

LAWS2015 EQUITY CASE NOTES

SEMESTER 2, 2024

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TOPIC 2: APPLICATIONS OF THE CONSCIENCE OF EQUITY

4. BREACH OF CONFIDENCE

4.1 Equity will prevent the unauthorised use of information by recipients in circumstances where it has been disclosed with an intention that it only be used for particular purposes and hold them to account for any wrongful use.

4.2 Note: the duty must be owed to the claimant, if not then the claim will fail *Frazer v Evans*.

(a) *Coco v AN Clark (Engineers) Ltd* [1969] RPC 41

Facts

- Coco was developing a motor-assisted cycle or moped. He entered into negotiations with AN Clark to develop the moped and provided information to A.N. Clark about his moped.
- After some time, A.N. Clark elected to not further develop the Coco moped and instead began to develop its own moped.
- Coco became suspicious that A.N. Clark was using some of his designs for the new moped.
- He therefore applied for an injunction to stop A.N. Clark making or sell any moped using his confidential information. A.N. Clark had just released its moped on the market while Coco had stopped developing his moped.

Issue

- Was there a breach of confidence?
- NB: Does not matter there was no contract.

Held at [47]

- The court held that there are generally three elements which are required for a breach of confidence claim
 - The information must have the necessary quality of confidence (i.e., not public knowledge);
 - The information must have been imparted in circumstances importing an obligation of confidence; and
 - There must be unauthorised use of that information to the detriment of the party communicating it.
- HOWEVER, c.f., to *Smith Kline* where it was held that in the third limb it does not need to be to the detriment of the plaintiff.

On Public Domain at 47

- **this must not be taken too far.** Something that has been constructed solely from materials in the public domain may possess the necessary quality of confidentiality: for something new and confidential may have been brought into being by the application of the skill and ingenuity of the human brain.

Practically

- P must be able to point towards the similarities in the design.

(a) *Optus Networks Pty Ltd v Telstra Corporation* (2010) 265 ALR 281

Facts

- Optus and Telstra had a contractual agreement about having access to each others customer information.
- Optus alleged that Telstra had used Optus's traffic information for marketing and other purposes without their knowledge and consent.

- There has to be a pre-existing legal relationship between the parties. This was satisfied in the case above as there was a lease and the promise was in relation to the terms of the lease.
- Promissory estoppel could only be used as a defence i.e., a shield from the promisor to the promisee. [note this is contentious now]

At 134

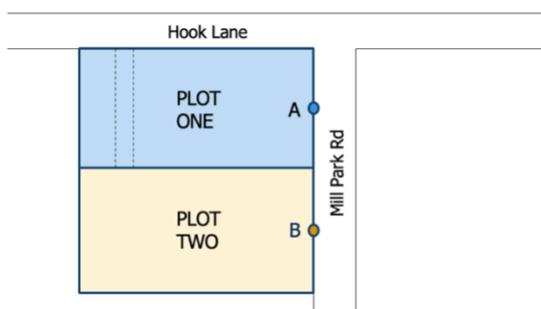
“cases in which a promise was made which was intended to create legal relations and which, to the knowledge of the person making the promise, was going to be acted on by the person to whom it was made and which was in fact so acted on. In such cases the courts have said that the promise must be honoured”

This suggests promissory estoppel can create obligations where there were none already.

(a) Crabb v Arun District Council [1976] Ch 179

Facts

- C and the council (D) reached a non-binding agreement for a right of way over D's land but no formal contract was reached
- A gap was left in a fence D later put up and a gate was installed at the planned access point
- C sold off part of his land (1), with the remained being landlocked (2) save for the right of way
- D repudiated the agreement, took down the gate and built a wall over the gap



Issue

- Could an estoppel be granted to allow C to maintain a right of access and easement to access his land?

Held

- **Estoppel**
- Court of appeal held the council was estopped from denying that C had a right of access at point B and a right of way to pass along MillPark lane (encouragement, and proprietary case).
- **Should C have to pay for the easement?**
- Does C have to pay for the easement? The court was considering making C pay a fair price for the easement. But the court was convinced to make him not make the payment. On the basis of the council acting contrary and had left C land locked.

(a) Pascoe v Turner [1979] 1 WLR 431 (CA)

Facts

- The plaintiff told the defendant, who had been his mistress, that he had given his house to her. This was untrue. She spent £230 (a quarter of her savings) on improvements, to his knowledge.
- Later he brought an action for possession, and she counterclaimed for relief based on proprietary estoppel.

Issue