**“Contractual estoppel: a general overview.”**

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**Abstract**

The origin of estoppel lies with the mediaeval common law estoppel in *Pais.* However, most development of modern estoppel has occurred since the law of equity has developed. Consequently, various forms of estoppel have developed in both the courts of law and equity. However, most development the law of estoppel has received is through equitable doctrines. Historical origins of different estoppel are of little practical relevance today. It is time to consider each estoppel individually because each has slightly different requirements. Since its development there was a need for uniformity and merging different categories of estoppel into one overarching rule. Although many attempts have been made to formulate a unified theory of estoppel with a single set of requirements, these have been unsuccessful. In 21st century courts have increased its attention to the law of estoppel since a new category of estoppel has developed, known as contractual estoppel or estoppel by contract. This is the only category of estoppel entirely developed in law, going beyond the traditional estoppel developed from equity. The modern contractual estoppel has made its first appearance in famous case *Peekay Intermark v Australia and New Zealand Banking Group[[1]](#footnote-1).* Later the concept of contractual estoppel is fully argued and established in the judgement of *JP Morgan Chase Bank v Springwell Navigation Corporation[[2]](#footnote-2).* Since its development, the doctrine of contractual estoppel has been greatly applied in practice and widely accepted by the judiciary in many commercial litigations. Such acceptance and recognition by judiciary and legal profession creates a strong case for the recognition of contractual estoppel as a separate new category of legal estoppel. This paper seeks to give a general overview on contractual estoppel. First chapter of this paper will be devoted to introductory part and historical background of contractual estoppel. On subsequent chapter there will be critical analysis of landmark cases on contractual estoppel through which this principle has received its most developments. On next chapter, there will be critical discussion on general features of contractual estoppel. In following chapter, the implication of contractual estoppel will be discussed and finally, there will be a concluding mark on the findings.

**CHAPTER ONE**

1. **Introduction to Contractual Estoppel**
   1. **Introduction**:

Contractual estoppel is undoubtedly now one of the most significant defensive tools in the arena of commercial relationship. The doctrine of contractual estoppel enables parties to agree facts that they both know to be false, thereby creating a contractual basis for subsequent disputes. It does not belong to the traditional categories of estoppel, it is a distinct category of legal estoppel. The requirements for contractual estoppel are not as strict as for other form of estoppel. Where parties created a contract containing an acknowledgement of certain state of affairs, subject to statue and public policy, the maker of the statement will be barred by the contractual estoppel from asserting in litigation that the opposite was true.[[3]](#footnote-3) The modern view on doctrine of contractual estoppel was developed in modern landmark case *Peekay Intermark v Australia and New Zealand Banking Group[[4]](#footnote-4).* From the fact of this case, a investor signed a contract containing terms that describes the descriptions of his investment and acknowledgement that he had read and understood the documentation. Establishing contractual estoppel, the Court of Appeal held that the investor was barred from arguing that he had been induced by a misrepresentation as to the nature of investment to enter into contract.[[5]](#footnote-5) The landmark court of appeal decision in *Peekay* was later recognised in *Springwell* *Navigation Corp v JP Morgan Chase Bank[[6]](#footnote-6).* After detailed analysis, Gloster J. upheld the the doctrine of contractual estoppel as set out by Moore-Bick LJ in *Peekay.[[7]](#footnote-7)*

Since the doctrine of contractual estoppel has developed through *Peekay* and subsequently recognised in *Springwell,* it has received a tremendous acceptance by the courts in different occasions. Specially, it become regular feature in the disputes arising from financial markets. Despite its great popularity in a short period of time, it became the subject of debate too. The courts have clearly confirmed that, as a matter of freedom of contract, parties of a contract are now able to agree on the basis of certain state of affairs, and the court would not disrupt this approach as a matter of contractual certainty. However, many academics think that this view of the court is inappropriate. S Wilken and K Ghaly in their book described the contractual estoppel as “anomalous” and “not an estoppel”.[[8]](#footnote-8) Moreover, many academics think that contractual estoppel is an illegitimate species of estoppel and this doctrine is a “myth”.[[9]](#footnote-9) Despite all these controversies the doctrine of contractual estoppel is in wide use in the arena of commercial contracts where parties to the contract binds themselves from making false claims in future disputes. This paper is combined with five chapters. The very first chapter (this chapter) will be on introductory observations and the historical background of the doctrine of contractual estoppel. Second chapter will critically analyse the leading cases that have developed modern concept of contractual estoppel. On the third chapter there will be critical discussion on general principles of contractual estoppel. Fourth chapter of this paper will analyse the controversy created regarding the position of contractual estoppel in the family of estoppel. The fifth chapter will critically discuss the implications of contractual estoppel and finally there will be concluding remarks on the findings.

* 1. **History behind contractual estoppel:**

The term ‘contractual estoppel’ is likely to have originated in an early edition of Spencer Bower’s text on estoppel.[[10]](#footnote-10) Ferris J was the first judge who has imported this term into judicial lexicon by quoting from Spencer Bower in the first instance of *Colchester BC v Smith[[11]](#footnote-11).* The term ‘contractual estoppel’ later popularised by the court of appeal decision in *Peekay and* has since taken root. In some respect, the function of contractual estoppel is very different from traditional estoppel. Therefore, before discussing contractual estoppel, it is important to have some idea on traditional estoppel and historical background of the development of contractual estoppel. It can be seen from historical origin modern estoppel is a classic example of equity, which prevents the exercise of strict legal rights ignoring the true situation and the behaviour of the parties towards each other.[[12]](#footnote-12) For the policy reason, traditional estoppel sometimes prefers natural justice over legal certainty to represent the desire of the court. The traditional view of estoppel can be found in the wordings of Diplock J in *Lowe v lombak[[13]](#footnote-13),* applying a standard estoppel analysis to a contractual representation, an estoppel would arise where a clear and unambiguous statement was made, intended by the claimant to be acted upon by the defendant, or that such an intention could be inferred, and the defendant believed it to be true and was induced by such belief. It can be seen from above analysis; a contractual estoppel cannot be created if a representation in a contract known to be false. Therefore, commercial lawyers have been struggling in the face of analysis in *Lowe v Lombak[[14]](#footnote-14)* to design or frame the contractual terms that would give their clients certainty on the future disputes.[[15]](#footnote-15) Such struggles have been continued for decades since above analysis of traditional estoppel. However, in 21st century commercial lawyers finally got relived from such struggle since the most needed concept ‘contractual estoppel’ has developed. Many commercial cases have been decided applying this principle. In short period of time the principle of contractual estoppel received mass popularity in the arena of commercial litigations. Such popularity of contractual estoppel is the evidence that it serves the real demand.[[16]](#footnote-16) The modern doctrine originates from the famous case *Peekay Intermark v Australia and New Zealand Banking Group[[17]](#footnote-17).* The doctrine states, ‘there is no reason in principle why parties to a contract should not agree that a certain state of affairs should form the basis for the transaction, whether it be the case or not.’ The principle in *Peekay* also states that, where parties express an agreement in a contractual document neither party can subsequently deny the existence of the facts and matters upon which they have agreed, at least so far as concerned those aspects of their relationship to which the agreement was directed. The contract itself gives rise to an estoppel. The first case the modern principle of contractual estoppel has been recognised since its appearance in *Peekay, is* JP Morgan Chase v Springwell Navigation*[[18]](#footnote-18)*. In this case Springwell had made contractual representations and given warranties to the effect that it was sophisticated, was not relying upon advice from the bank and had made its own independent decision to acquire the financial instruments in question. It was held by Gloster J that there was no reason why Springwell and the bank were not free contractually to determine the factual basis upon which they conduct business, even if those statements were in fact inaccurate. Later in Court of appeal the decision of Gloster J was upheld. The court of appeal also made it clear that, contractual estoppel is a separate doctrine from estoppel by convention, and that there was no requirement on the part of bank to show that it would be unconscionable to resile from the representation made. Since the formal recognition of contractual estoppel by court in Springwell, the doctrine has become a popular tool in commercial litigation. A complete development of this doctrine will be critically discussed in the following chapter through the analysis of leading cases.

**CHAPTER TWO**

1. **Development of Contractual Estoppel: pivotal cases**
   1. **Chapter overview:**

The doctrine of contractual estoppel keeps the contracting parties to the bargain they have stuck, even if the reality of the situation is not reflected. This type of estoppel was the desire of the English courts for a long time, to give the parties freedom to resolve the uncertainty and to determine the basis on which they wish to enter into contractual relationship. This chapter will critically discuss how contractual estoppel has been developed over the period of time through its landmark cases. The first landmark case was *Peekay Intermark v Australia and New Zealand Banking Group Ltd[[19]](#footnote-19)* where the doctrine of contractual estoppel first appeared. Following the decision of Court of Appeal in *Peekay* the doctrine has been reconsidered and formally established in the case JP Morgan Chase v Springwell Navigation Corporation*[[20]](#footnote-20)*. Since the decision in Springwell, the doctrine of contractual estoppel has been considered by the English Courts in different occasions. *Prime Sight Ltd v Lavarello[[21]](#footnote-21)* is one of the independent cases where this doctrine applied since its development through *Peekay* and *Springwell.* To have a good understanding on this doctrine many cases could be analysed, however, above three cases would give a general idea on how this doctrine works. Any lackings or issues of debate in former cases have been considered in subsequent cases.

* 1. **Caselaws on contractual Estoppel:**

1. ***Peekay Intermark v Australia and New Zealand Banking Group Ltd*:**

The modern doctrine of contractual estoppel that is widely applied now has been defined in the pivotal Court of Appeal case *Peekay.* Peekay is the first modern case of contractual estoppel. In *Peekay,* an investor described as ‘with considerable investment experience’ purchased a product from Australia and New Zealand Banking Group Ltd (“ANZ”). The product was described as ‘structured US Dollar hedged Russian Treasury bill deposit’. The value of this bill contractually linked to the performance of a Russian government bond called “GKO”. Although the investor bought this product from ANZ bank, no proprietary right over GKO derives. The investor signed and returned the terms and condition form of the contract along with a risk discloser statement. However, investor did not read either of the documents. Both documents that have been signed and returned by the investor made it clear that before entering into a transaction or making any investment, the client should independently assess the appropriateness and truthiness of the investment upon his own judgement and upon such adviser as it considered necessary. The focal point here was that investor has received inconsistent information from the bank regarding the rights attached to the product before signing the documents. However, it was an express term that the client was not relying on any past statements either oral or written, made before entering into the contract. In August 1998, after an announcement from Russian government, the investment became worthless.[[22]](#footnote-22)

Following the incident, investor made a claim of damages under section 2(1) of the Misrepresentation Act. The claimant’s basis of claim was that the product has been sold as one offering proprietary rights in GKOs. At first instance, the investor’s claim was successful with the finding by Judge that the investor was induced by the bank’s informal representation to purchase the product.

The appellant bank ANZ appealed against the decision. The Court of Appeal surprisingly upheld the appeal of ANZ. It was held that, the Claimant was induced to enter contract by his own reckless assumption that the contractual terms would match with the description of representation made to him, and he was not induced by the bank’s previous statement.[[23]](#footnote-23) Although the Claimant had enough opportunity to read the description in the contract he did not do so. The Court of Appeal put a great weight on final terms and conditions, found that the wording and description in the terms and condition were clear and definitive as to the nature of the product. The prior inconsistent information given to the investor was only made innocently.

Moore-Bick LJ stated, “there is no reason in principle why parties to a contract should not agree that a certain state of affair should form the basis for the transaction, whether it be the case or not. For example, it might be desirable to settle an agreement as to an existing state of affairs in order to establish a clear basis for the contract itself and its subsequent performance. Where parties express an agreement of that kind in a contractual document neither can subsequently deny the existence of the facts and matters upon which they have agreed, at least so far as concerns those aspects of their relationship to which agreement was directed. The contract itself gives rise to an estoppel.”[[24]](#footnote-24)

Therefore, the contractual estoppel was raised by the ANZ bank in *Peekay* as an alternative argument, where Court of Appeal was required to decide whether, by signing the risk discloser form the investor was precluded from contending that he did not understand the nature of the investment. Such an argument lead to the two terms of the risk discloser form to be considered, those are: (i) you should also ensure that you fully understand the nature of the transaction and contractual relationship into which you are entering; and (ii) the issuer assumes that the customer is aware of the risks and practices described herein, and that prior to each transaction the customer has determined that such transaction is suitable for him. It was also important to focus on the statement written immediately above the signature line of the risk discloser form, which says: "[Client] confirms it has read and understood the terms of the Emerging Markets Risk Disclosure Statement as set out above." Therefore, as per Moore-Bick LJ, by signing the risk discloser form, the investor was bound by the statement above the signature line, that he has read and understood the terms of the contract. And by returning the signed final terms and condition form along with risk discloser statement, the investor made offer to contract with bank on the terms in the forms and such offer was accepted by the bank by implementing the investor’s instruction.[[25]](#footnote-25) Consequently, above two terms were included in the contract between investor and bank. Therefore, investor was aware of the nature of the investment he was seeking to purchase and had satisfied himself that it was suitable for his needs. In such circumstances, it was not open to investor to say that he did not understand the nature of the transaction, and he cannot assert that he was induced to enter into the contract by inconsistent earlier information by bank. In its simplest, contractual estoppel prevented the investor in *Peekay* case to deny the effect of terms of the contract by arguing opposite of what he agreed.

1. **JP Morgan Chase v Springwell Navigation Corporation:**

It is the second leading case on contractual estoppel after *Peekay. Springwell* is the first case to consider and confirm the principle developed in *Peekay.* Springwell Navigation Corporation (“Springwell”) was the ivestment vehicle for a group of shipping companies run the Polemis family. During 1998, Adamandios Polemis was the sole person to manage the company. Springwell purchased 42 GKO linked bills from JP Morgan Chase bank. The value of those bills was linked to the GKO bonds issued by the Ministry of Finance of the Russian Federation. As the GKO linked bills always traded in US Dollar, it contained embedded forward currency swap to remove the currency risk. In August 1998, Russian government announced a moratorium on foreign debt repayments and a suspension of all trading on Russian issued bond. Consequently, GKO linked bills got affected and became worthless. Springwell still had 11 GKO linked bills in its portfolio when moratorium was declared. As Springwell has signed the documentation during the purchase, it was found that all material risks were disclosed and known to Adamandios Polemis through risk disclosure documents.

In this case, investor’s claims were heard in two parts, pre-default and post-default claims. Pre-default claims were very broad that includes claims for breach of contract, breach of fiduciary duty, negligent mis-statement and claim under section 2 of Misrepresentation Act. In pre-default claims, contractual estoppel was one of the many issues that has been considered with great significance.[[26]](#footnote-26) In this case the Bank succeeded in raising a purely contractual estoppel on the basis those acknowledgement and representations were contractual terms which operated independently of reliance or any wider considerations of unconscionability. The investor argued that following *Lowe v Lombank* analysis, statements of past facts known by both parties to be false cannot create a future contractual obligation. The court disagreed with this argument on the basis that the outcome in *Lowe v Lombank* was decided under the Hire Purchase Act 1938, not on contractual estoppel. The court upheld the decision in *Peekay,* that it was possible for a party to be estopped by contract from asserting that it had been induced by misrepresentation to enter into purchase. It was also held that there was no further unconscionability requirement since parties were in contractual relationship.[[27]](#footnote-27) Therefore, investor’s claims failed because of the contradiction with state of affairs agreed by the contract.

*Springwell* is the most important case in the development of contractual estoppel. It made three important contributions to the development of contractual estoppel. This is the first occasion where the court defined the contractual estoppel as distinct from other form of estoppel. *Springwell* clearly confirmed that contractual estoppel does not require the detrimental reliance like in evidential estoppel, it arises on the basis of the contract alone.[[28]](#footnote-28) Therefore, contractual estoppel smoothly avoids the difficulties caused by the evidential estoppel requirements in the context of non-reliance cases.[[29]](#footnote-29) Detailed analysis on this topic will be discussed in later chapters. Moreover, the question whether *Peekay* is a good law or not was raised in the analysis of *Springwell.* It was argued that in addressing contractual estoppel parts of *Peekay* were obiter. After detailed review such claim has been dismissed by the court. In addition, Aikens LJ found out in *Springwell* that *Peekay* was good law and it was consistent with both principle and authority, although he initially considered only principle.

1. ***Prime Sight Ltd v Lavarello*:**

This is an independent case where the principle of contractual estoppel has been considered after appearance through *Peekay* and formal recognition in *Springwell.* A deed of assignment for an apartment was entered by Mr Marrache in return for payment of £499,950 by Prime Sight Ltd. It has been provided in the deed that the receipt and payment of that sum was acknowledged, however, both partied knews that the amount was never paid. Later it has been found that Mr Marrache went bankrupt. As consequence, the official Trustee of Mr Marrache filed a winding up petition against the Prime Sight Ltd claiming they were indebted to Mr Marrache for the unpaid purchase price.

An appeal to the Privy Council succeeded where official Trustees were estopped by the receipt clause from claiming the debt. In this case Privy Council outlined the development of contractual estoppel, stating that, parties are generally free to choose whatever terms they want to enter into contract under contract law except in certain situations. The appellant pleaded estoppel by deed and Privy Council considered the estoppel by convention. However, finally the Privy Council applied the principle of contractual estoppel due to its principle basis party autonomy and freedom of contract. Therefore, it was stated that, ‘if as a matter of construction, a recital amounts to a mutual agreement to treat it as true, and if there were no vitiating factors such as illegality or misrepresentation, the fact that the parties have willingly so bound themselves is itself sufficient reason for the contract to be enforced.’[[30]](#footnote-30) It was also stated that, ‘parties are ordinarily free to contract on whatever terms they choose and the court’s role is to enforce them… contractual estoppels are subject to the same limits as other contractual provisions, but there is nothing inherently contrary to public policy in parties agreeing to contract on the basis that certain facts are to be treated as established for the purpose of their transaction, although they know the facts to be otherwise.’[[31]](#footnote-31)

**CHAPTER THREE**

1. **Contractual Estoppel: General Features**
   1. **Chapter Overview:**

Since the doctrine of contractual estoppel has developed through its landmark cases it has been the subject matter of many criticism and debates about its function and characteristics. However, distinct nature of this doctrine made it more popular in short period of time in the area of commercial contracts and banking sector. This chapter will provide a detailed discussion on the general features of contractual estoppel and how such characteristics of this doctrine have been criticised and recognised in different cases.

* 1. **Distinct form of estoppel**:

It has been clearly confirmed from *Springwell* that, contractual estoppel is a separate form of estoppel from other form of estoppel. The reason behind its distinct form is clearly demonstrated in the outcome of *EA Grimstead & Son Ltd v Mc Garrigan[[32]](#footnote-32).* In this case, a share sale agreement contained two acknowledgements of non-reliance on representations and warranties. The Court of Appeal held that, Vendor did not make any false oral representations. It also held that, even if such representations had been made, such clauses would be capable of operating as an evidential estoppel.[[33]](#footnote-33) The Court of Appeal in this case applied the principle set out in *Lowe v Lombank[[34]](#footnote-34),* to prove whether the vendor fulfilled three requirements of evidential estoppel; (i) that the non-reliance statements of purchaser were clear and unequivocal, (ii) that the purchaser intended that the vendor should act upon those statements, and (iii)that the vendor has believed the statements to be true and acted upon it. Chadwick LJ started that, although first and second requirement were met, it would be difficult for vendor to prove the third requirement since having made the representation, vendor cannot say that he did so in order to persuade the purchaser to agree to purchase.[[35]](#footnote-35) Contrarily, in *Springwell,* it was clearly confirmed that contractual estoppel does not require detrimental reliance, therefore, it does not require to follow the evidential estoppel requirements in the context of non-reliance cases.[[36]](#footnote-36)

* 1. **No requirement of unconscionability:**

Moreover, contractual estoppel is distinct from estoppel by convention.[[37]](#footnote-37) The estoppel by convention requires party wishing to rely on a statement shows that it would be unconscionable for the other party to go back on the assumed state of affairs.[[38]](#footnote-38) However, unlike reliance based estoppels, contractual estoppel does not required to show the consideration of unconscionability.[[39]](#footnote-39) In *Springwell,* investors submitted that any estoppel should be governed by the considerations of justice and equity.[[40]](#footnote-40) The Court of Appeal in *Springwell* held that, contractual estoppel is bases on the contract between the parties, it is a separate doctrine , so no other mechanism is required; therefore, requirement of unconscionability is irrelevant to contractual estoppel. Aikens LJ expressly clarified that, ‘once it is accepted that there is a separate doctrine of contractual estoppel then there is no room for a requirement that the party which wishes to rely on that estoppel must demonstrate that it would be unconscionable for the party to resile from the conventional state of affairs that the parties have assumed.’[[41]](#footnote-41) The agreement itself sufficient. As per Briggs LJ, ‘the essence of contractual estoppel, as it is now understood, is that it has contractual force.’[[42]](#footnote-42)

* 1. **Truth or falsity of agreed statement is irrelevant:**

In contractual estoppel, where the parties agreed to consider certain statement of facts to be true for the purpose of their contract, it is irrelevant whether such statements are true or false.[[43]](#footnote-43) The main purpose of agreed statements of facts is to require the parties to accept those statements as true, even if they knew that actually they are not true. Once parties are agreed on that, there is no chance for either of the parties in later situation to deny the agreed statements or assert the opposite.

It is also irrelevant that parties had the knowledge of falsity of the statements they agreed. It does not matter if any party or all know that the agreed statement is not in fact true, except where the agreement might otherwise violate public policy or a statutory prohibition.[[44]](#footnote-44) Like other contractual provisions, contractual estoppels are subject to similar limits, however, there is nothing inherently contrary to public policy in parties agreeing to contract on the basis that certain facts are to be treated as established for the purposes of their transaction, although they know the facts to be otherwise.[[45]](#footnote-45) Subject to the fraud, mistake or misrepresentation, a party to the contract shall not be deprived of the benefit of contractual estoppel if it is shown that this party alone knew the falsity of agreed statement.

* 1. **Future facts to raise contractual estoppel**:

It is now clear that contractual estoppel can be raised by an agreed statement of past or present fact. However, in nowhere future facts have been considered to raise the contractual estoppel. Since the statements of past and present facts in a contract can give rise to contractual estoppel, it would be unprincipled if agreed statement of future facts cannot, where each statement is a term of a complete and binding contract.[[46]](#footnote-46) Therefore, as long as contractual statements on true construction are concerned with agreed facts or proposition, it is able to raise estoppel regardless of the point of time and event by reference to which the fact or proposition is agreed.

In addition, there is also a distinction between an agreement of future facts and a promise of future action. The important point here is that an agreement of future fact as true can raise contractual estoppel, however, a promise of future action cannot.[[47]](#footnote-47) To clarify this issue it is necessary to have a look on the case *Credit Suisse v Stichting Vestia Groep[[48]](#footnote-48).* This case is concerned with the capacity of a Dutch housing authority to enter derivative transactions with the Credit Suisse Bank. A Master Agreement governed the transaction between the parties and seven swaps contracts were entered. Vestia Groep later found to be unable to provide security. Therefore, Bank terminated the Master Agreement and sought the damages. In response to the claim, Vestia disputed the transaction as ultra vires. The Bank relied on a statement of Veista in the Master Agreement, that Sticthing Veista Groep “is and will be in compliance with its article of association”, deemed to be repeated on specified future dates.[[49]](#footnote-49) Andrew Smith held that the swaps were void because they were entered into ultra vires. However, the Master Agreement was valid and contained certain warranties which allowed Crdit Suisse Bank to enforce the ultra vires contract. Veista was contractually estopped from disputing the validity of the swaps. The judge considered that, contractual estoppel was raised by the statement, read as a contractual undertaking to comply with the articles of association in the future.[[50]](#footnote-50) In *Credit Suisse,* it is not clear why the word in Master Agreement “is and will be in compliance” considered in Veista had to be read as promise of future action and not as an agreement to accept as true proposition that at a future date the party is in compliance.[[51]](#footnote-51) The latter meaning would have raise the contractual estoppel without stretching it to a breaking point. A breach of promise to act may lead to damages, but contractual estoppel is raised by an agreement that stated facts are true. Therefore, it can be said that, on the construction of the statement as a promise of future action, relief ought to have been limited to damages, and the finding of contractual estoppel was not warranted.

* 1. **Form of statement in not relevant:**

It is not important matter that to raise contractual estoppel there should be a precise form of statement, as long as it is a true construction that the statement is an agreement of party to accept a stated fact or proposition as true. Considering the specific form of contractual language that raised contractual estoppel in *Peekay*, Gloster J, in *Springwell* stated that, “but the principle extends more broadly and, in my judgement, applies to any form of contractual statement, for instance as to sophistication or non-reliance on advice generally. In each case the parties are contractually free to determine the factual basis upon which they conduct business.”[[52]](#footnote-52) Therefore, whether a statement is able to raise contractual estoppel is completely depends, as a matter of substance, on the basis of construction of a contractual agreement. Statement that give rise to contractual estoppel may be in many different forms. Apart from statements of agreement, acceptance and other form of express consent, contractual estoppel has been raised by statements of recital, direction, assumption, acknowledgement, advice, admission, confirmation, intention and purpose, representation and warranty, plain representation, action and inaction, non-reliance, reliance, denial.[[53]](#footnote-53)

Moreover, there is an argument that, to raise contractual estoppel, statement must meet a high standard of clarity. However, there is no authority that mentioned the requirement of clear and unambiguous language to raise contractual estoppel. It is not even a defensible argument. Contractual estoppel arises as a matter of contract. The question of whether contractual estoppel has raised and to what extent, is to be determined by the ordinary principles of construction and implication of terms.[[54]](#footnote-54) There should be no special requirement beyond that. Ferris J in *Colchester BC v Smith[[55]](#footnote-55)* has rejected a claim that a clause could not give rise to an estoppel because it was not clear and unambiguous. The counsel argued that the terms related to that clause were self-contradictory to the point of failing to support an estoppel. However, court held that, such clause gave rise to contractual estoppel and construed in the ordinary meaning of those terms.[[56]](#footnote-56)

**CHAPTER FOUR**

1. **Contractual Estoppel: is it really an estoppel?**
   1. **Chapter overview**:

Since its appearance the doctrine of contractual estoppel is of great practical utility and applied in many cases. The application of this doctrine is no more limited to only disputes in financial sector, but greatly applied in wide range of commercial disputes. Despite its great popularity in contractual disputes, there were many occasions where the principle of contractual estoppel fell into controversies. Many academic and Judges claimed that it is not an estoppel. On the other hand, many argued it is a separate and distinct estoppel. Analysing such debates proposition can be made that, contractual estoppel is a separate and distinct type of estoppel, the juridical basis of which is simply contract rather than any other traditional requirements. This chapter will critically discuss the position of contractual estoppel in the family of Estoppel.

* 1. **Is it an estoppel?**

The question whether contractual estoppel is really an estoppel is taxonomical. Although doctrine of contractual estoppel first brought into existence by the court in *Peekay,* it sometimes doubted that it is really an estoppel. As, contractual estoppel arises without needing of detriment, reliance and unconscionability, some judges believe that this disqualifies contractual estoppel from being an estoppel.[[57]](#footnote-57) Such confusion and division within the scholars and judges arose because of the disagreement about what are the relevant definitional features of estoppel. There are two main factions; first faction defines the family of estoppel by reference to its requirements. As an example, Wilken and Ghaly argued that, ‘estoppel at root require detriment, detriment is the main theme common to all estoppel – all save for this contractual estoppel.’[[58]](#footnote-58) However, some scholars denied expressing their definition of estoppel directly, even they were not appeared to adopt similar premise. McMeel argued that, ’contractual estoppel is not a true estoppel because it does not require reliance, or unconscionability.’[[59]](#footnote-59) The similar approach has been taken by Trukhtanov, where he stated in his book that, contractual estoppel is not really an estoppel on the basis that the doctrine is raised by the finding of contract without more.[[60]](#footnote-60)

On the other hand, the second faction believes that the family of estoppel should be defined by reference to its legal effect. In *Simm v Anglo American Telegraph[[61]](#footnote-61),* Bramwell LJ stated that, ‘an estoppel may be said to exist, where a person is compelled to admit that to be true which is not true, and to act upon a theory which is contrary to the truth. Such formula nearly approaches a correct definition of estoppel.’[[62]](#footnote-62) This approach has been adopted in Phipson on Evidence, which claims that the hallmark of legal estoppels is that they prevent a party from denying a particular fact.[[63]](#footnote-63) Following this definition, it can be argued that contractual estoppel clauses can properly be regarded as giving rise to an estoppel.

Many good reasons can be found to support the definition of estoppel that is based on the legal effect, rather than their requirements. An important reasoning could be that, if estoppel was defined by the requirement of detrimental reliance or unconscionability then estoppel by deed would not be an estoppel as well. Such proposition would go against the many centuries judicial approach to estoppel by deed. Another reason could be that, the definition of estoppel based on legal effect is better accord with the literal meaning of the word ‘estoppel’, which is derived from ‘to stop’ or ‘to prevent’. These factors create the doubt on the first faction’s definition of estoppel which is based on the requirement. Therefore, it can be argued that, if second faction’s definition is preferred over first faction’s, this doctrine would be properly regarded as an estoppel.

* 1. **Contract as juridical basis for estoppel:**

It has already been cleared from the leading cases, contractual estoppel is a separate and distinct type of estoppel. Moore-Bick LJ in *Peekay* made a clear proposition that ‘the contract itself give rise to an estoppel’.[[64]](#footnote-64) Likewise, Aikens LJ in *Springwell* rejected the counsel’s argument that there is no juristic concept of contractual estoppel which is distinct from the doctrine of estoppel by convention. He further stated once it is accepted that there is a separate doctrine of contractual estoppel then there is no room for a requirement that the party which wishes to rely on that estoppel should demonstrate that it would unconscionable for the other party to resile from the conventional state of affairs that the parties have assumed.[[65]](#footnote-65) The absence of contract in estoppel by convention is the only reason why the requirement of unconscionability need to be established to enforce such estoppel. Therefore, where there is no contract, some other mechanism should be there to make non-contractual estoppels enforceable. For example, contract is not required to raise reliance-based estoppels, they are raised on the basis of unconscionability. Therefore, to enforce such estoppel all they ever do is establish unconscionability, not contract. A contract arises where considerations are communicated between the parties by words or conduct, intending to create legal relationship based on the agreed terms of the contract. Therefore, absence of intention to create legal relation cannot be compensated by estoppel.

* 1. **Contractual Estoppel is distinct from Evidential estoppel:**

The evidential estoppel sometime referred to as estoppel by representation. The distinct category of contractual estoppel has separated this doctrine from estoppel by representation. In *Peekay,* it was established that contractual estoppel is different from the estoppel by representation. Similarly, in *Springwell* it was held that two forms of estoppel are different with different jurisprudential bases.[[66]](#footnote-66) The main difference is that in contractual estoppel a statement binds the maker by contractual intention, and in estoppel by representation a statement is made without such intention and bind the maker by another’s reliance on it. There are three basic requirements for estoppel by representation: (i) a clear and unambiguous statement based on which the recipient is objectively intended to act; (ii) the statement has been relied and induced the recipient; and (iii) detriment to the recipient if the maker of the statement is allowed to resile from it. It can be seen from the abode requirements, none of the, include the requirement of unconscionability. However, requirement of unconscionability is inherent to the estoppel raised in equity. Although requirement of unconscionability is unlikely to be found in any of the above three requirements, the satisfaction of them would normally add up to establish unconscionability. Express or implied statements from which estoppel by representation arise can take different forms like representation of fact, promise or conduct, however, none of them intended as an offer which could be accepted to create contractual promise. There could be a little possibility that, estoppel by representation may be raised at law, in which unconscionability is not a strict requirement. However, still the factual elements of the estoppel are the same both at law and equity.

**CHAPTER FIVE**

1. **Implications of Contractual Estoppel & Concluding Remarks**
   1. **Chapter overview:**

The doctrine of contractual estoppel operates as a means of holding parties to their particular contractual statements. Any implications of this doctrine are completely depending on the words used or statement made by the parties. More clear demonstration of such proposition was given in *Camerata Property v Credit Suisse Securities (Europe) Ltd.[[67]](#footnote-67)* The judge found in above case that the contractual estoppel has raised and the statements in question were given only for allowing bank to make them when acted on behalf and it was about a state of affairs as a particular point in time. Therefore, bank was not protected from the claims brought against it by its investor. This chapter will consider the implications of contractual estoppel with detailed analysis of relevant area of law. To provide a broad analysis of the implications of contractual estoppel, three widely adopted types of provisions in commercial contract are separately considered below. These provisions usually used to limit the liability of the parties to a contract, however, it sometimes can be the basis clauses for contractual estoppel. These clauses may be under the requirement of Unfair Contract Terms Act 1977 (“UCTA”) ‘reasonableness test’ if used to limit the liability of the parties.

* 1. **No Responsibility:**

To minimise parties’ potential liability in commercial contract ‘no responsibility’ clause is one of the widely adopted provisions. These provisions are included to attempt to establish that no duty arises between the parties, not even the fiduciary duty or a duty of care. These types of clauses are more popular in banking sector. It was decided in *Springwell* that, bank and their clients may come into agreement that no advisory duty is to arise or has arisen before. Proposition has been made by Lord Hodge that, such wording in *Springwell* defines the basis of the parties’ trading, or banking relationship, and allocates risk in a way which negates any possibility of a general or specific advisory duty coming into existence.[[68]](#footnote-68) In this context the effect of contractual estoppel is that, such clause bar the customer to claim that he was given advise and relied on it, regardless of the truth in reality.[[69]](#footnote-69) Moreover, contractual estoppel in this context allows the parties to acknowledge that no such duty arose prior to contract, thereby defining the basis of their dealings.[[70]](#footnote-70)

* 1. **Non-reliance Clauses:**

Non-reliance clauses are now commonplace in commercial contracts. Using these provisions parties normally confirm that they have not relied on any representations or warranties save for those expressly stated in the contract.[[71]](#footnote-71) The effect of these type of provision is to limit parties’ potential liability for pre-contractual representations. However, under English law, the effect of non-reliance clause is to raise a contractual estoppel, by which the parties are prevented from asserting the facts contradicting the agreed state of affairs. A typical non-reliance clause is likely to state: ‘The parties hereby confirm that in entering the contract they have not relied upon any representations or statements made by the other party.’[[72]](#footnote-72) The origin of this type of clauses were discussed in *E A Grimstead & Sons Ltd v McGarrigan.[[73]](#footnote-73)* Chadwick LJ cited the remarks of Mr Justice Browne-Wilkinson in *Alman and another v Associated Newspaper Group Ltd[[74]](#footnote-74)* that, ‘if the entire agreement clauses were designed to exclude liability for misrepresentation it would, I think, have to be couched in different terms, for example, a clause acknowledging that the parties had not relied on any representations in entering into the contract.’[[75]](#footnote-75) It was stated in *Grimstead* that,binding the parties on such statement would be a matter of evidential estoppel, however, *Springwell* confirmed that, contractual estoppel may arise to hold the parties to non-reliance clauses. Alexander Trukhtanov considered this as redressing a mischief by finally putting non-reliance clauses on the same footing with entire agreement clauses.[[76]](#footnote-76)

As the effect in *Springwell* was decisive, the investor was contractually estopped from alleging that an actionable misrepresentation was made by the bank.[[77]](#footnote-77) This part of the decision in *Springwell* has been widely applied in later cases. In recent case *Barclays Bank v Svizera Holdings BV[[78]](#footnote-78)* non-reliance clause was considered in a Mandate letter for a syndicate loan, where court cited the authority of *Peekay* and *Springwell*. It was stated that, the party may be contractually estopped from alleging that he relied upon a representation in entering the contract.[[79]](#footnote-79) An argument was made by the borrower in *Barclays Bank* that, the drafting of the clause should be struck down under sections 3 and 11 of Unfair Contract Terms Act 1977 (“UCTA”), which was described as hopeless. This has created the debate whether this type of drafting should fall under UCTA. It was assumed in *Grimstead* that, UCTA would apply because the drafting was found to be terms which exclude any remedy available to a party to a contract by reason of a pre-contractual misrepresentation. In *Grimstead,* it was noted by Judge that, the court should not refuse to give effect to an acknowledgement of non-reliance in a commercial contract between parties with equal bargaining power and experience, where they have the benefit of professional advice.[[80]](#footnote-80) There were two reasons; firstly, to avoid the uncertainty of litigation to uphold the parties’ intention over oral discussion at pre-contractual meetings; and secondly, because the price would have reflected the risk that the parties had agreed to take.[[81]](#footnote-81)

* 1. **Entire Agreement Clause:**

Entire agreement clause is another widely adopted provision in commercial contracts like non-reliance and no representation clauses. An entire agreement clause is a contractual provision by which parties to a contract agree that the entirety of their agreement on a specific subject matter is recorded in a written instrument identified by clause.[[82]](#footnote-82) The status and interpretation of entire agreement clauses is highly fact specific, but usually been treated by the courts as contractual terms. It was stated by Lightman J in *Inntrepreneur Pub Co v East Crown Ltd[[83]](#footnote-83)* that ‘entire agreement clause constitutes a binding agreement between parties that the full contractual terms are to be found in the document containing the clause and not elsewhere, and any assuarance or promises made outside the documents stated n clause shall have no contractual force.’[[84]](#footnote-84) However, in *Axa Sun Life Services plc v Campbell Martin Ltd[[85]](#footnote-85)* the court of appeal decided that contractual estoppel was the basis on which an entire agreement clause took effect in accordance with its terms. Similarly, Hamblen J in *Standard Chartered Bank v Ceylon Petroleum Corporation[[86]](#footnote-86)* stated that because of contractual estoppel an entire agreement clause incorporating non-reliance clause took effect, thereby any non-fraudulent representations were prevented. Therefore, it can be seen as a convergence between the legal effects of non-reliance and entire agreement clauses.

Wide adoption of non-reliance and entire agreement clauses in commercial contracts for the purpose of contractual estoppel give rise to the debate whether these clauses are subject to UCTA reasonableness test. The Court of Appeal in *Axa Sun Life* held that UCTA reasonableness requirement did apply to the entire agreement clause in this case. However, prior to applying test, Stanley Burton LJ held that an entire agreement clause is not an exemption clause of kind where UCTA is concerned.[[87]](#footnote-87) In addition, as the clause prevented collateral warranties coming to existence, rather than excluding liability, section 3(2)(b)(i) of UCTA did not apply. However, it was held that section 3(2)(a)(i) of UCTA applied, because the objective of the clause may be to allow party to render performance substantially different to that which was expected. Despite all these debate, Stanley Burton LJ in *Axa Sun Life* held that, applying UCTA Axa’s entire agreement clause was reasonable, and these were Axa’s standard terms. Therefore, it can be seen, the court tried to establish that the defendant should have read and understood the terms and that both sides could benefit from the certainty of their contract.[[88]](#footnote-88)

1. **Concluding remarks:**

This paper has sought to give a complete overview of contractual estoppel in current context of commercial litigations. There are not many books devoted to contractual estoppel as it is still a rising area of law in the family of estoppel. However, many research, lectures, court decisions and journal articles can be found for a wide research of contractual estoppel. The conclusion can be drawn at the end of this paper that, contractual estoppel is a great tool to prevent the parties from contracting in one basis and litigating on another. There is no doubt that doctrine of contractual estoppel is must needed development that has been developed over the past few decades. Although the doctrine first developed in *Peekay,* the breakthrough of this doctrine came after the formal consideration in *Springwell.* However, controversies on this doctrine remain continued despite its overwhelm acceptance in judiciary. Many academics and judges did not recognise this doctrine as an estoppel and they described it as anomalous. However, it is worth noting that, contractual estoppel plays a very different function from traditional estoppel. It keeps contracting parties to the bargain they have stuck, even if it does not reflect true situation. Unlike evidential estoppel, detrimental reliance is not required to raise contractual estoppel. Such nature of this doctrine may still be controversial due to the different nature. Suggestion can be made that; further judicial discussion would be necessary for further development of contractual estoppel to bring certainty.

Since, contractual estoppel is relatively new form of estoppel, it has many areas left to be developed. Controversies should be resolved through judicial approach on the truth or falsity of agreed statement of fact. In current feature of contractual estoppel, where parties agreed to certain statement of facts it is irrelevant whether such statements are true or false. This nature of this doctrine could lead to great controversies that may raise the question on certainty of contractual estoppel. Non-reliance and Entire agreement clauses are often used in most commercial contracts nowadays. These clauses as well are not out of debate to raise contractual estoppel. Generally, contractual terms that incorporated to limit the liability are subject to the UCTA ‘reasonableness test’. In discussions above, it has been seen that the application of Reasonableness test varies from case to case. In *Axa Sun Life,* although Stanley Burton LJ stated that UCTA reasonableness test does not apply to entire agreement clause, the Court of appeal held that, the test applied to the entire agreement clause in this case. Similarly, in *Grimstead* it was assumed that the test would apply to non-reliance clause. Therefore, although many critics claiming this doctrine creates virtual world and calling Supreme Court to abolish it, the better approach would be to accept it as commercially useful, but to put extra attention when considering whether ‘non-reliance’, ‘’no representation’ and other basis clauses excludes liability, so as to fall within the reasonableness test of UCTA.

**Bibliography:**

**List of Books:**

1. Alexander Trukhtanov, Contractual Estoppel, (1st edn, Informa Law from Routledge, 2018)
2. George Spencer Bower and Alexander Kingcome Turner, The Law Relating to Estoppel by Representation (3rd edn, Butterworths, 1977)
3. H Malek and others, Phipson on Evidence, (19th edn, Sweet & Maxwell, 2017)
4. S. Wilken and K. Ghaly, The Law of Waiver, Variation and Estoppel, (3rd edn, Oxford University Press, 2012)

**List of Journal Articles:**

1. Catherine Gibaud, Contractual estoppel: an old remedy revived, or a new remedy forged? [2010] 6 Journal of International Banking and Finance Law
2. G. McMeel, "Documentary Fundamentalism in the Senior Courts: The myth of contractual estoppel" [2011] 185 Lloyd’s Maritime and Commercial Law Quarterly
3. Jo Braithwaite, The origins and implications of contractual estoppel [2016] 132(Jan) Law Quarterly Review
4. Nelson Goh, 'Non-reliance clauses and contractual estoppel: commercially sensible or anomalous?' [2015] 7 Journal of Business Law
5. Rupert Lewis, “The development of contractual estoppel” [2011] 49 Journal of International Banking Law and Regulation

**List of Cases:**

1. Alman and another v Associated Newspaper Group Ltd [2007] EWHC 997
2. Axa Sun Life Services plc v Campbell Martin Ltd [2011] 2 Lloyd’s Rep 1
3. Barclays Bank v Svizera Holdings BV [2015] 1 All E.R. (Comm) 788
4. Camerata Property v Credit Suisse Securities (Europe) Ltd [2011] EWHC 479
5. Colchester BC v Smith [1991] Ch 448 (QB) 493
6. Credit Suisse International v Sticthing Vestia Greop [2014] EWHC 3103, 291
7. Inntrepreneur Pub Co v East Crown Ltd [2000] 2 Lloyd’s Rep 611
8. EA Grimstead & Son Ltd v Mc Garrigan [1998] TLR 384
9. Grant Estates Ltd v RBS [2012] GWD 29
10. HGughes v Pendragon Sabre Ltd [2016] EWCA Civ 18, 32
11. JP Morgan Chase v Springwell Navigation Corporation [2010] 2 CLC 705
12. Lowe v lombak [1960] 1 WLR
13. Peekay Intermark v Australia and New Zealand Banking Group [2006] EWCA Civ 386
14. Prime Sight Ltd v Lavarello [2013] WLR 514
15. Simm v Anglo American Telegraph [1878] 5 QBD 188 (CA) 202
16. Wood v Capital Bridging Finance Ltd [2015] EWCA Civ 451

**List of Acts:**

1. Unfair Contract Terms Act 1977

1. [2006] EWCA Civ 386 [↑](#footnote-ref-1)
2. [2008] EWHC 1186 (Comm) [↑](#footnote-ref-2)
3. Jo Braithwaite, The origins and implications of contractual estoppel [2016] 132(Jan) Law Quarterly Review 1 [↑](#footnote-ref-3)
4. [2006] EWCA Civ 386 [↑](#footnote-ref-4)
5. *Peekay Intermark v Australia and New Zealand Banking Group* [2006] EWCA Civ 386 [↑](#footnote-ref-5)
6. [2010] EWCA Civ 1221 [↑](#footnote-ref-6)
7. Catherine Gibaud, Contractual estoppel: an old remedy revived, or a new remedy forged? [2010] 6 Journal of International Banking and Finance Law 4 [↑](#footnote-ref-7)
8. S. Wilken and K. Ghaly, The Law of Waiver, Variation and Estoppel, (3rd edn, Oxford University Press, 2012) 90-91 [↑](#footnote-ref-8)
9. G. McMeel, "Documentary Fundamentalism in the Senior Courts: The myth of contractual estoppel" [2011] 185 Lloyd’s Maritime and Commercial Law Quarterly, 206 - 207 [↑](#footnote-ref-9)
10. George Spencer Bower and Alexander Kingcome Turner, The Law Relating to Estoppel by Representation (3rd edn, Butterworths, 1977) 158.s [↑](#footnote-ref-10)
11. [1991] Ch 448 (QB) 493 [↑](#footnote-ref-11)
12. Rupert Lewis, “The development of contractual estoppel” [2011] 49 Journal of International Banking Law and Regulation, 1 [↑](#footnote-ref-12)
13. [1960] 1 WLR [↑](#footnote-ref-13)
14. ibid [↑](#footnote-ref-14)
15. Alexander Trukhtanov, Contractual Estoppel, (1st edn, Informa Law from Routledge, 2018) 126 [↑](#footnote-ref-15)
16. Alexander Trukhtanov, Contractual Estoppel, (1st edn, Informa Law from Routledge, 2018) 127 [↑](#footnote-ref-16)
17. [2006] EWCA Civ 386 [↑](#footnote-ref-17)
18. [2008] EWHC 1186 [↑](#footnote-ref-18)
19. [2006] EWCA Civ 386 [↑](#footnote-ref-19)
20. [2008] EWHC 1186 [↑](#footnote-ref-20)
21. [2013] WLR 514 [↑](#footnote-ref-21)
22. Peekay Intermark v Australia and New Zealand Banking Group Ltd [2006] 1 CLC 582, at 50-58 [↑](#footnote-ref-22)
23. Ibid. 52 [↑](#footnote-ref-23)
24. Ibid. 56 [↑](#footnote-ref-24)
25. Jo Braithwaite, The origins and implications of contractual estoppel [2016] 132(Jan) Law Quarterly Review 5 [↑](#footnote-ref-25)
26. Ibid. 6 [↑](#footnote-ref-26)
27. JP Morgan Chase v Springwell Navigation Corporation [2010] 2 CLC 705 [↑](#footnote-ref-27)
28. Jo Braithwaite, The origins and implications of contractual estoppel [2016] 132(Jan) Law Quarterly Review 7 [↑](#footnote-ref-28)
29. Watford Electronics v Sanderson [2001] 1 All E.R. 40 [↑](#footnote-ref-29)
30. Prime Sight Ltd v Lavarello [2013] WLR 514, 41 [↑](#footnote-ref-30)
31. Ibid 47 [↑](#footnote-ref-31)
32. [1998] TLR 284 [↑](#footnote-ref-32)
33. *EA Grimstead & Son Ltd v Mc Garrigan* [1998] TLR 384, at 411 [↑](#footnote-ref-33)
34. [1960] 1 WLR 196 [↑](#footnote-ref-34)
35. Jo Braithwaite, The origins and implications of contractual estoppel [2016] 132(Jan) Law Quarterly Review 7 [↑](#footnote-ref-35)
36. Watford Electronics v Sanderson [2001] 1 All E.R. 696, at 40 [↑](#footnote-ref-36)
37. Jo Braithwaite, The origins and implications of contractual estoppel [2016] 132(Jan) Law Quarterly Review 7 [↑](#footnote-ref-37)
38. ibid [↑](#footnote-ref-38)
39. Alexander Trukhtanov, Contractual Estoppel, (1st edn, Informa Law from Routledge, 2018) 217 [↑](#footnote-ref-39)
40. Jo Braithwaite, The origins and implications of contractual estoppel [2016] 132(Jan) Law Quarterly Review 7 [↑](#footnote-ref-40)
41. JP Morgan Chase v Springwell Navigation Corporation [2010] 2 CLC 705, at 177 [↑](#footnote-ref-41)
42. Wood v Capital Bridging Finance Ltd [2015] EWCA Civ 451 [↑](#footnote-ref-42)
43. Alexander Trukhtanov, Contractual Estoppel, (1st edn, Informa Law from Routledge, 2018) 217 [↑](#footnote-ref-43)
44. ibid [↑](#footnote-ref-44)
45. Prime Sight Ltd v Lavarello [2013] UKPC 22, 47 [↑](#footnote-ref-45)
46. Alexander Trukhtanov, Contractual Estoppel, (1st edn, Informa Law from Routledge, 2018) 245 [↑](#footnote-ref-46)
47. Alexander Trukhtanov, Contractual Estoppel, (1st edn, Informa Law from Routledge, 2018) 228 [↑](#footnote-ref-47)
48. [2014] EWHC 3103 [↑](#footnote-ref-48)
49. Credit Suisse International v Sticthing Vestia Greop [2014] EWHC 3103, 291 [↑](#footnote-ref-49)
50. Ibid. 313 [↑](#footnote-ref-50)
51. Alexander Trukhtanov, Contractual Estoppel, (1st edn, Informa Law from Routledge, 2018) 228 [↑](#footnote-ref-51)
52. ibid [↑](#footnote-ref-52)
53. Alexander Trukhtanov, Contractual Estoppel, (1st edn, Informa Law from Routledge, 2018) 232 [↑](#footnote-ref-53)
54. Prime Sight Ltd v Lavarello [2013] UKPC 22, 47 [↑](#footnote-ref-54)
55. [1991] Ch 448, 459 [↑](#footnote-ref-55)
56. Ibid 496 [↑](#footnote-ref-56)
57. *Proactive Sports Management Ltd v Rooney* [2010] EWHC 1807 [↑](#footnote-ref-57)
58. S. Wilken and K. Ghaly, The Law of Waiver, Variation and Estoppel, (3rd edn, Oxford University Press, 2012) 22 [↑](#footnote-ref-58)
59. G. McMeel, "Documentary Fundamentalism in the Senior Courts: The myth of contractual estoppel" [2011] 185 Lloyd’s Maritime and Commercial Law Quarterly, 206 [↑](#footnote-ref-59)
60. Alexander Trukhtanov, Contractual Estoppel, (1st edn, Informa Law from Routledge, 2018) 363 [↑](#footnote-ref-60)
61. [1878] 5 QBD 188 (CA) 202 [↑](#footnote-ref-61)
62. Simm v Anglo American Telegraph [1878] 5 QBD 188 (CA) 202 [↑](#footnote-ref-62)
63. H Malek and others, Phipson on Evidence, (19th edn, Sweet & Maxwell, 2017) 506 [↑](#footnote-ref-63)
64. Peekay Intermark v Australia and New Zealand Banking Group Ltd [2006] 1 CLC 582 [↑](#footnote-ref-64)
65. *Springwell Navigation Corporation v JP Morgan Chase Bank* [2010] EWCA Civ 1221 [↑](#footnote-ref-65)
66. *Springwell Navigation Corporation v JP Morgan Chase Bank* [2010] EWCA Civ 1221 [↑](#footnote-ref-66)
67. [2011] EWHC 479 [↑](#footnote-ref-67)
68. Grant Estates Ltd v RBS [2012] GWD 29=588 [↑](#footnote-ref-68)
69. ibid [↑](#footnote-ref-69)
70. Jo Braithwaite, The origins and implications of contractual estoppel [2016] 132(Jan) Law Quarterly Review 16 [↑](#footnote-ref-70)
71. Nelson Goh, 'Non-reliance clauses and contractual estoppel: commercially sensible or anomalous?' [2015] 7 Journal of Business Law 511-529 [↑](#footnote-ref-71)
72. ibid [↑](#footnote-ref-72)
73. [1998-99] Info. TLR 384 [↑](#footnote-ref-73)
74. [2007] EWHC 997 [↑](#footnote-ref-74)
75. E A Grimstead & Son Ltd v McGarrigan [1998-99] Info. TLR 384 [↑](#footnote-ref-75)
76. A. Trukhtanov, "Exclusion of liability for pre-contractual misrepresentation: A setback" (2011) 127 L.Q.R. 345, 349 [↑](#footnote-ref-76)
77. Springwell Navigation Corp v JP Morgan Chase Bank [2010] 2 C.L.C. 705 [↑](#footnote-ref-77)
78. [2015] 1 All E.R. (Comm) 788 [↑](#footnote-ref-78)
79. Barclays Bank v Svizera Holdings BV [2015] 1 All E.R. (Comm) 788 [↑](#footnote-ref-79)
80. E A Grimstead & Son Ltd v McGarrigan [1998-99] Info. TLR 384 [↑](#footnote-ref-80)
81. Ibid. [↑](#footnote-ref-81)
82. Alexander Trukhtanov, Contractual Estoppel, (1st edn, Informa Law from Routledge, 2018) 479 [↑](#footnote-ref-82)
83. [2000] 2 Lloyd’s Rep 611 [↑](#footnote-ref-83)
84. Inntrepreneur Pub Co v East Crown Ltd [2000] 2 Lloyd’s Rep 611 [↑](#footnote-ref-84)
85. [2011] 2 Lloyd’s Rep 1 [↑](#footnote-ref-85)
86. [2011] All ER (D) 113 [↑](#footnote-ref-86)
87. Axa Sun Life Services plc v Campbell Martin Ltd [2011] 2 Lloyd’s Rep 1 [↑](#footnote-ref-87)
88. ibid [↑](#footnote-ref-88)