

3. ESTOPPEL

- Protects against unconscionable dealings.

Waltons Stores (Interstate) Ltd v Maher (1988) 164 CLR 387

Summary of case included in purchased notes.

3.1 Origins of Proprietary Estoppel

- Operates with respect to conduct or assumptions about proprietary interests.
 - 'Equity of acquiescence' can arise where:
 - A encourages B to believe that B will have an interest in property;
 - B acts to own detriment because of A's representation or acquiescence.

Dillwyn v Llewelyn

Summary of case included in purchased notes.

- Wider principle (as stated by Lord Denning):
 - If A (owner of land) requests or allows B to expend money on the land, under the expectation that B will be able to remain in possession (or in residence), then B can claim an equitable right to remain.
- *'Namely, the principle that equity will come to the relief of a plaintiff who has acted to his detriment on the basis of a basic assumption in relation to which the other party to the transaction has "played such a part in the adoption of the assumption that it would be unfair or unjust if he were left free to ignore it"' (Waltons Stores v Maher).*
 - The Australian High Court adopted Lord Denning's position in *Crabb v Arun District Council*.

3.2 Promissory Estoppel

- Relates to promise made in present about future.
 - Most common when a party to pre-existing legal relationship gives some assurance that rights available to them under relationship will not be enforced.
 - Causes other party to act in reliance on that assurance.

3.3 Recent Estoppel Judgement

Crown Melbourne Ltd v Cosmopolitan Hotel (Vic) Pty Ltd [2016]

Summary of case included in purchased notes.

- Has altered possibility of promissory and proprietary estoppel being unified in one doctrine.
- High Court has now steered the law in a different direction: proprietary estoppel and promissory estoppel are quite different.

- Promissory estoppel requires a clear promise.
 - A promise that it is certain is a contractual promise.
- Proprietary estoppel can be based on assurances or even silence (where the silence is responsible for a person reasonably acquiring a belief that they will be receiving a property right).

3.4 Elements of Proprietary Estoppel

Framework for Estoppel	
IF	<p>A</p> <ol style="list-style-type: none"> 1. causes B to believe (no particular form is necessary) 2. reasonably (could a reasonable person believe that they will receive a property right from what A has said and done?) 3. that B has or will get <u>some</u> proprietary right (need not be clear what the right will be)
AND	<p>B</p> <ol style="list-style-type: none"> 4. reasonably (actions taken as a result of belief must also be reasonable) 5. with A's knowledge (person who is estopped (A) must know of actions or know that actions are intended to be taken by B) 6. acts in reliance of that belief (B must prove that actions taken or intended to be taken were actions that relied on that belief— some evidence that actions would not have been taken without belief. If intended to do them anyway, then no claim. May be <u>positive actions</u> (eg. demolishing a shed or refurbishing an area) or <u>also a failure to act</u> (eg. not seeking a new house). 7. which would cause detriment to B if the belief were false (B must prove that the actions that she took would leave her worse off if A does not live up to expectation that A created. If B is to be better off, despite A going back on promise, then B has lost nothing and there is no detriment.
THEN	<ol style="list-style-type: none"> 8. A is estopped from relying on her common law rights.

- Shows a crucial difference between promissory and proprietary estoppel.
 - In proprietary estoppel— all A has to do is cause B to believe.
 - In promissory estoppel— A has to make some clear, unambiguous promise to B.

3.5 Estoppel Remedies

- Remedy that will be granted is the 'minimum equity to do justice' (*Giumelli v Giumelli*).
- **Expectation based relief** (*prima facie* remedy):
 - Can give the claimant what they expected: a fee simple estate, a license to occupy the home, an easement— whatever the other party has promised (proprietary).
 - Can give the value of that thing in money (compensatory).
- Reliance based relief (based on what was lost):

- Will compensate the party for actions that they took in reliance (so they will be no worse off than from before the representation was made).
 - Minimum remedy that will do justice (but not injustice to other party).
- Reasons for departing from the expectation based remedy (court has discretion):
 - Disproportionality— detriment is disproportionate to value of property right that they expected to get.
 - Can avoid detriment— can be situations where detriment can be avoided completely just by giving someone reasonable notice (eg. where a person is permitted to live on a property (not have the property itself), all detriment could be avoided if sufficient notice is given then they can seek alternative accommodation).
 - Oppressive— Full expectation-based remedy oppressive to estopped party (eg. disproportionality).
 - Uncertainty/ unreasonableness in estoppel claim— Where the promising party is vague or unclear and the relying party is unreasonable in relying on such a unclear promise, the court may adjust the relief to match the belief that a reasonable person could have had based on those unclear words or unclear actions (*Crown Melbourne v Cosmopolitan Hotel*), rather than throwing away the estoppel claim entirely.