

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.

¹Promissory Estoppel is well established in New Jersey. *E.g.*, *Royal Assoc. v. Concannon*, 200 N.J. Super. 84 (App. Div. 1985). *See Spaulding v. Hussain*, 229 N.J. Super. 430, 438 (App. Div. 1988) where “the trial judge correctly charged the elements of promissory estoppel, namely, a clear and definite promise made with the expectation that the promisee will rely coupled with reasonable reliance therein by the promisee to his detriment.” *See also Friedman v. Tappan Development Corp.*, 22 N.J. 523 (1956); *The Malaker Corp. v. First Jersey National Bank*, 163 N.J. Super. 463 (App. Div. 1978), *certif. den.* 79 N.J. 488 (1979). However, more recent decisions have tended to relax the strict requirement of a “clear and definite” promise, particularly where the plaintiff seeks damages resulting from detrimental reliance on promises made. *See, e.g., Pop’s Cones v. Resorts Intern. Hotel*, 307 N.J. Super. 461, 469-70, 472 (App. Div. 1997); *Peck v. Imedia, Inc.*, 293 N.J. Super. 151, 168 (App. Div. 1996).

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.

²*Peck 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.