

LEGISLATING PROMISSORY ESTOPPEL IN MALAYSIA

By

Nur Hafiza Binti Jemi (2010360057)

Nursakina Binti Azman (2010992285)

Khairunnadiah Binti Rosli (2010134045)

Ahmad Farouq Bin Amir (2010313869)

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In a nutshell, we hope that this project paper can help other researchers in fulfilling their own research paper as well as to give ideas and guidelines for Malaysia to implement the doctrine of promissory estoppel into the Malaysian law.

ABSTRACT

This research has been conducted to analyse the existing legal framework in Malaysia governing the doctrine of promissory estoppel, where, special references have been made to the legal position in Australia and United States of America. This research aims to examine the adequacy in Malaysian law regarding the existing law which is still in need to be revised in order to handle cases such as detrimental reliance upon the promise. This study also reveals how the United States of America are craving for the existence of a specific statutory provision for the land in order to uphold and serve the justice fairly. The continuing evolution of promissory estoppel starts with the first phase, which dated back to as early as the 16th century under the notion of reliance as an acceptable element of contract law. The reliance notion is shown to be a thriving alternative to the contractual element of consideration throughout the study. It has also been revealed that the evolution of promissory estoppel in Malaysia did not end with its formal promulgation but continues to be developed by the common law courts. Thus, a collective study between Australia, Malaysia and United States of America has been carried out in this study to determine the present parameters of promissory estoppel where it is found may develop this doctrine to further levels.

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CHAPTER ONE

INTRODUCTION

1.0 THE MISSION

This research paper aims to analyse the application of the doctrine of promissory estoppel in Malaysia. This paper also aims to propose the implementation of the said doctrine into the Malaysian legislation. The structure of this research paper will begin with the background study of the research area that will clarify the development and the problems faced by the Malaysia legal system regarding the application of the doctrine of promissory estoppel.

Next, the problem statement and the objectives of this research are further construed. Following the previous, the significance of the research will enlighten the reader about the importance of promissory estoppel to be legislated into the Malaysia law. The limitation and the research of the study are explained as well. Lastly, the conclusion is written to conclude the chapter.

1.1 BACKGROUND OF STUDY

Promissory estoppel is an equitable doctrine applicable in contract law, which applies when one party to a contract promises the other, by words or conduct, that he will not enforce his right under the contract. Estoppel is a rule of evidence or rule of law, which prevents a person from denying the truth of a statement he made or from denying facts he alleged to exist.¹ Promissory estoppel fall under the category of estoppel by representation and is applicable when one party to a contract promises the other, either by words or conduct, that he will not enforce his right under the contract wholly or

¹ Martin (1986)

² Wan IzatulAsma. "Enacting Promissory Estoppel into the Malaysian Law: Towards More Certainty in Litigation". *Journal of Politics and Law*, (2012): 5.

³ Supra Note 2

⁴ (1877) 2 AC 439, p.498, where the meaning of promissory estoppel, had been judicially explained by Lord Cairns as follows, "...It's the first principle upon which all courts of equity proceed, that if parties who have entered into definite and distinct terms involving certain legal results $\frac{1}{2}$ certain penalties or legal forfeiture – afterwards by their