ESTOPPEL BY CONDUCT AND ELECTION


The author, K R Handley, is a Judge of Appeal in New South Wales and is the author of the third edition of Spencer Bower Turner & Handley on Res Judicata and the fourth edition of Spencer Bower Turner & Handley on Actionable Misrepresentation.


The way was thus open for a new work on estoppel by representation which would consider leading authorities in the Dominions.

Handley has obliged. His knowledge of the law of estoppel must be as extensive as anyone in the common law world. Unfortunately, this has meant that the author has made it plain that leading cases in the High Court of Australia are basically flawed. This is useful for English lawyers, but (apart from lawyers arguing cases before the High Court) Australian lawyers are bound by what the High Court said, whether they think the court was right or wrong.

The book commences with some basic concepts.

Estoppel by representation originated in equity in the 17th century, and was adopted by the common law. There are three distinctive types of exclusively equitable estoppel, namely, proprietary estoppel by standing by, proprietary estoppel by encouragement and promissory estoppel. Each is given a thorough treatment in the book.

The propositions in the book are soundly based in black letter law. Thus, at 1-028, the author makes the point that the recent utterances of some leading judges that there is some overarching principle in the law of estoppel are rather naïve. The author notes that each form of estoppel has its own elements and that any single overarching doctrine would be at such a high level of abstraction that it would serve no useful purpose.

The author looks closely at the three leading High Court authorities, namely Waltons Stores (Interstate) Ltd v Maher (1988) 164 CLR 387, Foran v Wright (1989) 168 CLR 385 and Commonwealth v Verwayen (1990) 170 CLR 394. As to Walton, the author says at 13-037 that the High Court misread Crabb v Arun DC [1976] Ch 179, it misread AG (Hong Kong) v Humphreys Estate (Queens Gardens) Ltd [1987] AC 114 and generally confused promissory and proprietary estoppel. His comments on Verwayen were not any more complimentary.

The author clearly defines the various types of equitable estoppel. He notes that many of the serious mistakes of principle in the authorities were caused by confusing two similar, but different types of estoppel such as confusion between promissory estoppel and proprietary estoppel by encouragement.

The book also gives a full treatment of the other major issues in the law of estoppel, such as what constitutes a representation, communication of the representation and inducement. He also comprehensively deals with estoppel by deed, estoppel by convention, election as well as the situations where estoppels are frequently encountered. There are chapters headed “Estoppels in Relationships”, “Estoppels in Transactions” and “Estoppels and Election in Proceedings”.

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Altogether a sound work of scholarship with principles clearly expressed. The principles are expressed in clear modern language. This is a work of great value to Australian lawyers.

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