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## Contracts—New Promise Made Upon Past Consideration Not Enforceable

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explain a person's presence on a waterfront facility than to show extrinsic circumstances tending to prove lawful possession of a penknife.

It is apparent from this discussion that in some instances the courts may be able to apply the rules as to vagueness, overbreadth and abuse of the police power to the same set of facts. The courts may also apply some of the rules to the exclusion of the others where all of them could apply. In most cases the tendency is to attack the most obvious defect in the statute, rather than discuss all the possible reasons for invalidity. Of course, in some of these cases there will be no unanimous agreement as to what the paramount defect is.

M. A. L.

## CONTRACTS

### NEW PROMISE MADE UPON PAST CONSIDERATION NOT ENFORCEABLE

In *Arden v. Freyberg*,<sup>1</sup> an insurance agent, at the request of defendants, devised and submitted a plan for corporate life insurance policies to defendants' corporation. Subsequent to the submission of the plan defendants orally promised plaintiff that the policies would be written by him. The plan as prepared by plaintiff was adopted by defendants' corporation, but the insurance was written through an employee of the corporation who was made an insurance agent for that sole purpose. Plaintiff brought an action for damages in an amount equal to the commissions and renewal commissions he would have received, if defendants had placed the plan with him.

The trial court's judgment for the plaintiff was reversed by the Appellate Division.<sup>2</sup> The Court of Appeals, in a 4-3 decision affirming the Appellate Division, stated that the oral promises made by the defendants subsequent to submission of the plan by plaintiff did not afford adequate consideration to create an enforceable contract. Consideration which consists of services already performed is generally held to be insufficient to support a promise.<sup>3</sup>

The majority found that at the time the request was made by defendants, there was no accompanying promise, express or implied, to obtain the insurance from the plaintiff. Therefore, in the opinion of the majority, if a contract was created, one could be found only on the defendants' subsequent promises, which were not binding because they were supported by past consideration.

The dissent took the view that the conduct of the parties from the initial request to the final acceptance disclosed the creation of a unilateral contract.<sup>4</sup> At the time the request for the submission of the plans was made, a promise to place the insurance with plaintiff could be implied. The performance by

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1. 9 N.Y.2d 393, 214 N.Y.S.2d 400 (1961).

2. 11 A.D.2d 1, 201 N.Y.S.2d 151 (1st Dep't 1961).

3. *Axelrod v. 77 Park Ave. Corp.*, 225 App. Div. 557, 234 N.Y. Supp. 27 (1st Dep't 1929); *Blanshan v. Russell*, 32 App. Div. 103, 52 N.Y. Supp. 963 (3d Dep't 1898), aff'd, 161 N.Y. 629, 55 N.E. 1093 (1899).

4. On unilateral contract, see 33 Colum. L. Rev. 463 (1933).

plaintiff, *i.e.*, a plan which was acceptable, would provide the consideration for the contract.

By imposing on the defendants an implied promise to obtain insurance from the plaintiff, if his plans were acceptable, from the initial request of the defendants, the dissent did what the majority had refused to do. This implied obligation, once established, enabled the dissent to acquire vast legal support for its decision.<sup>5</sup> The majority, unlike the dissent, was not willing to imply a promise to pay the plaintiff for his services, since the negotiations between the parties had not passed the informal stage. To imply a promise to pay on the basis of informal conversations between friends would, according to the majority, create a new and undesirable type of contract liability.

In *Blanshan v. Russell*,<sup>6</sup> the only case cited by the majority in the case at bar, it was held that services rendered by a woman to a man to whom she was engaged to be married, *without any idea of being paid therefor*, are no consideration for subsequent assurances by defendant that plaintiff would be paid. In the instant case, one can be reasonably certain that an insurance agent, whose livelihood is dependent upon his commissions from the sale of insurance, would expect compensation for his services if his plans were acceptable. The *Blanshan* case can be distinguished from the instant case because there was probably no intent by the insurance agent to offer his services gratuitously, and the dissent was undoubtedly correct in implying a promise from the initial request for an insurance plan.

L. H. S.

OFFICER NOT PERSONALLY LIABLE ON CORPORATE CONTRACT NOTWITHSTANDING CLAUSE TO THE CONTRARY

In *Salzman Sign Co. v. Beck*,<sup>7</sup> the plaintiff contracted with the Leslie 575 Corporation, of which defendant's intestate was president, for the purchase of an advertising sign. Paragraph five of the printed-form contract stipulated that where the purchaser was a corporation, the officer signing on behalf of the corporation "hereby personally guarantee[s] the payments hereinabove provided for." The signature for the purchasing corporation appeared thusly: "Leslie 575 Corp. L.S.[,] Irving Beck pres L.S.." Plaintiff sued defendant for the balance due on the contract.

The trial court held for the defendant on the ground that there was no clear indication that Beck intended to be bound personally. The Appellate Term affirmed, granting the defendant summary judgment and dismissing the complaint. The Appellate Division, in affirming,<sup>8</sup> granted leave to appeal to the Court of Appeals, which in affirmance held that the contract executed and

5. See *Hedemann v. Fairbanks, Morse & Co.*, 286 N.Y. 240, 36 N.E.2d 129 (1941); *Rubin v. Dairymen's League Co-op. Ass'n*, 284 N.Y. 32, 29 N.E.2d 458 (1941); *Willets v. The Sun Mutual Ins. Co.*, 45 N.Y. 45 (1871).

6. *Blanshan v. Russell*, *supra* note 3.

7. 10 N.Y.2d 63, 217 N.Y.S.2d 55 (1961).

8. 11 A.D.2d 1068, 206 N.Y.S.2d 525 (2d Dep't 1961).