

TRAPS IN CONTRACT NEGOTIATIONS ESTOPPEL

It is often assumed that parties negotiating a contract only enter into a binding legal relationship when contracts have been executed.

In fact parties who are negotiating a contract can incur liability for statements made to one another and as a result of their general conduct.

The law today has gone so far as to say that if one party leads another party to believe that a certain state of affairs exists, whether by saying something or by doing nothing, a Court may rule that that state of affairs does in fact exist and the first party is estopped or prevented from denying that a contract exists. Estoppel can give rise to obligations which are similar to those under an executed contract.

In general terms the rules for the application of the doctrine of estoppel are:

- the statement or conduct must amount to a clear promise, eg that a contract will be awarded. If it is equivocal it will probably not be enforced by a Court.
- the other party must have relied on the promise and have acted to his or her detriment; and
- it would be unfair or unjust not to allow the party that has suffered detriment to recover his or her loss.

Staff of the University should take care in what they say and do during pre-contractual negotiations. The University may be bound to any representations made by them.

In particular, if the University makes a decision not to proceed and is aware that the other party is acting on the assumption that negotiations are to continue, the decision not to continue should be communicated immediately to the other party.

This article provides general information only. It is not a complete or definitive statement of the law on the subject matter. Formal legal advice should be sought in relation to particular matters.