

Answers to end of chapter Q&A

Question 1: In *Crabb v Arun District Council*, was the Court of Appeal right to give Mr Crabb some protection against the council, even though the council had made no contractual promise to Mr Crabb?

This is a surprisingly difficult question. On the one hand, in the extract set out on pp 384-387, each of Lord Denning MR and Scarman LJ is convinced that, despite the absence of a contract between Mr Crabb and the council, the council should be under a duty to allow Mr Crabb, for free, access over its land. Similarly, in the extracts on pp 387-389, Atiyah and Millett agree that the council should be under a duty to Mr Crabb: their dispute is as to the source of that duty. On this view, then, the facts of *Crabb v Arun* demonstrate the usefulness of proprietary estoppel in providing protection to B where he reasonably relies on a belief, for which A is responsible, that B has or will get a right in relation to A's land. However, the decision of the House of Lords in *Yeoman's Row Management Ltd v Cobbe* may cast some doubt on the Court of Appeal's decision in *Crabb v Arun*. It is true that, in *Yeoman's Row*, Lord Scott referred to *Crabb* and seemed to regard the decision as correct. Yet, as discussed in the McFarlane & Robertson extract on pp 398-399, Lord Scott's explanation of *Crabb* was that Mr Crabb believed he *already* had a right in relation to the council's land. That seems implausible, as, given the negotiations between the council and Mr Crabb, he could only have expected to acquire such a right after paying for it. So the argument could be made that Mr Crabb, like Mr Cobbe, acted at his own risk by selling his land when he knew that the council was not yet under a contractual duty to give him access over its land. In *Cobbe*, as noted on p 393, the House of Lords did order that Mr Cobbe should receive some money from Yeoman's Row – but this was because his action, in providing a service requested by the company, had conferred a benefit on the company. In contrast, in *Crabb*, Mr Crabb's act of reliance did not benefit the council.

Question 2: In *Yeoman's Row Management Limited v Cobbe*, should Mr Cobbe have been entitled to at least some of the increase in value of YRML's land, given that his work was crucial in obtaining the planning permission that led to that increase?

The facts of *Yeoman's Row* are set out on pp 392-394. As noted there, Etherton J, at first instance, ordered that Yeoman's Row should pay Mr Cobbe a sum equal to half the increase in the value of the company's land caused by the grant of planning permission: Mr Cobbe was therefore set to receive around £2m. The Court of Appeal (albeit somewhat reluctantly) upheld that decision. This view can perhaps be defended on the grounds that Mr Cobbe's endeavours were crucial in the company's receipt of planning permission. It could also be said that, given Mr Cobbe had fully performed his side of his informal deal with the company, the company should fully perform its part of that deal and so give Mr Cobbe some of the benefit of the increased value of the land.

The House of Lords, as seen in the extract on pp 394-397, allowed Mr Cobbe's appeal and so took a different view from that of Etherton J and the Court of Appeal. It is interesting to note that, even if you agree with the House of Lords' view that Mr Cobbe should have no proprietary estoppel claim, it may still be possible to argue that he should have received some of the benefit of the increased value of the land. The House of Lords,

as noted on p 393, did find that the company should pay Mr Cobbe something for the services he had rendered. Such payments are generally set at the going rate for the service, plus expenses. It may well be that the usual agreement, in such a situation, is that if the developer's efforts lead to a grant of planning permission, the developer will share in the financial benefits of that grant. After all, as Mr Cobbe agreed to be paid nothing if planning permission was not obtained, it might be reasonable for him to expect a bonus (beyond a mere hourly rate payment) if planning permission was granted.

Question 3: What are the basic requirements of proprietary estoppel? Which of those requirements, if any, are affected by the decision of the House of Lords in *Yeoman's Row*?

This important question is considered over pp 399-416. The basic requirements of proprietary estoppel, as understood before the decision in *Yeoman's Row*, are set out on p 400. The actual decision in *Yeoman's Row* seems to be consistent with those requirements; but, as discussed by McFarlane & Robertson in the extract on pp 398-399, the reasoning of the House of Lords in that case suggests that the basic requirements of proprietary estoppel are considerably harder to satisfy than was previously thought. In particular, it would seem that it might no longer be possible for B to bring a successful proprietary estoppel claim in a case where he believes that A *will* give him a right in the future, but does not think that A is under a current duty to give him that right.

After the book went to press, the House of Lords decision in *Thorner v Major* ([2009] UKHL 18) has clarified, to some extent, the impact of *Yeoman's Row*. As discussed in the supplement to Chapter 13 (available as part of the Online Resource Centre), that decision concerned a case in which, due to A's encouragement, B believed he would inherit A's land on A's death. When acting in reliance on A, B had no belief that A was *already* under a duty to B. So, if the reasoning of Lord Scott or Lord Walker in *Yeoman's Row* had been fully adopted by the House of Lords in *Thorner*, it seems B's claim would have failed. Nonetheless, B's proprietary estoppel claim succeeded. It may therefore be the case that the restrictions on proprietary estoppel suggested in *Yeoman's Row* do not exist; or perhaps apply only to 'commercial' rather than 'domestic' cases. For further discussion, see the supplement to Chapter 13 and a note on *Thorner* by McFarlane & Robertson at (2009) 125 LQR 535.

Question 4: Can proprietary estoppel apply even if A (the party against whom proprietary estoppel is used) has acted perfectly innocently? How does the decision in *Taylor Fashions v Liverpool Victoria Trustees* affect your answer?

The Court of Appeal's decision in *Taylor Fashions* is discussed on pp 401-404. Two separate proprietary estoppel claims were made: one by Taylors, the other by Olds. Each party had a lease from Liverpool Victoria, and acted in reliance on a belief that it had a right to renew that lease. At the time of that reliance, Liverpool Victoria had also shared the parties' belief and therefore could not be said to have deceived either party. When it turned out that, in fact, neither Taylors nor Olds had a right to renew its lease, each party argued that Liverpool Victoria was estopped from relying on this point. Taylors' claim failed, because Oliver J held that Liverpool Victoria had not encouraged it to believe that it had a right to renew the lease, and it was not clear that Taylors had acted in reliance on

its belief that it could renew the lease. In contrast, Olds' claim succeeded, because Liverpool Victoria had encouraged it believe it had a right to renew, and Olds had spent large sums improving the land in reliance on that belief.

As discussed on pp 403-404, the wider significance of the decision in *Taylor Fashions* depends, in part, on Oliver J's use of the concept of unconscionability. His Lordship used the concept to emphasize that the doctrine of proprietary estoppel should not be constrained by overly technical rules. The particular rule on which Liverpool Victoria had attempted to rely was that, before B could acquire a right through proprietary estoppel, A had to know that B's belief was, in fact, mistaken. If such a rule existed, it would prevent both the claim of Taylors and of Olds. However, by taking a more flexible approach based on unconscionability, Oliver J rejected that rule. This shows that proprietary estoppel may be available even if A, an owner of land, has acted perfectly innocently. It is thus somewhat ironic that an emphasis on unconscionability, which we tend to associate with bad conduct on part of A, resulted in B acquiring a right against A even though A had not acted badly.

Question 5: Do you agree with the results reached by the Court of Appeal in *Gillett v Holt* and *Jennings v Rice*? Would the same results be reached in those cases by applying the reasoning of the House of Lords in *Yeoman's Row*?

The facts and results in *Gillett v Holt* and *Jennings v Rice* are discussed, respectively, on pp 404-412 and pp 417-426. At a general level, the decisions can be compared to that in *Crabb v Arun District Council*: even in the absence of a contract with A, B acquired a right against A due to reliance on a belief, encouraged by A, that B would acquire a right in relation to A's land. As a result, the answer to Question 1 above is also relevant here. A potentially important difference between *Crabb v Arun* on the one hand, and *Gillett v Holt* and *Jennings v Rice* on the other, concerns the context of each case. As noted in the answer to Question 1 above, the context of *Crabb v Arun* can be seen, broadly speaking, as 'commercial'. In contrast, each of *Gillett v Holt* and *Jennings v Rice* can be seen as a 'domestic' case. This may be important in considering the impact of *Yeoman's Row*. In that case, a proprietary estoppel claim was denied in a commercial context where B acted before entering a contract with A. In contrast, in *Gillett v Holt* and *Jennings v Rice*, we can perhaps be more sympathetic to the estoppel claimants, who were not acting in a commercial context and so can perhaps be more readily excused from acting before any contract was concluded with A. Certainly, this distinction between 'commercial' and 'domestic' cases can help to explain the recent House of Lords' decision in *Thorner v Major* – although, as discussed in the supplement to Chapter 13 (available as part of the Online Resource Centre), there may be some problems with that distinction.

Question 6: Does section 116(a) of the Land Registration Act 2002 impose a potentially unfair burden on a third party acquiring land subject to a proprietary estoppel claim?

The effect of proprietary estoppel on a third party is discussed on pp 426-432. Section 116(a) of the Land Registration Act 2002 was designed by the Law Commission to confirm the conventional understanding of how B's proprietary estoppel claim, arising initially as a result of A's conduct, may affect C. On that view, before any court order is made in B's

favour, B has an 'equity by estoppel'. That right is capable of binding C, if C acquires his right before any court order in B's favour.

The potential problem for C occurs in a case where C acquires his right before any court order in B's favour, and a court would ultimately have ordered A simply to pay money to B, or to allow B to occupy A's land as a licensee. In such a case, if C had acquired his right *after* such a court order, it would be clear that C could not be bound by B's pre-existing proprietary estoppel claim: after all, if A is under a duty simply to pay money to B, or not to revoke a licence, then B has only a personal right against A. It therefore seems strange, and potentially unfair to C, that C should be bound by B's claim simply because C acquired his right *before* any court order in B's favour.

Of course, it should be noted that section 116(a) does not mean that B's 'equity by estoppel' will always bind C: for example, as noted on p 429, C may be able to use the lack of registration defence against B's right. However, in a case where B is in actual occupation of A's land before C acquires his right, C will not be able to rely on that defence, as any 'equity by estoppel' of B will count as an overriding interest.