague. (The court may be influenced by UCC §2-305 although the UCC doesn't explicitly apply in this case.) Second, an option contract normally requires consideration to be binding. If the court follows the reasoning of *Berryman v. Knoch*, where the court did not regard an unpaid \$10 listed on the agreement as consideration, it may agree that the option contract was not binding. However, RSC §87(1)(a) suggests that a "purported

consideration” may allow an option contract to become binding; although comment b to §87 says that a “comparatively small payment” may constitute adequate consideration, it may also be possible that a mere statement that consideration was paid might be sufficient. Here, however, the statement is that Smith “will pay” consideration, which probably decreases the likelihood that the court will disregard Smith’s failure to actually pay the sum. Third, even if the court finds the option contract binding, HH can argue that Smith failed to comply with its requirements by not giving HH written notice by June 1 of his intention to renew the contract. Smith can argue in opposition that he did give oral notice of his intention to renew to Perez on May 15, before the deadline, and HH acknowledged that it had received this information from Perez. The court may, however, regard written notice as an express condition of the option contract and thus decide that oral notice can not be considered substantial performance (see *Oppenheimer*; Smith’s argument is in fact weaker than that in the *Oppenheimer* case because Smith never did give written notice even after the deadline had passed). On the other hand, the court may excuse Smith’s failure to give written notice since written rather than oral notice does not seem material to the contract and Smith’s failure, if unexcused, would cause him significant damage (RSC §229).

Third, Smith can argue that HH violated its obligation of good faith. If clause 5 constitutes an option contract, the clause also imposes a duty on both parties to negotiate in good faith to put the renewal option into effect; RSC §205 also imposes the duty of good faith in performing all contracts. HH showed a lack of good faith when it began negotiations with another party to open a franchise in the new mall, which would have violated the within-4-miles exclusivity of Smith’s franchise, and when it failed to negotiate with Smith at all, despite receiving oral notice that Smith intended to renew his contract, and terminated the contract without notice. As in the *J.N.A. Realty* case, HH also failed to remind Smith that written notice

was required; unlike that case, however, we don't know if HH customarily gave Smith written notices. In response, HH may argue that it had no choice but to enter negotiations with another party because it was impracticable to maintain a franchise in the Market Garden location, and unfavorable market conditions frustrated the franchise's purpose. HH cited market changes and the nonviability of Smith's store when it explained why it had terminated the franchise. HH may not be able to succeed in this argument, however, because market difficulties are not usually sufficient grounds to justify breaching a franchise contract, as indicated in *International Harvester*, because poor market conditions can not be considered a "basic assumption" (RSC §266(1)) of the contract, nor can profitability be considered its "principal purpose" (RSC §266(2)).

Based on the arguments above, Smith may not be able to obtain specific enforcement of an option to renew the franchise or expectation damages. Even if this is the case, however, Smith may be able to recover the \$5000 he paid for an architect to redesign the shop based on the doctrine of promissory estoppel. Smith can argue that Perez gave him assurances that his franchise would be renewed and that his request to sell tofu hamburgers would finally be granted. If the court finds that it was reasonable for Smith to rely on these assurances, it will grant equitable relief under RSC §87(2). However Smith's case differs from *Pop's Cones* in that Smith did not receive specific instructions that he should go ahead with his plans, and unlike in *J.N.A. Realty*, Smith did not confer a lasting benefit on HH, so Smith's case is weaker than theirs. The court will also have to determine whether Perez's statement could be taken as representing HH's plans or was merely an indication of her opinion (see *Piantes*). Even without Perez's statements, however, Smith may have been justified in believing his franchise would be renewed, so the court may grant him reliance damages.

3B. Eisenberg's and Fried's statements imply a fundamental conflict between contract law's purpose, to enforce promissory obligations, and its effect, denying enforcement of unrelieved-upon donative and other gratuitous promises. However, this apparent conflict can in fact be resolved by considering Eisenberg's phrase "all promises that are seriously made." The courts' decisions and the common law that seem to (and sometimes do) prevent some legitimate promises from being enforced have not developed with such prevention as their goal. This is merely the inevitable result of the courts' recognition that they are not omniscient institutions and can not always determine whether a promise is "seriously made" or not. Courts must therefore impose limitations on themselves in order to prevent unserious promises from being enforced.

Contract law seems to have undergone a clear progression, from the classical system where a signature was considered absolutely binding (see *Ray v. Eurice*), a contract requires bargained-for consideration to be enforceable (see *Kirksey v. Kirksey*) and a written document could be interpreted only according to what appeared within its four corners (see *Thompson v. Libby*), to a modified approach where a party can incur obligations simply because the other party has relied on what he said (see *King v. Trustees of BU*), he has made a promise after the fact (see *Webb v. McGowin*), or parol evidence demonstrates an intention that may differ from what appears in the contract (see *Taylor v. State Farm*). This progression does not indicate a change in the courts' fundamental concern with whether a party's promise is serious; it merely indicates a difference in the methods courts are willing to use to ascertain whether the promise is serious. The question is therefore not whether donative promises "should" be legally enforced; the clear answer is that they should, if they are serious, under the same circumstances a relied-upon promise should be enforced (e.g., not if enforcing the promise would cause unconscionable harm to the promisor). The courts' problem in doing so is only that it is difficult to determine

whether an informal unrelayed-upon donative promise is serious or not.

This view seems to contradict the view of the judge in *Mills v. Wyman*, who maintains that although a promise may represent a “moral obligation” and may even be “deliberate, in writing, made freely and without any mistake”, it should not be enforced unless there is or once was consideration; otherwise it should be left to the “tribunal of conscience.” In *Kirksey v. Kirksey*, the judges refused to enforce a brother-in-law’s promise to take care of his widowed sister-in-law, and in *Dougherty v. Salt*, an aunt’s promise to bestow money on her nephew after her death was not enforced, in both cases due to lack of consideration. However, I would maintain that the judge’s caution in each of these cases is likely to arise from his knowledge that he can not know all the circumstances of the plaintiff’s and the defendant’s situations and thus can not determine with absolute accuracy whether a “moral obligation” is truly in force (or if he thinks he knows in this case, he is aware that he may not be as certain in another case). Although Fried argues that an individual “is morally bound to keep his promises” (p. 126), Fried does not address the question of what to do, under a law that enforces all promises, if an individual claims in court that a promise has been made, and the promisor denies having made it. In order to reach an objective decision in such a case, the court surely requires some guidelines on how to judge whether the alleged promisor or the promisee is the most credible. Contract law has always included such guidelines although they have changed over time. Lon Fuller, in his discussion of the evidentiary, cautionary, and channeling functions of legal formalities, addresses the problem of objectively determining credibility and suggests that consideration is useful as evidence in determining credibility (pp. 110-111, casebook). It can be inferred that other doctrines, such as the statute of frauds and the parol evidence rule, play a similar role.

As contract law has changed and courts have demonstrated an increasing willingness to

consider evidence beyond what was allowed in the classical system, the doctrines of promissory estoppel, promissory restitution, and exceptions that allow parol evidence to be introduced expand the list of “evidentiary” (of the promise’s seriousness) rules. This seems to indicate a change in their perception of such evidence’s reliability. Under the common law writ system, a signature by itself constituted conclusive evidence of a promise. It is not surprising that courts have been tempted to rely only on such a tangible and difficult-to-forge sign of a promisor’s intention. As the law has evolved, a signed written document has continued to be the preferred evidence of serious intention. However, courts recognize that on the one hand, signed written documents may not accurately reflect a party’s intention, and on the other hand, agreements that are not written or signed may have been seriously made. New exceptions to the parol evidence rule should not be regarded as a drastic transformation of the court’s policy but merely a different view of how the court can most accurately determine the terms of a contract.

The doctrine of promissory estoppel, by which courts now tend to agree that a promise that reasonably induces reliance should be enforced even without consideration, is a more radical step away from the goal of recognizing whether a promise was seriously made. While reliance may not be evidence of the promisor’s true intention, however, it is evidence of how the promisee interpreted the promisor’s statement; if the promisee was justified in the interpretation, the court considers this sufficient evidence that the promise was “legitimate”. This argument is strengthened by pointing out that the court’s interest in ascertaining whether a donative promise is seriously made (Fuller’s evidentiary function) is closely tied to its interest in preventing a promisor from making a non-serious promise in the first place (Fuller’s cautionary function). While the doctrine of promissory estoppel can play a cautionary role perhaps almost as well as consideration doctrine can (under the assumption that promisors may be cautious in making

promises that may induce reliance if they know they will have to pay for such reliance), an open enforcement of seriously made donative promises would probably fail to play this role because of the very difficulty in proving that a donative promise was seriously made.

In conclusion, it seems to me that seriously-made donative promises should be enforced, but that, in the absence of consideration, detrimental reliance, or some other form of evidence, a seriously-made promise may not be enforced simply because it can not be proven to have been seriously made. I do not think this can be viewed as evidence of the court's position on enforcing "moral obligations"; it seems rather to be an inevitable and understandable result of the court's recognition of its own limited ability to determine what parties intended or even what they did or said. While this may seem unfair in cases where a promise was seriously made but there is no evidence to prove it, it would surely be even more unfair to enforce every promise on the assumption that it was seriously made. The court's flexibility in applying the law should also be taken into account. We have seen examples, such as *Syester v. Banta*, *Williams v. Walker-Thomas Furniture*, and, most notably perhaps, *Allegheny College*, where the judge was apparently utterly convinced of where the truth lay in a particular situation and was able to rule accordingly within whatever restrictions were imposed by legal formalities. Courts are inevitably influenced, in how they apply the law, by what they believe to be the truth; nevertheless, it seems appropriate and necessary for them to consider their limited ability to determine what it really is.

Question 1: Ish's question on whether he has to pay Grant for her services depends on whether or not he can show that she breached their contract. The strength of Ish's claim that Grant breached the contract depends on whether or not the note Grant sent to Ish could be included as part of the agreement, and/or the admission of parole evidence to explain or supplement the agreement. The first step is to determine if he can sue for breach of contract.

The written contract between Ish and Grant stated that Grant would "write and submit a \$75,000 grant to the NEA by May 1, 1998," and included a strong merger clause that this included the full extent of their agreement. If taken at face value, Ish has a strong claim against Grant for breach of contract because she submitted an incomplete grant request. Clearly the contract states that she is responsible for the grant, which includes the budget portion. The merger clause shows that this is an integrated agreement according to §209, which should be taken as the complete and exclusive statement of the terms of the agreement according to §210. Ish would further argue that the additional dealings between he and Grant would be barred from evidence by the Parole Evidence Rule, including the oral representations that he would prepare the budget section, and the note Grant sent him explaining that she was relying on him to complete the budget section.

The parole evidence rule excludes the use of extrinsic testimony to explain or add to a written contract that is specific and integrated. As discussed above, there is strong evidence that the agreement was integrated, and therefore complete and final. According to §215, "where there is a binding agreement, either completely or partially integrated, evidence of prior or contemporaneous agreements or negotiations is not admissible in evidence to contradict a term of the writing." Ish can argue that their oral agreement that he write the budget portion is conflicting with the written terms that Grant would "write and submit" the proposal, and therefore should not be allowed as evidence. Ish could further argue that if the oral representations were admitted as evidence, Grant was mistaken to rely on them. In *Piantes v. Pepperidge Farm*, the court ruled that

when one party to a contract makes nearly contemporaneous conflicting oral and written statements, it is not reasonable as a matter of law for the other party to rely on either statement. Therefore Grant should have prepared the budget portion herself, to fulfill her obligation of writing and submitting a grant proposal, and not have relied on Ish to prepare it for her.

However, Grant would likely argue that the written agreement was not a complete manifestation of their intent because she and Ish agreed that he would write the budget portion of the grant prior to signing. According to §217, “[w]here the parties to a written agreement agree orally that performance of the agreement is subject to the occurrence of a stated condition, the agreement is not integrated with respect to the oral condition.” Grant would have a strong defense that Ish bears the blame for breach because he did not fulfill his portion of the agreement. Grant can argue that parole evidence is allowed to determine if a contract was integrated or not, and to explain ambiguous terms in an integrated contract. See *Taylor v. State Farm*. According to *Taylor*, a judge can decide if an agreement is integrated or not based on hearing the what the parties argue the terms to mean, and then deciding if that proposal of the meaning is reasonable. In essence the judge is attempting to discern the intent of the parties. Along with the oral agreement that Ish would prepare the budget, Grant sent Ish a note that furthered explained the intent of their agreement and her reliance on Ish to prepare the budget. It is reasonable that this letter supplements the agreement and explains the full intention of the parties. Grant can further argue that the terms of the contract are ambiguous.

The original terms of “write and submit” are arguably ambiguous because writing a grant could mean that she prepares all of the information and also writes it, or that she merely uses the information supplied by the client and writes an eloquent proposal. It is reasonable that a judge would interpret the term to mean that Grant was to write the budget portion based on information supplied to her by Ish, because it is obvious Grant would not know how Ish planned to spend his

grant money unless he told her. Grant makes a good point that if she had prepared the budget without his input, it would be unethical and perhaps get him into trouble if he gets audited.

As far as Grant's reliance on Ish's promise to prepare the budget is concerned, Grant could argue that Ish is still at fault for the breach because of his material misrepresentation of wanting to prepare the budget. §162 (2) explains that a misrepresentation is material if it would be likely to induce a reasonable person to manifest assent. Ish's statement of, "I assume you will let me put together the budget," along with Grant's statement of "Indeed, I expect you to write it," and Ish's confirmation of "Good, I'll get started on it now," clearly fit the requirements of inducement and reasonable assent.

Ish could argue that their agreement was integrated and therefore no extrinsic evidence is allowed to contradict its terms. However, Grant could argue that according to §217, the written agreement was not integrated with respect to who would prepare the budget portion, and therefore extrinsic evidence must be admitted. Grant could further argue that extrinsic evidence is necessary to discern the intent of the parties because the terms are ambiguous and because of the letter Grant sent to Ish explaining her reliance on him to prepare the budget section. Based on this evidence, I believe Grant has the stronger position and will ultimately prevail. Ish will have to pay her the \$2,500 as that is what she would have received if the contract had been fully executed.

Assuming Ish can prove that grant was in breach, he has problems proving damages for the grant money, the loss of income from his job, the loss of future income from receiving tenure and his miscellaneous moving expenses because they are probably too speculative as expectation damages and/or not foreseeable under the *Hadley* Rule.

Expectation damages are those a party is entitled to based on their position if the contract had been completed. They are calculated by taking any losses in value + other losses (expected profits), and subtracting any costs avoided or losses avoided by the breach. To claim expectation

damages, the loss must be (1) in contemplation of the parties when they signed the contract (*Hadley* rule), (2) directly related or proximately caused by the breach, and (3) measurable by good evidence. The loss of the grant money, \$75,000, are the most foreseeable damage for breach of this contract. However, this loss is probably not directly related or proximately caused by the breach, because receiving the grant depended on more than just writing the proposal. As stated in *Roth v. Speck*, expectation damages must be estimated with a good degree of certainty to be in the range of recovery. Even though the proposal was ultimately accepted, there was no way of knowing this at the time of the breach, which is when the damages are calculated. They are too speculative. The loss of his tenure (\$10,000/year more in income) is probably not foreseeable (unless he told her he had to get this grant to get tenure), and also based on too many factors to be estimated with certainty. The chair of the tenure committee admitted that even if he did get the grant and stage a good event, his tenure would be a close call. The loss of his current job is probably also not foreseeable (unless he told her he would be fired if he didn't get the grant), and again based on too many factors to be reasonably certain. Even if the contract was not breached, keeping his job depended on whether or not he received the grant, hosted a good event, and made tenure. If one of these did not happen, he would have lost his job anyway. He also received a new job, which mitigates all but \$10,000 of his damages relating to the loss of his job, and received an additional \$10,000 from the sale of his artwork that arose from using Grant's work that he didn't pay for to get the proposal. These damages are mitigated completely. Finally, the \$2,500 in moving expenses are probably not foreseeable for the same reasons that losing his job are not foreseeable, nor are they the directly related to the breach for the same speculative reasons as listed above. Even if they were deemed recoverable, Ish would have had to pay \$2,500 to Grant for writing the contract if she had not breached it, so the loss is offset by the cost avoided.

Question 2. Smith can sue HH for breach of contract on several theories: (1) by initiating

negotiations with a new store and not allowing him to serve the tofu burger, they did not act in good faith; (2) initiating negotiations with the new store was a breach of the contract's terms; (3) HH did not give proper notice of ending the contract; and (4) HH should accept his notice to Perez that he desired to renew the franchise because of the forfeiture he would suffer by being forced to comply with the express term. HH has many good counter-arguments to these theories, specifically that (1) the market forces indicated they would not have to renew the contract; (2) Smith never paid for the option of renewal; (3) Smith failed to comply with important quality standards under the contract; and (4) Smith failed to comply with the express condition for renewal of the contract.

The contract between Smith and HH specified that Smith would have an exclusive franchise for a 4 mile radius. Nevertheless, HH entered into negotiations to place a franchise in the new mall located just 1 mile away. This can be argued as a breach of the contract on its terms, and also a breach of good faith. According to §205, "[e]very contract imposes upon each party a duty of good faith and fair dealing in its performance and its enforcement." The terms of the contract dictate that HH not enter into agreements with a franchisee within 4 miles of Smith, and good faith dictates that they should not enter into negotiations to put a store within 4 miles of Smith. Smith could argue that HH clearly was not interested in maintaining their agreement, and this showing of bad faith is the reason why they sought to terminate the contract. An additional showing of bad faith arises from HH not allowing Smith to sell the Tofu burgers, even though he had evidence that the customers wanted such a product. Although it was within HH's discretion what products Smith could sell, good faith dictates that they do all in their power to make this a successful venture for both them and Smith.

HH can counter this argument by showing Smith did not keep the proper quality standards at his store, and that he was behind in franchise payments. HH has a strong argument that allowing

Smith's store to continue reflects poorly on the entire organization because of its poor cleanliness and quality standards. The agreement expressly states in paragraph 8 that the quality interests are very important, so important that they are a reason for termination. If Smith's store was as bad as they say, it would not be a showing of bad faith to not give him the Tofu line, because they would not want to expose more customer's to a bad store. HH could also argue that it was not against the contract to negotiate with the new store owner, nor a showing of bad faith that they did because Smith was behind in his franchise payments. It is also unclear when the negotiations started, and if they were after June 1st, HH was not acting in bad faith because they had not received any written notification from Smith to continue his franchise. Because of the express contractual term of the importance of quality, I think HH would win on this claim.

Smith can further claim that HH breached the contract when they did not give him the requisite 14 days notice for termination according to paragraph 10. The only notice that Smith received was a letter stating that the franchise was over. Clearly this is a breach of the contracts terms. True, Smith had notice in the past of HH wanting him to clean up his store, but they never gave notice of termination because of it. Furthermore, HH's most recent visit to the store by representative Perez indicated no feelings of unhappiness on the part of HH for the condition of the store. On the contrary, Perez was positive that a new franchise agreement would be underway. Therefore, HH could not terminate the agreement in the way that they did, and should be liable for at least 14 days of lost profits for terminating the agreement without notice. Smith could also argue that the termination clause was unconscionable. 14 days termination on a franchise agreement of this sort is ridiculous! 14 days is not enough time to inform the customers and utility and governmental entities that you are closing. It's just not a reasonable time.

All HH can really argue is that the letter Smith received on June 15th was a notice of termination for quality problems, and that they only owe him the 14 days of lost profits. HH could

counter the unconscionable theory, however, by showing that courts generally do not consider clauses between commercial entities unconscionable because they are sophisticated entities that should know better than to enter into such agreements. See *Piantes v. Pepperidge Farm*.

Perhaps Smith's strongest argument is that his notice to renew the contract given to Perez should have been enough to constitute proper notice for the option clause. HH has a strong counter because the method of renewal was expressly stated in the contract and should be followed (see *Oppenheimer & Co. v. Oppenheim*), and Smith never paid the \$100 in consideration for the option. Smith can counter the first argument with §229 of the restatement. It says that "[t]o the extent that the non-occurrence of a condition would cause disproportionate forfeiture, a court may excuse the non-occurrence of that condition unless its occurrence was a material part of the agreed exchange." This principle was further enunciated in *JNA Realty v. Cross Bay Chelsea*. In that case a landlord attempted to decline a tenant's option to renew the lease because the written notice came after the stipulated deadline. It was the tenant's negligence that caused the delay, however, denying the tenant the right to renew would have meant a substantial forfeiture for the costs he incurred in improving the property and losing his customer base. Therefore the court decided that as long as it does not prejudice the landlord, the tenant's notice was acceptable. In Smith's case, he did fail to give the written notice as stipulated by the contract, but was diligent in informing Perez that he wanted to renew weeks before the June 1st deadline. Perez gave him assurances that she would inform the home office and a new contract would be underway. Because Perez was the HH representative, it was reasonable for Smith to rely on her assurances and not send the written notice. Furthermore, denying Smith's notice as adequate would result in a substantial forfeiture to Smith. He had already expended \$5,000 to improve the property and maintain the quality level for HH, not to mention the initial franchise fees he paid, and the customer base he already had. This is a strong argument for Smith.

HH could first argue that Smith never paid the \$100 for consideration for the option. This could be countered by showing that the clause to pay \$100 for this option was not necessary. Smith gave consideration for the entire contract, which included the option to re-negotiate. Smith could further argue that both parties intended for the provision of re-negotiating a new contract to be binding, as demonstrated by their actions. It was only after the fact that HH even raised the issue that Smith never paid the money. This leads to the third counter, the consideration was nominal. The great value of the option to renew, compared to the small consideration stipulated for it shows that neither party was interested in the \$100, but only interested in continuing the franchise if the market forces agreed. The degree of forfeiture for not complying with this provision is too great to hold Smith accountable for it. However, if HH can show that they had intended the condition to be binding and had already entered into an agreement to offer the franchise to another, that might be enough to counter Smith's forfeiture argument. However, if they were only in negotiations, that probably would not be enough to show prejudice. HH could also argue that the option was merely for negotiations based on market forces, and not a right to re-new the contract.

Smith has strong claims of breach for bad faith and equitable claims of forfeiture. However, HH has strong claims that the express conditions should be upheld in their contract and that they did not act in bad faith because Smith had poor quality and was behind in payments. I think the court would eventually rule that Smith should have been able to renew the contract for reasons of forfeiture, and HH should give Smith a chance to try the Tofu line for reasons of good faith. Public policy would also favor Smith because it seems as if HH is trying to sabotage his business for their own interests. Classical theory should give-way to equity in this case.

Question 3.

I generally agree that informal, unrelayed-upon, donative promises should not be enforced,

with the exception of promises made regarding payment at time of promisor's death. I agree with this position for reasons of judicial economy, the characteristics of a legal "right," and the individual protection against the law imposing morality that this position affords.

Promises made regarding payment at time of promisor's death.

Perhaps the most compelling case for enforcing promises made payable at time of death is *Dougherty v. Salt*. In this case a young boy's aunt desired to give him a gift of \$3,000 payable at the time of her death. Eventually the court decides that this promise is not legally enforceable because any value the aunt received for this donation would have been past consideration. I disagree with the reasoning and outcome of this case.

This case should have been looked upon as analogous to enforcing the will of a deceased person. Clearly any consideration for gifts in a will is past consideration, but as a society we have determined that the finality and abruptness of death gives rise to different contractual rules. When a person dies, they normally have not had the time to pay all of their debts, receive all of their income, and give away all of their property. It is unreasonable to expect any person to be so prepared that all of their desires for their property would be already carried out at time of death. This would mean that they would then have to become dependant upon others for every monetary need until they die. If a man gives away his home, his property, his savings, how can he live? Even more impracticable than expecting a man to have executed every gift of his estate before death, is expecting him to return and do so afterward. For this reason, wills are legally enforceable.

It is not a huge logical leap to include written promises made payable at the time of one's death in the category of legally enforceable promises. Although they have not been written perhaps with the same solemnity of thought as a will, they have been written as expressions of one's dying wish. The essence of the promise is the same, and the law should not punish a dead person by refusing their last wishes simply because they were not written on the correct piece of paper.

Very different from this type of situation is the example that Charles Fried gives of seeing no difference in a promise to sell his car to his brother in law, or give it to his nephew. The reason why these two promises cannot be given the same importance is for reasons of judicial economy and the characteristics of a legal right.

At the outset, it is impracticable to expect the courts to have the resources necessary to enforce every informal, unrelieved-upon, donative promise made. If an aunt promises to give her car to her nephew, and the nephew does not rely on the promise, and she decides not to execute the promise, what would the court do to remedy the situation? What is the problem the court needs to remedy? The nephew did not lose anything because he didn't rely on the promise. The nephew's non-reliance is a manifestation of his will to not have the car. Presumably the nephew did not like the car, or did not have need of the car, or knew the aunt really didn't want to give her car away. Should the court now step in and force the car upon him? Would this be in harmony with the general idea of freewill in contracts? Can you force a non-willing party into a contract they do not assent to? The answer to all of these questions is no. Given that there are plenty of cases to be heard where there are disputes over real contracts, the court has neither the time nor the money to spend on forcing two unwilling parties to contract with one another.

The situation would be different if the nephew had relied on the promise to receive the car, and had foregone an opportunity to purchase a different car at a reduced price. Now the nephew has the type of reliance similar to that in *Hamer v. Sidway*. In that case, an uncle's promise to give his nephew a sum of money if he refrained from doing certain activities that he had a legal right to do, was enforced by the courts. The nephew had given consideration in the form of detrimental reliance, and was therefore legally entitled to the promised sum of money. The case introduces the second point of why informal, unrelieved-upon, donative promises should not be enforced, the character of a legal "right." For one to say she has a right to someone else's property, she must

have done something to deserve it. In our legal system, property rights are held in such regard that the highest law of our land, the Constitution, contains a special provision requiring due process before one can be stripped of their property. The right to property can be viewed as something so important that only after a proper showing of just cause, in a court of law, can one lose it. This is because one's property is deemed to be hers by way of something she has done to deserve it, whether it be that she earned it, or the one who did earn it legally gave it to her as was his legal right to do. Can one say that they have this same type of right because they have received a promise they did nothing to earn? No. Only if one has affirmatively contracted for another's property in free and fair exchange, or has materially changed her position on reasonable reliance of another's assertions, have they done an act worthy of being granted a right to another's property. To conclude otherwise would weaken the sanctity of the legal right to property, and our society which is based upon it.

Opponents of this view could argue that the legal right to property rests with the owner, and it is his right to transfer that ownership in anyway he sees fit. This is true. Let the owner not make promises at all, but make immediate transfers of the property he wishes to donate. This would avoid all problems. However, in the case where the owner does not transfer the property, we must assume it is for some reason, whether he is not capable because he does not yet own the property he has promised, or because he really does not wish to transfer it. In this case, the opponents must agree that the legal right to property still rests with the owner, and he should decide how, when, and if he gives it away, so long as he has not caused someone to materially change their position in reliance on his promise.

Finally, the enforcement of informal, unrelieved-upon, donative promises would simply be enforcement of an individual moral obligation--the obligation being that one tells the truth and keeps her word. However, in *Mills v. Wyman*, the court rejected the notion that a mere moral

obligation gives rise to a legal obligation. The court stated that the law, "perhaps wisely so," leaves the enforcement of these promises to the one's conscience. At this point one has to step back and realize that an argument against the enforcement of these promises by the law is not the same as an argument to induce people to not follow through on their promises. However, so long as one is not infringing upon the rights of others, the law should protect the right of people to behave as morally, or immorally as their conscience dictates. The law tried to outlaw what it saw as immoral behavior with the laws of prohibition. This was a clear example of how the law is a complete failure as a substitute conscience.

Opponents might argue that *Webb v. McGowin* is an example of when the courts have said it is correct to force people to keep their word. However, what *Webb* held is that when the promisor receives a material benefit from the promisee, although done without the promisor's request, it constitutes as consideration for the enforcement of the promise. This is not inconsistent with the position that informal, unrelieved-upon, donative promises should not be enforced. Clearly if consideration for the promise can be found (and in *Webb* it was saving the promisor's life by sustaining serious physical injury to the promisee), then the promise should be enforced. The promisee has done something, in the eyes of the law, to deserve the property.

If one has not done something to earn another's property, and has not manifest a desire to have a promise enforced by reliance, then a purely informal, unrelieved-upon, donative promise should not be enforced for reasons of judicial economy, nature of a legal right, and individual protection against the law imposing morality.