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Contracts -- Interpretation of Contracts When There Are No Terms As to Duration

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a public-private distinction,[50] but it is possible that a stronger showing of legitimate legislative purpose will be required, and a stricter test of the authorizing resolution applied, when the subject of the investigation is private, rather than public, in character.

Judicial reluctance to enjoin legislative investigations will likely remain the rule. Nevertheless, the recent exceptions can be considered to be healthy, for they will encourage courts to grant injunctive relief in those situations where it is appropriate. Possibly *Goldman* presented just such an opportunity. The exercise of first amendment rights is fundamental to academic freedom and the educational process. The mere existence of a vague and overbroad resolution is likely to discourage the exercise of these rights. Such an inhibition strikes at the very heart of the academic community.[51] In light of the special danger of great harm, the injunction sought in *Goldman* would seem to have been appropriate relief. If the legislature required further information, an investigation could still be authorized by a carefully drafted resolution that clearly articulated the scope and purpose of the investigation and the powers of the committee.

The cases illustrate that high standards of precision and clarity are required of authorizing resolutions because of the constitutional dangers posed by legislative investigations. Unfortunately, many investigations are instigated in the heat of emotion rather than in the light of purposeful legislative reasoning. Perhaps the heightened possibility that vague and overbroad resolutions may be enjoined will encourage careful and precise legislative draftsmanship.

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Contracts—Interpretation of Contracts When There Are No Terms As to Duration

When a contract, otherwise definite and binding, contains no terms as to its duration, many attorneys would surmise that the contract would be

[50] The distinction is recognized in R. CUSHMAN, CIVIL LIBERTIES IN THE UNITED STATES 71-72 (1956).

[51] Sweezy v. New Hampshire, 354 U.S. 234 (1957).

> The essentiality of freedom in the community of American universities is almost self-evident. . . . No field of education is so thoroughly comprehended by man that new discoveries cannot yet be made. . . . Scholarship cannot flourish in an atmosphere of suspicion and distrust. Teachers and students must always remain free to inquire, to study and to evaluate, to gain new maturity and understanding; otherwise our civilization will stagnate and die.

Id. at 250.

terminable only after the lapse of a reasonable time.[1] In *Southern Bell Telephone & Telegraph Co. v. Florida East Coast Railway*,[2] however, the Fifth Circuit Court of Appeals held that a contract containing no express terms as to its duration was terminable at will by either party upon the giving of a reasonable notice. The court establishes guidelines that may be helpful in the analyses of future cases.

In 1917 Southern Bell and F.E.C. entered into a contract that established detailed procedures and specifications for the placement of Southern Bell's telephone and telegraph lines over and under F.E.C.'s tracks. The agreement called for Southern Bell to submit their plans to F.E.C.'s chief engineer for approval, thus insuring that the line placement would not interfere with the railroad's operations. Southern Bell paid no money to F.E.C. for these crossings, although the agreement provided that Southern Bell would indemnify F.E.C. for any damage caused by the line crossings. Without the agreement, Southern Bell could still have obtained the right to cross the railroad by eminent domain procedures;[3] however, the contract avoided the need for litigation each time that Southern Bell wished to cross F.E.C.'s property. The contract proved satisfactory for nearly fifty years, but in 1965 F.E.C. complained that the rapid expansion in the number of crossings cast an intolerable burden upon the railroad. F.E.C. gave notice of termination and refused to abide by the terms of the agreement.[4] Southern Bell brought suit to enforce the contract.

The court found that the intent of the parties as to the duration could not be gleaned from the terms of the agreement and, therefore, turned to legal rules and presumptions to aid it in inferring the reasonable intent of the parties.[5] The legal presumption that the court found controlling

[1] *See, e.g.*, Friedman v. Schleuter, 105 Ark. 580, 151 S.W. 696 (1912) (where no time fixed for erection of a building, a reasonable time is implied); Duke v. Miller, 355 Mich. 540, 94 N.W.2d 819 (1959) (where contract is silent as to time for payment, payment must be made within a reasonable time); Walker v. Central Freight Lines Inc., 382 S.W.2d 125 (Tex. Civ. App. 1964) (where no time is fixed for performance, a reasonable time is intended).

[2] 399 F.2d 854 (5th Cir. 1968).

[3] FLA. STAT. ANN. § 73.24 (1964).

[4] 399 F.2d at 856. Southern Bell admitted that if F.E.C. could terminate the contract, the notice given was adequate. It should be noted that F.E.C. offered Southern Bell a new contract similar to those that F.E.C. had with other utility companies. These contracts provided for payment for the crossings.

[5] In construing a contract, the court will try to ascertain the intent of the parties, and, if successful, the agreement will be construed to conform to that intent. *See, e.g.*, Western Union Tel. Co. v. Pennsylvania Co., 129 F. 849 (3d Cir. 1904); Mississippi River Logging Co. v. Robson, 69 F. 773 (8th Cir. 1895). *See also* S. WILLISTON, LAW OF CONTRACTS § 38 (3d ed. 1957) [hereinafter cited as WILLISTON].

was that the parties to a contract indefinite as to duration intended that the contract be terminable at will upon giving reasonable notice. The court noted two exceptions to this presumption: (1) when one party has relied to its detriment on the agreement or (2) when one party has fulfilled its part of the bargain without corresponding performance on the part of the other party.[6] Since Southern Bell neither alleged nor proved detrimental reliance on its part and could not bring itself within the exception of a party who had executed its part of the bargain,[7] the court found that F.E.C. was within its rights in terminating the contract.

Southern Bell sought to have the contract construed as granting it rights in perpetuity to cross F.E.C.'s land. Although perpetual contracts are sanctioned in some areas such as real property[8] or when there is a promise not to carry on a business,[9] contracts of indefinite duration are not often interpreted as being perpetual.[10] When interpreting a contract where the intent of the parties as to the duration cannot be ascertained, the problem facing the courts is to give the contract a reasonable interpretation. The contract may be construed to conform to what the court believes the expectations of the parties were at the time the contract was made.[11] It would be difficult to establish a broad general rule that could

[6] 399 F.2d at 859. In City of Gainesville v. Board of Control, 81 So. 2d 514 (Fla. 1955), the city offered to provide free water if the university would locate in Gainesville. No termination date was set forth and the court held that the city was obligated to furnish water as long as the university remained in Gainesville. It should be noted that although two exceptions were set forth to the general rule, both tend to shade into the central idea of detrimental reliance.

[7] To have shown detrimental reliance, Southern Bell would have had to prove that F.E.C. promised to allow the crossings perpetually and that it (Southern Bell) changed its position in reliance upon this promise. Southern Bell could not bring itself within the second exception because, as to the crossings already completed, *both* parties had fully executed their parts of the bargain.

[8] *Compare* Morton v. Sayles, 304 S.W.2d 759, 763 (Tex. Civ. App. 1957) (where a restrictive covenant was held "not to run for a reasonable length of time, but that it is to run forever"), *with* Normus Realty Corp. v. Gargano, 38 Misc. 2d 408, 237 N.Y.S.2d 648 (Sup. Ct. 1963) (where the court refused to enforce a restrictive covenant when changed conditions would make the enforcement inequitable).

[9] Hauser v. Harding, 126 N.C. 295, 35 S.E. 586 (1900). *But see* Maola Ice Cream Co. v. Maola Milk & Ice Cream Co., 238 N.C. 317, 77 S.E.2d 910 (1953); Note, *Covenants Not to Compete*, 38 N.C.L. REV. 395 (1960).

[10] Holt v. St. Louis Union Trust Co., 52 F.2d 1068, 1069 (4th Cir. 1931) (". . . a construction conferring a right in perpetuity will be avoided unless compelled by the unequivocal language of the contract"). *See also* Freeport Sulphur Co. v. Aetna Life Ins. Co., 206 F.2d 5 (5th Cir. 1953); Town of Readsboro v. Hoosac Tunnel, 6 F.2d 733 (2d Cir. 1925); WILLISTON § 38.

[11] Farnsworth, *Disputes Over Omission In Contracts*, 68 COLUM. L. REV. 860 (1968).

equitably solve every problem of this nature; and, as a result, the courts will look in each case at the circumstances surrounding the contract to determine whether the contract will endure for a reasonable time or be terminable at will.[12] It is possible that a court may, in effect, construe a contract as perpetual by determining that the reasonable time of duration approaches perpetuity.[13] Encountering this problem, where a city promised to furnish water to a non-resident of the city, the South Carolina Supreme Court in *Childs v. City of Columbia*[14] held:

> [I]t would be unreasonable to impute to the parties an intention to make a contract binding themselves perpetually. In such a case the courts hold with practical unanimity that the only reasonable intention that can be imputed to the parties is that the contract may be terminated by either, on giving reasonable notice of his intention to the other.[15]

The court did not discuss its reasoning, but if in a setting where conditions will obviously change, the parties do not expressly provide that the contract is to endure perpetually, it is reasonable to assume that the parties considered and rejected this provision.

The reasoning applied to the problem in *Southern Bell* is evident in other types of contracts. One area in which the problem of indefinite duration often arises is the employment contract. Although the law is somewhat unsettled in this area,[16] courts have generally interpreted the employment contract of indefinite duration to be terminable at the will of either party.[17] Where the compensation for personal services is proportionate to a unit of time, the agreements have often been interpreted to be terminable only after the lapse of this period,[18] although some courts

[12] See, *e.g.*, Mitler v. Friedeberg, 32 Misc. 2d 78, 222 N.Y.S.2d 480 (Sup. Ct. 1961).

[13] City of Gainesville v. Board of Control, 81 So. 2d 514 (Fla. 1955).

[14] 87 S.C. 566, 70 S.E. 296 (1911).

[15] *Id.* at 572, 70 S.E. at 298.

[16] *See* Note, *Employment Contracts of Unspecified Duration*, 42 COLUM. L. REV. 107 (1942).

[17] Willcox & Gibbs Sewing Mach. Co. v. Ewing, 141 U.S. 627 (1891); Seneca Falls Mach. Co. v. McBeth, 368 F.2d 915 (3d Cir. 1966); WILLISTON § 39; Note, 15 N.C.L. REV. 276 (1937). *Compare* Warden v. Hinds, 163 F. 201 (4th Cir. 1908) (contract terminable at will without notice), *with* Atchison, T. & S.F. Ry. v. Andrews, 211 F.2d 264 (10th Cir. 1954) (contract terminable at will but only upon giving reasonable notice).

[18] RESTATEMENT OF CONTRACTS § 32 (1932); WILLISTON § 39; Comment, *Contracts-Duration of Indefinite Employment Contracts That Specify Period of Pay*, 48 MICH. L. REV. 80 (1949).

merely consider this as one factor to be weighed in the determination.[19] However, when an employee has relied to his detriment upon a promise of employment[20] or when the employee has wholly executed his part of the bargain,[21] the courts have not interpreted the contract as being terminable at will.

Employment contracts are not entirely adequate precedent for a broad application of the presumption employed in *Southern Bell*, however, due to the thirteenth amendment's proscription of involuntary servitude and the courts' traditional refusal to specifically enforce such agreements.[22]

A second area in which the problem of a contract of indefinite duration arises is the franchise or exclusive sales agency contract. The parties to the franchise contract can frequently bring themselves within the first exception to the general rule by showing detrimental reliance since these agreements often involve a large investment and expense to the distributor, and the courts, therefore, are hesitant to allow the parties to terminate the agreement at will. Some courts interpret the agreement to be enforceable for a reasonable time, indicating that the contract does not endure until the distributor has recouped his expenditures but only until he has had a fair opportunity to do so.[23] When the agreement is a "sales distribution" agreement, combining the features of an employment contract and a sales agency contract, courts have held that the agreement is terminable only after a reasonable time has elapsed and then only upon the giving of a reasonable notice.[24]

[19] *See, e.g.*, McCall v. Oldenburg, 382 S.W.2d 537 (Tenn. Ct. App. 1964). *See also* Note, 24 TENN. L. REV. 1188 (1957).

[20] Riefkin v. E.I. dupont De Nemours & Co., 53 App. D.C. 311, 290 F. 286 (D.C. Cir. 1923) (relinquishment of a position in reliance of employment; the employment is to last as long as the employer remains in business); *cf.* Hicks v. Freeman, 397 F.2d 193 (4th Cir. 1968) (the only detriment was the lessening of skills due to passage of time; therefore, the contract was terminable at will).

[21] *See, e.g.*, Cary v. U.S. Hoffman Mach. Corp., 148 F. Supp. 748 (D.D.C. 1957).

[22] Kadis v. Britt, 224 N.C. 154, 29 S.E.2d 543 (1944); *see* Stevens, *Involuntary Servitude by Injunction*, 6 CORNELL L.Q. 235 (1921).

[23] General Tire & Rubber Co. v. Distributors, Inc., 253 N.C. 459, 117 S.E.2d 479 (1960); Gelhorn, *Limitations on Contract Termination Rights—Franchise Cancellations*, 1967 DUKE L.J. 465, 478-83; Note, 40 N.C.L. REV. 804 (1962). *Contra*, Sanchez v. Crandon Wholesale Drug Co., 167 So. 2d 640 (Fla. Ct. App. 1964). In *Sanchez* both parties admitted that the agreement was terminable at will. The agent was not allowed to recoup his expenditures because he could not prove detrimental reliance. The court stated that *reliance* in the legal sense was presented where one party justifiably relied upon a certain set of facts only to have those facts change to his detriment. Here the facts did not change.

[24] J.C. Millett Co. v. Park & Tilford Dist. Corp., 123 F. Supp. 484 (N.D. Cal. 1954); C.C. Hauff Hardware, Inc. v. Long Mfg. Co., 257 Iowa 1127, 136 N.W.2d 276 (1965).

In a commercial setting where economic conditions often change rapidly and unexpectedly, to interpret all contracts that are indefinite as to duration as binding in perpetuity would result in inequities to the parties. On the other hand, to interpret all contracts that are indefinite as to duration as terminable at will would lead to uncertainty and perhaps defeat the clear intent of the contracting parties. It would be a rare case in which the parties intended to make a contract that could be terminated within one day or one week. A third approach would be to construe the contract as enduring for a reasonable time. This approach would lend a degree of certainty to the contract, yet would allow sufficient flexibility to avoid unpredictable and inequitable consequences. In fact, the court in *Southern Bell* may have implicitly adopted this approach and concluded that a reasonable time had elapsed, since the contract had endured for nearly fifty years. The court was certainly justified in placing the burden upon the contracting parties to make the terms of duration explicit in the contract if they intended it to endure in perpetuity. When the parties failed to manifest such an intent and when one party could not show detrimental reliance, the court logically interpreted the contract as terminable at will upon giving reasonable notice.

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Federal Courts—The "Erie Doctrine" and Tolling of the State Statute of Limitation

> Thus perhaps we can conclude that under the Constitution only Pennsylvania can say what tort duties are imposed on Pennsylvania landowners, that under the Constitution only the federal government can say how the federal courts are to administer their proceedings, and that under the Constitution it is a difficult and doubtful question whether New York or the federal government should have the right to determine how promptly a suit must be brought in federal court to vindicate a right created by the state.[1]

The "difficult and doubtful question" posed by Professor Wright came into issue recently in the United States Court of Appeals for the Fourth Circuit in the case of *Atkins v. Schmutz Manufacturing Co.*,[2] where an

[1] C. WRIGHT, FEDERAL COURTS § 56, at 198 (1963).

[2] 401 F.2d 731 (4th Cir. 1968) (petition for rehearing en banc has been granted, limited to the issue of whether either state or federal equitable remedies may be available to plaintiff).