

There create legal
relation and
consideration. this
question

Law



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There are four basic elements of a contract to be valid and binding which are, agreement (offer and acceptance), certainty, intention to create legal relation and consideration.

This question concerns one of the essential element of a contract, consideration (promissory estoppel). Contract law requires consideration for making a promise or agreement, there must be give and take something from both party's sides. In other words, in English law, an agreement is not binding unless it is supported by consideration, except the promise on the deed. Consideration exists where there are rights, interests, of benefits accrues or will to the promisor as result of some detriment, loss that has been given or suffered by the promisee. Consideration can be either executory (where something to be done in the future after the contract has been formed.

It usually involves a bilateral contracts), or it can be executed (where at the time of the contract the consideration has already been performed. It usually involves a unilateral contracts). On the other hand, it cannot be past (where it has already been completed before the promises made and cannot amount to consideration). Consideration has also described as a benefit to one party to a contract which is usually the promisor, or a detriment to another usually the promisee, and it is the price paid for a promise or the element exchange. The doctrine of promissory estoppel has stated in *Crabb v.*

Arum (1976), it is a newer development of 'waiver' which is traditionally applied their strict rights under the contract and this generally occurs after a

party failsto perform the contract and sometimes even before it filled out and signed. Promissory estoppel is an equitable doctrine which obviously derived from 'equity' and sometimes known as ' equitable estoppel'. The word ' equity' meansfair or just in its wider sense, but its legal meaning refers to legal rulesthat were development by the courts to overcome inflexibility of the rules andprocedures of Common law courts. Equity has created a new right. The Chancellor(senior legal keeper of the king's conscience) and who was a cleric, dealt withthe petitions which were passed to him by the king, and on basis of what wasmorally right, he would give or withhold relief, not according to anyprecedent. 1474 the Chancellor issued the first decree in his own name.

Andbegan the independence of the court of Chancellor from king's council and thedevelopment pf a system of legal principles knowns as ' equity' which wasdifferent from the Common law courts.

Generallytalking, promissory estoppel is an exception to the general rule of contract whichis in order to make a contract binding it has to be supported by consideration. The court has the power to perform what is fair rather than following themission of the law under the power of equity.

For example, enforcing a party tohonor its promise but if it is the only way to do justice. In some instance, promissory estoppelcan hinder or stop a person from going back on promise which is not supportedby consideration. In other words, under the English Law system, it is used as aprinciple of justice and equity, even if the promise made without formal consideration.

The doctrine can help you to recover losses, damages, if those damages were the result of a promise made by a promisor. There are certain requirement elements must be established or present to invoke promissory estoppel.

Where promisor made a promise significant enough to cause the promisee to act on it, nor promisee relied upon the promise, and if the promisee did not, there would be valid argument that it was not inequitable for the promisor to go back on his/her promise.

For example, if a party enters into contract with another party and for some reason that contract is not enforceable either because the contract is not in writing or does not have sufficient consideration (lack of consideration), promissory estoppel can make it enforceable because it is substitute for the lack of consideration or substitute for writing. So that one party to the contract generally the offeree has to rely on the other party's promise, and his/her reliance has to be objectively reasonable. Further, if a promisee suffered significant detriment, that is an economic loss - ensues to the promisee from action, the court will decide if there was detrimental reliance, or a change in the position of the promisee, who acts based on the promise.

Promissory estoppel shield not a sword, this phrase invented by the Council in the case of *Combe v Combe* 1951, and provided later by Lord Burke. In that case Denning LJ said that the principle 'does not create new causes of action. It only prevents a party from insisting upon his strict legal rights, when it would be unjust to allow him to enforce them, having regard to the dealings which have taken place between the parties'¹. It gives the parties no right of action, but only of objection. It is only used as a defense or a shield when the

party usually the offeror is trying to change hisher promiseas a result of something unreasonable and tries to impose the condition ofdetriment to other party usually the offeree. 2Can't be used to make quite new privileges or augment it can only prevent theenforcement of rights already held. 1

<http://swarb.co.uk/combe-v-combe-ca-1951-2/2>LAW 832: Business

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