

Promissory estoppel essay sample

Law



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Contracts are made to ensure reliability and effectiveness between the parties doing business. A contract is an agreement giving rise to obligations which are enforced or recognised by law. The obligations and the rights of the parties in an agreement are laid down undoubtedly in a contract. This is to ensure that the parties are aware of their duties and responsibilities of an agreement. There are three requirements, which need to be satisfied for a contract to be valid and those would be offer, acceptance and consideration but the doctrine of Promissory Estoppel (PE) seems to overthrow some of the established rules of a contract. In regards to the two doctrines, this paper will look at how the doctrine of consideration and the doctrine of PE relate to each other and also if the current legal position is justifiable to enforce a creditor's promise to accept less. Let's take a look at the definition of consideration first. According to Justice Lush in *Currie v Misa*; "A valuable consideration, in the sense of the law, may consist either in some right, interest, profit or benefit accruing to one party, or some forbearance, detriment, loss or responsibility given, suffered, or undertaken by the other." So to describe it in simpler terms, a consideration "is the price for which the promise of the other party is bought" as mentioned by Pollock in *Dunlop v Selfridge*.

But this already seems to give scope for some arguments as it seems to "coincide" with the argument of Lord Somervell in *Chappell v Nestle* where he suggests that "even a peppercorn does not cease to be good consideration even if it may be thrown away". This suggests that there is no clear definition of the price for a promise but then one could argue that one of the criteria for consideration is that it must be sufficient but need not be

adequate. In other words, if an agreement is freely reached between the parties, the inadequacy of the price is immaterial to the existence of a binding contract. So, what are the other criteria for consideration? Firstly, a consideration must not be in the past like in *Eastwood v Kenyon* where the court held that a past consideration is not a good consideration. The case *Tweddle v Atkinson* illustrates the other criteria that consideration must move from the promisee. The case *Stilk v Myrick* states the third rule that an existing obligation is not a good consideration. Finally the rule that, part payment of debt does not count as consideration. This last rule will be discussed in detail further on in this argument as it may seem to contradict with the doctrine of PE. Consideration as an established law does give scope to criticize it.

The doctrine is believed to be “plagued by uncertainty and inconsistency”. If one was to explore why it is uncertain and inconsistent, then it is because courts often imply consideration into cases by making it more of formality or technicality rather than a doctrine. To see to what extent this criticism is understandable is by looking at the case of *Williams v Roffey Bros* in which the court was willing to find consideration in the practical benefit arising to the promisor from making the promise. This decision by the courts was very questionable, because consideration would normally not apply to cases concerning completion of contractual duties in an existing agreement. This is why it could be argued that it seems to give scope for unfairness and might even lead to unlawful cases in the future. In order to distinguish or relate the two doctrines, it is important to understand the doctrine of PE. According to a law journal, it could be seen as the law of waiver – giving up one's rights and

therefore could be called equitable forbearance. E Cooke in her book 'The modern law of estoppel' describes it as followed.

" Estoppel is a mechanism for enforcing consistency; when I have said or done something that leads you to believe in a particular state of affairs, I may be obliged to stand by what I have said or done, even though I am not contractually bound to do so" However, PE has evolved as an alternative to contract law's doctrine of consideration. It allows the courts to enforce a contract without the aspect of consideration if the following criteria are met. 1. A clear and unequivocal promise to suspend existing contractual rights, 2. Change of position by promisee in reliance on the promise, 3. Inequitable for the promisor to go back on the promise. PEs proliferation and emergence has led some Scholars to sound the " death knell" for the bargain theory of consideration as they view PE as an insignificant and secondary doctrine of contract formation. The milestone for PE was laid in the case Hughes v Metropolitan Railway and was revived in the 1940s by Denning J in Central London Property Trust Ltd v High Trees House Ltd where a claim was brought to resume payment of the original rental amount after the war has stopped in 1945.

In his judgement, Denning J declares that if the claimant had sued for the difference of rent between 1940 and 1945, then their claim would have failed but does give the parties the right to resume their suspended contractual rights if satisfactory notice is given as this was confirmed in Tool Metal Manufacturing Co Ltd v Tungsten Electric Co Ltd. So PE could be seen as suspensive but not extinctive. This was also seen as " equity's answer to the strictures of the law of consideration" The equitable maxim of " he who <https://assignbuster.com/promissory-estoppel-essay-sample/>

seeks equity must do equity” also applies to this doctrine. A good example to illustrate this would be the case of D&C Builders v Rees where Ms Rees, forced D&C Builders to accept the part payment as full settlement because she knew the company was in struggle but the courts held that the debtor could not rely on the doctrine of PE as the promise was extracted by intimidation. So consideration still “ remains as a cardinal necessity of the formation of a contract” and PE only serves as a shield not a sword.

To put it in other words, PE can only be used as a defence and cannot be the basis of a legal claim. “ 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 at his word and acted on it, the one who gave the promise or assurance cannot afterwards be allowed to revert to the previous legal relations as if no such promise or assurance had been made by him. 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.” Based on the information above, it should be now clear on the working of consideration and PE.

Comparing the doctrine of consideration to the doctrine of PE, one could see PE as a justifiable contrast to the doctrine of consideration as it may lessen the unfair effects of consideration as it seems to give scope for it to be seen too narrow or unfair in some circumstances. For this reason, there is necessity for an additional doctrine to help reduce such disadvantages in consideration and this is where the link between consideration and PE can be established. Instead of restricting the courts to the strict requirement of

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consideration, one could argue that the doctrine of PE allows the courts to outline the law according to the circumstances of the case and the economic situation at the time. A good example to demonstrate such a situation would be the Central London Property Trust Ltd v High Trees House Ltd case, where the court had to take in to account the circumstances and the economic situation before and after the war. The flexibility arising from PE does not only allow the courts to be fair in doing justice but also helps to keep up with the fast changes in the mindset of the people.

Now take a look at some of the advantages of the doctrine of PE. It is to be seen as a shield to protect against retrospective claims. So it can help to protect the weaker party from exploitation in a negotiation procedure. Actually, scholars seem to agree with the view of the doctrine being an advantage to the less powerful parties like consumers or employers as they are mostly powerless or unprepared against much bigger parties. To express it in a different way “ the doctrine of estoppel is used to prevent the party who created the belief that the contract was valid from taking advantage of the statutory rule” and that makes the promise binding even if it lacks consideration. This leads to the other advantage of PE, which makes it of suspensive nature, because no reasonable man would want to have his rights extinguished as a consequence of a plain promise as one can see from the case against High Trees. It only allows the rights to be suspended but does not terminate it. This section will discuss the disadvantages of PE. One of the major arguments going against it is the uncertainty it creates in law.

One could argue that the flexibility arising from this doctrine is also the reason for its uncertainty. This is because “flexible law can lead to the worst arbitrariness... if it is not hedged about by the limitations of rigid law”. The confidence of the public in law might get lost, because of the uncertainty. There are also grounds for concern whether the doctrine can be used as a ‘sword’ or just a ‘shield’. The ruling in an Australian case may have given room for such concern, because in the case *Walton Stores (Interstate) Ltd v Maher*, the court allowed PE to be used as the foundation for legal action so as a sword. Even though this case is from a foreign jurisdiction and one might argue that it does not have authority in the English law, it still may be persuasive. What are the difficulties in laying the ground rules for PE? It is safe to assume, that the most difficult and potentially troublesome element in the whole estoppel concept is the element of detrimental reliance. Because sometimes it is not clear what the detriment is or under which criteria it could be classified as detriment due to the reliance.

The doctrine of PE helps to make promises binding without consideration. Nevertheless, if one was to take a deeper look at it, then it becomes obvious that the courts have applied PE only to cases promises to accept less but yet have to acknowledge cases involving promises to give more. This approach appears to be a bit unfair as it seem to benefit only the promisee. Also, the efforts to divert from the established approach set by the *Hughes* and the *High Trees* case have caused to question the boundaries of promissory estoppel as a reputable and well-established area. Given the arguments above, it should be clear now on the arguments for and against PE. The above discussion on doctrine of consideration makes it the main element of

a binding contract and the lack of it may even make the contract voidable. On the other hand, the doctrine of PE makes a contract enforceable without consideration. By comparing the two doctrines, it would be sensible to say that PE is more lenient. This could be because the criteria for the doctrine of PE may be rather easily satisfied than the criteria for consideration. The reason for this might be because the requirements for PE seem more clearly defined than the ones for consideration.

So it would be fair to argue that it is always expected that doctrines are not immune from their own specific difficulties and the courts would be sensible to make use of only the doctrines which are more precise and give less ground for errors. Taking all the arguments into account “ the doctrine of consideration is nevertheless still an established part of... common law landscape in general”. It was also mentioned by Lord Steyn that “ there are a few cases where even in modern times courts have decided that contractual claims must fail for want of consideration”. Even though the doctrine of consideration might seem to lack flexibility, it is its inflexibility preventing uncertainty in the English law. For this reason, consideration cannot be ignored and will not be ignored. The doctrine of PE might be seen as an alternative to consideration to provide the parties with more flexibility but it cannot replace consideration. In conclusion, the current legal position and the limitations of promissory estoppel, manifested from the continuing evolution of promissory estoppel, may pose turbulence in contract law and open the flood gate to cases.

This equitable doctrine, which originally acted as an exception, now appears as an open and unlimited doctrine. These facts supply even more materiel

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and room for discussion about the two doctrines but even though there is room for a lot of debate, for the time being, both of these doctrines must go hand in hand with each other to provide the best possible judgement with regards to the current social mind sets. The courts would have to choose the best possible from the two doctrines considering the effects the outcome could have on the society and the law. Bearing in mind that consideration is a common law concept, and promissory estoppel an equitable one, only time will tell which one these doctrines will win the upper hand. The current legal position of promissory estoppel is not justifiable as it raises a lot of unanswered questions and lacks certainty. Therefore, only by allowing the doctrine of PE to grow and develop, one will be able to say if the promise to accept less eventually becomes an undisputable doctrine. ' I [1053832] declare that this piece of work contains [2354] words. I have read and fully understood the provisions relating to unfair practices (including plagiarism) as cited on the VLE.

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