

Estoppel	
<p>Estoppel operates where non-contractual promises and representations have been relied upon, and protect the relying party from detriment that may occur as a result of the other party's change of position. In the absence of a binding contract, a party may rely on EE as a means to obtain some relief; this is an example of EE as a shield (defensive claim).</p> <p>In the event that the contract may fail for want of certainty/consideration, however, due to P's reliance on D's representations, P may have an enforceable right in estoppel.</p>	
Common law estoppel	Equitable estoppel
<ul style="list-style-type: none"> CL estoppel concerns an assumption of fact Rights of parties determined on assumed state of affairs E.g. a builder negotiates contract with customer, neither intends to be bound without signed written document (s.126). builder signs contract, sends to customer, customer calls and says he has signed it (even though he has not) – assumption as to existing fact Jorden v Money: an estoppel can arise as CL only from an assumption of existing fact (not an assumption as to future conduct) 	<p>Can rely on future representation in certain circumstances "I will sign the contract"</p> <ol style="list-style-type: none"> Proprietary: replying party acts to his/her detriment on the faith of an assumption that the replying party has or will be granted an interest in land Promissory: any application of equitable estoppel that does not relate to an interest in land <ul style="list-style-type: none"> In the absence of a binding contract, where there is no pre-existing relationship between the parties, but the Representor has implicitly promised to enter into a contract with the relying party), a party may rely on equitable estoppel (EE) as a means to obtain some relief (Waltons: HC 1983) HC recognised unity of principle between proprietary and promissory estoppel – manifestations of a broader principle of equitable estoppel This would be an example of EE as a shield (defensive claim)
Six Components of Estoppel	
1. Assumption (nature of assumption = CL or EE)	2. Inducement
<p>P (the relying party) will argue that they adopted an assumption fact/conduct. D led P to believe that they had completed the exchange (fact)/would complete the exchange (future conduct) Waltons Stores</p> <p>Replying party adopted an assumption about a past, present or future state of affairs</p> <ul style="list-style-type: none"> Dean J in Waltons Stores suggests an equitable estoppel cannot arise outside the context of a legal relationship C.f. W v G: assumption did not relate to legal relationship E.g. One party assumes the other won't enforce their strict legal rights under a contract (Je Maintiendrai, Legione v Hateley) E.g. Assumption that a person will enter into a contact (Waltons Stores v Maher) 	<p>That assumption must have been induced by the conduct of the Representor.</p> <ul style="list-style-type: none"> Assumption may be induced by a representation or promise by the Representor, but need not be express It must be "unqualified, firm and specific" (Mobil) The position taken in other cases is often different and conflicting <ul style="list-style-type: none"> Representation must be clear and unequivocal (Legionne, Mobil v Wellcome) Can be constituted by silent, at least in part (Waltons Stores v Maher)
3. Detrimental Reliance	4. Reasonableness
<p>Relying party acted on assumption such that he/she will suffer detriment if representor does not adhere to assumption, and includes:</p> <ul style="list-style-type: none"> Acting on faith of the inducement by doing or desisting from doing something, to his/her detriment (Legione) Must be "material disadvantage" if representor permitted to depart from assumption (Legione) <p>There must be proportionality between the detriment sought to be avoided and the remedy that estoppel is to provide (Verwayen, Mobil v Wellcome)</p> <p>Types of detriment:</p> <ul style="list-style-type: none"> Expectation loss: the loss of the benefit the relying party assumed they had or expected to receive Reliance loss: loss suffered as a result of the relying party's reliance on the relevant assumption when the representor acts inconsistently (also arise where the replying party has taken some action or inaction on the faith of the promise) 	<p>Whether the Representee behaved reasonably by adopting on assumption and acting on it as they did: Waltons</p> <ol style="list-style-type: none"> Relying party's reliance must be reasonable (Is relying party deserving of protection?) <ul style="list-style-type: none"> Nature of assumption: unreasonable if P's expectation is highly unlikely Inducement: less reasonable if inducement by acquiescence/objectively equivocal representation (Legione); reasonable if induced by government (Verwayen) or someone with expertise/authority Parties' relationship: more reasonable if close (W v G) The detrimental action must also be objectively reasonable <ul style="list-style-type: none"> Type of action taken: unreasonable if excessive Parties' relationship: more reasonable if close (W v G) Identity of Representor: reasonable if government/person with expertise (Verwayen); unreasonable if 2 parties at arms length with access to legal advice Inducement: reasonable where express inducement; less reasonable if objectively equivocal representation (Legione)

5. Unconscionable conduct	6. Departure or threatened departure
<p>It must be unconscionable in the circumstances for the Representor to depart from the assumption.</p> <ul style="list-style-type: none"> • Focuses on the role of the Representor in inducing the adoption of the assumption (<i>Verwayen per Deane J</i>) • Representor did nothing to correct representee's understanding of situation • Was reasonable for representee to act on assumption • Nature and extent of detriment is sufficiently significant <p><u>Example:</u></p> <ul style="list-style-type: none"> • When other party aware of detriment P will suffer, but does not intervene <i>Waltons</i> <ul style="list-style-type: none"> ➢ <i>Where the only thing the party suffering detrimental reliance can point to is silence, it is not enough for other party to merely change his mind. To have acted unconscionably, party must have had actual/constructive knowledge of other's detriment</i> 	<p>The Representor must depart, or threat to depart, from the assumption adopted and acted upon by the relying party (this constitutes unconscionable conduct) – that is, the Representor seeks to breach the promise or deny the truth of the assumption.</p>
Effect of an estoppel	
<p>CL estoppel is about enforcing promises. I.e. rights of the parties are determined on the assumed state of affairs. The main measure of relief is expectation damages (specific performance/giving value in damages equivalent to the promise).</p> <p>EE main remedy is specific performance but also possible to make orders for compensation. Court will give the “minimum equity to avoid injustice.” Mostly think reliance damages (not expectation). But, courts are often generous when deeming what is the minimum equity needed to avoid injustices:</p> <p>Expectation damages: Enforce a promise upon which representee has relied</p> <ul style="list-style-type: none"> • Specific performance • Order Representor to transfer promised or expected interest in land • Refuse to allow Representor to depart from representation • <i>Waltons</i>: Court ordered amount equivalent to rent • <i>W v G</i>: Court ordered child support (not reliance damages – cost of birth; IVF) <p>Award of damages to compensate representee (to enforce promise would be impractical, unjust, or unfairly impact on third party)</p> <ul style="list-style-type: none"> • If the land has been conveyed to somebody else • THUS: give value in damages that is equivalent to the promise <p>Reliance damages: Award to compensate representee for losses incurred up until the point Representor sought to resile from the assumption (may be unjust/disproportionate to give representee expectation damages)</p> <ul style="list-style-type: none"> • Materials, labour, time etc. ! monetary compensation • Approach favoured by majority HC in <i>Verwayen</i> ***** 	

Expressed Terms

A term derived from something that has been expressly stated in word by one or more parties

- Such statement may made orally or be in writing
- NB: however where parties have intended to record their agreement entirely in writing, they may not be able to rely on oral statement as forming part of the terms of a contract (Parole Evidence Rule)
- Terms articulate the precise obligations of the parties to the contract
- Ascertaining them gives a reasonable expectation of what is expected
- Disputes will be resolved through evaluations of the terms and parties performance or non performance of these terms
- If a party has deviated from a contractual obligation that party has breached a term of the contract.
- Failure to adhere to a term gives rise to a claim for breach of contract in court

Identifying Express Terms

1. Effect of the signed document	2. Incorporated by reasonable notice
Are their written terms in a contractual document which has been signed by one or more of the parties?	Is it possible that express terms have been incorporated into a contract by one party simply giving the other reasonable notice of those terms before the contract is formed?
3. Incorporated by the Course of Dealings	4. Statements Made by the parties during negotiations
Given parties entering into contracts on numerous occasions before, is it possible that expressed terms have been incorporated by the course of dealings	Statements either written or oral that may be incorporated from statements made in negotiations provided PER does not exclude them
5. Promissory	6. Parol Evidence Rule
Is the statement sufficiently promissory to be regarded as a contractual term?	If the parties have reduced their agreement to a written document can notices or statements being promissory be included or does the Parol Evidence Rule operate to exclude such extrinsic material such as the statements from being considered as part of the written contract.

Think about:

Is the document signed or unsigned?

Was a notice or signage put up that P has read or not read? What issue might arise from this?

Have they had dealings before?

What did they say during negotiations?

Were the statements or written terms sufficiently promissory?

Does PER apply?