failure to get a new job constituted consideration or his reliance upon the payments (made by the corporation for four years) created sufficient basis for the use of promissory estoppel as defined in Section 90 of the Restatement. The first stated alternative is subject to the same criticism as the instant case in so far as absence of the bargain requirement is concerned. It will be noted that the boundaries between Section 90 and Section 75 are blurred if, indeed, ascertainable at all in the *Langer* case.

Pennsylvania courts generally, as in the present instance, have at least nominally adopted the Restatement of the Law of Contracts. However, in the *Mickshaw* case the court has misconstrued Section 75 and ignored Section 90. It may have come to a correct conclusion, but only in spite of the Restatement section upon which it purports to rely. The transaction presents a clear situation in which to argue plausibly for the application of the Restatement concept of promissory estoppel. The promisor's statement may have induced reasonable reliance by the promisee —a matter of evidence—and injustice can perhaps be avoided only by enforcing the promise. Although the court could have reached the same result under Section 90, its present unhappy construction of the Restatement creates unfortunate confusion, and the purpose of the Restatement ". . . to promote the clarification and simplification of the law . . ." here remains unattained.[17]

FRANK M. MAYFIELD, JR.

THE PART OF THE LEGISLATURE IN DETERMINING THE QUALIFICATIONS FOR ADMISSION TO THE BAR.—Until recent times the courts had consistently held that the judicial branch of government should have the sole power to admit attorneys to the bar. The legislature, employing its police power, could prescribe reasonable requirements for the protection of the general public, but the courts had the ultimate power to grant or deny licenses to practice law. Recently, however, the legislatures of many states have attempted to play a more significant role in prescribing qualifications requisite to admission to the bar. Typical was a recent Idaho statute:

> . . . the following applicants *shall* be admitted as attorneys and counselors in all courts of this state without being re-

17. RESTATEMENT, CONTRACTS p. IV (1932).

> quired to pass any examination as to their qualifications with respect to learning and ability, to-wit: Residents of this state who are citizens of the United States, of the age of twenty-one years and of good moral character, who are graduates of the University of Idaho Law School, or graduates of any law school which is a member of the Association of American Law Schools, or which has been approved by the American Bar Association, or the Committee on Legal Education of the American Bar Association, or by the Association of American Law Schools.[1] [Italics added]

Samuel Kaufmann had been graduated from an accredited law school and apparently satisfied all other requirements of the statute. On the basis of this he applied to the Idaho Supreme Court for a license to practice law. Upon objection by the state bar commissioners, the court denied petitioner a license, holding the legislature's admissions law incompatible with the constitutional proviso for a separation of governmental powers.[2] The court emphasized the fact that the Idaho legislature had encroached upon the judicial department's inherent power to prescribe the *maximum*[3] qualifications for admission to the bar.

In reviewing the legal principles related to the *Kaufmann* case, discussion will be confined to the consideration of three pertinent questions, namely:

1. Is an attorney an officer of the court, and, if so, does the judiciary have the sole power to admit him to the bar?
2. What qualifications, if any, may the legislature prescribe as requisites for admission to the bar?
3. Did the legislature exceed its constitutional bounds in the *Kaufmann* case?

1. *The Attorney as an Officer of the Court.*

The great majority of American courts have held that an attorney is an officer of the court.[4] This rule of law was emphatically stated by the Supreme Court in *Ex Parte Garland*:[5]

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1. 2 IDAHO CODE ANN., § 3-101 (1949 P.P. Supp.).
2. Application of Kaufman *et al.*, 69 Idaho 297, 206 P.2d 528 (1949).
3. The word *maximum* is employed to demonstrate the difference between the power of the legislature and that of the courts, and the word signifies that the courts can make more stringent qualifications, in addition to the legislature's, as prerequisites to admission to the bar. Actually, of course, the qualifications which the courts establish are *minimum* as to applicants in that the courts provide the lowest requirements which will allow admission to the bar.
4. Keeley v. Evans, Dist. Atty. *et al.*, 271 Fed. 520 (D.C. Ore. 1921); *In re* Crum, 103 Ore. 296, 209 Pac. 948 (1922); Application of Levy, 23 Wash.2d 607, 161 P.2d 651 (1945).
5. 71 U.S. 366 (1867).

> Attorneys and counselors are *not* officers of the United States; they are officers of the court, admitted as such by its order, upon evidence of their possessing sufficient legal learning and fair private character.[6]

Furthermore, it is equally well settled that the judicial department alone has the final power to grant or deny an applicant a a license to practice.[7] *Ruckenbrod v. Mullins*[8] stated the general proposition clearly:

> It has been consistently held that the right of the legislative branch of the government to regulate and control attorneys is subject to the inherent power of the court ultimately to control admission to practice and disbarment.[9]

Judicial omnipotence as to final denial or admittance of an applicant is an ancillary aspect of the doctrines of separation of powers—a doctrine first expressed by the French political scientist Montesquieu, basic to our Federal Constitution, and explicitly incorporated into most state constitutions. Therefore, it is now well settled that an attorney is an officer of the court, hence the judiciary has the ultimate authority to regulate admissions to the bar.

2. *The Legislature's Role in Prescribing Bar Requirements.*

Conceding the fact that the courts have the ultimate and final discretion as to licensing an attorney by virtue of the doctrine of separation of powers, the question arises as to whether the legislature, by virtue of any of its constitutional powers, can provide *any* qualifications as conditions precedent to an applicant's privilege to practice law. To this question an affirmative answer must be given. A leading California case has enunciated the general rule:

> The manner, terms and conditions of their [attorneys'] admission to practice . . . as well as their powers, duties, and privileges, are proper subjects of legislative control.[10]

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6. *Id.* at 378.

7. *In re* Greer, 52 Ariz. 385, 81 P.2d 96 (1938); *In re* Lavine, 2 Cal.2d 324, 41 P.2d 161 (1935); Brydonjack v. State Bar of California, 208 Cal. 459, 281 Pac. 1018 (1929); *In re* Chapelle, 71 Cal. App. 129, 234 Pac. 906 (1925); Hanson v. Grattan, 84 Kan. 843, 115 Pac. 646 (1911); *Ex Parte* Steckler *et al.*, 179 La. 410, 154 So. 41 (1934); *In re* Opinion of Justices, 279 Mass. 607, 180 N.E. 725 (1932); State *ex rel.* Johnson, Atty. Gen. v. Childe, 139 Neb. 91, 295 N.W. 381 (1941); *In re* Bledsoe, 186 Okla. 264, 97 P.2d 556 (1939); *In re* Crum, 103 Ore. 296, 209 Pac. 948 (1922); *In re* Splane, 123 Pa. 527, 16 Atl. 481 (1889); *In re* Adkins *et al.*, 83 W. Va. 673, 98 S.E. 888 (1919).

8. 102 Utah 548, 133 P.2d 325 (1943).

9. *Id.* at 559, 133 P.2d at 330.

10. *Ex parte* Yale, 24 Cal. 242 (1864).

This general proposition is amply supported by authority,[11] the legislatures deriving this regulatory authority from their general police power. The California case quoted above states the general rule, but it is rather difficult to determine exactly how extensive legislative authority can be. It is agreed that a legislative enactment may require that an applicant be a citizen of the United States, that he be a resident of that state, that he be at least twenty-one years of age, and that he show proof of good moral character.[12]

The courts are also in agreement that the legislature may require that an applicant have at least a minimum of legal learning.[13] But a legislature may not discriminate against an applicant because of sex, and a statute forbidding such discrimination was struck down in In re *Goodell*.[14] However, in Ex Parte *Yale*[15] a statute requiring all bar applicants to take an oath of allegiance was declared constitutional. Another court held constitutional a statute relating to the manner in which bar examinations should be graded.[16] In *Application of Levy*[17] petitioner sought admission to the bar under a statute providing that any person serving in the armed forces (during a certain period), and having graduated from an accredited law school ". . . may me admitted to practice law on motion before the Supreme Court."[18] The court held the statute constitutional, since it left to the judiciary the final judgment as to an applicant's qualifications.

The legislation then, by exercising its police power, may provide certain prerequisites to licensing, fulfillment being a condition precedent to applicant's admission to the bar. However, the authorities are all in accord with the proposition that the judiciary has the final discretionary power. To whatever the legislature demands, the courts may annex additional qualifica-

11. *In re* Greer, 52 Ariz. 385, 81 P.2d 96 (1938); *In re* Lavine, 2 Cal.2d 324, 41 P.2d 161 (1935); Brydonjack v. State Bar of California, 208 Cal. 459, 281 Pac. 1018 (1929); Vernon City Bar Association v. McKibbin, 153 Wis. 350, 141 N.W. 283 (1913); *In re* Adkins *et al.*, 83 W. Va. 673, 98 S.E. 888 (1919); *In re* Application to Practice Law, 67 W. Va. 213 67 S.E. 597 (1910).

12. Anderson v. Coolin, 27 Idaho 334, 149 Pac. 286 (1915); *In re* Application to Practice Law, 67 W. Va. 213, 67 S.E. 597 (1910).

13. *In re* Application to Practice Law, 67 W. Va. 213, 67 S.E. 597 (1910).

14. 48 Wis. 693, 81 N.W. 551 (1879).

15. 24 Cal. 242 (1864).

16. *In re* Opinion of Justices, 279 Mass. 607, 180 N.E. 725 (1932).

17. 23 Wash.2d 607, 161 P.2d 651 (1945).

18. *Id.* at 609, 161 P.2d at 653.

tions, and in no case has it been held that a legislature can actually admit an attorney to the bar. The well settled rule is: *The courts may not accept less than the legislature has required of an applicant, but may demand more.*

3. *Unconstitutionality of Mandatory Legislative Provisions.*

Did the Idaho Legislature, in drafting its statute, overstep its bounds and encroach upon the judiciary? One's answer depends on interpretation of the statutory language, but probably should be in the affirmative since the great weight of authority is in accord with the result reached by the Idaho court.

The decision reached in the *Kaufmann* case seems to rest almost entirely upon the interpretation which must be given to the statutory phrase indicating that persons meeting certain defined qualifications *shall* be admitted as attorneys. Overruling petitioner's contention that the word *shall* should be construed as being merely directory, the court held that the use of the word imposed a mandate upon the court, and that once an applicant met the requirements set out, the statute compelled admission. This compulsion by the legislature, said the court, was an illegal encroachment upon the powers reserved to the judiciary. In re *Day*[19] is a leading case involving a similar situation. Here an Illinois statute required that the supreme court ". . . shall issue a license to practice law to law students . . ." who had met certain defined qualifications. The Illinois Supreme Court held that the legislature had no power to provide that a person fulfilling statutory requirements *must* be admitted, and declared the statute unconstitutional.[20] A Pennsylvania court held a similar statute unconstitutional because it left "no discretion to the court to reject a person ascertained to be unfit to practice before it."[21] In construing a statute which required that "any graduate of a 'Grade A' law school *shall* be admitted to the bar," the Oklahoma court held it unconstitutional, saying that it constituted "an invasion of the inherent power of the Supreme Court to fix the maximum requirements for admission to the practice of law."[22]

In all of these cases, the courts have declared that the word *shall* renders the statute mandatory, and leaves the judiciary no

19. 181 Ill. 73, 54 N.E. 646 (1899).
20. *Ibid.*
21. *In re* Splane, 123 Pa. 527, 16 Atl. 481 (1899).
22. *In re* Bledsoe, 186 Okla. 264, 97 P.2d 556 (1939).

alternative but to admit any applicant who has fulfilled the prescribed requirements. Not one of these courts construed *shall* as being a directory provision, which would allow the judiciary to provide additional requirements for admission to the bar. It should be noted that where legislatures have drafted similar statutes but have substituted the word *may* in place of the word *shall,* courts have held these laws simply directory—and constitutional. In such instances the courts retained power to add further qualifications to those demanded by law. The rule of these decisions is well stated in In re *Greer*:[23]

> It is true that the legislatures of the various states may, and often do, prescribe *minimum* qualifications which must be possessed by those who desire . . . to practice [law], and the courts will require all applicants to comply with the legislative conditions . . . but notwithstanding that an applicant may possess the qualifications required by the legislature, this does not entitle him to admission to practice unless the court is satisfied that such qualifications are sufficient.[24]

In other words, the legislature, by virtue of its police power, may prescribe reasonable conditions to an applicant's admission to the bar. But in no case has the legislature been allowed to set the maximum requirements beyond which the judicial department may go. This proposition represents the great weight of authority[25] and the *Kaufmann* decision is consistent therewith.

WALTER M. CLARK

TORTS—GUEST STATUTE APPLICATION BROADENED—PROTECTION WHILE GUEST ENTERING CAR DURING TRIP.—Ella Castle had been accompanying McKeown in his auto on a day-long summer outing from Lansing to a nearby lake resort. Returning that evening and still some distance from the Michigan capital, McKeown stopped his car on an upgrade to examine a soft rear

23. 52 Ariz. 385, 81 P.2d 96 (1938).
24. *Id.* at 390, 81 P.2d at 98.
25. Keeley v. Evans, Dis't Atty. *et al.*, 271 Fed. 520 (D.C. Ore. 1921); *In re* Lavine, 2 Cal.2d 324, 41 P.2d 161 (1935); *In re* Chapelle, 71 Cal. App. 129, 234 Pac. 906 (1925); Freeling v. Tucker, 45 Idaho 475, 289 Pac. 85 (1930); Anderson v. Coolin, 27 Idaho 334, 149 Pac. 286 (1915); Hanson v. Grattan, 84 Kan. 843, 115 Pac. 646 (1911); *Ex parte* Steckler *et al.*, 179 La. 410, 154 So. 41 (1934); *In re* Opinion of Justices, 279 Mass. 607, 180 N.E. 725 (1932); State *ex rel.* Johnson, Atty. Gen. v. Childe, 139 Neb. 91, 295 N.W. 381 (1941); *In re* Crum, 103 Ore. 296, 209 Pac. 948 (1922); Vernon City Bar Association v. McKibbin, 153 Wis. 350, 141 N.W. 283 (1913).