Estoppel

<u>When to apply?</u>

- When an element of contract formation fails/privity rule fails, and plaintiff relied on promise to their detriment

Structure

<u>Introduction</u>

_ would argue that there needs to be existing contractual relationship for estoppel to operate, but _ would argue that per *Waltons*, absence of existing contractual relationship (pre-contractual relationship) can still allow estoppel to operate. _ would then argue that estoppel could only be used as a shield and not an independent cause of action, but _ would argue per *Waltons*, it was held that estoppel can be used as a sword instead of a shield

<u>1. Assumption</u>

- The assumption was [facts]. _ would argue that the assumption must relate to a particular legal relationship (*Mobil)*, but _ would argue that no existing or expected legal relationship needed (*W v G)*. Nonetheless, this is unclear.

<u>2. Inducement</u>

_ would argue that it is not clear and unequivocal (*Crown v Cosmopolitan),* as per the facts _, is merely encouraging. However, _ would argue that _ has the authority to make that statement (*Legione* per Brennan J), as [facts]. **Moreover, _** would argue that in *Crown*, Nettle J stated that it needs to be clear but **not** objectively unambiguous, thus, there would be an inducement, as the threshold is lower. Nonetheless, _ would argue if the threshold is to be clear and unequivocal, the statement meets this threshold, as [facts]. _ would further argue that it need not be the sole inducement, and it is sufficient as it played a part to induce (*Sidhu)* _ by [facts]

- **CLEAR and UNEQUIVOCAL (*Crown)***

<u>3. Detrimental Reliance</u>

- _ would argue that the person claiming estoppel has onus of proving detrimental reliance (*Sidhu)*. _ would argue that the detriment was [facts], and this was brought about by relying on the statement/action, as [reason]. _ would argue that _ did/did not change his/their position on the basis of the assumption (*Legione)*, as [facts]. _ would also argue that detriment should be assessed at time of departure (*Verwayen)*, and at the time of departure, [facts]
- **Change position test:** The relying party should have **<u>changed their position</u>** on the basis of the assumption
    - *Legione v Hateley*: H had funds to make payment on time; they changed their position to their detriment in reliance on their assumption
- **Assessed at time of departure**: Detriment should be assessed at the time of representor seeking to depart from induced assumption (*Cth v Verwayen)*
    - *Je Maintiendrai*: the parties were better off financially each month but at the time of the departure from the assumption, the lump sum constituted a detriment
- **Detriment need not only be financial** (*Cth v Verwayen)*

4. Reasonableness

- **Was it reasonable for party to adopt assumption?**
- **Was it reasonable for party to detrimentally rely on the assumption?**

_ would argue that _ acted reasonably in adopting the assumption, as a reasonable person would also adopt the assumption as [reason]. However, _ would argue that a reasonable person would not adopt the assumption, as [reason].

_ would argue that _ acted reasonably in [taking the relevant detrimental action], as a reasonable person would do the same as [reason if relevant]. However, _ would argue that a reasonable person would not [take the relevant detrimental action] as [reason]

5. Unconscionability

- **Failure of promise/change of mind insufficient (*Waltons)***
- **How substantial is the detrimental reliance?**
- _ would argue that the failure of _ [promise]/_ changing his mind was unconscionable. However, _ would argue that it needs to be more than a failure to fulfil promise or change of mind (*Waltons)*. Per above, the inducement was/was not clear and unequivocal, as _ is a [what role]. It was reasonable/unreasonable for _ to rely on _actions/statement, and _ would argue that he did not know that _ would detrimentally rely on his actions/statement. _would argue that the extent of the detrimental reliance is substantial/not substantial, therefore it will be/will not be unconscionable.

6. Departure

7. Conclusion

Remedy

- Relief is discretionary (*Giumelli)*
- If I am incorrect and _ did manage to make out the elements of estoppel, he/she will be entitled to prima facie to expectation damages (the reward he wants from contract)
- Unless:
    - Not practical (e.g. property cannot be transferred to relying party, if people are staying there (*Sidhu)*)
    - Violates the "minimum equity principle" or "proportionality" to do justice (*Cth v Verwayen)*
        - Weighing up remedy and detriment
    - If impractical/disproportionate, entitled to reliance damages

Note: reliance vs expectation damages

Example:

- A promised to pay $10000 for world holiday for B
- B pays $2000 non-refundable deposit
- A changes his mind
    - B's **expectation loss = $10,000**
    - B's **reliance loss = $2000**