4.10 BILATERAL CONTRACTS

K. PROMISSORY ESTOPPEL (Approved 5/98)

Plaintiff has alleged that the defendant promised [name what was promised] and that plaintiff reasonably relied on that promise.

A promise which is made without any consideration being given by the other party sometimes can be enforced. Thus, even if nothing of value was promised or exchanged by the party who reasonably relied on a promise, sometimes the promise can be enforced.

To succeed on this claim, plaintiff must prove each of the following facts:

1. That the defendant made a clear and definite promise.¹

2. That the defendant expected that the promise would be relied upon.

3. That the plaintiff did reasonably rely on the promise.

4. That the plaintiff’s reliance on the promise caused the plaintiff to suffer a definite and substantial detriment.²

If plaintiff proves all of the above conditions by a preponderance of the evidence, then you can consider the defendant’s promise as creating a valid contract between the parties.

²Peck v. Imedia, Inc., 293 N.J. Super. 151 (App. Div. 1996) discusses the need for detrimental reliance without expressly stating that the reliance by “substantial and definite.” 293 N.J. Super. at 165. The “definite and substantial” requirement can be traced to Friedman v. Tappan Dev. Corp. 22 N.J. 523, 538, (1956) and has been reiterated in more modern cases, like Malaker, 163 N.J. Super. at 479, and Royal Assoc., 200 N.J. Super. at 92. However, the Restatement (Second) expressly questions the continued viability of the “substantial and definite” requirement. § 90, Reporter’s Note, at 247-48.