

The purpose of this assignment is to test and develop your ability to recognize and derive express and implied rules from a judicial opinion. This is a basic skill used in preparing for class, preparing outlines for your exams, writing papers for your classes, and representing and advising actual clients in a case.

Techniques for Finding Express and Implied Rules

The task is to determine as many rules as possible from the case I gave you. The point of this answer sheet is to give you more examples of how lawyers derive rules from cases.

This answer sheet is chronological. It goes through our case, *Ruben Garcia v Conoco Oil Co.*, line-by-line, listing the rules in the order I found them. References to our reading material are by page number and then line number: 3.5-8 is Page 3, lines 5-8.

Page 3, Lines 5-8: Breach of contract cause of action

Here, the appellate court affirms the trial court's finding against Garcia on his breach of contract claim. By itself, this is a conclusion. But the court earlier (page 2.28-page 3.2) told us the essential facts of the case. Since the court has found that Conoco didn't breach a contract, and since Conoco didn't attempt to do anything/perform in anyway, that must mean there wasn't a contract for Conoco to breach. And that tells us that the facts weren't enough to create a contract. So putting the essential facts together with the court's conclusion produces the following rules:

Rule 1

When

- Plaintiff acts in reliance upon ongoing negotiations to acquire a franchise,
- Plaintiff acts *before* submitting a formal proposal, and
- Defendant rejects the proposal because it has adopted a nation-wide temporary moratorium on new franchises, the relying party/Plaintiff does not have a valid claim for breach of contract.

Rule 2

A plaintiff who does not prevail on a breach of contract claim still may prevail on a promissory estoppel claim involving the same transaction.

Note: Another clue to the existence of Rule 2 is the "Compare and Contrast" technique we discussed in class. Here, we have two causes of action. One works; one doesn't work. That comparison often suggests a rule or two.

Page 3, Lines 9-10: The Statement of Issues

Lines 8-11 are really the court's statement of the issues in the case. But they contain two express rules and clues to the existence of several rules.

Rule 3

The normal remedy for a breach of contract is an award of the profits the plaintiff has lost because of the defendant's breach.

Clues to More Rules

The court says the first issue is whether lost profits are a proper form of damages to award. For this to be an issue, there must be at least one other type of damages that the court could award. So we need to look for rules that

- (a) identify the various types of damages available;
- (b) define those types of damages; and
- (c) tell us when we should use each particular type of damages.

Rule 4

The court then says the second issue is whether Garcia took reasonable steps to mitigate his damages. Again, that hides a rule: "In a promissory estoppel action, the plaintiff must take reasonable steps to mitigate damages." Also, it suggests we need to look for rules that define mitigation and "reasonable steps." Whenever we see terms of art, we need to look for definitions.

Page 3, Lines 14-24: Mitigation of Damages

This paragraph contains some express rules and some rules that we should infer by combining the facts that the court discusses with the court's conclusion.

Rule 4 (repeated from above)

A plaintiff with a valid cause of action under promissory estoppel must take reasonable steps to mitigate his damages. *Note: if the rule's element/test is "reasonable steps," then somewhere the court has to tell us what "reasonable steps" were in Garcia's situation. That will create a (sub)rule that will define a term ("reasonable steps") which appears in the main rule.*

Rule 5

"Reasonable steps" are steps that a person exercising ordinary care would use.
3.18-19

Rule 6

A plaintiff whose franchise application was rejected sufficiently mitigated his damages when he applied to and was rejected by four other companies who provide similar franchises. 3.15-20.

Rule 7

A plaintiff does not have to mitigate his damages by taking actions or conducting searches he does not have the sophistication to conduct. 3.23-24

Rule 8

A plaintiff need not mitigate by finding alternative suppliers if he lacks the sophistication to find them. 3.21-24.

Page 3, Line 27 to Page 4, Line 3: Measure of Damages

This paragraph consists mostly of Conoco's arguments: indeed, it begins by saying "Conoco next argues...." The arguments of one party to a lawsuit are just that—arguments—until a court adopts them as rules. So page 3, lines 32-34 are *not* a rule that says a promissory estoppel plaintiff can get only reliance damages—indeed, this appellate court reaches the opposite conclusion. The appellate court agrees with only one of Conoco's arguments: the definition of reliance damages:

Rule 9

Reliance damages put Plaintiff in the position he would have been in had the Defendant never made the promise. 4.1-3.

Page 4, Lines 5-6: Traditional contract law

This single sentence states an express rule, and the footnote includes several more express rules:

Rule 10

Traditionally, contract law enforced only those promises supported by mutual consideration bargained for and exchanged by the two parties.

Rule 11

Traditionally, a Plaintiff who proved Defendant had breached a contract was entitled to full performance of the contract. 4.5-6

Note: we earlier read the court's clue that there were different types of remedies. Here, the court starts talking about those types of remedies, so it's time to start taking notes.

Rule 12

Full enforcement of the contract is called the expectation interest. 4.note 4

Rule 13

The expectation interest puts the Plaintiff where he expected to be if the defendant had fully performed the contract. 4.note 4

Rule 14

Reliance damages compensate Plaintiff for losses he suffered to expenses he incurred in reliance on the promise. 4. note 4.

Rule 15

Except in a losing contract, the expectation interest always exceeds the reliance interest. 4 note 4.

Note: Aha!!!!!! You'll remember Conoco, the defendant, earlier argued Garcia should only get his expenses (his reliance damages), while Garcia wants what he would have received had the contract been fully performed (his lost profits/his expectation damages). And the court earlier said that one of the issues in Garcia is the proper type of damages to award. So now we should start looking for rules that tell us when a plaintiff gets reliance damages and when he gets expectation damages.

Page 4, Lines 7-12, 14: Promissory Estoppel as a Cause of Action

Before we get to an in-depth discussion of damages, the court introduces us to the cause of action that won the case for the plaintiff. Here, the court expressly adopts Section 90 of the Restatement of Contract:

Rule 16

- (a) A promise
- (b) which the promisor should reasonably expect to induce action/forbearance on the part of the promisee or a third person, and
- (c) which does induce
- (d) such action or forbearance is binding
- (e) IF injustice can be avoided only by enforcement of the promise.

Notice: Section 90 has two sentences, and I've only pulled a rule from Sentence 1. That's because Sentence 1 concerns the elements of promissory estoppel, while Sentence 2 concerns the remedy for promissory estoppel. Since those are different subjects, they produce different rules.

Now that we have five elements to promissory estoppel, an obvious question arises: what does each element mean? We need to look for definitions or examples of each element. Eventually, when the court discusses why Garcia's promissory estoppel claim is valid, we'll get some examples. In the meantime, footnote 5's citation of Section 90, Illustration 1 provides us an example we can use. Illustr. 1 gives us some facts and tells us the promise is binding under promissory estoppel—so those facts satisfy all elements of promissory estoppel. That produces several rules:

Rule 17(a & b) (re element (a) of Section 90: "A promise")

A promise by A to give B \$5,000 upon B's completion of college is binding after B enters college, borrows, and spends a substantial sum on college expenses.

A promise to give someone money to attend college is a promise enforceable under §90.

(I know—that's pretty dull. But this technique can produce interesting results—keep reading).

Rule 18 (re element (b) of Section 90: “which the promisor should reasonably expect the promisee to rely on”)

A promise to a college-bound student to pay for college is a promise the promise-maker should expect the recipient/promisee to rely on.

Note: I know. This still is pretty boring. But look at the next rule.

Rule 19 (re element (c): “and the promise induces”)

A promise is considered to induce the promisee’s act/reliance even when the promisor knew, before making the promise, that the promisee intended to commit the act.

NOTE: Strangely, the facts of Illus. I say “A, knowing that B is going to college...” You would think that the inducement/causation element could be satisfied only if B showed that A’s promise came before, not after, B’s decision to go to college. Does this mean that the drafters of Illustration 1 were sloppy? Or did they mean to suggest that B could satisfy Section 90’s inducement element merely by showing that A’s promise reinforced/confirmed B’s earlier-made decision to go to college?

Rule 20 (re element (d): “such action or forbearance”)

Attending college and committing to pay tuition are acts of reliance sufficient to satisfy Section 90.

Rule 21 (a & b) (re element (e): “Avoiding injustice only by enforcing the promise”)

It is unjust to let a Defendant break his promise, even if the breach of the promise meant Plaintiff merely had to pay for something (going to college) that Plaintiff wanted to do before Defendant made the promise.

It is unjust to let a Defendant break his promise to pay Plaintiff’s college tuition, even if Plaintiff’s act of reliance benefitted her by providing her an education. *Hmmmmmmmmmmmm..... This just gave us some unexpected interpretations of Section 90’s requirements.*

Page 4, Lines 11 & 12: Promissory estoppel’s remedy

Rule 22

The usual remedy for a plaintiff who satisfies all the elements of promissory estoppel is full performance of the promise (*note: this comes from line 11’s declaration that the promise “is binding”*), but the court may limit that remedy if justice so requires.

Note: “the court may limit that remedy if justice so requires.” What does that mean? When does justice require limiting the remedy? And limiting the remedy to what? Those are more questions that whose answers will provide us with more rules.

Rule 23

A promise to give someone \$5,000 tuition for college, which causes that person to borrow and spend more than \$5,000 on tuition, should cause a court to award the promise recipient the full amount of the promise, *i.e.*, \$5,000. 4.note 5 (Illustration 1 to Section 90).

Page 3, Lines 17-25: Introduction to Promissory Estoppel Damages

Lines 17-18 begin by telling us we have to determine the appropriate type of damages to award in a promissory estoppel cause of action. So now we should be looking for

- rules that identify the types of remedies available;
- definitions of those rules; and
- factors, guidelines, or tests the court use to decide which type of damage award is appropriate in which types of cases.

Rule 24

A promise binding under this section is a contract. 4.20
Hmmmmmm....that suggests another rule, courtesy of our “compare and contrast” tactic.

Rule 25

Even though a promise is not supported by consideration or that was not bargained for between the parties, that promise still can be a contract if the promisee relies on it...*Note: this combines line 20 with page 4, lines 5-6.*

Rule 26

Full enforcement of the broken promise “is often appropriate” under promissory estoppel. 4.20-21.

Rule 27

Implied from the prior sentence: Sometimes full enforcement of the broken promise is NOT appropriate under promissory estoppel. 4.20-21. *Obvious question: so how do we tell when full enforcement is or is not appropriate under promissory estoppel?*

Rule 28

“Sometimes” (*when would that be?*) relief under promissory estoppel should be restitution 4. 23 (*so now we need a rule that defines restitution, and another telling us when restitution is an appropriate remedy*) or damages based on the extent of the promisee’s reliance. 4.23-25.

Page 4-5, note 6: Illustrations of how promissory estoppel works

Footnote 6 on pp. 4-5 contains Illustrations 8, 10, and 12 to Section 90 of the Restatement (Second) of Contracts. Illustrations are gold mines for rules, as are a court’s discussion of cases.

Here, we’ll use the old “combine the facts with the court’s conclusion to produce a rule” technique. You’ll note that each illustration says the plaintiff has satisfied the

elements of promissory estoppel, so, as we did earlier, we can use the facts of each illustration to define those elements. In addition, each illustration tells us what damages a court should award. That should produce a rule about when to award expectation damages, reliance damages, or restitution damages.

Illustration 8

Rule 29 (a-e) (Defining the elements of promissory estoppel)

(a) Defendant's promise to accept A's application for a franchise and to deliver at least 30 radios is a sufficient promise to satisfy the first element of Section 90 ("A promise")

(b): Defendant who tells franchise applicant that his application will be accepted should expect applicant to rely on that statement.

Note: A really good attorney would have deduced this rule instead: It is reasonable for a franchise applicant to rely on an oral promise to give applicant a franchise, even if the Defendant has not formally accepted the application and even if Defendant can terminate any franchise at will, e.g., five days after granting it.

(c) When a person receives a statement that his application has been accepted and then immediately spends \$1,150 preparing to do business, he has committed an act of reliance that satisfies Section 90.

(d) Spending \$1,150 to set up a business to sell radios is an act of reliance.

(e) When B promises A that A's franchise application has been accepted, A then spends \$1,150 preparing a business to sell the items that such franchises sell, and B then breaches, it would be unjust not to award A some type of remedy.

Rule 30 (Remedy for promissory estoppel)

A franchise applicant who spends \$1,150 hiring sales staff, soliciting orders, and otherwise preparing to do business in reliance on Defendant's oral promise of a franchise and delivery of 30 radios is entitled to recover those \$1,150 in expenditures, but not the lost profits on the 30 radios.

Unfortunately, the Illustration doesn't suggest WHY reliance damages are more appropriate than expectation damages. One of your classmates suggested that lost profits should not be awarded because the defendant could have terminated the franchise at any time, cutting off the plaintiff's chance to earn profits. That's an excellent point. You also could infer a rule that says "Even if Defendant could terminate the franchise at will, it is unjust to terminate the franchise before Plaintiff has the chance to sell enough radios to pay for all his expenses."

Illustration 10

Rule 31 (a-e) (Defining the elements of promissory estoppel)

(a): Statements that \$18,000 will establish B in a store and that "Everything is ready to go. Get your money together, and we are set" are sufficient to be a promise

under Section 90, even though “many details of the proposed agreement between the parties are unresolved.”

Note: you could paraphrase this language to say “Even though defendant’s promise omitted so many terms that it could not be a traditional contract, the plaintiff still may enforce the promise under the doctrine of promissory estoppel.”

(b): Supermarket franchisor should have expected that bakery owner would rely on franchisor’s promise that \$18,000 would establish B in a store and that “Everything is ready to go. Get your money together, and we are set,” even though both sides knew “many details of the proposed agreement between the parties [were] unresolved.”

Hmmmmmmmmmm....Very interesting! This seems to say a promise-recipient may reasonably rely on a promise even though he knows the promise is NOT an enforceable contract. I would think only the opposite to be true. In other words, I would think it reasonable to rely only on those promises you know are enforceable contracts.

*Illustration 10 suggests that parties can be bound to each other **even before there is a contract.***

(d) Moving to another town, selling a bakery, and purchasing a small grocery (and then selling it at a loss) are acts of reliance sufficient to satisfy the elements of Section 90.

(e) See generalization re Element **(c)**, above.

Rule 32 (Remedy for promissory estoppel)

Again, the technique is to combine the facts with the court’s conclusion:

Where supermarket franchisor promised bakery owner that \$18,000 would establish B in a grocery store and that “Everything is ready to go. Get your money together, and we are set,” and bakery owner relied on those promises *before the parties created a contract*, bakery owner was entitled to his reliance damages but not expectation damages.

Note: the third and second-to-the-last lines in Illustration 10 say “Since the proposed agreement was never made, however, A is not entitled to lost profits...or to his expectation interest.”

Rule 33 (Reliance damages)

Reliance damages are the losses on sale of the bakery and grocery, moving expenses, and temporary living expenses.

Rule 34 (Expectation damages)

Expectation damages include the profits lost when he sold his bakery and grocery and the profits he would have made in the grocery store he was promised.

Expectation damages are recoverable only when the parties actually reach an agreement that has bargained for consideration. (*Hmmmmmmmm....Is this rule consistent with the Garcia court’s ultimate decision?*)

Illustration 12

Rule 35 (a-e): The elements of promissory estoppel

(a) A's promise to give land to his son-in-law, B, coupled with B's taking possession of the land and improving it for 17 years, is sufficient to show a promise under Section 90.

(b): A father-in-law who promises to give a tract of land to his son-in-law should reasonably expect his son-in-law to rely on that promise by improving the land.

(d) Living on a tract of land and improving it for 17 years is sufficient reliance to make a promise binding under Section 90.

(e) Even though B presumably benefitted from living on father-in-law's land for seventeen years, it would be unjust not to enforce the promise in some way, since B also had made valuable improvements to the land.

Rule 36 (Remedy)

Where promisee relied to his detriment on promisor's promise, but also benefitted from promisor's partial performance of promise (by living on the promised land for 17 years),

- expectation damages in the form of specific performance are not appropriate,
- reliance damages are appropriate, and
- reliance damages are the value of the improvements promisee made in reliance on the promise.

Note: The preceding sentence may not be accurate. The illustration's actual language (in the last two lines of page 5) is that B is entitled to a lien "for the value of the improvements, not exceeding their costs." That suggests that full reliance damages are the MAXIMUM the court should award. Why should we award less than full reliance damages? The illustration doesn't tell us. I suspect the drafters thought a court may reduce the reliance damages by the value promisor received by (a) living on the land (free housing!) for 17 years and (b) for benefits he received from the improvements he made.

Page 5, Lines 2-16: the Court's Application of the Facts to the Law

Rule 37 (Implied)

Promises made by Defendant during negotiations over a franchise application can satisfy the first element of promissory estoppel and be a promise even though the Defendant later rejects Plaintiff's application/proposal/author.

Rule 38 (a-c)

A court may assume that someone who invests time and money in a gas station (or can we generalize to *any* business?) does so because she anticipates earning profits from that station. 5.2-4.

Investing money and time in a gas station is an act of reliance which deserves protection. 5.4-5.

Giving up the opportunity to invest time and money in other, more profitable enterprises is an act of reliance which deserves protection. 5.4-6.

Rule 39

A Plaintiff's lost profits regarding a particular business may be based on evidence of that business's sales and profits under the previous owner, 5.11-12, and testimony by an expert witness. 5.13

Page 5, Line 18 to Page 6, Line 12: General discussion of damages

These lines contained lots of rules which were sufficiently express that almost everyone found them. Unfortunately, they were so general as to be almost meaningless.

Rule 40

A court of equity has discretionary power to award damages to do justice. 5.18 to 6.1; 6.3-4; 6.10-11. *Hmmmmmmmmmm...What factors should an equity court use to exercise its discretion?*

Rule 41

A court of equity may use Section 90 to devise a remedy which equals or exceeds the agreement between the parties, if that is necessary to make the injured party whole. 6.6-8

*NOTE: this is dicta, but wow! A future plaintiff who invokes Section 90 can use this language to support an award of **more than expectation damages** ("a remedy which...exceeds the agreement....").*

Rule 42

Promissory estoppel is an equitable matter. 6.10

Note: we really haven't studied the difference between law and equity, so don't worry if you overlooked this rule or its significance.

Rule 43

Equity will not suffer a wrong to be without a remedy. 6.11-12

Page 6, Lines 14-20: The court's conclusions**Rule 44**

The elements of Section 90/promissory estoppel are now a cause of action in this jurisdiction. 6.14-15

Rule 45

Since Garcia lost profits because he relied on Conoco's promise, Garcia is entitled to receive those lost profits. 6.15-21

Rule 46

To recover lost profits, a plaintiff must prove them with "reasonable certainty." 6.16-17

Note: now we can go back to page 5's discussion of expert testimony and the evidence of the gas station's prior sales and say that such evidence proves lost profits with "reasonable certainty."

Note: Footnote 7, which uses Goodman as an example, includes more rules.

Rule 47

Where Plaintiff bought and improved gas station in reliance on Defendant's promises concerning Plaintiff's application, and Defendant put a nation-wide moratorium on new franchises before it had considered Plaintiff's application, Plaintiff's reliance was sufficient to make Defendant's promises binding for at least a year, even though the parties had not made a contract. 60.14-19, and the statement of facts.

Rule 48

When trial court's findings of fact are not clearly erroneous, appellate court must affirm them. 6.20-21.