PROMISSORY ESTOPPEL: COMMON LAW WINE IN CIVIL LAW BOTTLES

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INTRODUCTION

Every legal system employs its own methods and techniques to serve the ends of justice. That one should be precluded from contradicting his own acts or words when they have been relied on by another to his detriment is a well recognized principle in civil law. The common law utilizes the mechanism of estoppel[1] in order to implement this prin-

[1]The word "estop" is an ancient English word which was originally equivalent to the word "stop." *See* G. BOWER & A. TURNER, THE LAW RELATING TO ESTOPPEL BY REPRESENTATION 3 (3rd ed. 1977). According to Coke, "'estoppe' cometh of the French word 'estoupe', from whence the English word stopped: and it is called an estoppel or conclusion, because a man's own act or acceptance stoppeth or closeth up his mouth to alledge or plead the truth ...." 2 COKE ON LITT. 352 a. *See also* Delashmutt v. Teetor, 261 Mo. 412, 169 S.W. 34, 41 (1914) ("The law has adopted the ...

ciple. Estoppel as it exists in a common law jurisdiction forms no part of the civil law vocabulary.[2] Similarly, there is in the civil law no counterpart to the doctrine of promissory estoppel,[3] and detrimental reliance

term [estoppel] from the old French estoupail, meaning a bung; and it indicates that in such a case one's mouth is plugged against the flow of truth.") Different terminological equivalents are used to express the same idea of estoppel, such as "preclusion," "foreclosure," and "bar." *See, e.g.*, J. RANKINE, THE LAW OF PERSONAL BAR IN SCOTLAND 1 (1921).

[2]It has been observed that the term "estoppel" has dropped out of the modern French vocabulary. *See* J. DAWSON, GIFTS AND PROMISES 90 (1978). The French principle of "fin de non-recevoir," which roughly translates as "a bar to the reception of a specific plea," may, however, serve some of the functions of estoppel. For comparison of the two principles, see Wasserman, *The Doctrine of Fins De Non-Recevoir in Quebec Law* (with a Comparative Analysis of the English Doctrine of Estoppel), 34 CAN. B. REV. 641 (1956).

It has also been observed that Latin American law does not know the doctrine of estoppel. In this regard, Eder states:

> Another principle of equity jurisprudence, of great practical importance, is *estoppel*. As far as I am aware, there is nothing equivalent in Latin-American law. The word "estoppel" has the same root as the Spanish *estopa* There is a Spanish saying: *"No bastan estopas para tapar tantas bocas"* (caulking is not enough to stop so many mouths). And, precisely, estoppel is the conclusion reached by operation of law because the act or conduct of a person "stoppeth his mouth" to allege or assert the truth of a fact .... [E]quitable estoppel ... appears to me almost *sui generis* of Anglo-American law.

P. EDER, A COMPARATIVE SURVEY OF ANGLO-AMERICAN AND LATIN - AMERICAN LAW 74 (1950).

[3]Williston formulated the term "promissory estoppel" to mark the distinction between estoppel based on a representation of fact and estoppel based on a promise. He said:

> It is generally held that a representation of fact made to a party who relies thereon with the right to so rely may not be denied by the party making the representation if such denial would result in injury or damage to the relying party.
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> Some courts have sought to apply [this] principle of estoppel to the formation of contracts, where, relying on a gratuitous promise, the promisee has suffered detriment. Since he relies on a promise and not on a misstatement of fact, the term "promissory" estoppel or something equivalent should be used to mark the distinction.

1 S. WILLISTON, CONTRACTS § 139-40 (Rev. 3rd ed. 1957)(footnotes omitted). *See generally* Boyer, *Promissory Estoppel: Requirements and Limitations of the Doctrine*, 98 U. PA. L. REV. 459, n. 1 (1950). In Corbin's view, "[t]he phrase is objectionable. The word is so widely and loosely used as almost to defy definition, yet in the main it has been applied to cases of misrepresentation of facts and not to promises." 1A, A. CORBIN, CONTRACTS, § 204, at 232, 233 (1963). Most American courts use the terms "promissory estoppel" and "detrimental reliance" synonymously. *See, e.g.*, Kirkpatrick v. Seneca National Bank, 213 Kan. 61, 515 P.2d 781, 786 (1973). Today, more modern courts prefer the term "detrimental reliance." *See, e.g.*, Minor v. Sully Buttes School District No. 58-2, 345 N.W.2d 48, 50-51 (S.C. 1984); Valley Bank v. Bowdy, 337 N.W.2d 164, 165 (S.D. 1983). In England, the terms "equitable estoppel" and "quasi-estoppel" are sometimes used by English authorities to indicate the idea of promissory estoppel. *See, e.g.*, O. PHILLIPS, A FIRST BOOK OF ENGLISH LAW, 368-369 (7th Ed. 1977); R. SUTTON & N. SHANNON, CONTRACTS, 79-85 (1970); Duncanson, *Equity and Obligations*, 39 MOD. L. REV. 286 (1976).

rarely constitutes a distinct ground for the enforcement of promises. This does not mean, however, that where a person is held liable at common law on the basis of estoppel, he would therefore not be liable at civil law. Various principles and rules analogous to estoppel are used in a civil-law system to protect the reliance interest.

The purpose of this article is to examine the civil law analogies to promissory estoppel. Our comparison will focus on the different areas in which promissory estoppel has been applied in American law and English law, and the equivalent solutions provided by the civil law. Special reference will be made to Louisiana law as a model of a jurisdiction of civilian heritage incorporating the concept of detrimental reliance in its civil code.[4] Since it was not until 1985 that the Louisiana Civil Code recognized detrimental reliance as a basis of obligations, the question arises whether a civil code contains other devices for the enforcement of promises in cases of reliance, and whether the doctrine of promissory estoppel might serve any useful purpose in such a system.

(1) *VENIRE CONTRA FACTUM PROPRIUM*: NOTIONS OF ESTOPPEL IN CIVIL LAW

(A) *Venire Contra Factum Proprium* Defined

Roman law knew the maxim *venire contra factum proprium non valet*, which means "no one can contradict his own act," or "no one is allowed to go against the consequences of his own act."[5] The doctrine of one's own act is founded on the notion that "it is not licit [for one] to enforce a right in contradiction to one's previous conduct, when that conduct, interpreted in good faith, would justify the conclusion that the

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[4] On the Louisiana civil law system and the influence upon it by the common law, *see generally* Tate, *Civilian Methodology in Louisiana*, 44 TUL. L. REV. 673 (1970); Sanders, *The Civil Law in the Supreme Court of Louisiana*, 15 LA. B.J. 15 (1967); Robertson, *The Precedent Value of Conclusions of Fact in Civil Cases in England and Louisiana*, 29 LA. L. REV. 78 (1968); Tate, *Techniques of Judicial Interpretation in Louisiana*, 22 LA. L. REV. 727 (1962); Jolowicz, *The Civil Law in Louisiana*, 29 TUL. L. REV. 491 (1955); Tucker, *The Code and the Common Law in Louisiana*, 29 TUL. L. REV. 739 (1955); Ireland, *Louisiana's Legal System Reappraised*, 11 TUL. L. REV. 585 (1937); Greenburg, *Must Louisiana Resign to the Common Law?* 11 TUL. L. REV. 598 (1937); Crabites, *Louisiana Not a Civil Law State*, 9 LOY. L. REV. 51 (1928).

[5] S. LITVINOFF, OBLIGATIONS, § 88 at 135 (7 La. Civ. Law Treatise 1975). *See also* J. PUIG BRUTAU, ESTUDIOS DE DERECHO COMPARADO, 97 (1951), *quoted in* Sanders v. United Distributors, Inc., 405 So.2d 536, 537 n.2 (La. Ct. App. 4th Cir. 1981), *writ denied*, 410 So.2d 1130 (La. 1982).

right does not exist or will not by enforced."[6] The doctrine applies in cases where "certain conduct by one party ... may have engendered a situation contrary to reality; that is, one [merely] apparent and [yet] by means of that appearance capable of influencing the conduct of others."[7] The apparent conduct constitutes "the basis for trust by another party who may have proceeded in good faith and therefore may have acted in a manner that would cause him a detriment if his trust should remain frustrated."[8]

Thus, the doctrine of *venire contra factum proprium non valet* is similar to that of equitable estoppel,[9] which rests on the broad principle that he who by his representation leads another to do what he would otherwise not have done or refrain from doing what he would otherwise not have done, shall not subject such person to loss, injury, or detriment. Equitable estoppel precludes a person who, by representation of fact, has induced another to change his position to his detriment or from

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[6] J. PUIG BRUTAU, *supra* note 5, at 111, *quoted in* Sanders v. United Distributors, Inc., 405 So.2d at 537 n.2

[7] J. PUIG BRUTAU, supra note 5, at 112, *quoted in* Sanders v. United Distributors, Inc., 405 So.2d at 537 n.2.

[8] *Id.*

[9] The doctrine of estoppel was recognized early at common law, then became a part of equity. Estoppel at common law was technical in its requirements and limited in its application. It made certain formal legal instruments or transactions conclusive "by matter of record, by matter in writing, and by matter *in pais*" 2 COKE ON LITT. 352a Courts of equity fashioned another form of estoppel, quite different in concept and application from legal estoppel. In the leading case of Horn v. Cole, 51 N.H. 287 (1868), Chief Justice Perley distinguished legal estoppel from equitable estoppel, in what was described as "an admirable and accurate presentation." 3 J. POMEROY, A TREATISE ON EQUITY JURISPRUDENCE, § 802 at 181 n. 6 (5th ed. 1941). Chief Justice Perley said:

> The equitable estoppel and legal estoppel agree indeed in this, that they both preclude from showing the truth in the individual case. The grounds, however, on which they do it are not only different, but directly opposite. The legal estoppel shuts out the truth, and also the equity and justice of the individual case, on account of the supposed paramount importance of rigorously enforcing a certain and unvarying maxim of the law.
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> Equitable estoppels are admitted on the exactly opposite ground of promoting the equity and justice of the individual case by preventing a party from asserting his rights under a general technical rule of law, when he has so conducted himself that it would be contrary to equity and good conscience for him to allege and prove the truth. The facts upon which equitable estoppels depend are usually proved by oral evidence; ... where the facts are clearly proved, the maxim that estoppels are odious, — which was used in reference to legal estoppels, because they shut out the truth and justice of the case, — ought not to be applied to these equitable estoppels ....
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> Horn v. Cole 51 N.H. 287, 290-292 (1868).

asserting a right or raising a defense inconsistent with his representation.[10] Equitable estoppel, like venire contra factum proprium, shifts the loss from the innocent party who originally incurred it to another who, under the law, is or should be liable for that loss.

The same view has been expressed by Vice-Chancellor Bacon in Keate v. Phillips, 18 Ch. D. 560 (1881), where he said:

> The common law doctrine of estoppel was ... a device which the Common-Law Courts resorted to at a very early period to strengthen and lengthen their arm, and not venturing to exercise an equitable jurisdiction over the subject before them, they did convert their own special pleading tactics into an instrument by which they could obtain an end which the Court of Chancery, without any foreign assistance, did at all times, and I hope will at all times, put into force in order to do justice.

Id. at 577.

For discussion of this distinction between legal estoppel or estoppel at common law and equitable estoppel, *see generally* H. MCCLINTOCK, HANDBOOK OF THE PRINCIPLES OF EQUITY § 31 at 79-80 (2nd ed. 1948), 2 F. LAWRENCE, A TREATISE ON THE SUBSTANTIVE LAW OF EQUITY JURISPRUDENCE, § 1046 at 1132 (1929).

It is believed that the concept of equitable estoppel was introduced to the common law in the eighteenth century by Lord Mansfield in Montefiori v. Montefiori, [1762] 1 Black. W. 363, 364, 96 Eng. Rep. 203 (K.B. 1762), where a note given fraudulently, to carry on a marriage treaty, was held to be good against the drawer, though rendered without any consideration. Lord Mansfield stated:

> The law is, that where, upon proposals of marriage, third persons represent any thing material, in a light different from the truth, ... they shall be bound to make good the thing in the manner in which they represented it ... for no man shall set up his own iniquity as a defense, any more than as a cause of action.

Id. at 364. *See* Jones, *Change of Circumstances in Quasi-Contract*, 73 L.Q. REV. 48, 50-51 (1957). *But see* N. FETTER, HANDBOOK OF EQUITY JURISPRUDENCE 46 (1895) (arguing that equitable estoppel was adopted as a common law doctrine in the leading case of Pickard v. Sears, 6 Ad. & E. 469, 112 Eng. Rep. 179 (1837)).

[10] One of the earliest definitions of equitable estoppel appeared in Pickard v. Sears, 6 Ad. & E. 469, 112 Eng. Rep. 179 (1837), in which the court stated:

> [W]here one by his words or conduct willfully causes another to believe the existence of a certain state of things, and induces him to act on that belief, so as to alter his own previous position, the former is concluded from averring against the latter a different state of things as existing at the same time ....

Id. 6 Ad. & E. at 471, 112 Eng. Rep. at 181. This principle of estoppel has been more recently defined in the following terms:

> [W]here one person ("the representor") has made a representation to another person ("the representee") in words or by acts or conduct or (being under a duty to the representee to speak or act) by silence or inaction, with the intention (actual or presumptive) and with the result, of inducing the representee on the faith of such representation to alter his position to his detriment, the representor, in any litigation which may afterwards take place between him and the representee, is estopped, as against the representee, from making, or attempting to establish by evidence, any averment substantially at variance with his former representation, if the representee at the proper time, and in the proper manner, objects thereto.

G. BOWER & A. TURNER, *supra* note 1, at 4.

(B) Application of *venire contra factum proprium* in the Louisiana Civil Code

A close examination of the Louisiana Civil Code reveals several applications of the doctrine of *venire contra factum proprium*, or "equitable estoppel." For instance, although the code does not use these terms,[11] it protects the reliance interest of a contracting party who relies to his detriment upon a misrepresentation by a minor of his age.[12] The Code also protects a third party who relies upon the apparent authority of an agent[13] and the tenant who continues in possession of leased pre-

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The most famous and often quoted enumeration of the elements of equitable estoppel is that of Pomeroy, who states as follows:

> 1. There must be conduct - acts, language, or silence - amounting to a representation or a concealment of material facts. 2. These facts must be known to the party estopped at the time of his said conduct, or at least the circumstances must be such that knowledge of them is necessarily imputed to him. 3. The truth concerning these facts must be unknown to the other party claiming the benefit of the estoppel, at the time when such conduct was done, *and at the time when it was acted upon by him.* 4. The conduct must be done with the intention, or at least with the *expectation*, that it will be acted upon by the other party, or under such circumstances that it is both natural and probable that it will be so acted upon .... 5. The conduct must be relied upon by the other party, and, thus relying, he must be led to act upon it. 6. He must in fact act upon it in such a manner as to change his position for the worse; in other words, he must so act that he would suffer a loss if he were compelled to surrender or forego or alter what he has done ...." J. POMEROY, *supra* note 9, s805 at 191-192.

Thus, the promissory nature of the statement distinguishes promissory estoppel from equitable estoppel. On this distinction, *see, e.g.*, First Fed. Sav. & Loan v. Perry's Landing, 11 Ohio App. 3, 13, 463 N.E.2d 636, 648 (1983); Valley Bank v. Dowdy, 337 N.W.2d 164, 165 (S.D. 1983); O'Connell v. Entertainment Enterprises, 317 N.W.2d 385, 389 (N.D. 1982); Johnson v. Gilbert, 621 P.2d 916, 919 (Ariz. Ct. App. 1980); Com. Dept. of Pub. Wel. v. Sch. District, 49 Pa. Commw. 316, 410 A.2d 1311, 1314 (1980).

[11] For an early attempt to trace the various applications of estoppel in the Louisiana Civil Code, *see* Comment, *Estoppel in the Law of Quebec (With references to the Civil Code of Louisiana)*, 5 TUL. L. REV. 615 (1931).

[12] LA. CIV. CODE art. 1924, which provides: "The mere representation of majority by an unemancipated minor does not preclude an action for rescission of the contract. When the other party reasonably relies on the minor's representation of majority, the contract may not be rescinded."

Comment (b) states: "Under this article, a contract made with a minor who represents himself as of age is valid for the benefit of the contracting party who relied in good faith upon that representation." *See, e.g.*, Guidry v. Davis, 6 La. Ann. 90, 92 (1851): "It is an error to suppose that the law can sanction the perpetration of frauds by minors; the truth and reality of bona fide transactions are as binding upon them as upon majors."

[13] The Louisiana Civil Code contains several articles which give legal effect to apparent authority.

LA. CIV. CODE art. 3010: "The attorney can not go beyond the limits of his procuration; whatever he does exceeding his power is null and void with regard to the

mises after his lease has expired.[14] Similarly, the Louisiana Insurance Code protects an insured who has violated the terms of his insurance policy if such violation was known to the insurance agent who nonetheless made no objection.[15]

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principal, unless ratified by the latter, and the attorney is alone bound by it in his individual capacity."

LA. CIV. CODE art. 3012: "The mandatary, who has communicated his authority to a person with whom he contracts in that capacity, is not answerable to the latter for anything done beyond it, unless he has entered into a personal guarantee."

LA. CIV. CODE art. 3013: "The mandatary is responsible to those with whom he contracts, only when he has bound himself personally, or when he has exceeded his authority without having exhibited his powers."

LA. CIV. CODE art. 3021: "The principle is bound to execute the engagements contracted by the attorney, conformably to the power confided to him. For anything further he is not bound except in so far as he has expressly ratified it."

LA. CIV. CODE art. 3029: "If the principal only notifies his revocation to the attorney, and not to the persons with whom he has empowered the attorney to transact for him, such persons shall always have the right of action against the principal to compel him to execute or ratify what has been done by the attorney; the principal has, however, a right of action against the attorney."

On the concepts of agency by estoppel and apparent authority at common law, *see* RESTATEMENT (SECOND) OF AGENCY, § 8B (1957).

See generally REUSCHLEIN & GREGORY, AGENCY AND PARTNERSHIP § 14 at 33-40 (1979); SELL, AGENCY § 5 at 4-5 (1975); SEAVEY, AGENCY § 8E at 14, 15 (1964); MECHEM, AGENCY, § 87-88 (4th ed. 1952); SEAVEY, STUDIES IN AGENCY 194 (1949); TIFFANY, AGENCY § 16 at 37-45 (1924); Note, *Binding the Insurer--Apparent Authority and Estoppel in Virginia*, 27 WASH. & LEE L. REV. 93 (1970); Comment, *The Objective Theory of Agency: Apparent Authority and the Estoppel of Apparent Ownership*, 47 NEB. L. REV. 678 (1968); Comment, *Agency--Recovery in Tort Under the Theory of Apparent Authority or Agency by Estoppel*, 69 W. VA. L. REV. 186 (1970); Rubenstein, *Apparent Authority: An Examination of a Legal Problem*, 44 A.B.A. J. 849 (1958); Cook, *Agency by Estoppel: A Reply*, 6 COLUM. L. REV. 34 (1906); Ewart, *Agency by Estoppel*, 5 COLUM. L. REV. 354 (1905); Cook, *Agency by Estoppel*, 5 COLUM. L. REV. 36 (1905).

[14]According to LA. CIV. CODE art. 2688:

> If, after the lease of a predial estate has expired, the farmer should still continue to possess the same during one month without any step having been taken, either by the lessor or by a new lessee, to cause him to deliver up the possession of the estate, the former lease shall continue subject to the same clauses and conditions which it contained; but it shall continue only for the year next following the expiration of the lease.

Similarly, LA. CIV. CODE art. 2689 provides:

> If the tenant either of a house or of a room should continue in possession for a week after his lease has expired, without any opposition being made thereto by the lessor, the lease shall be presumed to have been continued, and he cannot be compelled to deliver up the house or room without having received the legal notice or warning directed by article 2686.

[15]Under the Louisiana Insurance Code:

> No policy of fire insurance issued by any insurer on property in this state shall hereafter be declared void by the insurer for the breach of any representation, warranty or condition contained in the said policy or in the application therefore. Such breach shall not avail the insurer to avoid liability unless such breach (1) shall exist at the time of the loss, and be either such a breach as would increase either the moral or physical hazard under the policy,

Louisiana law also recognizes other concepts of estoppel. Estoppel by judgment,[16] for instance, is incorporated in the more general doctrine of res judicata,[17] and a species of estoppel by deed[18] is embodied in the doctrine of bona fide purchaser.[19]

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or (2) shall be such a breach as would be a violation of a warranty or condition requiring the insurer to take and keep inventories and books showing a record of his business. Notwithstanding the above provisions of this section, such a breach shall not afford a defense to a suit on the policy if the fact or facts constituting such a breach existing at the time of the issuance of the policy and were, at such time, known to the insurer or to any of his or its officers or agents, or if the fact or facts constituting such a breach existed at the time of the loss and were, at such a time, known to the insurer or to any of his or its officers or agents, except in case of fraud on the part of such officer or agent or the insured, or collusion between such officer or agent and the insured.

LA. REV. STAT. § 22:692.

It must be noted, however, that the operation of this statutory provision does not depend on the existence of detriment on the insured's side. *See generally* Comment, *Waiver and Estoppel in Louisiana Insurance Law*, 22 LA. L. REV. 202 (1961)

[16]Justice Field, in a famous statement, defined estoppel by judgment as a branch of the more general doctrine of "res judicata". He said:

> In the former case, the judgment, if rendered upon the merits, constitutes an absolute bar to a subsequent action. It is a finality as to the claim or demand in controversy, concluding parties and those in privity with them, not only as to every matter which was offered and received to sustain or defeat the claim or demand, but as to any other admissable matter which might have been offered for that purpose ... Such demand or claim, having passed into judgment, cannot again be brought into litigation between the parties in proceedings at law upon any ground whatever.
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> But where the second action between the same parties is upon a different claim or demand, the judgment in the prior action operates as an estoppel only as to those matters in issue or points controverted, upon the determination of which the finding or verdict was rendered.

Cromwell v. County of Sac, 94 U.S. 351, 352-53 (1877). On the effect of a former adjudication, *see* RESTATEMENT (SECOND) OF JUDGMENTS § 17 (1982).

[17]For instance under LA. REV. STAT. § 13:4947:

The judgment of the court, confirming and homologating the sale, shall have the force of res judicata, and operates as a complete bar against all persons, whether of age or minors, whether present or absent, who may thereafter claim the property sold, in consequences of all illegality or informality in the proceeding, whether before or after judgment. The judgment of homologation shall in all cases be received and considered as full and conclusive proof that the sale was duly made according to law, in virtue of a judgment or order legally and regularly pronounced on the interest of parties duly represented.

[18]Estoppel by deed, or as it was traditionally called, "estoppel by matter in writing" precludes a party to a deed from denying any statement written in the deed, or disputing its force and effect, or claiming a right in contradiction therewith. Here estoppel applies only against the parties to the deed and those in privity with them. It is limited to questions directly concerning the deed. The deed, however, must be valid since an estoppel cannot be created by a void deed. *See* M. BIGELOW, A TREATISE ON THE LAW OF ESTOPPEL AND ITS APPLICATION IN PRACTICE 332-352 (5th ed. 1890). Estoppel by deed is regarded by some authorities as a subdivision of a more general doctrine of "estoppel by convention." See G. BOWER AND A. TURNER, *supra* note 1, at 157.

(C) Application of "*venire contra factum proprium*" in Louisiana

In practice, the Roman doctrine of "venire contra factum proprium" to date has had very limited impact on the Louisiana jurisprudence. The courts have not made use of the doctrine as a general theory. Only three courts, to this writer's knowledge, have referred to the doctrine. In *Davilla v. Jones*,[20] a lessee wrote his lessor requesting repairs

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The writers argue that the only difference between estoppel by deed and estoppel by convention is that "estoppels by deed have historically been justified not only on the ground of convention, which in modern times is seen as their true source of authority, but by the deliberation and the solemnity in form of the deed from which they spring." *Id.* at 161. *Contra* R. WALKER & M. WALKER, THE ENGLISH LEGAL SYSTEM 595-596 (6th ed. 1985). The latter writers consider "estoppel by convention" or, as they call it, "estoppel by agreement," as a form of estoppel of conduct (i.e., equitable estoppel) to be distinguished from "estoppel by deed," which they place in a class by itself.

One of the most important applications of estoppel by deed is title by estoppel. Under this form of estoppel, where a deed is executed and delivered by a person with no title to the described property, or by one who has a lesser interest than the deed purports to convey, the grantor and his successors are denied the right to assert any "after-acquired title" against the grantee and his successors. When, later, a grantor acquires part or all of the title, the "after-acquired title" passes to the grantee and his successors. *See e.g.*, Southland Corp. v. Shulman, 331 F.Supp. 1024, 1029 (D. Md. 1971); McNeal v. Bonnel, 412 S.W.2d 167, 171 (Mo. 1967); Robben v. Obering, 279 F.2d 381, 383 (7th Cir. 1960); Aure v. MacKoff, 93 N.W.2d 807, 811, 812 (N.D. 1958); Guy v. Poss, 212 Ga. 724, 95 S.E.2d 682, 684 (1956); Wellman v. Tomlin, 140 W. Va. 342, 84 S.E.2d 617, 620 (1954); Haab v. Moorman, 332 Mich. 126, 50 N.W.2d 856, 864 (1952); Skelley Oil Co. v. Butner, 201 Okla. 372, 205 P.2d 1153, 1156 (1949); Watson v. Goldsmith, 205 S.C. 215, 31 S.E.2d 317, 320 (1944); Frawley v. Forrest, 310 Mass. 446, 38 N.E.2d 631, 634 (1941); Ayer v. Philadelphia & Boston Face Brick Co., 159 Mass. 84, 34 N.E. 177, 178 (1893). *See generally* R. CUNNINGHAM, W. STOEBUCK & D. WHITMAN, THE LAW OF PROPERTY § 11-5, at 745 (1984); 6A G. POWELL, THE LAW OF REAL PROPERTY 927 (1980); C. CLARK, REAL COVENANTS AND OTHER INTERESTS WHICH "RUN WITH LAND" 59-64 (2d ed. 1947); Feinbaum, *The Recent Recognition of the Doctrine of Estoppel by Lease in Massachusetts*, 17 NEW ENG. L. REV. 603 (1982).

[19] According to LA. REV. STAT. § 9:2756:

> All sales, contracts and judgments affecting immovable property, which shall not be recorded, shall be utterly null and void, except between the parties thereto.
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> The recording may be made at anytime, but shall only affect third persons from the time of recording. The recording shall have effect from the time when the act is deposited in the proper office, and endorsed by the proper officer.

Another formulation of the bona fide purchaser doctrine appears in LA. REV. STAT. § 9:2721. It provides that:

No sale, contract, counter letter, lien, mortgage, judgment, surface lease, oil, gas or mineral lease or other instrument of writing relating to or affecting immovable property shall be binding on or affect third persons or third parties unless and until filed for registry in the office of the parish recorder of the parish where the land or immovable is situated; and neither secret claims or equities nor other matters outside the public records shall be binding on or affect such third parties.

[20] 418 So.2d 724 (La. Ct. App. 4 Cir. 1982).

to the wall and roof of the leased premises, in default of which he would have the repairs done and deduct the cost from future rent. The lessor repaired only the roof. Again the lessee sent a letter concerning the wall, advising that he would continue to withhold rent until enough had accumulated to employ a contractor. The lessee next sent the lessor two bids quoting prices for the repair, but the lessor stated that she would like to get one more reasonable estimate. The lessor sent a contractor to quote a price, but nothing further was done. The lessor then served an eviction notice upon the lessee alleging nonpayment of rent for nine months. In holding that the lessor was not entitled to evict the lessee, the court said, "We conclude, on the civil law estoppel doctrine of venire contra factum proprium non valet ... that our lessor cannot be allowed to evict our lessee for failing to actually spend the withheld rent on repairs when it was the lessor herself who importuned the lessee to delay those repairs."[21] The court continued, "Nor can the lessor evict for the rents withheld after the lessee's letter ... because the parties were at all time negotiating for the repairs that the lessee could under the law have made without attempting to accommodate the lessor's desire to have them done as inexpensively as possible."[22] The court also noted that "at no time did the lessor demand that the rents be paid nor herself undertake the wall repairs."[23]

A similar estoppel analysis was applied in an English case which laid the foundation for promissory estoppel in England.[24] In *Hughes v.*

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[21] *Id.* at 725.

[22] *Id.* Under LA. CIV. CODE art. 2694, the lessee has the right to make repairs upon lessor's failure to make them. The article states that:

If the lessor do not make the necessary repairs in the manner required ..., the lessee may call on him to make them. If he refuse or neglect to make them, the lessee may himself cause them to be made, and deduct the price from the rent due, on proving that the repairs were indispensable, and that the price which he has paid was just and reasonable.

[23] Davilla v. Jones, 418 So.2d 724, 725 (La. Ct. App. 4 Cir. 1982).

[24] On the development and operation of promissory estoppel in England, *see generally* W. ANSON, LAW OF CONTRACTS 98-109 (26th ed. 1984); P. ATIYAH, AN INTRODUCTION TO THE LAW OF CONTRACT 123-128 (3d ed. 1981); F. DAVIES, CONTRACT 35-39(3d ed. 1977); 1 J. CHITTY, CONTRACTS 92-96 (24th ed. 1977); G. CHESHIRE & C. FIFOOT, LAW OF CONTRACT 83-97 (9th ed. 1976); R. SUTTON & N. SHANNON, CONTRACTS 79-85 (7th ed. 1970); J. WILSON, PRINCIPLES OF THE LAW OF CONTRACT 60-65 (1957); K. SUTTON, CONSIDERATION RECONSIDERED (1974); Teh, *Promissory Estoppel as a Sword*, 13 ANGLO-AM. L. REV. 45 (1984); Thompson, *From Representation to Expectation: Estoppel as a Cause of Action*, 42 CAMBRIDGE L.J. 257 (1983); Hickling, *Labouring with Promissory Estoppel: A Well-Worked Doctrine Working Well?* 17 U.B.C. L. REV. 183, 184-90 (1983); Simpson, *Promises Without Consideration and Third Party Beneficiary Contracts in American and*