

ESTOPPEL

Used when: no consideration; non-contractual promises and representations were relied on; BACK UP to CONTRACT

Important

- Enforceable rights, where general contract law does not provide any
- Can also prevent one party from enforcing contractual rights against another
- Estoppel by rep
 1. The aim is to prevent the representor from denying the truth of the assumption - so the assumed state of affairs will be considered as opposed to the true state of affairs
- Equitable estoppel
 1. The aim is to prevent the representor from acting inconsistently with the assumption without taking steps to ensure that the departure does not harm the relying party
 - E.g. **compensating the relying party, giving the relying party reasonable notice**
 - Can enforce reps as to future
 - *Riches v Hogben* (proprietary)
 - Mother told son that she would buy a house for her son if he moved to Australia with her
 - The son sold everything and came to Australia but the house was never put in his name
 - Held: the son was encouraged to act in a certain way with the assumption that he would get an interest in land

THE NATURE OF ESTOPPEL BY CONDUCT

- Requirements – *Walton Stores*:
 1. Representor **induces** relying party to adopt and act upon an **assumption** of fact (common law estoppel – *Jorden v Money* (1854) 10 ER 868) or an **assumption** as to the future conduct of the representor (equitable estoppel)
 - The nature of the req.
 - Where an assumption is induced by silence, show that the representor intended reliance, knew of the acts of reliance or should reasonably have expected reliance
 - An express promise is not reqd. *Walton Stores*
 - Walton Stores leased on condition Mahers build new one to their specifications
 - Mahers sent a doc with the final terms to Waltons, who said that they would inform M the next day if they disagreed with the terms - M heard nothing from W
 - The lease was signed by M but W told their solicitors to delay signing
 - W became aware that M had begun to demolish the building in December, and then on 19 Jan (the building was 40% complete), W told M they had not intended to go through with the lease
 - There was no contract between M and W
 - Held: unified principle between proprietary and promissory = equitable estoppel
 - Must an unequivocal promise or rep be made
 - *Legione*
 - Transfer of land, buyers needed more time to get the money – consulted with secretary (“Should be fine, but have to get instructions”), acted on the assumption
 - The rep made by the secretary was not a promise
 - Held: the assumption should not be adopted
 2. The relying party must have acted on the assumption so that they will **suffer detriment** if the representor acts inconsistently with the assumption
 - Actual loss suffered - not loss of expected benefit: e.g. **wasted expenditure of money, wasted expenditure of time and energy, or inactivity that leads to loss of an opportunity to obtain a benefit or avoid a loss**
 - *Je Maintiendrai v Quaglia*
 - Hairdressing business had financial difficulties and landlord struggling to fill shopping centre
 - Landlord (according to gratuitous promise) accepted reduced rent for 18 months until the tenants wanted to vacate, where the landlord demanded the full amount
 - Held: promissory estoppel prevented the landlord from demanding the full amount
 - Promissory estoppel could only arise if the promisee had altered their position on the faith of the promise and would thereby suffer detriment if the promisor was subsequently allowed to assert their strict legal rights

- The tenants were impecunious, so it would have been easier for them to pay small instalments back instead of paying the lump sum demanded
 - *Ashton v Pratt*
 - *W v G*
 - Having the children on faith that costs/support would be contributed to
 - *Gray v National Crime Authority [2003] NSWSC 111*
 - Entering witness protection program on faith that costs would be covered
 - *Vosnakis v Arfaras [2015] NSWSC 625*
 - Man desired to be buried next to his wife, mother-in-law would not give the rights
 - Non-financial detriment
 - *Commonwealth v Verwayen*
 - In 1964 V suffered injuries and psychiatric harm due to 2 naval ships colliding, in 1984, C stated they would not use particular defences for the collision due to policy
 - V then tried to prosecute after 20 years, and C changed its policy to plead those defences
 - Held: appeal dismissed
 - Deane and Dawson JJ found detrimental reliance - the detriment being the increased stress caused by continuing with the court proceedings
 - Material detriment
 - The detriment must be:
 - Material
 - *Thompson v Palmer (1933) 49 CLR 507; Newbon v City Mutual Life Assurance Society Ltd (1953) 52 CLR 723; Territory Insurance Office v Adlington (1992) 109 FLR 124*
 - Significant; or
 - *Commonwealth v Verwayen*
 - Substantial
 - *Je Maintiendrai*
 - *Hawker Pacific Pty Ltd v Helicopter Charter Pty Ltd (1991) 22 NSWLR 298*
 - The representor induced the relying party to believe that the rep would pay a certain sum of money to the relying party in dispute settlement
 - Held: the detriment caused by the "fruitless" visits was not material/substantial enough for estoppel
 - The detriment in estoppel can be ongoing (not just assessed at time) or in the future
 - However, the prospect of suffering detriment must be high
3. It must be unconscionable for the representor to depart from that assumption
 - *Austotel v Franklins*
 - A leased supermarket space to F – F did not finalise lease – A let F have 9% more space but the parties did not agree on rent for extra space
 - Store was being built, F incurred costs for fittings – A pulled out of lease
 - *Walton Stores; Commonwealth v Verwayen* - consider on the facts of the case
 - Key aspects:
 - The role of the rep in inducing the assumption
 - Rep's knowledge of the relying party's assumption
 - Rep's intention to induce reliance
- The representor must **depart** or **threaten** to depart from the assumption

REMEDIES

- The reliance interest and expectation interest (for estoppel remedies)
 - Relying party has interest in being compensated for the detriment suffered
 - Compensation for the harm suffered is an unusual remedy
 - Expectation interest for the benefit they expected to receive
 - Remedies can be:
 - Specific performance
 - Damages in lieu of specific performance
 - *Sidhu v Van Dyke (2014) 251 CLR 505*
 - Sidhus married couple living on a rural property, living in the main homestead – decide to rent a cottage on the property to Mrs Sidhu's brother Mr Van Dyke and his wife and newborn

- Mr Sidhu and Mrs Van Dyke start having an affair and Mr Sidhu promises Mrs Van Dyke that he will subdivide the property and transfer the cottage so that she can stay in the cottage and raise the baby
- When Mrs and Mr Van Dyke separated, she said that she did not need any property settlement because she had the cottage – she continued to care for the cottage, and refrained from seeking full employment
- Held:
 - Burden of proof on the person seeking the estoppel
 - The promise did not have to be the sole reason for the detriment, but just play a part
 - She had detrimentally relied on the promise because she had made life-changing decisions based on it with irreversible consequences
 - She was compensated for the value of the land
 - Rejected minimum equity
 - Relief will ordinarily involve enforcing the promise or at least reflecting its value
 - Though may be cases where insisting on making good the promise would be disproportionate to detriment suffered, so appropriate to limit relief

ESTOPPEL AND CONTRACT

- Privity
 - A person who is not a party to a contract, but who has been led to believe that they are a party or will receive a benefit under a contract will be liable may be able to estoppel if they have acted to their detriment on the faith of that assumption
 - *Trident General Insurance Co Ltd v McNiece Bros Pty Ltd (1988) 165 CLR 107*
 - A rep who is not party to a contract will be liable where they have been induced a relying party to act to their detriment on the faith of an assumption that the rep will abide by the terms of the contract
 - *Weir v Hoyelefans Pty Ltd [2001] WASCA 23*
- Formalities
 - Equitable estoppel may apply where a contract is unenforceable because it fails to comply with formal (statute) reqs.: e.g. **writing for sale of land contracts**
- Contract variations
 - Where one party induces another to believe that a contract has been or will be varied or to believe that a term of the contract will not be enforced
- Estoppel by convention
 - Parties to an agreement have adopted a particular state of affairs as the basis of their agreement/relations
 - Arise from an assumption as to the legal rights of the parties or the effect of a document
 - The parol evidence rule
 - Where parties have signed a contractual doc which appears to provide a complete record of their agreement
 - Prevents the admission or consideration of evidence that subtracts from, adds to, varies or contradicts the terms of the written contract
 - Entire agreement clauses
 - The written contractual doc constitutes the entire agreement between the parties and that one of the parties has not relied on any additional promises or reps made by the other party
 - Unclear whether they apply
 - Post-contractual variations
 - Question whether the performance of a contractual obligation can = detrimental action
 - Probably not
- Termination of contracts
 - In the context of contract variations, a contractual right may be lost due to estoppel or its exercise restricted
 - Where A induces B to assume that A will not exercise its right to terminate and B acts to their detriment on the faith of that assumption, then equitable estoppel will restrict the exercise by A of that right to terminate
- Estoppel and misrep
 - Estoppel is only concerned with inconsistent conduct

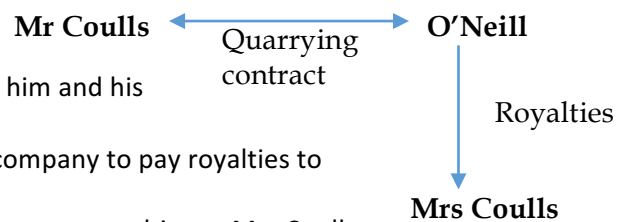
PRIVITY

- A person who is not a party to the contract can neither enforce the contract nor incur any obligations under it
- A contract might benefit a third party by a positive or negative stipulation
 - One of the parties might undertake a positive obligation to confer a benefit on a third party
 - A might enter into a contract with B under which A agrees to pay money to C in return for B's provision of services to A
 - B might enter into such an arrangement if B owes money to C or because C is a relative of B's or is in a company related to B
 - A contract between A and B might confer a benefit on C in a negative stipulation
 - A (the owner of the land) might engage B (a builder) to perform building work for A on the understanding that B will subcontract some carpentry work to C
 - The contract might then stipulate that A will not sue B or C in respect of negligence during the building

Contracts conferring a benefit on a 3rd party

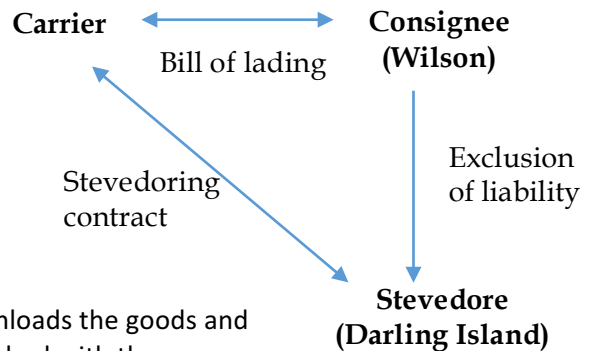
- **Non-parties cannot enforce contractual promises that benefit them** – *Coulls v Bagot's*; *Wilson v Darling Island*
- *Coulls v Bagot's* (1967) 119 CLR 460

- Mr and Mrs Coulls both signed the contract – the agreement stipulated that Mr Coulls "authorised" the company to pay royalties to both him and his wife as "joint tenants"
- Mr Coulls died and his executor tried to force the company to pay royalties to his wife
- Held: the company owed no contractual obligation to pay royalties to Mrs Coulls because she was not party to the agreement
 - The contract was expressly between Mr Coulls and the company
 - The company made no express promise to pay royalties to Mrs Coulls and it was not possible to imply such a promise



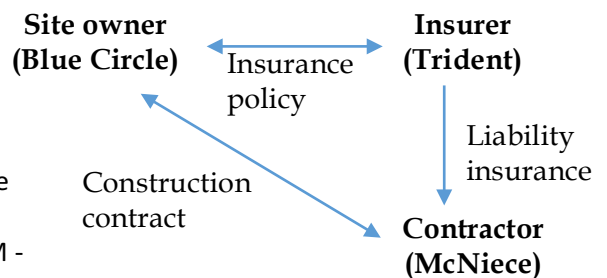
- *Wilson v Darling Island*

- As part of the shipment, there is a bill of lading (receipt of the consignment of goods) – bill of lading applies to agents and servants + exclusion of liability clause
 - Carrier has no liability before loading or after loading, inc the agents and servants from the shipping company that would help with the loading and unloading of the goods
- Upon arrival, a stevedore (employed by the carrier), unloads the goods and causes water damage by hitting the water pipe in the shed with the crane
- Issue: whether Wilson could claim and recover damages from Stevedore for negligence
- Held: the stevedore was not a party to the contract (the contract being the bill of lading between the carrier and Wilson) therefore Darling Island cannot be sued under the bill of lading, and Stevedore cannot use the exclusion of liability because it was not part of the bill of lading
 - Stevedore liable under torts



- *Trident v McNiece* (1988) 165 CLR 107

- T and Blue Circle had an insurance contract – M was the principal contractor at a construction site owned by BC - the contract allowed BC and its related companies to make claims in relation to non-employee injuries
- Employee of company under instructions of M, sued M - M tried to get insurance from T
- Statute changed during these events, but only applied to contracts made after the commencement of the *Insurance Contracts Act 1984 (Cth)*
 - A person who is covered by a general insurance policy can recover from the insurer notwithstanding that they are party to the contract - s 48
- Held: 5:2 in favour of McNiece



- Mason CJ, Wilson, Toohey J - an exception to the privity rule should be made in the case of insurance contracts because 3rd parties are so likely to rely on them
- Commercial convenience and practice demanded it
- Gaudron J - found for McNiece due to unjust enrichment
 - In order to prevent unjust enrichment, the third party is entitled to enforce an obligation imposed by law, which will ordinarily correspond with the contractual obligation - recognition of that obligation does not abrogate the doctrine of privity
- Deane J - the terms of the contract indicated that BC held its rights against Trident on trust for non-beneficiary parties, inc. McNiece
- Brennan and Dawson JJ - dissented (McNiece had no right to enforce the contract)

GETTING AROUND PRIVACY DOCTRINE

- Agency – action under contract
 - Privity does not apply if a person promised a benefit under a contract can show that one of the parties entered into the contract as their agent
 - If A, acting as an agent for C (principal), makes a contract with B, then C is party to the contract (not A)
 - Authority:
 - Agent MUST have authority to contract on behalf of principal (principal must give consideration)
 - To est. agency - show that the principal expressly or impliedly consented to the agent acting on their behalf so as to effect the principal's relations with third parties
 - *Perpetual Trustees v Schmidt* [2010] VSC 67
 - Mr. S borrowed money from Perpetual via VHLA
 - Mr. S sued Perpetual because VHLA was acting as Perpetual's agent
 - Agency relationships can be express or implied – though it must be clear
 - Also, must show that the agent was purporting to act on the behalf of the principal, and not merely on their own behalf, unless the contract is subsequently ratified
 - *Carminco Gold v Findlay* [2007] FASFC 194
 - The respondent agreed to raise funds for the appellant so that the A could purchase a mine – R said it would raise the funds from its clients and, acting as their agent, transfer the funds to the A – sale of mine did not happen, and R tried to claim funds back (A said R had no right because they were acting as an agent)
 - Held: despite the R saying it would act as an agent, the R alone had acquired rights and assumed obligations under the contract
 - R did not know identity of investors at the time of contract = entered the contract on its own behalf
 - The agreement provided that the funds be repaid to the R
- *Harris v Burrell & Family*
 - Dealing with a loan, at the end, there will be a debt of \$2 million
 - In 2005 2 loans from Harris to Burrell; both loans are interest bearing and two agreements are being formed between the parties – 3 add monthly loans, no agreement signed – money is not being paid back completely for the 3 loans
 - In 2008 new loan agreement to consolidate all 5 loans – later debtor goes into liquidation
 - First 2 agreements only referred to the debtor – last 3 referred to the debtor and associated entities – was the debtor acting as an agent?
 - Held: both, because the debtor signed the agreement, made him liable, acting as agent of company, but also personally liable due to clause if the money was not repaid
 - Debtor and creditor had a good relationship, therefore, originally given to the debtor, as opposed to the company
- Authority can be ratified if principal agrees that to authorise the agent's previously unauthorised activity (adoption or confirmation of a contract by a person who was not originally bound to it)
- Often used for contracts of carriage (transporting goods)
 - Because these contracts often include exclusion liability clauses (Himalaya clauses) for any damage during the transaction
 - These clauses are used to apply to cover employees, agents and sub-contractors of the carrier (e.g. stevedores engaged to load and unload goods)
 - *The New York Star* (1978) 139 CLR 231 (HC); (1980) 144 CLR 300 (PC)