

THE “LICENCE COUPLED WITH EQUITY” IN SINGAPORE AND MALAYSIA¹

Introduction

A common view about land law is that nothing ever happens in it. Its complex rules make it like a great tangled ball of string: even if you find an end, and pull it, things only get worse, the rules more complex. There is no forward development. But in one area at least the courts are moving forward, namely licences to occupy land. The licence is gradually emerging as a fully fledged interest in land, the first such emergence since restrictive covenants over a century ago.

Some of these developments we shall have to leave aside for a later date. It is not proposed for instance to look at contractual licences. This article will deal with that interest sometimes called a licence coupled with an equity, or proprietary estoppel.² Questions to be discussed will be, how the equity is raised, how it is satisfied, the extent to which such a licence is transmissible, its capacity to bind assignees of the licensor and its revocability.

We will focus our attention on Singapore and Malaysian cases and examine them in the light of the English position. Throughout one might bear in mind Lord Wilberforce's comment in *National Provincial Bank v. Ainsworth*:³

“Before a right or an interest can be admitted into the category of property, or of a right affecting property, it must be definable, identifiable by third parties, capable in its nature of assumption by third parties, and have some degree of permanence or stability.”

How the equity arises

The first issue to be discussed is naturally, how does the equity arise in a case involving a claim to be entitled to occupy land by proprietary estoppel. An obvious starting point is the House of Lords decision of *Ramsden v. Dyson*⁴ where Lord Kingsdown, in a dissenting judgment which was nevertheless as far as principle was concerned on all fours with the speeches of his brethren, made what is still widely regarded as a definitive statement of the law:

“If a man, under a verbal agreement with a landlord for a certain interest in land, or, what amounts to the same thing, under an expectation

¹ See generally Dawson & Pearce, *Licences Relating to the Occupation of Land* (1979) and A.R. Everton “*An Equity to Remain*.” (1976) 40 Conv. (N.S.) 416.

² References will occasionally be made to the rarer phenomenon in this context, of estoppel by representation, which effectively creates a legal interest in land. See *Hopgood v. Brown* [1955] 1 AH E.R. 550. Proprietary estoppel is really just a type of representative estoppel. Although this article is concerned with the licence coupled with an equity, there is no difference in principle, between a licence and a lease, with regard to the questions, to be examined in this article.

³ [1965] A.C. 1175 at page 1247.

⁴ (1886) L.R. 1 H.L. 129.

created or encouraged by the landlord, that he shall have a certain interest, takes possession of such land, with the consent of the landlord, and upon the faith of such promise or expectation, with the knowledge of the landlord, and without objection by him, lays out money upon the land, a Court of Equity will compel the landlord to give effect to such promise or expectation.”⁵

Lord Kingsdown proceeded to contrast this situation with that where the man in possession is fully aware of the extent of his rights and spends money in the hope of an extended term: assuming that this hope has not been encouraged by the owner of the legal right, there is no equitable claim.

Numerous English and Commonwealth decisions illustrate the application of the basic principle.⁶ One of the most well known is *Dillwyn v. Llewelyn*⁷ where a son was placed in possession of land belonging to his father, the latter signing a memorandum to the effect that the land was intended as a site for the son's home: but no conveyance was taken. The son proceeded to build a house at his own expense and with the father's acquiescence. When the father died, the question arose of the ownership of the land. The court directed that the land be conveyed to the son absolutely. The facts raised an estoppel in the son's favour, binding on the beneficiaries under the father's will, and in the court's view, it could only be satisfied by an outright conveyance.

It seems to be established⁸ that five conditions are required for an estoppel of this sort to be raised. In brief they are as follows. Firstly, a mistaken belief, on the part of the party in whose favour the estoppel is claimed, as to his legal rights over the property, that is to say a belief that he had or would obtain an interest in the property. Secondly, he must have spent money or done some other act on the faith of that mistaken belief. Thirdly, the owner or the person in possession of the legal right, must be aware of the existence of that right. Fourthly, the landowner must be aware of the other party's mistaken belief as to his rights. And fifthly, the landowner must by his conduct or his omission to act have served to encourage, directly or indirectly, the other party in his expenditure or other acts. Provided that these five conditions are satisfied an estoppel will be raised in favour of the claimants.

It is now proposed to examine the local case-law in the light of the foregoing discussion. In a number of recent local cases it has been held that the conduct of the parties and the circumstances of the case were such as to raise a claim of “equitable estoppel” — sometimes referred to as an “equitable right to remain.” One such case is *Devi v. Francis*,⁹ one of a number of local cases dealing with the right to occupy a house owned by someone who was not the owner of the land on which the house stood. A (the claimant)

⁵ *Ibid.*, page 170.

⁶ See, e.g. *Plimmer v. Wellington Corp.* (1884) 9 App. Cas. 699; *Inwards v. Baker* [1965] 2 Q.B. 29.

⁷ (1862) 4 De G.F. & J. 517.

⁸ See *Dawson & Pearce*, *op.cit.* page 33; *Crabbe v. Arun District Council* [1975] 3 All E.R. 865.

⁹ [1969] 2 M.L.J. 169. See also *Lee Eng Teh & Ors. v. Teh Theang Seong*, discussed below.

occupied a house which he had bought from B (the landowner)'s predecessor in title, and which stood on land belonging to B. The sale agreement between A and B's predecessor in title provided that in the event of the owner of the land for the time being deciding to sell it, A should have in effect a first option to buy that portion on which his house stood. Subsequently the land was conveyed to B, who was in fact the vendor's son and who had full notice of the agreement. B now claimed possession of the land on the ground that A's interest in it was merely a monthly tenancy terminable by one month's notice. Notice had been duly given. A claimed that he had a licence or tenancy to occupy the land, and that by virtue of the agreement the licence was irrevocable—a licence coupled with equity. The court upheld this contention finding for A on both contractual and equitable grounds and relying on Lord Kingsdown's dictum. One ground for the decision was that as A was given the first option to buy the land in question, the agreement itself presupposed the continued existence of his tenancy: notice to quit could not be given to A until the land had been offered to her and she had refused that offer.¹⁰ As to the *Ramsden v. Dyson* principle, the agreement was relevant there also. The form of the agreement, as construed above, gave A an expectation that she would have the first chance to buy the land. Quite apart from the agreement, no-one would spend the money required to buy a house when one only had a monthly tenancy of the ground on which it stood. A was under the impression, encouraged by the agreement, that the land was hers for as long as she occupied the house and the vendor did nothing to disabuse her of this view. The equity did not, however, cover a subsequent extension to the house: no expectation had been raised by B's predecessor in title in respect of this.¹¹

So, there was a belief on the claimant's part that she was entitled to remain on the land for as long as she chose, the encouragement of that belief by the landowner, and expenditure of money on that basis: the classic ingredients of proprietary estoppel. Similar considerations applied in the Singapore case of *Khew Ah Bah v. Hong Ah Mye*¹² where the owner of a house standing on land in respect of which he paid monthly ground rent was held entitled to the protection of equity under the principle of *Ramsden v. Dyson*¹³ on the ground that the house had been purchased (and considerable improvements made to it) in the reasonable expectation that the tenancy of the land would endure for as long as rent was paid. Consequently, Choor Singh J. held, the tenancy could not be determined without the landowner's satisfying the equity—in this case by paying compensation.¹⁴

These cases can be contrasted with others, where for one reason or another the circumstances have been held not to raise an estoppel.¹⁵

¹⁰ *Ibid.*, pp. 171, 173 *per* Chang Min Tat J.

¹¹ *Ibid.*, p. 173.

¹² [1971] 2 M.L.J. 86.

¹³ *Supra*, note 4.

¹⁴ It might well be argued that the licence was irrevocable (though personal to the licensor) as long as rent was paid.

¹⁵ Cases not specifically discussed in the text include *Wee Khang Whye v. Lee Woon Tong* [1974] 1 M.L.J. 7, where the circumstances allowed no room for the operation of estoppel, the licence being bare and gratuitous; and *Ooi*

Sometimes the nature of the property in question has been held to justify this decision. For example in *Ooi Ah Seng v. Chan Lin Lam*,¹⁶ the claimant's father built a wooden shed on land rented out to him by the landowner. Eight years later the owner served a notice to quit on the claimant, whose defence was that he had a tenancy or licence coupled with an equity and that he was entitled to stay as long as he liked. This argument prevailed in the Session Court and the High Court in Penang but was rejected by the Federal Court. In the words of Azmi L.P. who delivered the judgment of the Court:

"If there was anything at all suggesting the duration of the tenancy, the very nature of the construction would indicate a tenancy of a temporary nature, and I am therefore unable to agree with the learned judge's conclusion that there had arisen in the tenant's favour an equity or equitable estoppel protecting his occupation of the land."¹⁷

There might be difficulties here, for example how temporary is temporary? Why should occupation not be protected for as long as the shed is required?

In *Liew Ah Hock v. Malayan Railway*¹⁸ it was the nature of the expenditure rather than the nature of the property that persuaded the court to hold that no estoppel was raised. A (the claimant) occupied part of B's land on a temporary permit which had expired: judgment for possession had been given against A. However he claimed that there had been an agreement between him and B under which B would permit A to occupy the land in consideration of A paying the costs of proceedings to evict other trespassers. A claimed that he had spent money in reliance on this agreement and that he was therefore entitled to remain and be granted a valid permit. Winslow J. held that as a matter of fact there was no binding agreement and rejected the claim to an estoppel interest. His principal ground for the decision was that A's expenditure was not "at all comparable with the expenditure of money in projects such as the building of a house . . . , and it is clear from the authorities . . . that money laid out on the land of another means money directed towards physical or structural improvements" ¹⁹ Now, it is doubtless true that all the reported cases have in fact been concerned with expenditure of the type specified and this is hardly surprising. However, there seems to be no reason why a principle of equity should be so limited. There might be circumstances where it would be extremely unjust to deny the claimant a remedy in equity on this ground, particularly where—as here—there is no enforceable contract. In this instance Winslow J. ought perhaps to have decided that an equity did arise, but that satisfaction of that equity should take a fairly limited form.²⁰

Ho Cheng v. Grace Joseph and Ors. [1975] 1 M.L.J. 168, where the agreement between the parties made it clear that to both parties' knowledge, occupation was to be as long as the owner permitted and no longer. A curious case concerning padi cultivation is *Haji Taib v. Ismail* [1971] 2 M.L.J. 36.

¹⁶ [1973] 2 M.L.J. 20.

¹⁷ *Ibid.*, p. 22.

¹⁸ [1967] 1 M.L.J. 53.

¹⁹ *Ibid.*, at p. 55.

²⁰ Cf. Scarman LJ. in *Crabbe v. Arun D.C.*, *supra* note 8 page 73, "The court has to answer three questions. First, is there an equity established? Secondly, what is the extent of the equity, if one is established? And thirdly, what is the relief appropriate to satisfy the equity?"

Satisfaction of the equity

It is proposed in this section to analyse the remedies which the courts grant to the plaintiff who has a licence coupled with an equity. It has been said on more than one occasion that "the court must look at the circumstances in each case to decide in what way the equity can be satisfied."²¹ Because of the wide discretion given to the courts there have been differences of opinion amongst great judges as to the nature of the relief to be granted.

We will examine the factors which influence the Courts in granting the various remedies and it is our contention that there has been a lack of consistency in the exercise of this discretion.

The Courts in the exercise of their discretion (as in most cases) seek to give effect to the intention of the parties;²² however "the equity arising from expenditure on land need not fail merely on the ground that the interest to be secured has not been expressly indicated."²³ Intention of the parties may be inferred from the circumstances. Some of the relevant factors which have influenced the courts are expectation of the licensee, the amount of money expended on the land and the consequences that may follow the granting of a particular remedy.

We will examine these factors in detail, to see how they have affected the courts' discretion. It has to be borne in mind that these factors are not mutually exclusive but rather interrelated to a great extent, in working towards a conclusion.

Expectation of the licensee

A licence coupled with an equity arises because the licensee has expended money or done other acts on the licensor's land under an expectation created by the licensor. The licensee's expectation of a particular kind of interest he will get, is also a relevant factor in determining the remedy that will be awarded to him. In *Ramsden v. Dyson* the evidence (according to Vice-Chancellor Stuart (in the lower court) and Lord Kingsdown) showed that the tenant expected a sixty year lease, which Vice-Chancellor Stuart decreed to him. Although the House of Lords reversed the decision, it was on the ground that the evidence showed that the landlord did not create an expectation in the licensee and not on the exercise of the discretion by the Vice-Chancellor.

In *Yong Tong Hong v. Siew Soon Wah*²⁴ the owner of premises agreed to lease the premises to the plaintiff for "as long as the tenant wishes to occupy." The plaintiff on reliance of the agreement paid the owner \$8,000 and effected certain structural alterations to the

²¹ *Per* Sir Arthur Hobhouse in *Plimmer v. Mayor of Wellington* (1884) 9 App. Cas. 699, 714.

²² See for example *Devi v. Francis* [1969] 2 M.L.J. 169.

²³ *Per* Sir Arthur Hobhouse in *Plimmer v. Mayor of Wellington*, *supra* note 21 at p. 713.

²⁴ [1971] 2 M.L.J. 105. Although this is a case concerning a lease and not a licence. The equitable principle of estoppel is equally applicable and has been applied by the courts in dealing with leases. See e.g. *Devi v. Francis supra*, note 22 at p. 173.

premises. The landlord's successor in title sought to evict the tenant. The Federal Court held that the intention of the parties was to create a lease for as long as the law allows,²⁵ for according to Ong C.J.:

"No tenant would willingly pay a large sum of money for a simple monthly tenancy which is terminable at the will of the landlord at any time..."²⁶

This decision was upheld by the Privy Council.²⁷ Their Lordships were of the view that,

"He (the tenant) cannot have done that (i.e. paid the sum of \$8000) for a tenancy of short duration."²⁸

It can be seen therefore that the courts are willing in some circumstances to give effect to the expectation of the person who expends money on the land. It is our contention, however, that this factor although relevant is not decisive. Undue weight should not be given to it. In some cases where this has happened the courts have reached rather unsatisfactory conclusions.

In *Dillwyn v. Llewelyn*, the son spent some £14,000 in building the house, with the consent and approval of the father. The House of Lords was of the view that,

"No one builds a house for his own life only, and it is absurd to suppose that it was intended by either party that the house, at the death of the son, should become the property of the father."²⁹

On account of that, the House of Lords held that the son was entitled to a conveyance of the fee simple of the land, on which the house stood.

This rather extreme solution is unsatisfactory for at least 2 reasons; firstly, as was pointed out in Hanbury and Maudsley's "Modern Equity",³⁰ it may be unjust to the son who had expended money on the land to be left without remedy; however it is equally unjust to the father to be compelled to transfer his land to the son gratuitously. The injustice would be greater and more obvious if (as is in most cases) the land is more valuable than the house. Secondly, this solution gives full effect to the expectation of the licensee (as perceived by the court) but almost totally ignores the intention of the landowner. Did he intend when making the representation to the licensee to build on his land, that, by that representation he was in fact giving his land away. The circumstances may indicate that he did, but whatever it may be the court will have to examine the circumstances to try and gauge his intention.

If the courts merely take into account the expectation of the licensee and ignore the intention of the landowner, the end results may be, the satisfaction of the equity in a way not envisaged by the parties.

²⁵ In Malaysia, section 47 of the Land Code (Chapter 138) 1928 provided that no lease executed after the Code came into force should be for a longer period than 30 years.

²⁶ *Supra*, note 24 at p. 107.

²⁷ [1973] 1 M.L.J. 133.

²⁸ *Ibid.*, at p. 135.

²⁹ *Supra*, note 7 at p. 523.

³⁰ 10th Edition, p. 658.

The local case of *Lee Eng Teh v. Teh Thiang Seong & Anor*.³¹ provides a contrast to *Dillwyn v. Llewelyn*. In that case the plaintiffs who were the trustees and principal officers of a school in Klang, brought an action against the defendants for a declaration that the school was entitled to land in Klang and for an order that the land be transferred to the plaintiffs as trustees for the school. The land in question was the property of the second defendant (a company). It was alleged that the first defendant (the managing director of the second defendant) agreed to donate the land to the school. In reliance on that the school was built on the defendant's land. The Court held that, applying the principle laid down in *Dillwyn v. Llewelyn*, the second defendant having allowed the school to be built on their land, must be deemed to hold such land subject to the equity that they shall allow the school building to remain there indefinitely. On the other hand it opined that:

"... it is not the sort of equity on the basis of which, in the absence of an unequivocal promise by the second defendants to make a charitable gift, the plaintiffs are entitled to the declaration they are asking for."³²

There are 2 aspects of this case that require examination. Firstly the court seemed to be of the view that there was "no unequivocal promise by the second defendant to make a charitable gift..." What was meant probably was that, "the company... at no time made any promise to donate any part of its land to the school."³³ This finding of the court is rather difficult to reconcile with its holding that there was an equity in the plaintiffs' favour. If the second defendant did not make a representation to the plaintiffs, then the basis of the plaintiffs' equity could have arisen either

- (1) on the representation of the first defendant as agent for the second defendant or
- (2) the second defendant's acquiescence to the plaintiffs' building on its land.

The Court did not indicate at all, that it based its decision on the first ground. If it did however, then the fact that the second defendant did not make any unequivocal promise to donate the land should not be a reason against granting the plaintiffs the declaration that they sought, as a means of satisfying the equity in their favour. For if the second defendant were bound by the representation of the first defendant, with regard to the basis of the equity, it should be similarly bound with regard to the extent of the equity.

It was probably on the second ground that the equity was founded. However mere acquiescence by the second defendant to the plaintiffs' building on the land was not sufficient to raise an equity in the plaintiffs' favour. If no expectation was created by the second defendant, then the principle in *Dillwyn's* case would not apply.

Secondly, the court ordered that the school building be allowed to remain on the land indefinitely, but the court refused to order a conveyance of the land to the plaintiffs. This solution was less extreme

³¹ [1967] 1 M.L.J. 42.

³² *Ibid.*, at p. 45.

³³ *Ibid.*, at p. 43.

than that in *Dillwyn's* case. The effect of the order was to protect the plaintiffs against eviction by the defendants; in other words, it was as though there was an injunction against the defendants, preventing them from evicting the plaintiffs.

It is submitted that such a negative remedy is preferable to the positive one in *Dillwyn's* case. Firstly, because, granting a positive remedy may lead to conveyancing complications.³⁴ Secondly, a negative remedy is more consonant with these situations, which are examples of the operation of the principle of estoppel and estoppel as we know does not create new claims: it is, as it was said, "a shield and not a sword."³⁵

Extent of expenditure by the licensee

The extent to which the expenditure of the licensee affects the remedy granted by the courts is closely related with the expectation of the licensee. For the greater the amount expended by the licensee, the greater is his expectation of the interest he should get. The courts can and have considered both factors together before making an order.³⁶

However the licensee's expenditure can also influence the courts' decisions independently of his expectation. In cases where large sums of money are expended like in *Lee Eng Teh v. Teh Thiang Seong* (where about \$180,000 was spent on building the School) and *Dillwyn v. Llewelyn* (where no less than £14,000 was laid out in building the house) it is unlikely that the courts will order compensation as a remedy. For the landowner may not be in a position to pay off the money expended and even if he is, it may be wasteful for he may not want the structure on his land.

The quantity of money expended on the land is clearly relevant in the exercise of the courts' discretion in granting a remedy. However, this factor has been wrongly considered in relation with the establishment of the equity. It is our submission that the amount of expenditure (as opposed to the nature of expenditure³⁷) is not relevant to the issue of whether there is an equity in a particular situation. Once it has been decided that there has been expenditure on the land of the appropriate nature (under an expectation created by the landlord) then there arises an equity in the licensee's favour. The amount of money expended only determines the remedy to be granted by the courts.

The failure to make this distinction can be seen in *Ooi Ah Seng v. Chan Lin Lam* where as stated earlier the tenant was permitted by the landlord to build a wooden shed on the land. The shed was

³⁴ See Hanbury and Maudsley's "Modern Equity" Tenth Edition, pp. 657 and 660.

³⁵ See *Combe v. Combe* [1951] 2 K.B. 215. See also generally Hanbury and Maudsley, *ibid.*

³⁶ See for example, *per Ong C.J.* in *Yong Tong Hong v. Siew Soon Wah* and Viscount Dilhorne in *Siew Soon Wah v. Yong Tong Hong supra*, notes 26 and 28.

³⁷ As has been stated earlier in *Liew Ah Hock v. Malayan Railway* the court was of the view that to invoke the principle in *Dillwyn v. Llewelyn* expenditure must be directed to the physical or structural improvements to the land. This concerns the nature of expenditure.

built with corrugated iron roof, wooden posts and wire mesh walls. The court was of the view that the nature of the construction indicated that there was a tenancy of a temporary nature and therefore there had not arisen an equity in the tenant's favour. The fact that the construction was temporary, might have indicated that there was no representation by the landlord that the tenant would be given a permanent interest. Hence not expecting any permanent interest the tenant merely built a temporary structure. If that is the case then the principle laid down in *Dillwyn v. Llewelyn* is not applicable. But the court in *Ooi Ah Seng's* case did not so reason. It merely stated that the temporary structure indicated a temporary tenancy and therefore there was no equity in the plaintiff's favour. This it is submitted with due respect is *non-sequitur*.

Consequences of the remedies

The courts, because of their wide discretion can grant a wide variety of solutions to satisfy the equity that has arisen. The courts can order a conveyance of the land to the licensee,³⁸ or the licensee may be allowed to remain on the land as long as he wishes or for his life³⁹ or he may be allowed to enjoy his licence indefinitely.⁴⁰ The courts may also order monetary compensation to be made to the licensee. Some of these remedies are rather drastic and have important consequences. Some judges regard the consequences to be a relevant factor, in considering whether to grant a remedy or not.

If the courts order a conveyance of the land to the licensee, this amounts to a transfer of ownership to him. This very extreme measure, which deprives the owner of his land, should not then be made unless the other remedies are all inadequate.

Under English law, if a licensee is allowed to remain on the land as long as he wishes or indefinitely this may have the effect of making the licensee a joint tenant for life with the landowner, within the meaning of the Settled Land Act 1925. This creates two problems; firstly, as joint tenant the licensee had the power to sell the property or quit and let it—“none of these possibilities could conceivably have been embodied in the expectations giving rise to the equity...”—and would give to the licensee “a greater and more extensive interest than was ever contemplated...”⁴¹ This was one of the reasons which swayed the court in *Dodsworth v. Dodsworth*⁴² in refusing to make the above order. Secondly such an order would create conveyancing problems.⁴³

Fortunately, the above problems do not exist in Singapore and Malaysia. There are no provisions similar to those in the Settled Land Act 1925. However there is another factor which a court has to bear in mind before making an order for the licensee to remain indefinitely on the land. When parties reach the stage where they have to litigate to determine their rights, they are probably (especially

³⁸ *Dillwyn v. Llewelyn supra*, note 7.

³⁹ *Inwards v. Baker* [1965] 2 Q.B. 29.

⁴⁰ *Plimmer v. Wellington Corporation, supra*, note 21.

⁴¹ *Per Russell L.J. in Dodsworth v. Dodsworth* (1973) 228 E.G. 1115.

⁴² *Ibid.*

⁴³ See note 34.

in cases where property is in dispute) at logger-heads and bitter in their relationship. In such a situation to make an order to allow the licensee to remain indefinitely is to force him to share his home with people with whom he is at logger-heads. This is certainly not a desirable state of affairs.

The courts have shown that they will take this factor into consideration. In *Dodsworth v. Dodsworth* the plaintiff lived alone in a bungalow. She persuaded her brother and his wife to join her. They spent over £700 on improvements to the plaintiff's bungalow in the expectation encouraged by her that they would be able to remain in the bungalow as their home for so long as they wished to do so. The plaintiff commenced the action against them to recover possession. There was no doubt that there arose in the defendants an equity. The court refused to grant an order allowing them to stay on indefinitely. Instead it made an order for the plaintiff to reimburse them for their expenditure. One reason for the court's decision has been stated above; the other reason was this anxiety not to make two parties who are at logger-heads live together under one roof.

"Justice of the case"

In some cases, where an equity was raised, the courts in granting the remedy to satisfy the equity did not give any specific reasons to justify the remedy granted, but rather stated in a very general way, that it had come to its conclusions after considering all the circumstances. A classic formula would be for example: "After full and anxious consideration of the whole matter I have come to the conclusion that..."⁴⁴ or the judge may say, "I am quite clear in this case it can be satisfied by...."⁴⁵

It is our contention that when such general reasons are given the courts are in effect, giving voice to their own individual ideas of justice, that a particular remedy will bring about the "right" and "just" result. It is true that the courts have a wide discretion in the granting of the remedy appropriate to the situation. However this discretion must be exercised judicially, after considering all relevant factors which have been previously laid down by the courts. If no reasons are given except that after due consideration the court is of the view that a particular remedy is the best solution, then this can create great uncertainty for future courts and legal advisers. There will be no guidelines to be followed.

In *Khew Ah Bah v. Hong Ah Mye* for example, the court after finding an equity in the tenant's favour, concluded that the landlord would only be allowed to recover possession of the premises on condition that he made reasonable compensation to the tenant. There is on the face of it, nothing to fault this conclusion. However it cannot be used as authority for future courts to determine when and in what circumstances compensation should be made, instead of some other remedies, for the court gave no reasons for granting compensation as a remedy.

⁴⁴ *Per* Choor Singh J. in *Khew Ah Bah v. Hong Ah Mye* [1971] 2 M.L.J. 86 at p. 88.

⁴⁵ *Per* Lord Denning in *Inwards v. Baker* [1965] 2 W.L.R. 212 at p. 217.

The vague, "after considering all the circumstances" formula is often used as a cover for reaching a remedy which appears "just" to the court, but which, if all relevant factors are considered may not be defensible. In *Inwards v. Baker*,⁴⁶ a father encouraged a son to build a house on his land. The son did so, in the expectation and belief that he would be allowed to remain there for his lifetime. When the father died, he left the house to trustees for the benefit of persons other than the son. The trustees brought proceedings against the son to recover possession. The Court of Appeal after looking at the circumstances of the case felt that the equity should be satisfied by holding that the son could remain on the land as long as he desired.

The court has been rightly criticised⁴⁷ for failing to take into account, that the effect of their order was to make the son a joint tenant for life within the Settled Land Act 1925 (as explained above). This would confer upon the son a greater interest in the property than might have been envisaged by the parties. In the words of Russell L.J.⁴⁸ "This ... is a point which appears to have been overlooked (deliberately or otherwise⁴⁹) in *Inwards v. Baker*."

Transmissibility

To what extent does the licence created by proprietary estoppel give assignable rights to the licensee? This must be determined largely by the circumstances of the case and the way in which the equity is satisfied. Clearly a licence for life or as long as the licensee wants, creates no assignable interest. But there is no reason why a "perpetual" licence should not be assignable: it is after all, an interest in land.

In the rather unsatisfactory Malaysian case of *Kalimuthi v. Kandiah*⁵⁰ the claimant was the son of a man who was allowed to build a house on land belonging to the owner's predecessor in title, in consideration of the payment of a ground rent. The owner was claiming possession and the son set up an equitable defence on the *Ramsden v. Dyson* principle. The Federal Court held that the father had in fact been a contractual licensee, and his licence had terminated when he died. The court seems to have been uncertain whether the father could have claimed to be a licensee by way of proprietary estoppel. However it does seem to have been accepted that, had such a licence been created the son could have taken the benefit of it, if only in his capacity as administrator of his father's estate. In any event, the owner, somewhat implausibly was held to be a *bona fide* purchaser for value without notice, and so unaffected by any such equity.

Binding effect on third parties

This brings us to the question; to what extent do estoppel licences bind third parties, namely successors in title of the licensor? In marked contrast to the situation regarding contractual licences, there has never

⁴⁶ *Ibid.*

⁴⁷ In *Dodsworth v. Dodsworth*, *supra*, note 41.

⁴⁸ *Ibid.*, at p. 1115.

⁴⁹ Bracketed words, our own.

⁵⁰ [1976] 2 M.L.J. 217.

really been much doubt about this. *Dillwyn v. Llewelyn*, *Inwards v. Baker* and *Ives v. High* are all examples of cases where the licence was held to bind a successor in title of the original landowner. The licence created by proprietary estoppel is an equitable interest binding on all save the *bona fide* purchaser for value of the legal estate without notice.

The local courts have also accepted this principle that a licence by estoppel is binding on a third party, except a *bona fide* purchaser of the legal estate without notice. In *Yong Tong Hong v. Siew Soon Wah*, the Federal Court following *Inwards v. Baker* held the landlord's successor in title bound by the tenancy (which was coupled with an equity) which was entered into by the landlord. Ong C.J. was of the opinion that, "the respondents (i.e. the successor in title) take the premises subject to the agreement which binds their predecessor in title to give the appellant a lease of the premises."⁵² This decision as noted earlier was subsequently affirmed by the Privy Council.

On the other hand in *Kalimuthi v. Kandiah* as noted earlier, the Federal Court was of the view that, assuming the respondent's father acquired some sort of equity under the agreement with the son of the deceased owner, the appellant as purchaser without notice of the equity was not bound by it.

Revocability

This brings us to the last issue. We will discuss in this section a problem which has arisen recently. We will examine the situation where, after a court has decreed that the licensee should be given a right to remain on the land because of the equity which has arisen in his favour, can this licence to remain be revoked subsequently by the licensor.

Although much controversy once centred on the question whether a contractual licence was revocable in breach of contract, estoppel licences have not caused so much difficulty in this regard. This is mainly because there is no "dual remedies" problem. An ejected contractual licensee could always fall back on his remedy in damages for breach: the licensee by estoppel had no such alternative. But quite apart from that, licences by estoppel — including proprietary estoppel — claim their interests through a representation by the owner of the legal right. In the context of proprietary estoppel, the representation consists of the conduct of the owner in encouraging the mistaken belief or expectation. Clearly the court will not allow the owner to renege on that representation.⁵³ Hence the question of revocability will depend on the circumstances of the case, and also of course on how the equity has been satisfied. For instance no question of revocability could arise in a case like *Dillwyn v. Llewelyn* where the court ordered an outright conveyance to the licensee. In effect the equity may be satisfied by making the occupation permanent.⁵⁴ *Ives v. High*⁵⁵ provides another celebrated instance of a case where

⁵¹ *Supra* notes 6 and 7.

⁵² *Supra* note 24 at p. 108.

⁵³ Chang Min Tat J. in *Devi v. Francis* spoke of the equitable principle of an irrevocable licence [1969] 2 M.L.J. 167, 173.

⁵⁴ E.g. *Plimmer v. Wellington Corp.* *supra* note 6.

⁵⁵ [1967] 1 All E.R. 594.

a licence created by estoppel was held to be irrevocable. In a case of that sort equity will restrain revocation by the issue of an injunction.

So it can be seen that a licence created by proprietary estoppel may, but not must be revocable. Much will depend on the circumstances of the case and any agreement between the parties. Reference has already been made to *Devi v. Francis* where the terms of the agreement led the court to conclude that the licence could not be revoked until the licensee had been given an opportunity to purchase the land in question.

Two recent English Court of Appeal cases have raised interesting problems concerning such occupational licences. In *Williams v. Staite*⁵⁶ under a family arrangement the claimants, a married couple, were allowed to live for life in a cottage which had once belonged to the wife's mother. When the mother died, her property including the cottage was sold, and the purchaser tried to revoke the licence. It was held in a lower court that he could not as he clearly took with notice. The couple had a licence to occupy for life, or for as long as they chose. One relevant factor was the money they had spent on renovation. The purchaser sold the property (including adjoining cottages) to the plaintiff. Dispute arose between the new neighbours and an action for possession was brought against the married couple on the ground that their equitable licence could be revoked for misconduct. The action failed. Lord Denning M.R. based his decision on the simple fact that although there were some circumstances in which such a licence might be revoked, the couple's conduct would have to be "bad in the extreme"⁵⁷ to justify ejection. Goff L.J. stressed the point that the couple's equity had already been crystallised by the earlier court order: normally only at that stage would the claimant's conduct be considered (in deciding whether they merited equitable relief). As to the effect of subsequent conduct he said unequivocally that "bad behaviour cannot bring the equity to an end or forfeit it."⁵⁸ Cumming-Bruce L.J. concurred with the decision (both he and Goff L.J. were disposed to decide simply on the pleadings) but commented that he did not think "that in a proper case [where the pleadings were different] the rights in equity of the defendants necessarily crystallise forever at the time when the equitable rights come into existence."⁵⁹ The Court could have looked at subsequent conduct to determine whether the couple merited equitable relief. None of the judges doubted, of course, that the plaintiff was initially bound by the licence. What is now uncertain is whether such a licence can be subsequently revoked. It is hard not to agree with the majority on this point. Even though such a licence may well start life as a mere personal permission, equity transforms it into an interest in land.

Brief reference should be made to *Hardwick v. Johnson*,⁶⁰ although two members of the Court decided that it concerned a contractual licence. Lord Denning M.R. perhaps more satisfactorily called it an

⁵⁶ [1978] 2 W.L.R. 825.

⁵⁷ *Ibid.*, p. 828.

⁵⁸ *Ibid.*, p. 830.

⁵⁹ *Ibid.*, p. 831.

⁶⁰ [1978] 1 W.L.R. 683.

equitable licence, arising, presumably from proprietary estoppel. The facts involved another family arrangement: a woman bought a house for her son and his wife to live in, and they agreed to make monthly payments to her, to pay off the purchase price. Only a few payments were made and the son soon left the wife, whom the mother sued for possession. As noted above, the wife was held to be a (joint) licensee either by contract or equity. All the judges agreed that in the existing circumstances, the mother could not turn the wife out. Other circumstances might justify it: Lord Denning mentioned the absence of grandchildren and the wife's association with another man as being possible circumstances justifying revocation⁶¹ (a somewhat subjective approach to property rights?) Roskill L.J. referred to failure to fulfil the condition as to payment⁶² (held to have been hitherto waived by the mother). Again it suggests that the courts will not allow licences of this sort to be revoked without any good cause.

Conclusion

The local courts have accepted the principle laid down in *Ramsden v. Dyson*. They have also generally in this area tended to follow the English cases. However, some aspects of this area of the law, even the English case law is not very clear or certain. This is especially so with regard to the issue of the satisfaction of the equity (whenever it arises) and the broader question of the licence as a proprietary interest.

Between *Dillwyn v. Llewelyn* and *Inwards v. Baker* on the one hand and *Dodsworth v. Dodsworth* on the other hand, a Judge who has to decide on the remedy to award to a licensee who has an equity, will indeed have a difficult task. If *Dodsworth v. Dodsworth* is followed then the equitable licence can no longer be relied on to preserve one's occupation of the land.

It is not clear at this stage, the nature of the interest of a licensee with an equity. Can he for example assign this interest or dispose of it or transmit it. This area of the law is still in a very uncertain stage. A learned writer⁶³ has suggested that a new kind of right be introduced. This right (she calls it "an equity to remain") would apply exclusively to the occupation of a home and would preserve the licensee's occupation of his home as against both the licensor and his successors in title but would not provide him with a disposable interest. This is certainly a plausible compromise. Whatever it may be it is clear that the state of the law regarding expenditure by one on another's land is far from being fully developed.

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⁶¹ *Ibid.*, p. 689.

⁶² *Ibid.*, p. 691. Again one is reminded of *Devi v. Francis*: see text at note 53.

⁶³ Ann. R. Everton — "An Equity to Remain..." (1976) 40 Conv. (N.S.) 416.

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