

# Promissory estoppel essay sample



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In High Tree's Case the principle in use does not give rise to new causes of action if none existed before. It can only be used to prevent a party from ignoring his promise that he would not insist upon his strict legal rights. This essay mainly structures around this principle, 'Promissory estoppel' and highlights its basic requirements. In the absence of a bargain, promissory estoppel and moral obligation are the only grounds upon which common law courts enforce promises. The principle of promissory estoppel came into existence to preclude the necessity for consideration in cases where parties are already bound contractually with each other and one of them promises to waive, alter or suspend its strict legal rights. The terms mean: Promissory; about a promise, assurance and Estoppel; comes from Latin, to stop. A clear cut definition for the doctrine was expressed by Denning LJ in *Combe v Combe* (1951) 2 KB 215 (CA). The principle, as I understand it, is that, where one party has, by his words or conduct, made to the other a promise or assurance which was intended to affect the legal relations between them and to be acted on accordingly, then, once the other party has taken him his word and acted on it, the one who gave the promise or assurance had been made by him, but he must accept their legal relations subject to the qualification which he himself has so introduced, even though it is not supported in point of law by any consideration but only by his word.

The law on this principle derives from the case *Central London Property Trust Ltd v High Trees House Ltd* (1947) KB 130. The plaintiffs were the owners of a block of flats in London, which they rented to the defendants at a rent of £2, 500 pa. Following the outbreak of the Second World War in 1939, the defendants were unable to find sufficient tenants to take the flats, because

of the large numbers of people leaving London. As a result the plaintiffs agreed that, in the circumstances, the rent could be reduced by half, to £1,250 pa. This arrangement continued until after the war ended in 1945, and the difficulty in letting the flats ceased. The plaintiffs then sought to return to the original terms of the agreement. It was held that since the plaintiffs knew their promise would be acted upon, and it had been acted upon despite the absence of consideration, the plaintiffs were entitled to claim the full rent. In giving the decision in this case Denning LJ relied on the case *Hughes v Metropolitan Railway company* (1877) 2 App Cas 439 (HL), where a landlord gave a tenant 6 months' notice to carry out repairs failure to do so would result in forfeiture of the lease.

The landlord and tenant then entered into negotiations for the tenant to purchase the freehold of the property. It was thought by both parties that a conveyance of the property would take place. The tenant had not carried out the repairs as they believed they would be purchasing the freehold and the repairs required by the landlord were not essential to his use of the property. At the last minute negotiations broke down and the Landlord gave the tenant notice to quit for failure to carry out the repairs. The courts decided that the plaintiff cannot forfeit the lease. In the principle that is presumed in this case conditions that if a landlord and tenant settles upon excluding a specific obligation under the contract, the landlord cannot claim action against tenant for breach of contract if the tenant omits doing that specific performance. Lord Cairns in his judgement broke down the principle.

It is the first principle upon which all Courts of Equity proceed, that if parties who have entered into definite and distinct terms involving certain legal

results - certain penalties or legal forfeiture - afterwards by their own act or with their own consent enter upon a course of negotiation which has the effect of leading one of the parties to suppose that the strict rights arising under the contract will not be enforced, or will be kept in suspense, or held in abeyance, the person who otherwise might have enforced those rights will not be allowed to enforce them where it would be inequitable having regard to the dealings which have thus taken place between the parties.

Although in High Trees the landlord was not claiming breach of contract and was merely about going back on an action, declaring the promise made null and void the same principle of mutual consent between landlord and Tenant was stretched further hence making it more lenient and equitable. It is already seen that a promise can be enforceable despite the absence of consideration by applying the doctrine of promissory estoppel. However, there are some basic requirements that need to be established in order to apply this rule. The utmost important elements of it include; (1) Presence of a pre-existing legal relationship (2) The limitations of its usage; it is 'a shield and not a sword'. As Denning declares in his statement in *Combe v Combe* there must be an existing legal relationship between the parties for the application of promissory estoppel. The principle never stands alone as giving a cause of action in itself as it cannot be used to render unnecessary consideration on the formation of a contract. Thus in *Combe v Combe* (1951) 2 KB 215 (CA), a husband, upon divorce, promised a wife £100 a year as a permanent allowance. In reliance upon this promise, the wife forbore to apply to the courts for maintenance. The husband failed to make the payments, and the wife sued him on this promise. In this case it was held that the wife had

provided no consideration for the husband's promise and could not rely on promissory estoppel which did not give rise to a cause of action.

However, there have been instances where promissory estoppel arises from promise made by parties negotiating contracts. In *Brinkom Investment Ltd v Carr* (1979) 1QB 467 (CA), Lord Denning held that the tenants could rely on the defence of promissory estoppel. In this case the landlords of four blocks of flats offered to sell 99-year leases to their sitting tenants. The roofs of the blocks were in need of repair, and the landlord made oral representations to the tenants that the landlords would repair the roofs as their own expense. The subsequent leases contained covenant by the landlords to repair the roofs but also to stipulate that the tenants would pay an annual contribution in respect of the maintenance expenses incurred by the landlords. The leases were signed; the landlords repaired the roofs and then claimed contributions from the tenants. The tenants refused to pay, relying on the representations of the land lord. In the action the first defendant admitted that she would have taken the lease in any event, and the second and the third defendants were assignees of the original tenants to whom the representations had been made.

The majority of the court of appeal dismissed the landlord's claim on the basis that there was a collateral contract between landlords and the original tenants. A parallel view was expressed by Donaldson J in *Fancy Goods V. Michael Jackson* (1969) 2 QB 839. It was held in the case that a pre-existing legal relationship which could in certain circumstances, give rise to liabilities and penalties even if a contractual relationship was not present. Another important area that needs to be reflected upon, when dealing with

promissory estoppel is that it can only be used as a shield and not a sword. It can only be used to prevent a party from insisting upon his strict legal rights and cannot be used under any circumstance to force a party to comply with a promise. In *Combe v Combe* (1951) 2 KB 215 (CA), where a wife brought an action to enforce the promise invoking promissory estoppel was denied any recovery on the basis of the *High Trees* decision. In this case the court of appeal including LJ Denning considered the claim was an inappropriate use of the doctrine as it is only available as a defence. This clearly explains why the tenants in *High Trees* could not have sued on the landlord's promise to enforce their claim to pay the reduced rent.

And also clears out why the plaintiff's in certain other cases such as *William v Roffey Brothers* (1991) QB 1 and *Foakes v Beer* (1884) did not base their claim on promissory estoppel. In *William v Roffey Brothers* (1991) QB 1, the defendants were building contractors who entered an agreement with Shepherds Bush Housing Association to refurbish a block of 27 flats. This contract was subject to a liquidated damages clause if they did not complete the contract on time. The defendants engaged the claimant to do the carpentry work for an agreed price of £20,000. 6 months after commencing the work, the claimant realised he had priced the job too low and would be unable to complete at the originally agreed price. He approached the defendant who had recognised that the price was particularly low and was concerned about completing the contract on time. The defendant agreed to pay the claimant an additional £575 per flat. The claimant continued work on the flats for a further 6 weeks but only received an additional £500. He then ran out of money and refused to continue unless payment was made. The

defendant engaged another carpenter to complete the contract and refused to pay the claimant the further sums promised arguing that the claimant had not provided any consideration as he was already under an existing contractual duty to complete the work. The judges gave the judgement in favour of the plaintiff. Consideration was provided by him by conferring a benefit thus making the defendants liable to make the extra payments they promised.

Nevertheless, this requirement of promissory estoppel only being used as a defence is further questionable. In the case of *Evenden v Guildford City Association Football Club Ltd* (1975) QB 917, the plaintiff successfully employed the doctrine to create a cause of action although the judges sitting stated that he need not use the doctrine as there is a clear contract and it was breached. The fact of the case was the plaintiff was employed as a grounds man by a supporter club who was working for the defendant. Later on, he was employed by the football club and maintained that same position as a grounds man until he was fired by reason of redundancy. The plaintiff claimed compensation from the continuous period from 1955 (while he was working for the supporter club) to 1974 (while he was under the employment of the football club). The football club contested that the plaintiff was only entitled for compensation from 1968 to 1974 (the duration of his employment with the club). The court held that the plaintiff was entitled for the continuous period from 1955 to 1974. *Re Wyven Developments* (1974) 1 WLR 1097 is another case where the courts held that promissory estoppel can be a cause of action.

Having mentioned the two main important elements of promissory estoppel, it is indeed of much importance to have a look at the outcome of the doctrine. Although the principle was originated to mitigate the harshness of common law, it to be seen that under the doctrine although, the promisor agrees on not insisting upon his contractual rights, he was free to change his mind. Also the rule has been laid down as such that the promisor couldn't recover the arrears or the accrued amount incurred in the process, from the promisee. *Central London Property Trust Ltd v High Trees House Ltd (1947) KB 130* and *Tool Metal Manufacturing Co. Ltd v Tungsten Electric Co. Ltd (1955) 1 WLR 761 (HL)* are suitable examples of such cases. In *Tool Metal Manufacturing Co. Ltd v Tungsten Electric Co. Ltd*, Tungsten had been infringing a patent right held by Tool Metal Manufacturing. When Tool Metal Manufacturing heard of this they waived all infringements in return for Tungsten paying 10% Royalty and also 30% 'compensation' if sales exceeded 50KG in any month. These sums were excessive but Tungsten agreed to pay them otherwise they would be faced with a claim for infringing the copyright.

Tungsten struggled to make payments. They got into arrears during the war times and an agreement was reached to waive the 'compensation' payments during the war years. It was held that Tool Metal Manufacturing could not enforce the compensation payments during the war years but could enforce them on termination of the war. Tool Metal Manufacturing was estopped from going back on their promise to waive the payments in equity. Generally promissory estoppel will merely suspend legal rights rather than extinguish them. However, where periodic payments are involved and a



promise has been made to reduce the payments because of pressing circumstances which are not likely to persist, promissory estoppel can be used to extinguish legal rights.

In conclusion, it can be said that the doctrine of promissory estoppel is a valuable concept that was introduced to the common law. The High Trees case acted as a vessel in which the doctrine of promissory estoppel was reinstated to lessen the chance of any rigid applications of the law which can end up being inequitable to either of the parties bound in a contractual relationship with the other. Limitations such as existence of legal relations and the strict use of it as a defence are the main fundamentals of the principle. However, it is to be kept in mind that although the principle seems rather clear-cut, in convention it is rather complex.

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