

## QUESTION ONE

### Estoppel

Y made a representation regarding X's interest. X relied on this representation to her detriment; it would be unconscionable to allow Y to resile from it. X will seek relief through the doctrine of equitable estoppel.

#### i) Representation

The representation made by Y, that X would have a life interest in the property, must have been clear and unequivocal (*Legione v Harteley*). The statement here was clear and could not have been interpreted in any alternative way than that which X interpreted it. In *Legione*, the statement was made by an agent of the party to the contract. The agent lacked the authority in making this statement. Further, the statement was vague – 'I think that'll be alright'. Here, Y made a clear promise, with clarity. He also had authority. It is likely to be considered clear and unequivocal.

#### ii) Reliance

The reliance of X on Y's statement must be reasonable. Unlike in contractual agreements, equity can look to the power imbalance between the parties (*Austotel*). Here, Y was elderly and had dementia. However, he lived in Australia. X did not. Y was familiar with the country, X was a stranger to Australia, therefore needed to place trust in the authority of Y. X was therefore more likely to rely on Y's statement and place trust in his promise. The representation to X was made by a family member, Y. In *Giumelli*, the plaintiff relied on his parent's promises to give him the farm as a return for working on the farm, building a house and cutting ties with his potential second wife. Reliance occurred due to the nature of the family relationship, where reliance is more likely to be considered prevalent and reasonable. Y did not make any suggestion to X that the promise would not follow through. Omission to act in denying the contract, in *Walton Stores*, contributed to the plaintiff's belief and reliance of the agreement. There too, Y made no suggestion as to the later rebuttal of the promise by his sons. Reliance is likely reasonable in X.

#### iii) Detriment

The approach to detriment will determine the remedy awarded to X. The HCA in *Giumelli*, affirmed Deane J's approach to detriment in the majority in *Verwayen*. Deane J supports the approach of promise fulfilment, that is, relief for the loss incurred by reliance on the promise and any loss incurred if the promise is not fulfilled. Here, X would receive the \$10,000 from moving to Australia and \$460,000 from the sale of the house. The HCA in *Giumelli* asserted that although Deane J's approach is the starting point for the enquiry, Mason J's approach to detriment may alternatively be applied. Mason J dissenting in *Verwayen*, supported a narrow approach to detriment, detriment reversal. There, the plaintiff is awarded any loss currently suffered from reliance on the promise. This would see X awarded \$10,000. The approach to detriment chosen by the court will inform the remedy.

There must be a causal connection between the detriment suffered and the reliance on the promise. There is a strong causal link, as X would most likely not have made such a large life changing move, had it not been for Y's promise.

#### iv) Remedy

X may seek a constructive trust over Y's property. The court will impose the minimum equity, doing justice to both parties (*Verwayen*, Mason CJ). The broad approach of Deane J would involve Y's sons receiving little or no funds from the sale of the father's house. This is analogous to the facts in *Giumelli*, where upon imposition of a constructive trust, one son would receive none of the profits from the sale of his parent's property. The court held this would not be consistent with the nature of equity to do justice with good conscience. More information is required on the facts to determine whether Y made a promise to his sons, to give them the value of the property. Assuming Y did so, it would be against good conscience to allow the imposition of a constructive trust over the property in favour of X. This proposition was further affirmed in *JACs*, where the imposition of a constructive trust in favour of White City Tennis was held to be unfair to the third party, Walker. On this reasoning, it is likely if an estoppel is made out, that X will receive the detriment already incurred, under Mason J's approach, that being \$10,000. Alternatively, the court may order an equitable charge or lien over the property between X and Y's sons.

#### **Unconscionable dealings**

Although unlikely, X may argue a case in unconscionable dealings, applying Deane J's test from *Amadio*.

##### i) Special disability

X is likely to speak Polish as her first language. In *Amadio*, the plaintiffs' second language was English. This added to the presence of a special disability. Further, X is in a position of vulnerability, given that U is her uncle. In *Amadio*, the plaintiffs were held to be disadvantaged due to the relationship with their son, on whom they relied. X may also be in a position of disadvantage, given the poor living conditions in Poland. X may also be assumed as having little or no business experience, or experience in the transfer of titles in land. This is analogous to the lack of business knowledge in the plaintiffs in *Amadio*.

##### ii) Knowledge

X has the onus of proving Y's knowledge in her special disability. Y being X's uncle is likely to have knowledge of her level of experience in business, lack of English and dependency on him as family. However, this is an assumption and more evidence is needed. Given Y's dementia, evidence surrounding his request, such as that from his sons to whom he may have confided in, may be relevant.

##### iii) Unconscionable exploitation

Y has the onus of proving the transaction was fair and reasonable. Given that X was not stated as receiving independent legal advice, this is not likely (*Bester*). Independent legal advice need be given about the transaction and without influence. More facts are needed to establish this point, although it may be assumed that it was not received.

It is likely that X will receive a constructive trust over the property. Again, the effect on third parties is relevant (*Giumelli*).

### **Fiduciary Relationships**

X and y are not in a nominate fiduciary category. It may exist on the facts.

Trust and confidence - family relationship.

Undertaking to act in X's best interest. X has a reasonable expectation Y will act in X's best interest, therefore it is likely a fiduciary relationship exists.

Scope of relationship - no profit/ no conflict rule Deane J in *Chan v Zacharia*.

Breach - Sons benefit, could be seen as Y benefitting, though not likely.

Defences - Consent, not likely

Remedies - Constructive trust, *Giumelli*

### **QUESTION TWO**

Acme is a creditor of X and may seek a remedial constructive trust to regain the value of the loan. This is beneficial for creditors to do, as a constructive trust will give the creditor priority to the trust property. The basis for Acme arguing a remedial constructive trust is that it would be unconscionable for them to be denied the interest (*Bofinger*). The doctrine of constructive trust is erratic. It is not known whether the constructive trust is a remedial tool or an institution. In *Bofinger*, the plaintiff was awarded a constructive trust over land, where it was held unconscionable for the second mortgagee to gain an interest in the property, over them. It was discussed there, that it was not necessary to point to specific property, just a breaching party. Here, this would be Y's sons, if they retain the value of the property.

### **QUESTION THREE**

The remedy awarded in estoppel takes account of the position of all the parties. The equitable maxim, the court will impose the minimum relief, is relevant. This approach by the court is consistent with the connection of fairness and good conscience first used to establish the doctrine of equity. In contrast, a breach of contractual obligation will see the plaintiff awarded with damages, had the promise been fulfilled. Hence X would have received the full value of the house. For a valid contract, offer, acceptance and consideration is required. These elements were not present here.