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Cover Page Footnote

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The English Law Doctrine of Proprietary Estoppel and the Extent to which it could be applied in Jordanian Law

Dr. Zaid Muhmoud Al-Aqaileh⁽¹⁾

Abstract

The English law doctrine of proprietary estoppel is an equitable doctrine that represents the intervention of equity to mitigate the strictly harsh rules of the statute, and to create new proprietary rights in land, even in the absence of any formal requirements.

In Jordanian law, proprietary rights in land cannot be created informally, i.e. in the full absence of the needed formalities, and Jordanian courts cannot admit mere promises, or assurances, as a means of creation of such rights.

This article has examined the feasibility of the operation of the doctrine of proprietary estoppel, or a similar doctrine, in Jordanian law and investigated how Jordanian courts currently deal with such disputes as those which are presented before English courts. It has reached the conclusion that it is possible for Jordanian law, with certain limit, to adopt a similar doctrine under the name of “the doctrine of the fair enforcement of representations or promises in land”.

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Introduction

The doctrine of proprietary estoppel is an equitable doctrine that creates and affects rights of property. The gist of the doctrine is that where one party (the landowner) gives some assurance to another party (the representee), or otherwise encourages some belief in the representee, that he has or will have acquired some interests in the landowner's property and the landowner intends that assurance to be relied upon, then if the representee does rely on that assurance and acts to his detriment, the landowner will not be permitted, afterwards, to act inconsistently with that assurance or belief⁽²⁾. Equity of proprietary estoppel has, then, been raised in favour of the representee and it is for the court to determine the appropriate remedy to satisfy the equity⁽³⁾.

This article discusses the English law doctrine of proprietary estoppel and examines the extent to which Jordanian law could benefit from the adoption of such a doctrine or equivalent. It is divided into two main parts. Part one provides an outline of the doctrine of proprietary estoppel, and part two considers proprietary estoppel categories in case-law and discusses how Jordanian law responds to these categories.

Part One: Outline of the doctrine of proprietary estoppel

This part explains the concept of proprietary estoppel and discusses in detail its main conditions.

1.1 The concept of proprietary estoppel

Under this heading, we will discuss definition of proprietary estoppel, its development, its general concern, its general theory, its role, and its conditions.

1.1.1 Definition

According to the Halsbury's Laws of England, estoppel "a disability whereby a party is precluded from alleging or proving in legal proceedings that a fact is otherwise than it has been made to appear by the matter giving rise to that disability"⁽⁴⁾. Therefore, the essence of proprietary estoppel is that the court stops someone enforcing a legal right to land because, if he were to exercise his

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- (2) Thompson M.P, 1981, 'Proprietary Estoppel', Solicitors Journal, Vol.125(1), January, pp.539-540; Pawlowski M, 1996, The Doctrine of Proprietary Estoppel, London, Sweet & Maxwell, p.22; Thompson M.P, 1995, Land Law, First Edition, London, Sweet & Maxwell, p.131.
 - (3) Pawlowski M, 1997, 'Proprietary Estoppel: Satisfying the Equity', The Law Quarterly Review, Vol.113, April, p.232.
 - (4) Lord Halisham of St. Marylebone, 1992, Halsbury's Laws of England, Fourth Edition-Reissue, Vol.16, London, Butterworths, p.951.

legal rights, it would be unfair to the plaintiff⁽⁵⁾. The doctrine of proprietary estoppel has been invoked then to prevent the unconscionable assertion of strict legal property rights⁽⁶⁾.

The basic principle of the doctrine of proprietary estoppel is that a person who makes, by words or conduct, a representation or assurance to another, intending that other to rely on it, and the other does so to his detriment, as by expenditure of money or giving present accommodation, will not be allowed subsequently to take a position inconsistently with the representation which he made. In this way, proprietary estoppel acts as a principle of justice to protect the second person not the first.

1.1.2 Development of the doctrine

The origins of proprietary estoppel can be traced back into the seventeenth century where the court found itself face-to-face with a different case in which there was no way, in its discretion, unless to affirm the rights of the claimant who had relied upon the landowner's assurance and acted to his detriment⁽⁷⁾.

One of the early cases is *Bridges v. Kilburne*⁽⁸⁾ where a man encouraged another to lay out money in the improvement of land and where the court held that he would not be allowed to exercise his legal rights against him (the claimant).

Proprietary estoppel cases from the beginning of the nineteenth century are still frequently cited⁽⁹⁾. However, the speech of Lord Kingsdown in *Ramsden v. Dyson*⁽¹⁰⁾ is commonly referred to as the basis of the modern law⁽¹¹⁾.

In 1989, the Law of Property (Miscellaneous Provisions) Act (1989) (hereinafter LPA) was passed in order to bring more clarity and more certainty into the creation and disposition of interests in land. In practice, the majority of equitable rights must be evidenced in writing within section 2 LPA 1989. But, in exceptional circumstances, equity recognizes the existence of rights arising form

(5) Green K, 1997, Land law, London, Macmillan Press Limited, p.27.

(6) Duthie A, 1988, 'Equitable Estoppel: Unconscionability and the Enforcement of Promises', The Law Quarterly Review, Vol.104, p.362; Thompson M.P, 1981, Op. Cit, p.539; Thompson M.P, 1995, Op. Cit, p.132.

(7) See *Hobbs v. Nelson* (1649) Nels. 47.

(8) *Bridges v. Kilburne* (Unreported, 1792).

(9) See *Hunning v. Ferrers* (1710) Gilb Ch. 85; *Jackson v. Cator* (1800) 5 Ves. 688; *Taylor v. Needham* (1810) 2 Taunt 278.

(10) *Ramsden v. Dyson* (1866) LR 1 HL 129.

(11) See 2.2.1.

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oral contracts or promise, providing the conditions of proprietary estoppel are fulfilled⁽¹²⁾.

The core element of estoppel dictates that, in a fused system of law and equity, legally stipulated entitlements cannot be enforced in total isolation from the relational context in relevant dealings that have taken place⁽¹³⁾. Fortunately, the difficulties flow from an over rigorous reliance on formality are encountered in English property law by the doctrine of proprietary estoppel whose fundamental purpose is to afford protection against the detriment, which would flow from a party's change of position if the assumption that led to it were deserted⁽¹⁴⁾.

Thus, proprietary estoppel is viewed both as a method of preventing unconscionable dealing in relation to land and as a means of creating informal proprietary interests in land whenever a party has acted to his detriment in reliance upon an oral assurance that he has such an interest in land⁽¹⁵⁾.

1.1.3 The central concern of proprietary estoppel

The central concern of proprietary estoppel, as an equitable doctrine, is to prevent the person from insisting on his strict legal rights - whether arising under a contract, or on his title deeds, or by a statute - when it would be inequitable for him to do so having regard to the dealings which have taken place between the parties⁽¹⁶⁾.

Proprietary estoppel is a mechanism whereby rights in or over land may be created informally and the landowner is not permitted to plead the lack of formality in the creation of the defendant's rights if this would be inequitable. Thus, in *Commonwealth v. Verwayen*⁽¹⁷⁾, the High Court held that "the rationale of estoppel is 'not that it is right and expedient to save persons from the consequence of their own mistake, but that it is right and expedient to save them from being victimised by other people. The doctrine of proprietary estoppel thus counteracts the unconscionable conduct, which involves the insistence upon strict legal rights to take advantage of another's special vulnerability or

(12) See Artis D & Houghton J, 2002, Land Law, London, Blackstone Press Limited, p.14.

(13) Gray K, 1993, Elements of Land Law, Second Edition, London, Butterworths, p.312.

(14) Pawlowski M, 1997, Op. Cit, p.232.

(15) Pawlowski M, 1996, Op. Cit, p.22.

(16) See Bailey T, 1983, 'Estoppel and Registration of Title', The Conveyancer and Property Lawyer, pp.99-106; Baughen S, 1994, 'Estoppels Over Land and Third Parties', Legal Studies Journal, Vol.14(2), July, pp.147-155.

(17) Commonwealth v. Verwayen (1990) 170 CLR at 394.

misadventure. Estoppel has the indirect effect of creating proprietary rights on behalf of the claimant who successfully fulfils its conditions”.

The main concern of proprietary estoppel was expressed by Lord Denning in *Moorgate Mercantile Co Ltd v. Twitchings*⁽¹⁸⁾ as follows: “estoppel is not a rule of evidence. It is not a cause of action. It is a principle of justice and of equity. It comes to this: when a man, by his words or conduct, has led another to believe in a particular state of affairs, he will not be allowed to go back on it when it would be unjust or inequitable for him to do so”.

In *Willmott v. Barber*⁽¹⁹⁾, Fry LJ has expressed this in another way: “a man is not to be deprived of his legal rights unless he has acted in such a way as would make it fraudulent for him to set up those rights”. This judgement is similar to that of Scarman LJ in *Crabb v. Arun*⁽²⁰⁾ where he said: “the plaintiff has to establish as a fact that the defendant⁽²¹⁾, by setting up his right, is taking an advantage of him in a way which is unconscionable, inequitable or unjust. The court therefore, cannot find an equity established unless it is prepared to go as far as to say that it would be unconscionable or unjust to allow the defendants to set up their undoubted rights against the claim being made by the plaintiff”.

1.1.4 The general theory of proprietary estoppel

Proprietary estoppel is based on the theory that where there is an assurance by the landowner, reliance by the claimant on that assurance and acting to his detriment as a result of that reliance, then proprietary estoppel arises to protect the claimant and to prevent the landowner from insisting on his strict legal rights so as to find for himself an escape route to get rid of his undertakings⁽²²⁾. Proprietary estoppel arises then to settle, on fair basis, the dispute between the parties as will be seen.

In *Moorgate Mercantile Co Ltd v. Twitchings* (above), Lord Denning said: “the owner is not to be allowed to go back on what he had led the other to

(18) *Moorgate Mercantile Co Ltd v. Twitchings* (1976) Q.B, at 225.

(19) *Willmott v. Barber* (1880) 15 Ch D 96.

(20) *Crabb v. Arun District Council* (1976) Ch. 179.

(21) One can argue here that proprietary estoppel is a principle of justice as well as a rule of evidence. This is because according to the judgement of Scarman LJ the burden is on the plaintiff to prove that the defendant by setting up his right, is taking an advantage of him in a way which is unconscionable, or unjust. This is an important requirement for the plaintiff’s claim in proprietary estoppel to succeed.

(22) See Chappelle D, 1995, *Land Law*, Second Edition, London, Pitman Publishing, p.114; Dixon M, 1994, *Land Law*, London, Cavendish Publishing Limited, p.37.

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believe. So much so that his own title to the property, be it land or goods, has been held to be limited or extinguished, and new rights and interests have been created therein”.

The theory of proprietary estoppel is not a creation of the modern law, although it is certainly has come into force in recent times. In *Willmott v. Barber* (1880) (above), Fry LJ laid down what was be regarded for many years as the five *probanda* of proprietary estoppel or, in other words, the five conditions that needed to be established before a claimant could be awarded a right to another’s land arising informally⁽²³⁾.

The so called five *probanda* of *Willmott v. Barber* established a clear framework for ascertaining a likelihood of a successful plea of proprietary estoppel. However, over a period of time it became clear that courts were prepared to accept a plea of proprietary estoppel when one or more of Fry LJ’s *probanda* were missing⁽²⁴⁾.

1.1.5 The role of proprietary estoppel in the context of land law

The doctrine of proprietary estoppel plays an effective role in the context of English land law. It provides a defence to an action by a landowner who seeks to enforce his strict legal rights against someone who has been informally promised some right over the land. The landowner is not permitted to plead the lack of formality in the creation of the defendant’s rights if this would be inequitable⁽²⁵⁾. Hence, proprietary estoppel plays a much more dramatic role by generating new property interests in land in favour of the claimant⁽²⁶⁾.

Whatever the general role of estoppel, it is clear that it can have a positive effect in the property context. If it were purely a defence, one would expect that it would be limited to deny the owner (O) the right to recover possession from the claimant (C). Yet, estoppel has been used to enable (C) to claim a right in land. At once extreme, the claimant has on occasion been able to force a transfer of the fee simple⁽²⁷⁾ and in other case he has received a lease⁽²⁸⁾ or an

(23) See 1.1.6.

(24) See *Berg Homes v. Grey* (1980) 253 EG 473, *Mathura v. Mathura* (1994) The Times 13 May.

(25) See Sir Mason A, 1997-98, ‘Equity’s Role in the Twentieth Century’, *The King’s College Law Journal*, Vol.8, pp.1-20; Martin J.E, 1997, *Modern Equity*, London, Sweet & Maxwell, pp.45-50.

(26) *Voyce v. Voyce* (1991) 26 P & CR 291.

(27) *Lim Teng Huan v. Ang Swee Chuan* (1992) 1 WLR 113.

(28) *Stiles v. Cowper* (1748) 3 Atk 692; *J.T Development Ltd v. Quinn* (1991) 62 P & CR 33.

easement⁽²⁹⁾.

The significant role of the doctrine of proprietary estoppel stems from the fact that it is much stronger than the common law as it can be used to found a claim as well as to defend one; it can be used as a sword as well as a shield⁽³⁰⁾. Thus, if an equitable interest cannot be acquired by way of a resulting or constructive trust⁽³¹⁾, it may be possible on the facts to claim estoppel⁽³²⁾.

For example, in *Baker v. Baker*⁽³³⁾, the plaintiff father gave up his secure tenancy and moved in with his son and daughter-in-law. The property in which they all lived had been purchased by the son and the daughter-in-law with a substantial contribution from the father, on the understanding that the father was to live there rent free for rest of his life. Shortly, after they all moved in together there was a family dispute and the plaintiff father left, moving, eventually, into the council accommodation which provided him once again with security of tenure, this time rent free as he was granted a housing benefit. The father claimed a beneficial interest in his son's house by way of resulting trust. On the fact of the case he failed, but he did succeed by way of proprietary estoppel.

In such circumstances, the doctrine may operate to prevent the withdrawal of an existing facility, which could otherwise be freely withdrawn, or to make enforceable a new facility, which could not otherwise be enforced⁽³⁴⁾.

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- (29) Crabb v. Arun District Council (above). An easement is a right decided to the benefit of an immovable property over another immovable property owned by another owner. A clear example of an easement is the right of way (see Mansour M.M, 1997, Property Rights, Fifth Edition, Cairo, Dar Al-Falah, p.129; Obaidi A, 2006, Real Property Rights, Amman, Dar Al-Thaqafah for Publishing and Distribution, p.92).
 - (30) Baker J.H, 2002, An Introduction to English Legal History, London, Butterworths, p.132; Gravells N.P, 1995, Land law: Text and Materials, London, Sweet & Maxwell, p.154; Keenan D, 1995, English Law, Eleventh Edition, London, Pitman Publishing Limited, p.123; Chappelle D, Op. Cit, p.114.
 - (31) Trust as a legal relationship created by a person, the settler, when assets have been placed under the control of a trustee for the benefit of a beneficiary, or for a specified purpose. In its structure, trust is similar to the Islamic law institution of waqf. Each of these institutions is an act of charity; the grantor immobilizes his property as an endowment for a charitable purpose to which the income of the property is appropriated (see Abraham R, 1998, The Law of Property in Egypt: Islamic Law and the Civil Code, New Edition, Princeton, Princeton University Press, p.20; Coval S, Smith J.C and Coval S, 1986, 'The Foundations of Property and Property Law', Cambridge Law Journal, Vol.45, November, pp.457-475).
 - (32) See Hayton & Marshall, 1996, Law of Trusts and Equitable Remedies, London, Sweet & Maxwell, p.21; Curson L.B, 1993, Equity & Trusts, London, Cavendish Publishing Limited, p.63.
 - (33) Baker v. Baker (1993) 25 HLR 408.
 - (34) The Law Commission, 1980, Working Paper No.78: Rights of Access to Neighbouring Land,

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1.1.6 The conditions which are required for the operation of proprietary estoppel

As said above, proprietary estoppel has, for many decades, played a distinguished role in English property law, reflecting the intervention of equity to mitigate the consequences of lack of compliance with the formality requirements of the common law. The courts have laid down fairly strict conditions before an estoppel can be proved. These conditions (generally known the five *probanda* of proprietary estoppel) were codified by Fry LJ in *Willmott v. Barber (above)* as follows:

- (a)- The claimant of an equity based on estoppel must have made a mistake as to his legal rights over some land belonging to another.
- (b)- The claimant must have spent some money or carried out some action on the faith of his mistaken belief.
- (c)- The true landowner must know of the claimant's mistaken belief.
- (d)- The owner of the land over which the rights are claimed must know of the existence of his own rights which are inconsistent with the alleged rights of the claimant.
- (e)- The landowner must have encouraged the expenditure by the claimant, either directly or by abstaining from enforcing his legal rights.

The five *probanda* identified by Fry LJ related quite clearly to 'unilateral mistake' cases and they were approved in *Kammins Ballrooms Co Ltd v. Zenith Investments (Torquay) Ltd*⁽³⁵⁾. However, it has been established that not all the *probanda* have to be satisfied, in particular where there is a representation. Oliver J declared in *Taylor's Fashions Ltd v. Victoria Trustee Co Ltd*⁽³⁶⁾ that the *probanda* should not be seen as strict rules. He stresses that the modern tendency is to adapt a much more flexible approach and asks 'whether, in certain circumstances of the case, it was unconscionable for the defendant to seek to take advantage of the mistake which, at the material time, everybody shared'. Oliver J's approach has been supported by the Court of Appeal in many cases⁽³⁷⁾.

London, Her Majesty's Stationary Office (HMSO), pp.11-12.

(35) *Kammins Ballrooms Co Ltd v. Zenith Investment (Torquay) Ltd* (1971) AC 850. See Royle R, 1995, Briefcase on Land Law, London, Cavendish Publishing Limited, p.91.

(36) *Taylor Fashions v. Liverpool Victoria Trustee* (1981) 1 All ER 879.

(37) See for example: *Nationwide Anglia BS v. Ahmed & Balakrishnan* (1995) 70 P & CR 381; *Berg Homes v. Grey (above)*.

Gradually, it came to be recognized that the five *probanda* of Fry LJ did not constitute a comprehensive formula and the way was prepared for a broader restatement of the principle of estoppel⁽³⁸⁾.

1.2 Requirements of proprietary estoppel

Generally, proprietary estoppel will not arise in favour of the claimant against the landowner, unless certain requirements are satisfied. These requirements are not rigid, but they are guide-lines for determining whether it would be unconscionable for the landowner to rely on his strict legal rights:

1.2.1 Assurance (representation or expectation)

In order to establish a plea of proprietary estoppel, the claimant must show that there has been a representation given or an expectation created by the fee simple owner or his employee or agent⁽³⁹⁾. It is not sufficient to raise the equity that the assurance of entitlement was given by a tenant of the freehold owner⁽⁴⁰⁾. The party giving the assurance need not be a human; a company acting through its employees or agents can give a relevant assurance or representation⁽⁴¹⁾.

The representation must relate to present or future rights in or over the land of the person making the representation. It can be active⁽⁴²⁾ or passive⁽⁴³⁾, but in either case the person making the representation must intend the claimant to rely on it⁽⁴⁴⁾. Importantly, the form this assurance or representation takes is irrelevant and usually it is given orally or in the context of a written transaction that is not itself enforceable⁽⁴⁵⁾. The determining factor in this context is the impact which the assurance has upon the mind of the claimant as a reasonable person.

In *Lim Teng Huan v. Ang Swee Chaun*⁽⁴⁶⁾, a written, although unenforceable agreement was held to constitute the requisite assurance, and the Privy Council held that for proprietary estoppel to exist it was enough if there was an assurance, reliance and detriment.

(38) See Halliwell M, 1994, 'Unconscionability as a Cause of Action', *Legal Studies Journal*, Vol.14(1), March, p.15; Duthie A, Op. Cit, p.362.

(39) *Ivory v. Plamer* (1975) I C R 340.

(40) *Ward v. Kirkland* (1967) Ch 194 at 241 D.

(41) *Swallow Securities Ltd v. Isenberg* (1985) 274 EG 1028.

(42) *Plimmer v. Mayor etc of Wellington* (1884) 9 App Cas 699.

(43) *Warnes v. Hedley* (Unreported, Court of Appeal, 13 January 1984).

(44) *J.T Development Ltd v. Quinn* (above).

(45) *Brown M*, 2002, *Property Law*, Surrey, Tolley Publishing Company Limited, p.189.

(46) *Lim Teng Huan v. Ang Swee Chuan* (1992) 1 WLR 113.

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Assurance may be express⁽⁴⁷⁾ or implied⁽⁴⁸⁾. It must be clear and unequivocal⁽⁴⁹⁾. But, in any case, it must be proved that the party giving the assurance knew or ought to have known that the claimant was acting in the belief that he was acquiring some entitlement on the strength of the assurance⁽⁵⁰⁾.

1.2.1.1 Representation

The estoppel claimant must show that the representation was given by the freehold owner or his employee or agent. The representation must be one of an existing fact⁽⁵¹⁾. The courts are reluctant, however, to attach significance to mere silence on the part of the landowner unless it is quite clear that he deliberately intended that his silence should be construed as endorsing the supported entitlement of the estoppel claimant⁽⁵²⁾.

In *Maharaj (Sheila) v. Chand*⁽⁵³⁾, the woman had been represented by her partner, that, if she moved into her partner's house, he would see that she always had a roof over her head. In reliance on his representation, she gave up her secure rented accommodation and moved into his house. It was held that an equity of proprietary estoppel raised in her favour and her partner's representation amounted to an effective assurance.

Accordingly, there are two major types of representation:

(a)- Active representation, which occurs when the landowner, by words or conduct, leads the claimant to expect that he enjoys some entitlement in the land. *Griffiths v. Williams*⁽⁵⁴⁾ provides a good example here. In this case, the Court of Appeal held that there was a sufficient representation where a mother has assured her daughter, who was living with her and caring for her, that she would be entitled to live in the house for the whole of her life; (b)- Passive representation, which occurs when the landowner stands by doing nothing to disavow the claimant of a mistaken expectation that he is or will become entitled to an interest in the land. The possibility of a passive representation was raised by Lord Cranworth in *Ramsden v. Dyson (above)*⁽⁵⁵⁾.

(47) *Salvation Army Trustees v. West Yorkshire CC* (1981) 41 P & CR 179.

(48) *Ramsden v. Dyson (above)*. See Brown M, Op. Cit, pp.173-175.

(49) *J.T Development Ltd v. Quinn (above)*.

(50) *Gross v. French* (1976) 238 EG. 39 at 41.

(51) *Brikom Investment Ltd v. Carr* (1979) QB 467.

(52) *Ramsden v. Dyson (above)*.

(53) *Marahaj (Sheila) v. Chand (Jai)* (1986) AC 898.

(54) *Griffiths v. Williams* (1977) 248 EG. 947.

(55) See 2.3.1.

1.2.1.2 Expectation by the claimant

It is essential that the owner must have some responsibility for what the claimant has done. If the owner is ignorant of the claimant's claim and of the detriment, then it may not be unconscionable to deny claimant's claim. In practice, most expectations arise from presentations or assurance by the landowner⁽⁵⁶⁾.

In *Crabb v. Arun DC (above)*, the claimant expected that a right of access would be allowed, sold off part of the plot, thereby rendering the retained part landlocked. The sale constituted the detriment. The owner denied the awareness of the specific sale, although there was knowledge of the general intentions of the claimant as to the land. Whilst accepting that the problem was not covered by authority, the Court of Appeal had no difficulty in holding that the owner's general awareness was sufficient. As Cretney⁽⁵⁷⁾ indicated: "equity would arise to have the expectations, which had been encouraged, made good".

Another example may be found in *Nepean District Tennis Association Inc v. Council of the City of Penrith DC*⁽⁵⁸⁾ where the New South of Wales Court of Appeal granted compensation to an estoppel claimant which had resurfaced a tennis court complex in the 'reasonable expectation', albeit unsupported by any representation, that it would acquire a long-term lease of the complex.

1.2.1.3 The nature of the rights promised

The rights promised must be rights in or over land and must fall within the capacity of the owner to grant. Estoppel cannot be found on a representation that a planning permission will be available for the development on the claimant's land⁽⁵⁹⁾. It, also, cannot operate if the rights promised have already passed to the claimant of the equity before he incurs his expenditure or otherwise acts on the assurance given to him⁽⁶⁰⁾.

There is no requirement that the representation should be formulated in terms of a specific recognized proprietary interest and the courts have shown themselves willing, in practice, to invoke the doctrine of proprietary estoppel to give effect to expectations of entitlement which vary from a fee simple interest

(56) Duthie A, Op. Cit, p.362; Halliwell M, Op. Cit, p.15.

(57) Cretney S.M & Masson J.M, 1997, Principles of Family Law, Sixth Edition, London, Sweet & Maxwell, p.152.

(58) Nepean District Tennis Association Inc v. Council City of Penrith DC (1989) NSW ConvR 55-438.

(59) Western Fish Products Ltd v. Penwith DC (1981) 2 All ER 204.

(60) Avondale Printers & Stationers Ltd v. Haggie (1979) 2 N Z L R 124. See Brown M, Op. Cit, p.165.

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in land to the beneficial ownership of a share in land, a right of pre-emption, a lease, or an easement⁽⁶¹⁾.

1.2.2 Reliance

It is essential for the claimant to show that he has acted in reliance upon the representation or expectation that he has or will have acquired new proprietary rights in or over the land owned by the party who gave this representation or assurance. The claimant must rely on the assurance given to him, in that it must be possible to show that he was induced to behave differently because the assurance had been given. In practice, this is very difficult to prove, and the court may be prepared to infer reliance if that is a plausible explanation of the claimant's conduct. Thus, in *Greasley v. Cooke*⁽⁶²⁾, the Court of Appeal held that if clear assurance has been made, and detriment has been suffered, it is permissible to assume that reliance has occurred.

1.2.2.1 Presumption of reliance

It is apparent that there is a presumption of reliance once an assurance on the part of the legal owner has been established. The observations of Lord Denning in *Greasley v. Cook* (*above*) have been judicially interpreted as meaning that "where, following assurances made by the other party, the claimant has adopted a course of conduct which is prejudicial or otherwise detrimental to her, there is a rebuttable presumption that she adopted that course of conduct in reliance on that assurance".

In *Brikom Investment Ltd v. Carr* (*above*), Lord Denning suggests that "there is a presumption of reliance once it is shown that a representation was calculated to influence the judgement of a reasonable man". Also, in *Wayling v. Jones*⁽⁶³⁾, the Court of Appeal held that the burden was on the landowner to prove that the claimant did not rely upon the assumption or expectation and he had to establish the opposite.

1.2.2.2 Reliance as the causal link between assurance and detriment

Reliance provides a vital evidence of the causal link between the representation or assurance given by one party (the landowner) and the detriment suffered by the other (the claimant). It must be proved that the assurance has

(61) See *Hamp v. Bygrave* (1983) 266 EG. 270 at 726. For more details, see McKenzie T.W, 1998, *Equity Plays its Role*, London, Star House Ltd, p.257.

(62) *Greasley v. Cooke* (1980) 1 WLR 1306.

(63) *Wayling v. Jones* (1993) 69 P & CR 170.

induced the expectations of the party to whom it was given or has at least influenced his conduct⁽⁶⁴⁾.

It was stated in *Wayling v. Jones (above)*, that there must be a sufficient causal link between the promises relied upon by the estoppel claimant and the conduct which constitutes the detriment. In other words, the promises or representations made must be an effective cause of the detrimental conduct.

Accordingly, the courts have refused to apply the doctrine of proprietary estoppel where it was felt that the claimant contributed money and labour, not in the belief that she was acquiring either an interest in the family home or a right to live there, but merely because she was part of the family. There was no evidence of any causal link between the expectation and her change of position (arising from her expenditure) in respect of which the equity is claimed⁽⁶⁵⁾.

1.2.2.3 Change of position

In order to establish a claim of proprietary estoppel there must be a change of position by the party who has relied upon the assurance given to him by the landowner. In *Lloyds Bank v. Rosset*⁽⁶⁶⁾, Lord Bridge stated that in order to generate a constructive trust or proprietary estoppel the claimant “must show that she had acted to her detriment or significantly had altered her position in reliance on the representation”. Where there is no demonstrable change of position, the claim of estoppel, obviously cannot succeed.

The required change of position itself involves two features:

(a)- Proof of detriment

There must be proof of ‘detriment’ by the party who relies on the assurance and who seeks to establish a claim in proprietary estoppel. There is no complete catalogue of behaviour, which will be regarded as constituting sufficient detriment or change of position to establish an estoppel. However, certain types of conduct have been recognized as sufficient:

(i)- Expenditure by the claimant

The most obvious kind of detriment is that which relates to financial expenditure on improvements to realty, provided that the expenditure is incurred

(64) See McKenzie T.W, Op. Cit, p.241.

(65) Philip Lowe (Chinese Restaurant) Ltd v. Sau Man Lee (Unreported, Court of Appeal, 9 July 1985).

(66) Lloyds Bank Plc v. Rosset (1991) 1 CA 107.

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in reliance upon the representation. In *Pascoe v. Turner*⁽⁶⁷⁾, the representee was held to have acted to her detriment when she spent money improving, repairing and decorating the house of her former lover in reliance on his representation that she was entitled to an interest in land. Also, proprietary estoppel has been recognized where the claimant has built a dwelling-house on another's land or has financed an addition or extension to some existing construction⁽⁶⁸⁾.

(ii)- Claimant improves his land

If the representee incurs expenditure improving or changing his own land in reliance on a representation of entitlement to a representor's land, this will be sufficient detriment. For example, in *Rochdale Canal Co v. King*⁽⁶⁹⁾, the representee built a mill on his land and laid of pipes for the purpose of drawing water from the canal which belonged to the canal company. The company showed acquiescence and the court held that it was not entitled to an injunction to restrain the representee from drawing water.

(iii)- Representee purchases a new land

A representee will have acted to his detriment if he purchases a new land on the basis of a representation or a promise. Thus, in *Salvation Army v. West Yorkshire Metropolitan*⁽⁷⁰⁾, the Salvation Army purchased a new site and built a replacement hall when the Council represented that they would be requiring their present site for a road widening scheme. They were later informed that the scheme would not be adopted for some reasons. The Court of Appeal held that the Salvation Army were entitled to an equity and proprietary estoppel would interfere to afford protection to them.

(iv)- Other types:

A change of position may comprise other forms of conduct or activity, e.g. where the claimant had contributed of physical labour⁽⁷¹⁾, where the claimant had given up secure rented accommodation⁽⁷²⁾, etc. In each case, however, the required change of position must be a bona fide change of position⁽⁷³⁾.

(67) *Pascoe v. Turner* (1979) 1 WLR 431.

(68) *Hussey v. Palmer* (1972) 1 WLR 1286.

(69) *Rochdale Canal Co v. King* (1853) 16 Beav. 630.

(70) *Salvation Army Trustees v. West Yorkshire CC* (1981) 41 P & CR 179.

(71) *Dodsworth v. Dodsworth* (1973) 228 EG. 1115.

(72) *Marahaj (Sheila) v. Chand (Jai)* (1986) AC 898.

(73) *Koffman L and Macdonald E*, 1995, *The Law of Contract*, Second Edition, Surrey, Tolley Publishing Company Limited, p.504; *Artis D & Houghton J*, Op. Cit, p.87.

(b)- Causal nexus

The change of position undertaken by the claimant must be referable to his reliance upon the assurance given to him. Detriment *per se* is not sufficient to support a claim of proprietary estoppel. It must be shown that the claimant's change of position was referable to his reliance upon what he had been assured by the landowner. There must be a causal nexus between the legal owner's assurance or representation and the claimant's active willingness to undergo detriment or sacrifice⁽⁷⁴⁾.

In *Bhimji v. Salih*⁽⁷⁵⁾, Brightman LJ expressed the view that the doctrine of proprietary estoppel can apply only "where the promisee has in fact acted to his detriment in the sense that the promisee has altered his position in a way which would be to his disadvantage, if the strict legal position remained unqualified".

Mere alteration of a person's lifestyle may not be regarded. Thus, in *Watts v. Story*⁽⁷⁶⁾, the grandson aged 30 years had moved from a settled life in his home town in order to live with and look after his elderly grandmother. There was some evidence that she had promised him that, in return for his services, her house would be his when she died. Although there was a substantial evidence of disadvantage suffered by him, the Court of Appeal rejected his claim on the basis that an 'alteration of personal lifestyle is not necessarily a relevant change of position in the law of proprietary estoppel'.

1.2.3 Detriment

It is essential for the claimant to act to his detriment before proprietary estoppel can be made out. The origins of this form of estoppel lie in expenditure on the land. Although this remains the most obvious example of detriment, it may take quite different forms and certainly need not benefit the landowner⁽⁷⁷⁾. Several examples may be given from the cases: looking after the landowner or members of his family⁽⁷⁸⁾, leaving one's existing home where there is a right to remain and also an existing job⁽⁷⁹⁾, selling part of one's land leaving the remainder land-locked⁽⁸⁰⁾, building a garage on one's land on the basis of a right

(74) Duthie A, Op. Cit, p.362; Thompson M.P, 1981, Op. Cit, p.539.

(75) *Bhimji v. Salih* (Unreported, Court of Appeal, 1978 B No. 1099, 4 January).

(76) *Watts v. Story* (Unreported, Court of Appeal, 14 July 1983).

(77) Riniker U, 1998, 'The Fiction of Common Intention and Detriment', *The Conveyancer and Property Lawyer*, May-June, p.202.

(78) *Greasley v. Cooke* (above).

(79) *Jones (A.E) v. Jones (F.W)* (1977) 1 XVL R 438.

(80) *Crabb v. Arun District Council* (above).

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of access⁽⁸¹⁾, buying and building on replacement land in reliance upon the sale of land originally owned⁽⁸²⁾, building a mill on one's own land in the belief that he would be able to take water for it from the landowner's canal⁽⁸³⁾.

The idea of estoppel is simply expressed by Dixon J in *Grundt v. Great Boulder Pty Gold Mines*⁽⁸⁴⁾ in terms that 'the party asserting the estoppel must have been induced to act to his detriment'. Dixon J went to say: "the real detriment or harm from which the law seeks to give protection is that which would flow from the change of position if the assumption were deserted that led to it. So long as the assumption is adhered to, the party who altered his situation upon the faith of it cannot complain. His complaint is that when afterwards the other party makes different state of affairs the basis of an assertion of right against him then, if it is allowed, his original change of position will operate as detriment".

In proprietary estoppel, it is arguable that the remedy is more closely related to the claimant's detriment than to the landowner's promise. It can, thus, be said that estoppel is doing something quite different from enforcing promise; it is remedying the inequity resulting from the landowner encouragement or acquiescence in the claimant's detriment.

In *Inwards v. Baker*⁽⁸⁵⁾, Danckwerts LJ said: "it seems to me that this is one of cases of an equity created by estoppel, or equitable estoppel as it sometimes called, by which the person who has made the expenditure is induced by the expectation of obtaining protection, and equity protects him so that an injustice may not be perpetrated".

1.2.4 No bars to the equity

There must be no bars to the equity and the court may deny a claim based on proprietary estoppel in many different situations, these are:

(a)- Fetter on the statutory discretion or statutory duty of a statutory body

No public body can be estopped from performing a duty on it by statute or from exercising a discretion conferred on it by legislation. Thus, in *Western Fish Products v. Penwith*⁽⁸⁶⁾, the Court of Appeal held that an estoppel could not be

(81) E R Ives Investment Ltd v. High (1967) 2 QB 379.

(82) Salvation Army Trustees v. West Yorkshire CC (above).

(83) Rochdale Canal Co v. King (above).

(84) Grundt v. Great Boulder Pty Gold Mines Ltd (1937) 59 CLR 641.

(85) Inwards v. Baker (1965) 2 QB 929.

(86) Western Fish Products Ltd v. Penwith DC (above).

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(f)- Volunteer

A claim of proprietary estoppel cannot be established if the claimant is a volunteer, and the maxim ‘*equity will not assist volunteers*’ applies. Thus, a claim based on proprietary estoppel was rejected by the Court of Appeal when the claimant was merely a volunteer and there was no causal link between the detriment suffered and the assurance given⁽⁹¹⁾.

Part Two: Propriety estoppel categories in case-law

Law cases present the essential characteristics which embody the notion of the doctrine of proprietary estoppel, and each category of cases, in its turn, gives an emphasis to one or another of the constituent elements of assurance, reliance or detriment. Based on the available cases, proprietary estoppel could be divided into four main categories:

2.1 Imperfect gift cases

2.1.1 The position under English law

The general rule is that a gift of an estate, or interest, in land must be executed by using the appropriate legal formalities according to section 52 of the Law of Property Act 1925⁽⁹²⁾ which provides “all conveyances of land or of any of an interest therein are void for the purpose of conveying or creating a legal estate unless made by deed”. In default of such formality, the gift remains incomplete, but equity intervenes to perfect it. This means that in the absence of such formalities, the gift is normally unenforceable both at law and in equity, but the doctrine of proprietary estoppel may be invoked, in this context, to complete an imperfect gift.

In *Dillwyn v. Llewelyn*⁽⁹³⁾, a father allowed his son to build for himself a house on a land which he, the father, owned on the understanding that the father would convey the title of the land to the son who built a house, spending £14,000 with the knowledge and approval of the father. But, no conveyance was made and the son claimed to be entitled to have a conveyance of a fee simple. The Court of Appeal held that where gratuitous assurance is given that an estate or interest in land will be transferred, there arises an equity in favour of the promisee based upon proprietary estoppel, provided that the promisee suffers detriment in reliance on that assurance. Accordingly, the Court of Appeal upheld

(91) See *Watts v. Story* (above).

(92) The Law of Property Act 1925 became effective as of 1 January 1926.

(93) *Dillwyn v. Llewelyn* (1862) 4 De G F & J 517.

the son's claim and held that he is entitled to have the legal fee simple conveyed to him.

Similarly, in *Voyce v. Voyce*⁽⁹⁴⁾, a mother gave one of her sons a cottage and some land as a gift on the condition that he 'does it up'. This he did, incurring some considerable expense in so doing. There was no deed in regard to this gift, but several years later the mother executed a deed of a gift in regard to the same cottage in favour of her younger son who provided no consideration for the gift. Later, the elder son began to build an extension to the property. The younger brother claimed that this interfered with the right to his property. The Court of Appeal held that as the elder son has spent substantial sums on the cottage in reliance upon his mother's promise, she was estopped from denying the gift and, as the younger brother could not be in any better position than his mother, the elder son was the owner of the property.

From the above cases one can notice that the court has the ability to interfere in order to hold in favour of the promisee and to perfect the imperfect gift even in the absence of any required formalities. So, equity has intervened in order to do justice between the parties to the case and to give a remedy to the person adversely affected.

It has been argued by Moriarty⁽⁹⁵⁾ that the device of proprietary estoppel is simply a mechanism by which the law sanctions the informal creation of proprietary rights in land. For example, in *Voyce v. Voyce (above)*, it is the lack of legal formalities that creates the problem and proprietary estoppel is simply used to make up for its absence.

One can say that this is a logical argument since the main object of the doctrine of proprietary estoppel is to guide the court to grant remedies to the estoppel claimant in order to prevent the unconscionable conduct by the part of the landowner. In other words, an unambiguous assurance of entitlement must be honoured in light of the subsequent reliance upon it.

2.1.2 The position under Jordanian law

In order to explain the Jordanian law expected response to similar estoppel-type factual problems, as they exist in English law, it is necessary to discuss the position in Jordanian law in general, thereafter to investigate how Jordanian law

(94) *Voyce v. Voyce (above)*.

(95) Moriarty S, 1984, 'Licences and Land Law: Legal Principles and Public Policies', *The Law Quarterly Review*, Vol.100, p.376.

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deals with such problems, and what types of possible remedies that can be granted by Jordanian courts.

At the beginning, it is noteworthy that Jordanian law does not admit promises, representations, or assurances, as a means of the creation of any proprietary rights in the representor's land⁽⁹⁶⁾. In other words, Jordanian law denies mere promises, which have not been registered in the land register, as methods of the creation of any rights in the property, which is owned by the legal owner who gives these assurances or promises⁽⁹⁷⁾. Therefore, a representee cannot plea to the court to obtain an order compelling a representor to fulfil his promise, unless the promise is registered in the land register at the land registration department whose the land in question lies within its area of responsibility⁽⁹⁸⁾. Registration in the land records offers the promisee a prima facie evidence of his real right⁽⁹⁹⁾. It is to be added that such a term as estoppel has no exact counterpart in Arabic⁽¹⁰⁰⁾.

To clarify the situation, however, let us suppose a hypothetical example in which a man, Ali, and a woman, Noor, lived together in an established relationship according to law. Ali (the husband) is the legal owner of the house. He assured Noor (his wife) that the house is hers. In reliance upon Ali's representation, Noor carried out some improvements, decorations and bought some furniture. Later, differences between them lead to divorce and Ali sought to evict Noor from the house, which is registered in his name.

What is the solution in Jordanian law? Could Jordanian courts interfere to give her a share in the house?

As mentioned above, Jordanian law does not admit promises as methods of the creation of proprietary rights in land. In the above scenario, Jordanian courts will not hold in favour of Noor, unless Ali's promise has been registered in the land records at the land registration department whose the property in question (the house) lies within its area.

(96) See the Jordanian Court of Cassation Decisions: No.297/80 (1981); No.259/80 (1981); No.813/88 (1988); and No.142/87 (1989) (Adaleh Publications: www.adaleh.com).

(97) Mansour A, 2001, *The General Theory of Obligations*, First Edition, Amman, Dar Al-Thaqafah for Publishing and Distribution, p.84.

(98) See section 106 & section 254 of the Jordanian Civil Code No.43 of 1976 (JCC 1976).

(99) Siwar M, 2006, *Explanation of the Jordanian Civil Law: Original Property Rights*, Volume 2, Amman, Dar Al-Thaqafah for Publishing and Distribution, p.146; Obaidi A, *Op. Cit.*, pp.160-161.

(100) Al-Termanini Abdulsalam, 1982, *Comparative Law and Modern Legal Curriculums*, Second Edition, Kuwait, Kuwait University Press Publications, p.199.

What if Ali’s promise has been registered?

If Ali’s promise has been registered in the land register, the court will, certainly, hold in favour of Noor, applying sections 106 & 566 of the Jordanian Civil Code No.43 of 1976. Section 566 states “the effectiveness of the contract of gift shall be subject to the completion of any procedures prescribed by the legislative provisions for the transfer of ownership and either party to the contract may complete the necessary procedures; and in respect of movable property it shall be completed by taking delivery without any need for registration”. Also, section 106 states “if a person promises to make a contract and then withdraws and the other person sues him for the fulfilment of the promise and if the contract requirements and particularly those relating to form are fulfilled, the court’s decisions when it is finally binding shall replace the contract”⁽¹⁰¹⁾.

What is the solution if Ali’s promise has not been registered in the land register?

If Ali’s promise has not been registered in the land register, Jordanian courts will not leave Noor without remedy. In this scenario, the court may grant Noor a monetary compensation depending on the amount of money she spent on improving the house⁽¹⁰²⁾. The court may resort to apply section 256 of the Jordanian Civil Code No.43 of 1976 according to which “every injurious act shall render the person who commits it liable for damages even if he is a non-discerning person”. Alternatively, it may resort to apply section 1149 of the Code which states “the undertaking to transfer the ownership of an immovable property shall be limited to an undertaking for damages if either party commits a breach of his undertaking whether the damages are stipulated in the undertaking

(101) In addition, section 20 of the Ownership of Floors and Flats Law No.25 of 1968 and its amendments states “notwithstanding the provisions of this Law or of any other legislation, the agreement in which two parties pledge to enter into a contract in the future according to which one party will sell to another an apartment, a floor, or a building that has not been constructed yet, or that is under construction is regarded as a legally binding agreement if it is registered in the land register concerned...”.

(102) This, of course, is in addition to her rights to seek maintenance for her children for whom she keeps the right of incubation (see sections 171-173 of the Personal Status Law No.36 of 2010). It should be added that according to sections 72-73 of the Personal Status Law No.36 of 2010, the husband is required to make available for his wife a suitable accommodation that contains all furniture and facilities necessary for living. This accommodation with its furniture, however, will not be subjected to execution in case of the default of payment of debts and the court ruled in favour of the creditor (sections 28-29 of the Law of Execution No.25 of 2007).

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or not”.

In any case, however, the court will do its best so as to achieve justice to the woman. This is because Jordanian law, which finds most of its roots in shari’a, looks to a woman as a weak party and seeks to protect her as she cannot bear heavy burdens similar to those which a man can do.

Let us take another example where A is the grandfather and B is the grandson. A who is the owner of a piece of land promised B that if B builds on A’s land, A would convey the title of the land to B’s name. B did so. Six months later, A died without any conveyance having been made.

What is the legal position of the grandson (B)?

As Jordanian law does not admit mere promises as a means of the creation of any rights in property, the grandson cannot go to the court so as to obtain an order compelling his grandfather (during his life), or the executors, to fulfil the promise. However, if the son goes to the court and brings an action against the executors, the court will do its best to achieve a just solution and to prevent any injustice to him. Based on the facts and circumstances of the case, the court may grant the grandson, a monetary compensation depending on the amount of money he incurred.

The court may resort to apply section 256 of the Jordanian Civil Code No.43 of 1976 which states “every injurious act shall render the person who commits it liable for damages even if he is a non-discerning person”. In addition, since the case assumes A’s death after six months, the court may resort to apply sections 543-547 of the Jordanian Civil Code No.43 of 1976 which are relating to the sale in a dying sickness. According to these sections the sale by a sick person of some of his property to one of his heirs shall not be effective unless it is approved by the other heirs after the testator’s death, whilst the sale to an outsider for the quantum meruit price or with a slight prejudice shall be effective and not dependent on the approval of the heirs. This means that the rules governing the will⁽¹⁰³⁾ also govern the sale in a dying sickness. Accordingly, the property owner (the grandfather in the above example) cannot make a will for a successor and cannot make a will that exceeds one-third of the property.

Are the remedies which may be granted by Jordanian courts adequate?

In fact, the remedies which may be granted by Jordanian courts in the above examples are inadequate; they may result in an injustice to the promisee who has

(103) Section 1125(1) JCC 1976 defines a will as “a disposition of the estate contingent on death”.

acted to his detriment in reliance upon assurances or promises given to him by the legal owner of the land that he has or will have acquired a proprietary right in his land.

It is noteworthy that the amount of compensation as well as the regular maintenance that may be granted by the court to Noor in the first example may be of a lesser value than that of a fee simple in land. This, also, applies to the second example.

The shortage of remedies invites for consideration of a new means of achieving justice for the promisee who has acted to his detriment in reliance upon an assurance or promise, albeit informal, that he has or will have acquired a proprietary rights in the landowner’s property. It can be suggested, here, that the adoption of the doctrine of proprietary estoppel, or its equivalent, will not only help to solve many proprietary problems in the Jordanian civil law but also it can help to achieve a high level of justice for the promisee. Ultimately, this will fill up the gaps and cover the lack of provisions of the Jordanian civil law in the concern.

2.2 Common expectation cases

2.2.1 The position under English law

This category of cases concerns the position where A and B have consistently dealt with each other in such a way as reasonably to cause A to rely on a shared supposition that he would acquire rights of some kind in B’s land. Then, it would be unconscionable for B to deny A’s rights in his land⁽¹⁰⁴⁾.

The classic exposition of the common expectation formulation of the proprietary estoppel doctrine is to be found in the speech of Lord Kingsdown in *Ramsden v. Dyson (above)*⁽¹⁰⁵⁾. Here, Lord Kingsdown stated: “if a man, under a verbal agreement with a landlord for certain interest in land, or what amounts to the same thing, under an expectation, created or encouraged by the landlord that he shall have a certain interest, takes possession of such land, with the consent of the landlord, and upon the faith of such promise or expectation, with the knowledge of the landlord, and without objection by him, lays out money upon the land, a court of equity will compel the landlord to give effect to such promise or expectation”.

(104) See Halliwell M, Op. Cit, p.15; Duthie A, Op. Cit, p.362.

(105) See 1.1.2.

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The most obvious example of this form of cases is to be found in *Plimmer v. Mayor etc of Wellington (above)*. In this case, the appellant, with the permission of the Crown, had erected a wharf and later a jetty on the foreshore of Wellington (New Zealand) harbour. Part of the harbour, including the land occupied by the appellant, became vested by the statute in the provincial government; but the appellant continued to use the jetty. The government were engaged in the important work of inducing the immigrants into the colony. For some reason, they were not prepared to make landing-places of their own. So, they applied to John Plimmer to make his landing-place more commodious by a substantial extension of his jetty and the erection of a warehouse for baggage. The land subsequently vested in the respondent corporation, which took possession of the jetty and the warehouse. The appellant claimed statutory compensation on the ground that he had 'an estate or interest in land'. The Privy Council decided that the circumstances fell within the principle stated by Lord Kingsdown as to expectations created or encouraged by the landowner, and that the appellant had an equity arising from the expenditure on land. Accordingly, he had acquired a perpetual right to the jetty for the purpose of the original licence and this licence became irrevocable.

The case of *Inwards v. Baker (above)* provides another example. In this case, the younger Mr. Baker wished to build a bungalow for himself on land which he hoped to purchase, but the project was beyond his means. His father said 'why not put the bungalow on my land and make the bungalow a little bigger'? The son did so, building the bungalow largely through his labour and expense. He lived there continuously until his father's death in 1951, and so from that date until the proceedings began. The land was left elsewhere in a will dated 1922, and in 1963 the trustees for sale of land brought proceedings for possession. The Court of Appeal refused to allow the trustees under the father's will to obtain possession against the son holding that the son had acquired by reason of his expenditure on the land an 'equity' which bound not only the father (while he was alive) but also his successors in title with notice. In giving equitable relief, the court took the view that the equity could be satisfied only by holding that 'the son can remain there as long as he desires to'.

From discussion of the cases above, it seems that the common expectation engendered by the encouragement of the owner of the land can give rise to an equity based on proprietary estoppel. Thus, proprietary estoppel, as an equity-made doctrine, interferes to give effect to such expectation and to prevent any unconscionable conduct by the part of the legal owner of the land.

This formulation of the doctrine of proprietary estoppel is known as estoppel by ‘encouragement’ or estoppel by ‘acquiescence’. The general aim of this form of estoppel is to prevent the expectation from being defeated when the other party (the representee) had relied upon such a shared assumption or expectation⁽¹⁰⁶⁾.

In this sense, the fundamental target of the court is to do justice between the parties and to give suitable remedies as it sees fit according to the facts of the case. This was expressed by Lord Denning in *Baker’s case*⁽¹⁰⁷⁾ as follows: “the court will not allow the expectation to be defeated where it would be inequitable to do so...it is quite plain that the father allowed the expectation to be created in the son’s mind that the bungalow was to be his home”.

2.2.2 The position under Jordanian law

As said above, Jordanian civil law does not admit assurances, representations, or even any shared assumptions or expectations, as methods of the creation of rights of any kind in property. The only way to extract recognition of these promises or representations from the court is to register them in the land register concerned⁽¹⁰⁸⁾.

In order to clarify the position in Jordanian law, let us review an example from the English case law. An obvious example can be seen in the case of *E R Ives Investment v. High (above)*. In this case, A bought the site of a bombed building in Norwich and started to build a house on it. At the same time, B bought a site adjoining A’s land and started to build a block of flats on it. The foundations of B’s flats encroaches beneath A’s land, extending a foot over the boundary some feet below ground level. After negotiations, an agreement had been reached between them under which B was allowed to retain the foundations of his flats on A’s land and A was to have a right of way from his land across the yard of B’s flats so as to give him access to a road. Relying on the expectation, A built a garage, the only access to it was across B’s land. B raised no objection to the building of the garage. Later, when B sold his land to C, the latter sought an injunction restraining A from using the yard. The Court of Appeal held that by the reason of the acquiescence of C’s predecessors in A’s right under the

(106) See Christine J, 1996, ‘Proprietary Estoppel: Future Interests and Future Property’, *The Conveyancer and Property Lawyer*, May-June, p.193; Derham R, 1997, ‘Estoppel by Convention - Part I’, *The Australian Law Journal*, Vol.71(11), November, p.860; Snell E.H, Baker P.U & Langan P, 1982, *Snell’s Principles of Equity*, London, Sweet & Maxwell, p.21.

(107) *Inwards v. Baker (above)*.

(108) See section 106 & section 566 JCC 1976.

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agreement and the reasonable expectation which was created in A's mind, A had in equity a right of way across the yard.

Let us consider a similar scenario in Jordanian law: Sarah and Alia are neighbours, Sarah assured Alia that Alia could use her land to reach the street where Alia used to park her car. Later, Alia sold the land, which contains a house, to Nuha and assured her that access to the street, would be granted. In reliance upon Alia's representation and her expectation that she had a right of way over Sarah's land, Nuha built a garage, which the only access to was across Sarah's land and participated in the resurface of the road. When Nuha wanted to use the access Sarah refused. Nuha claimed that she had a right of way.

What is the legal position of Nuha; in other words, what is the solution in the Jordanian civil law?

In a similar scenario as is in *Ives Investment's* case, the English Court of Appeal, applying the doctrine of proprietary estoppel, held in favour of the representee. But, the solution in Jordanian law is different as it does not admit mere representations, or assurances, as methods of the creation of proprietary rights in land. Therefore, the Jordanian court will reject Nuha's claim or it will not hold in her favour.

Are there any possible remedies?

If Alia used Sarah's land in order to reach the street for a period of fifteen years or more, and Sarah acquiesced, then Alia will acquire a right of way by prescription according to sections 1181 & 1289 of the Jordanian Civil Code No.43 of 1976 providing Alia's use was continuous. However, if the Alia's land is land-locked then the court may grant her (Alia) a short cut. This, of course, is subject to a fair compensation to be paid to Sarah⁽¹⁰⁹⁾.

In the above scenarios, the court may grant Alia a right of way, whether perpetual or temporary, as a result of the nature of her land, i.e. because her land is land-locked, or as a result that this right is being practised for more than fifteen years. In other words, the right of way, which may be granted to Alia, is granted not because of the shared supposition that Alia would acquire a right of way in Sarah's land but because Alia has acquired this right by the elapse of time (prescription) or because Alia's land is land-locked and she has paid in return for the access to the public road.

(109) The court's decision will be based on section 1290(1) JCC 1976.

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In *Willmott v. Barber (above)*, Fry LJ formulated his own definition of the notion of estoppel. In his view, a man is not to be deprived of his strict legal rights unless he has acted in such a way as would make it fraudulent for him to set up those rights. In fact, the five *probanda* laid down by Fry LJ are related quite clearly and exclusively to unilateral mistake cases⁽¹¹¹⁾.

It is appeared from the above cases that in a unilateral mistake category of cases, the landowner (O) must have some responsibility for what the claimant (C) has done. Thus, if the landowner is ignorant of the claimant's claim or of the detriment, then it will not be unconscionable for him to deny C's claim. As Nourse LJ observed in *Barclays Bank Plc v. Zaroovabli*⁽¹¹²⁾: "you cannot encourage a belief of which you do not have any knowledge".

2.3.2 The position under Jordanian law

Jordanian courts have no discretion to hold that the acquiescence or the general awareness of the landowner is sufficient to create proprietary rights in favour of the third party, who has made a mistake concerning his rights and his true legal position.

In order to clarify this situation clearly, let us consider a hypothetical example. Suppose that Ali is the landowner who, by his conduct, leads another party (Zaid) to believe that he is not the landowner, or that Zaid can safely spend money on it. Zaid does so, in the belief that the land will be his own, or that he will acquire an interest in it. Later, Ali claims that Zaid has no claim to his land and seeks to assert his legal title, so as to deprive Zaid of the benefit of his expenditure on the land.

The solution in the Jordanian civil law:

At the outset, it is appropriate to indicate that in English law, the gist of this issue is to be found in the speech of Lord Cranworth in *Ramsden v. Dyson (above)* where he stated: "it would be dishonest in me to remain wilfully passive on such an occasion, in order afterwards to profit by the mistake which I might have prevented". Thus, it seems to be that in the above scenario, the English court will certainly hold that the landowner, Ali, is not permitted to assert his title so as to deprive the plaintiff, Zaid, of the benefit of his expenditure.

As for the position in Jordanian law, it is of great importance to refer to section 1081 JCC 1976, which states "whosoever reclaims or resurrects derelict

(111) See 1.1.6.

(112) *Barclays Bank Plc v. Zaroovabli* (1997) Ch 321 at 330.

land by permission from the competent authority shall be its owner". This is because the law considers any land of which there is no owner, as a property that belongs to the state⁽¹¹³⁾.

But, where the land belongs to another person, Ali, as is in the above example, the other party (Zaid), will not acquire any proprietary rights if Ali shows some forbearance towards the intrusion of Zaid⁽¹¹⁴⁾. The burden is on the plaintiff (Zaid), to prove that Ali did not show any forbearance. However, if Zaid does prove this in a court, the court may grant him any proprietary right, as it sees fit in the circumstances of the case, such as a fee simple, a right of way (an easement), etc. This is providing that he satisfies the conditions laid down by section 1181 JCC 1976, concerning the acquisition of proprietary rights by prescription. But, if Zaid fails to prove this, it seems likely that the court will reject his claim and leave him with no remedy. In other words, the court's decision will depend on the conditions which are satisfied by Zaid concerning the acquisition of proprietary rights by prescription according to section 1181 JCC 1976. Thus, if the plaintiff (Zaid) fails to satisfy these conditions, the courts will not uphold his claim.

It seems necessary to indicate that the court, in any case, will strive to prevent any injustice to the plaintiff. But, the court cannot overlook or circumvent the provisions of the statute to which its discretion is limited. The court, however, may resort to apply sections 293 & 294(1) JCC 1976 which are concerned with unjust enrichment if the required conditions are met⁽¹¹⁵⁾.

Alternatively, the court may take into consideration any surrounding circumstances, in order to determine the best solution to the dispute in question and to achieve justice for both parties. This narrow discretion of the court will not in any way amount to the equity that may be raised by the operation of the doctrine of proprietary estoppel if it is to be adopted in the context of the Jordanian land law.

Accordingly, one can say that the remedies, which may be granted by Jordanian courts, in the above example, are inadequate. Therefore, it can be suggested that the adoption of this doctrine, or its equivalent, will remedy the

(113) See section 1080(1) JCC 1976.

(114) See section 1171(3) JCC 1976.

(115) Section 293 JCC 1976 states "no person shall take the property of another without a lawful cause, and if he takes it he shall return it". Section 294(1) JCC 1976 states "whoever gains the property of another without a gainful disposition shall pay its value to that other unless the law otherwise provides". (See Mansour A, Op. Cit, pp.263-268).

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defect in the provisions of the law and guarantee a higher level of justice for litigants.

2.4 Co-ownership cases

2.4.1 The position under English law

Co-ownership of land exists where two or more persons enjoy property, or an interest in it, at the same time. In the huge majority of cases they simultaneously share the fee simple absolute in possession. Much of the case law has arisen in the context of matrimonial home, or more importantly, in the context of various forms of cohabitation. However, for unmarried couples, disputes concerning their home have to be decided upon general law principles, especially those relating to trusts⁽¹¹⁶⁾.

English law recognizes more than one form of co-ownership. The two forms which have survived to the present day are the joint tenancy and the tenancy in common. The principle distinguishing feature of the joint tenancy is the right of survivorship, i.e. when one of the joint tenants dies, the person's share does not pass under a will or intestacy. Instead, the surviving joint tenants are entitled to the property. It follows that the joint tenant who outlives all the others will become the sole owner of the property⁽¹¹⁷⁾.

The tenancy in common provides a more flexible form of co-ownership. There is no right of survivorship and the shares can be of whatever size the parties desire. It should be noted, here, that a joint tenancy can be converted into a tenancy in common.

For more clarification, it is necessary to discuss two forms: the position of married couples and the position of unmarried couples:

(i)- Married couples

A spouse with no property interest (or merely an equitable interest) is given a statutory right to retain occupation or, with the leave of the court, to go into occupation⁽¹¹⁸⁾. No equivalent right is given outside marriage.

(116) Bum E.H, 1996, *Trusts and Trustees: Cases and Materials*, Fifth Edition, London, Butterworths, p.57; Ferris G and Battersby G, 1998, 'The Impact of the Trusts of Land and Appointment of the Trustees Act 1996 on Purchasers of Registered land', *The Conveyancer and Property Lawyer*, May-June, p.168.

(117) See Brown M, *Op. Cit.*, pp.243-245.

(118) Section 30 of the English Family Law Act 1996.

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the property to her. In reliance upon A's assurance and with knowledge of him, B spent her own money on repairs, redecoration, improvements and also on buying of furniture. Later, A sought to evict her and gave her a notice to determine the licence. The Court of Appeal held that an equity of proprietary estoppel raised in her favour and compelled him to convey the house to her name. This indicates that English courts may give a remedy to the spouse or the cohabitant who has incurred expenses or whatsoever if there is a common intention that the ownership of the property shall be shared. Whether the parties are married or unmarried is a matter that has no influence on the court's decision.

Now, the question is: if a similar case is to be presented before Jordanian courts, could Jordanian law help B?

2.4.2 The position under Jordanian law

At the beginning, it is noteworthy that Jordanian courts have no power to order beneficial interests in the property or to enforce oral agreements, or promises upon which one of the parties has relied.

In Jordanian law, concurrent interest exists where two or more people enjoy a property, or an interest in it simultaneously. Jordanian law does not recognize more than one form of co-ownership that is the tenancy in common. It does not admit of any other forms of co-ownership such as the joint tenancy form. It follows that when one of the persons who shares the ownership of the property dies, his share passes under a will or intestacy and it does not transfer to the other party who is still alive⁽¹²³⁾. In other words, there is no right of survivorship in Jordanian law. In addition, the shares of the parties can be of whatever size they wish them to be⁽¹²⁴⁾.

For better understanding, let us suppose that A and B equally hold a blackacre in a fee simple. They are then both entitled to occupy the land. If the land is let, they are each entitled to a half share of the rent; if it sold they are each entitled to a half share of the proceeds of sale. So far no problem arises. But, what happens when one of them, say A, dies? What happens to his half share in the land?

In fact, one solution is possible in English law. That is when A dies, he ceases to have any interest in the land. Therefore, his half share will be left to B

(123) Siwar M, Op. Cit, p.62.

(124) See Korkobi M & Mansour S, 2002, Real Property Rights, Beirut, Sader Publications, p.365.

and B becomes the sole owner of the Blackacre. But, in Jordanian law A's share will not in anyway be transferred to B, and according to the Jordanian Personal Status Law No.36 of 2010 it will pass to his heirs, taking into account the terms of his written will⁽¹²⁵⁾.

On the other hand, Jordanian law denies any relationship between a man and a woman outside marriage. It also penalizes any sexual relationship that may exist in infringement of the rules of law. The same applies to homosexual or lesbian relationships⁽¹²⁶⁾.

For further explanation, it is appropriate to consider two situations; namely: unmarried couples and married couples:

(i)- Unmarried couples

Jordanian law, which derives most of its rules from shari'a, does not admit of any relationship between a man and a woman outside marriage. It also penalizes the parties to such a relationship. In the Holy Quran, the sentence for this type of relationship is flogging hundred times⁽¹²⁷⁾. But the Jordanian Penal Code No.16 of 1960, which is mainly derived from European laws, particularly French law, does not apply this rule⁽¹²⁸⁾. It provides that the penalty is imprisonment from one year to three years for each of the parties⁽¹²⁹⁾.

In the English case of *Pascoe v. Turner (above)*, the woman had been represented by her partner, that, if she spent her own money on repairs, redecoration and improvements, he would convey the house and its contents to her name. The Court of Appeal held that an equity of proprietary estoppel raised in her favour and compelled him to fulfil his promise towards the promisee.

This shows that the English Court of Appeal applying the equity which had been raised by proprietary estoppel, protected the woman against the man, who had assured her that the house and its contents would be hers and compelled him to convey the fee simple to her name. But, if a similar case is to be presented

(125) See sections 254-268 & section 310 of the Personal Status Law No.36 of 2010.

(126) See sections 282-286 of the Jordanian Penal Code No.16 of 1960 and its amendments.

(127) In the Holy Quran, Allah, the Almighty, has said "the woman and the man guilty of adultery or fornication - flog each of them with a hundred stripes: let no compassion move you in their case, in a matter prescribed by Allah, if you believe in Allah and the Last Day: and let a party of the believers witness their punishment" (Holy Quran, Surat Al-Nur, verse 2). See Abdullah Y.A, 2000, The English Translated Holy Quran, Hertfordshire, Wordsworth Editions Limited, p.87.

(128) See Amin S.H, 1984, Islamic Law, Glasgow, Royston Ltd, p.260.

(129) Section 282(1) of the Code.

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before a Jordanian court, would the court protect the woman? It seems that the Jordanian court will protect her only if she is in a legal relationship according to the provisions of the law. In any other circumstances, the court will certainly reject her claim and leave her with no remedy. This means that such a case as *Pascoe v. Turner* will not find a similar application if it is to be presented before any Jordanian court, and the court will not grant the woman any rights of any kind in the property because of the illegal relationship that connects her with the man.

(ii)- Married couples

Jordanian law only recognizes sexual relationships, which are based on marriage according to the provisions of law. The reason for this is to protect the society at large from immoral conducts, diseases, poverty, social problems, etc. Jordanian law provisions aim to protect the woman in a legal relationship, and seek to cover her with the needed protection as she cannot bear heavy burdens similar to those which a man can do.

To consider this situation in detail, let us suppose that a man, A, and woman, B, lived together and had a sexual relationship without being married. A promised B to give her the fee simple in his house. In reliance upon this promise, she gave up her own flat, moved into his house and spent some money on improving, painting and furnishing of the house. When their relationship broke down, he sought to evict her, claiming that she had only a licence and that a notice had been served on her.

What is the possible solution in Jordanian law?

In this hypothetical example, there is no doubt that the Jordanian court would reject the woman's claim for want of legality. Moreover, the Jordanian court enjoys no discretion concerning the order of beneficial interests in land in the form of an English law constructive trust. However, in a similar case, the English Court of Appeal had upheld the woman's claim and ruled that the equity of proprietary estoppel had been raised in her favour.

But, let us suppose that A and B are a husband and a wife; in other words, they are married couples. In this case, the court may apply the provisions of the law of restitution (unjust enrichment)⁽¹³⁰⁾, and rule in the woman's favour by granting her the suitable remedy as it sees fit according to the facts and

(130) See Mansour A, Op. Cit, pp.263-268.

circumstances of the case⁽¹³¹⁾. In any case, however, the Jordanian court will not admit of such remedies as those recognized by English courts, i.e. proprietary estoppel and constructive trust.

Evaluation & conclusion

The doctrine of proprietary estoppel operates as a means by which a person may acquire an interest in land belonging to another and the court may award this interest as a remedy against the landowner who has conducted himself in such a way that it would be unjust for him to deny the promisee any entitlement, because it has not been appropriately created. More precisely, protection of the claimant is the main target of the doctrine of proprietary estoppel.

As an equitable doctrine, proprietary estoppel plays an effective role in the context of English land law. It can be used to found a claim, as well as to defend one. Thus, it can be regarded as a mechanism by which the law sanctions the informal creation of proprietary rights in property.

The above discussion revealed that Jordanian law rules are different from those of English law in respect of the creation of proprietary rights in land. However, it is found that it is possible for a similar doctrine to be applied in the context of Jordanian land. Once the Jordanian legislator accepts the idea of proprietary estoppel, there is nothing prevents it from adopting a similar doctrine under the name of ‘the doctrine of the fair enforcement of representations or promises in land’. Application of this new doctrine to factual cases, however, may encounter hardships due to the nature of the Jordanian legal system. Thus, this new doctrine may be applied, at a first stage, to some situations:

(a)- Imperfect gift cases

As mentioned above, this kind of cases can be seen where one party (the landowner) promises another party (the promisee) that the other party has or will have acquired a fee simple in the property and the promisee has acted to his detriment in reliance upon that promise. In English law, the court has the power to interfere in order to compel the landowner to fulfil his promise towards the

(131) The relevant sections in this concern are sections 293 & 294(1) JCC 1976 (see 2.3.2). Four main elements should be available in order to support the woman’s claim in unjust enrichment: i- enrichment by the man, be it direct or indirect, material or immaterial, i.e. the woman must have provided the man with something of value while expecting compensation in return; ii- loss by the woman, be it direct or indirect, positive or negative; iii- a connection between enrichment and loss; and iv- absence of a justification for the enrichment, i.e. non existence of a legal cause, whether it is derived from law or from contract.

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promisee. But Jordanian courts currently refuse to intervene in this situation in the full absence of the required formalities (s.106 & s.566(2) JCC 1976). It can be argued here that the position of Jordanian law, in this respect, is defective and it may cause injustice to the promisee who has acted to his detriment in reliance upon the other party's promise. It can be suggested, then, that application of this new doctrine will help to remedy the defective provisions of the civil law and to achieve justice to the promisee despite the absence of any required formalities.

(b)- Common expectation cases

This kind of cases concerns the situation where two parties, A and B, consistently dealt with each other in such a way as reasonably to cause A to rely on a mutual assumption that he could acquire proprietary rights in B's land. The general aim of the new doctrine, if it is to be adopted, is to prevent the expectation from being defeated when the other party, A, has relied upon such a shared assumption or expectation. In English law, the court can intervene so as to achieve justice between the parties and to provide a suitable remedy depending on the facts of the case, whilst Jordanian courts have no power to intervene in the absence of the needed formalities.

(c)- Unilateral mistake cases

This kind of cases concerns the situation where only one party, A, has made a mistake in respect of his rights. The most important element in this context is the element of detriment which is suffered by the party who has relied upon his mistaken belief that he has or will have acquired rights in another party's land.

In many cases of this kind, the English courts, with no hesitation, held that where the landowner, by his conduct, leads another party to believe that he is not the owner or that the other party can safely spend money on the property, he cannot afterwards assert his title so as to prevent the other from taking benefit of his expenditure.

As for Jordanian courts, it is found that Jordanian courts have no discretion to take into account the element of detriment in their judgements, so as to grant the claimant a suitable remedy that satisfies the circumstances of his case. Furthermore, the claimant cannot go to the Jordanian court to obtain an order compelling the landowner to grant him any proprietary rights in his land, as a compensation for the detriment suffered by him, as a result of his reliance on his mistaken belief. Therefore, it can be suggested that the application of this new doctrine in these types of cases will guarantee a higher level of justice to the claimant.

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Concerning the possible remedies which may be granted by Jordanian courts one can say that the discretion of Jordanian courts is limited to the provisions of the statute. However, they may take into account the surrounding circumstances in each case. Accordingly, Jordanian courts can grant any possible remedies, such as a right of way (an easement), a lease, or even a monetary compensation. But, it seems to be that such remedies as the transfer of a fee simple in land, or the grant of a share in land to one of the parties who shares a relationship with the other outside marriage, are outside the range of the possible remedies which may be granted by Jordanian courts. Thus, such a case as *Pascoe v. Turner* may not find a similar application in the Jordanian courts, if such a doctrine, or its equivalent, is to be adopted by the Jordanian legislator.

References

Books

1. The Holy Quran.
2. Abdullah Y.A, 2000, The English Translated Holy Quran, Hertfordshire, Wordsworth Editions Limited.
3. Abraham R, 1998, The Law of Property in Egypt: Islamic Law and the Civil Code, New Edition, Princeton, Princeton University Press
4. Al-Termanini Abdulsalam, 1982, Comparative Law and Modern Legal Curriculums, Second Edition, Kuwait, Kuwait University Press Publications.
5. Amin S.H, 1984, Islamic Law, Glasgow, Royston Ltd.
6. Artis D & Houghton J, 2002, Land Law, London, Blackstone Press Limited.
7. Baker J.H, 2002, An Introduction to English Legal History, London, Butterworths.
8. Brown M, 2002, Property Law, Surrey, Tolley Publishing Company Limited.
9. Bum E.H, 1996, Trusts and Trustees: Cases and Materials, Fifth Edition, London, Butterworths.
10. Chappelle D, 1995, Land Law, Second Edition, London, Pitman Publishing.
11. Cretney S.M & Masson J.M, 1997, Principles of Family Law, Sixth Edition, London, Sweet & Maxwell.
12. Curson L.B, 1993, Equity & Trusts, London, Cavendish Publishing Limited.
13. Dixon M, 1994, Land Law, London, Cavendish Publishing Limited.
14. Gravells N.P, 1995, Land law: Text and Materials, London, Sweet & Maxwell.
15. Gray K, 1993, Elements of Land Law, Second Edition, London, Butterworths.

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16. Green K, 1997, Land law, London, Macmillan Press Limited.
17. Hayton & Marshall, 1996, Law of Trusts and Equitable Remedies, London, Sweet & Maxwell.
18. Keenan D, 1995, English Law, Eleventh Edition, London, Pitman Publishing Limited.
19. Koffman L and Macdonald E, 1995, The Law of Contract, Second Edition, Surrey, Tolley Publishing Company Limited.
20. Lord Halisham of St. Maryleborne, 1992, Halsbury's Laws of England, Fourth Edition-Reissue, Vol.16, London, Butterworths.
21. Mansour A, 2001, The General Theory of Obligations, First Edition, Amman, Dar Al-Thaqafah for Publishing and Distribution.
22. Mansour M.M, 1997, Property Rights, Fifth Edition, Cairo, Dar Al-Falah.
23. Martin J.E, 1997, Modern Equity, London, Sweet & Maxwell.
24. McKenzie T.W, 1998, Equity Plays its Role, London, Star House Ltd.
25. Obaidi A, 2006, Real Property Rights, Amman, Dar Al-Thaqafah for Publishing and Distribution.
26. Pawlowski M, 1996, The Doctrine of Proprietary Estoppel, London, Sweet & Maxwell.
27. Royle R, 1995, Briefcase on Land Law, London, Cavendish Publishing Limited.
28. Siwar M, 2006, Explanation of the Jordanian Civil Law: Original Property Rights, Volume 2, Amman, Dar Al-Thaqafah for Publishing and Distribution.
29. Snell E.H, Baker P.U & Langan P, 1982, Snell's Principles of Equity, London, Sweet & Maxwell.
30. Thompson M.P, 1995, Land Law, First Edition, London, Sweet & Maxwell.

Journals

1. Bailey T, 1983, 'Estoppel and Registration of Title', The Conveyancer and Property Lawyer, pp.99-106.
2. Baughen S, 1994, 'Estoppels Over Land and Third Parties', Legal Studies Journal, Vol.14(2), July, pp.147-155.
3. Christine J, 1996, 'Proprietary Estoppel: Future Interests and Future Property', The Conveyancer and Property Lawyer, May-June, p.193.
4. Coval S, Smith J.C and Coval S, 1986, 'The Foundations of Property and Property Law', Cambridge Law Journal, Vol. 45, November, pp.457-475.
5. Derham R, 1997, 'Estoppel by Convention - Part I', The Australian Law Journal, Vol.71(11), November, p.860.
6. Duthie A, 1988, 'Equitable Estoppel: Unconscionability and the Enforcement of Promises', The Law Quarterly Review, Vol.104, p.362.
7. Ferris G and Battersby G, 1998, 'The Impact of the Trusts of Land and Appointment of the Trustees Act 1996 on Purchasers of Registered land', The Conveyancer and Property Lawyer, May-June, p.168.
8. Halliwell M, 1994, 'Unconscionability as a Cause of Action', Legal Studies Journal, Vol.14(1), March, p.15.
9. Hayton D, 1990, 'Equitable Rights of Cohabitees', The Conveyancer and Property Lawyer, pp.370-387.
10. Moriarty S, 1984, 'Licences and Land Law: Legal Principles and Public Policies', The Law Quarterly Review, Vol.100, p.376.
11. Pawlowski M, 1997, 'Proprietary Estoppel: Satisfying the Equity', The Law Quarterly Review, Vol.113, April, p.232.
12. Riniker U, 1998, 'The Fiction of Common Intention and Detriment', The Conveyancer and Property Lawyer, May-June, p.202.
13. Sir Mason A, 1997-98, 'Equity's Role in the Twentieth Century', The King's College Law Journal, Vol.8, pp.1-20.

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14. Thompson M.P, 1981, 'Proprietary Estoppel', Solicitors Journal, Vol.125(1), January, pp.539-540.

Documents

- The Law Commission, 1980, Working Paper No.78: Rights of Access to Neighbouring Land, London, Her Majesty's Stationary Office (HMSO), pp.11-12.

Legislations

- English Law of Property Act 1925.
- English Law of Property (Miscellaneous Provisions) Act 1989.
- Jordanian Civil Code No.43 of 1976.
- Jordanian Law of Execution No.25 of 2007.
- Jordanian Ownership of Floors and Flats Law No.25 of 1968 and its amendments.
- Jordanian Penal Code No.16 of 1960 and its amendments.
- Jordanian Personal Status Law No.36 of 2010.

**نظام إلزامية الوعد الشفوي بنقل ملكية
عقار أو حق عيني عقاري في القانون
الإنجليزي ومدى إمكانية تطبيقه في
القانون الأردني**

الدكتور/ زيد محمد العقيلة

الملخص:

إنَّ نظام إلزامية الوعد الشفوي بنقل ملكية عقار أو حق عيني عقاري في القانون الإنجليزي هو نظام أنشأته قواعد العدالة المطلقة (قواعد الإنصاف) وهو يمثل تدخل العدالة من أجل التخفيف من جمود قواعد القانون المكتوب ومن أجل إقرار حقوق ملكية عقارية حتى في حالة غياب أية إجراءات شكلية. أما في القانون الأردني فإنه لا يمكن إنشاء حقوق ملكية عقارية في حالة غياب الشكليات المطلوبة، كما أن المحاكم الأردنية لا تعترف بالوعد المجردة أو التأكيدات الشفوية كوسيلة لإنشاء مثل هذه الحقوق. يناقش هذا البحث مدى إمكانية تطبيق هذا النظام أو أي نظام مماثل في القانون الأردني ويبحث في كيفية تعامل المحاكم الأردنية حالياً مع قضايا مشابهة لتلك التي عرضت أمام المحاكم الإنجليزية، وقد خلص البحث إلى أنه من الممكن - ضمن نطاق معين - تطبيق مثل هذا النظام في القانون الأردني تحت اسم نظام أو مبدأ إلزامية التأكيدات الشفوية أو الوعد في نقل ملكية عقار أو حق عيني عقاري.