

The rigid application  
of the rule in pinnel's  
case has frequently  
caused hardship...



**ASSIGN  
BUSTER**

The doctrine of Promissory Estoppel was developed in the late nineteenth century for the purpose of preventing injustice where one party goes back on their promise when the other party is in reliance of that promise. The doctrine was first established in *Hughes v Metropolitan Railway Co.* [1877]<sup>1</sup> and has been developing till date. The doctrine cannot be used as a cause of action; it is simply a doctrine of defence as illustrated in *Combe v Combe* [1951]<sup>2</sup>.

In Pinnel's case, Common law ruled that if a debtor paid a lesser sum to the creditor from the due amount and the creditor accepts with no obligation then the promise is invalid. The contradictory nature of the two rules have caused conflict in the law as to what rules should really be applied. The conflict of the Common law ruling has caused much hardship and conflict since the introduction on promissory estoppel. In Pinnel's case<sup>3</sup> (originally *Penny v Cole* [1602]), the courts held that payment of a lesser sum on the day cannot satisfy the payment of a greater sum as it would not come to the plaintiff's benefit unless it was the gift of a horse or hawk<sup>4</sup>. The ruling was later confirmed by the House of Lords in *Foaks v Beer* [1884]<sup>5</sup>.

If a debtor pays a lesser sum to the creditor than what is due, even upon the creditor's approval, the law says that the debtor cannot be discharged from his duty to pay the full amount. This is because the creditor's promise is not supported by consideration. However if the promise is supported by 'fresh' consideration then the part payment of this debt may discharge the debtor. The consideration must be made upon creditor's approval as it would be a benefit for him/her and a detriment for the debtor, thus the element of consideration. There are three exceptions to the rule in Pinnel's case,

<https://assignbuster.com/the-rigid-application-of-the-rule-in-pinnels-case-has-frequently-caused-hardship-essay/>

promissory estoppel being one. This doctrine 'estoppes' the promisor from going back on their word.

In *Combe v Combe*, Lord Denning J stated " 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 not 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, 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"

6. The application of the doctrine in the *High Trees* case<sup>7</sup> was according to the statement made by Lord Denning. Although the doctrine may seem quite frank, it has certain requirements which must be met. In order for the doctrine to come into play, it is necessary that the promise made is a clear and unequivocal promise as explained in the *High Tress* case. As well as a clear promise, the promisor must have stated that he will not enforce his strict legal rights. Thus making the promise legitimate and binding in nature.

Another requirement is that there must be clear identification of a contractual or legal relationship. As well as that, it must be remembered that the doctrine is 'a shield not a sword'. This was illustrated in *Combe v Combe* where Lord Denning had stated that the doctrine " does not create a new cause of action where none existed before. 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 dealing which have taken place between

<https://assignbuster.com/the-rigid-application-of-the-rule-in-pinnells-case-has-frequently-caused-hardship-essay/>

the parties” 8. It is necessary to show that the promisee was in reliance of the promise made by the promisor, this is usually proved when the promisee alters his/her position in detriment of the situation.

Another element which must be met is that “ it must be inequitable for the promisor to go back on his promise and revert to his strict legal rights. If the promisor’s promise has been extracted by improper pressure it will not be inequitable for the promisor to go back on his promise” 9 as illustrated in *D ; C Builders v Rees* [1965]10. A common question which is often raised by academics is if the doctrine suspends or extinguishes rights. “ Where the debtor’s contractual obligation is to make periodic payments, the creditor’s right to receive payments during the period of suspension may be permanently extinguished, but the creditor may revert to their strict contractual rights either upon giving reasonable notice, or where the circumstances which gave rise to the promise have changed as in *High Trees*” 11. In the case of *Tool Metal Manufacturing Co. Ltd v Tungsten Electric Co.*

*Ltd* [1995]12, the patent owners came to a decision to suspend their rights to compensation due to the outbreak of the Second World War at that time. The House of Lords held that the promise was binding only at that period of time, and if the patent owner wanted, then could revoke the compensation owed to them by giving reasonable notice to the other party. From this, it can be concluded that the rights were suspended temporarily for as long as the wartime conditions remained. If all these requirements are met, then the doctrine may be used as a shield of defence. The harshness of the rule

applied in Pinnel’s case lead to the development of the equitable doctrine of <https://assignbuster.com/the-rigid-application-of-the-rule-in-pinnels-case-has-frequently-caused-hardship-essay/>

promissory estoppel. In *Central London Property Trust v High Trees House Ltd* [1947], the plaintiffs had promised to accept a lesser sum of payment from the defendant to what was originally due.

However, the plaintiff's later claimed for the remaining money and based their claim on the ruling made in Pinnel's case. If Pinnel's case was applied in the ruling, undoubtedly the plaintiffs would have succeeded in their claim. However Lord Denning was in doubt of this rule in application to this case and held that Pinnel's case did not apply. " Denning concluded, obiter dicta, that the plaintiffs would failing such an action, relying on the operation of the doctrine of equitable estoppel as expressed in the nineteenth-century case of *Hughes v Metropolitan Railway Co. Ltd*"<sup>13</sup> From this evaluation, it may be concluded that the application of the rule in Pinnel's case has been in fact mitigated by the development of promissory estoppel. The development of this equitable doctrine has remained consistent.

However in the case of *William v Roffey Bros ; Nicholls (contractors) Ltd* [1990]<sup>14</sup> 1, the courts criticized the rule made in *Foaks v Beer* to say that a promise without consideration was unenforceable. This attack was focused on the reliance of the promise made by the creditor. Lord Denning concluded to say that is the conditions of promissory estoppel were satisfied the creditor could not go back on his promise as in this case. In the *Tool Metals* case, promissory estoppel overruled the decision Pinnel's case stating that the promise made in *Tool Metals* must be honoured regardless of the absence of consideration. This further emphasises on the argument that the development of the doctrine of promissory estoppel has significantly

mitigated the application of the rule made in Pinnel's case. However, this <https://assignbuster.com/the-rigid-application-of-the-rule-in-pinnels-case-has-frequently-caused-hardship-essay/>

argument can be contradicted as the case of Foaks v Beer had been made 7 years after the case of Hughes, yet the panel in Foaks v Beer decided to act completely oblivious to the ruling of promissory estoppel.

The plaintiffs reluctantly accepted but later sued for the full amount. Here the rule in Pinnel's case was applied despite the fact that the Plaintiffs promised they would accept the £300 as the complete charge. Many critics agree with the application of the rule in Pinnel's case; however the concept of economic duress contradicts with this rule questioning its usefulness. Others argue to say that the decision made in D; C Builders Ltd v Rees is unfair yet it remains to be affirmed by the courts as it was in Foaks v Beer. In Foaks v Beer, Mrs Beer received a judgment upon which Mr Beer owed her a sum of money.

It was agreed that the payment would be made in instalments and that Mrs Beer would not take any further proceedings on the judgment if the payments was received as decided. After receiving the full payment, Mrs Beer claimed for interest on that judgment debt<sup>15</sup>. Based on the rule in Pinnel's case, Mrs Beer could claim the remaining interest despite the fact that it was clearly promised that she would not do so. The harsh nature of the rule attracted much criticism when it was compared to D&C Builders as the decision in Foaks v Beer was a lot more harsh. This goes to show that the ruling in Pinnel's case is still upheld regardless of its rigidity.

It may be concluded that since the development of the doctrine of promissory estoppel, it has remained consistent with the aid of Lord Denning in his judgments. Pinnel's case however, renowned for its infamous decision,

<https://assignbuster.com/the-rigid-application-of-the-rule-in-pinnels-case-has-frequently-caused-hardship-essay/>

has nevertheless had a huge impact on the law of contract which is clearly evident through its constant critical application in the law. From what was discussed, it is fair to say that Pinnel's case focuses more on the detriment and benefit of the parties, whereas the doctrine of promissory estoppel concentrates on the promise and the reliance of that promise. It is evident that there is, to some extent, a fairly deep overlap of the two rules in the law which increases its complexity.