

EQUITY EXAM NOTES:

ESTOPPEL.....	2
UNCONSCIONABLE CONDUCT.....	5
FIDUCIARY OBLIGATIONS.....	8

EQUITABLE ESTOPPEL

A doctrine to protect a party from the detriment that would flow from that party's change of position if the assumption or expectation that led to it were to be rendered groundless by another as per *The Bell Group Ltd (in liq) v Westpac Banking Corporation*.

Promissory Estoppel: Where one party has either by words or conduct made a promise or assurance in which intended to affect the legal relationship between the parties and is subsequently relied and acted upon as per Eng case of *Combe v Combe*. Equity will bind the promisor to their word, requiring no consideration.

Proprietary Estoppel: equity binds the owner of property who induces another to expect that an interest in property will be conferred on them as per *Waltons Stores (Interstate) Ltd v Maher*.

EQUITABLE ESTOPPEL TEST (Main: Representation, reliance, detriment) (Brennan J in *Waltons Stores v Mahers*)

1. Clear and unambiguous representation: The representation must be clear and unequivocal *Bartport v Bomb; Legione v Hateley; Newbon v City Mutual Life Assurance Society Ltd*. The language must be reasonably understood in a sense by a person to who it is addressed to *Freeman v Cooke*. If not in writing, the promise or expectation perceived from that representation may be expressed or implied.

'I'll look after you after...' is not a clear and unequivocal representation *Crown Melbourne v Cosmopolitan Hotel*

STATE: Nettle J suggests no need for contractual certainty whereas Keane J in Crown suggests you do need it.

Note: There can be no promise or representation by mere silence during pre-contractual negotiations *Blackley Investments Pty Ltd v Burnie City Council*

2. An assumption made by the plaintiff who is induced by words, action or conduct:

- *Salienta* (Assumed rent deduction) Plaintiff must have been under the assumption that a legal relationship is present.
- Onus to prove that assumption is reasonable *Franklins v Metcash* affirmed the requirement.

The assumption is a result of conduct by the defendant... the conduct does not need to be the sole reason for the assumption, rather it needs to be a significant factor *Sidhu v Van Dyke*. (Didn't miss out even though she was cheating)

Cth v Verwayen 4 non-exhaustive categories of conduct:

- a. Induced the assumption by express or implied representation
- b. Entered a contractual or other material relation with the other party on the conventional basis of the assumption
- c. Has exercised against the other party rights which would exist only if the assumption were correct
- d. Knew that the other party laboured under the assumption and refrained from correcting him when it was his duty in conscience to do so.

CONSIDER: The HCA **did not reference** assumption requirement in '*Cth v Verwaye*' and *Douehi* does not require application in cases of **proprietary estoppel**....

3. Plaintiff demonstrated a reliance: Where the plaintiff has been induced by the defendant's representation, one must establish that the plaintiff acted or refrained from acting in reliance on the assumption as per *Priestly v Priestly*.

Onus of proof is on the relying party to establish that they relied on the representation - *Sidhu v Van Dyke*

There needs to be a causal link between the assumption and conduct - *Miler Heiman v Sales Principles*

Lower threshold: Contributory cause or influence not 'but for test' - *ADM v FDGK*

REASONABLE RELIANCE LIMBS - *Commonwealth Bank of Australia v Carotino*

- a) it must be reasonable to adopt the assumption based on the strength of the representation and
- b) the action taken from the reliance must be reasonable... **CONSIDER:** Emotional relationship or commercial?

- Legal representation/resources (less likely) *Austotel*
- Accustomed to commercial relationships (less likely)
- Causal or informal environment (*Sterns Trading* less likely)
- The bargaining strength of the parties (*Austotel Pty Ltd v Franklins Selfserve*)
- If person making assertion has actual/ostensible authority to do so (*Legione v Hateley* more likely)
- **STATE:** Ostensibly objective but has subjective aspects to it in that it considers the knowledge of the parties *Austotel Pty Ltd v Franklins Selfserve Pty Ltd*
- Constructive knowledge of the representations suggest lack of authority (*Legione v Hateley*)
- Urgency (*Waltons* more likely)

4. Defendant demonstrated a knowledge or intention: The representator must know or intend that the relying party will act or will refrain from acting as a result of the reliance of the assumption of expectation. *Waltons Stores (Interstate) Ltd v Maher*

Note: Contention on whether the threshold of 'ought to have known' is enough to constitute knowledge...

Waltons suggests no | *Commonwealth v Verwayen* suggests yes – supported by *New Zealand Peltic Export Company Ltd v Trade Indemnity New Zealand Ltd*

5. Plaintiff must have suffered a detriment that the defendant failed to avoid: Plaintiff must establish that they relied on the representation of the defendant to their detriment - *Browne v Browne*. Party must have suffered a 'material' loss to justify relief - *Je Maintiendrai Pty Ltd v Quaglia*.

Note: Consider what type of detriment (expectation or actual) as this will be discussed in relief (narrow or broad). *Vella v Was Lai Investment; Argot Unit Trust v National Mutual Life Association of Australia Ltd*

STATE: The object of equitable estoppel is not to compel the representor to fulfil the assumption or expectation, but rather to avoid detriment if the assumption or expectation goes unfulfilled. Where representor gives notice that the assumption should no longer be regarded as existing, estoppel will cease to bind either immediately or after the relying party has been given reasonable notice

6. Remedies/relief

- Equitable compensation** serves as a remedy providing monetary forms of relief *McCrohon v Harith*. The purpose is to place the aggrieved party in the position they would have been in had the equitable obligation not been breached *Nocton v Lord Ashburton*.
- Rescission** allows the courts to set aside a contract or other transaction, resorting the parties to the position they would have been in, had the contract not occurred *McDonald v Dennys Lascelles Ltd*. In order to rescind, an innocent party must, as a general rule, clearly and unequivocally communicate his or her election to rescind to the other party *Immer (No 145) Pty Ltd v Uniting Church in Australia Property Trust*.

Narrow view of Loss: The narrow view was supported stating that 'detriment occasioned by acting or abstaining from acting on the faith of a promise that is not fulfilled' will be sufficient *Vewwayn*. However, the law has seemed to shift from the narrow view to one directed at the enforcement of a promise, following the broad view - *Giumelli v Giumelli*.

Broad View of Loss allows for Constructive Trusts:

STATE: In a remedial constructive trust, it is to the Court's discretion as to whether it needs to be imposed at the date of judgement whereas in an institutional constructive trust the trusts at the date of the course of the event.

Is it promissory estoppel? Court has a discretion, but usually reliance-based relief is given *DeLaforce v Simpson-Cook*

Is it proprietary estoppel? **STATE:** The prima facie starting point according to *Giumelli* and affirmed in *Sidhu v Van Dyke* is expectation fulfilment through a constructive trust over the property to relieve expectation loss. As per *Sidhu* 'the relief which is necessary is usually that which reflects the value of the promise'.

However, if appropriate *Waltons* and *Verwayen* can also be followed to reverse detriment *Giumelli*. As per *Sidhu* enforcing the promise through constructive trust will be inappropriate if:

- It is not practically possible (property burnt down or is destroyed etc. *Sidhu*)
- Would cause hardship to third parties
- Unjust enrichment or disproportionate i.e. they only suffered a 'relatively small, readily quantifiable' financial contribution *Commercial v Amp; General Corporation PTY LTD v Manassen Holdings PTY LTD*
- if property already transferred then interference with 3rd party *Giumelli; Farah* no CT and *Torrens System* (if third party registered)

<i>Waltons Stores v Maher</i> , High Court of Australia, Brennan J	
Key Facts	<ul style="list-style-type: none"> Maher negotiated a new lease and new building to Waltons. To do so, the old building had to be demolished. Waltons led Maher to believe a contract would be formed. But, they did not want to sign it. They told their solicitors to 'go slow'. They did this knowing that Maher was demolishing old building and allowed it to continue.
Decision	<ul style="list-style-type: none"> Equitable estoppel applied and Waltons were estopped
Ratio/Reasoning	<ul style="list-style-type: none"> Stopped them from retreating from its' implied promise to complete the agreement as it was unconscionable, knowing the Mahers were exposing themselves to detriment relying on the promise, which they encouraged with inaction.

