A representation to be relied upon

The crucial condition for estoppel is that the representation must have been relied upon. As we shall see in the next section that means that a belief must have been engendered or strengthened by the representation, and something must have been done as a result of that belief; and causation is notoriously difficult to define or prove.65 The law has developed a number of devices to make proof of causation easier; they relate both to the nature of the representation and to the action supposed to have been done in reliance upon it. We are concerned here with the former.

A recent case refers to ‘the modern law of estoppel by representation . . . with its insistence on the presence of a clear and unequivocal representation, inducement and materiality’.66 ‘Materiality’ is a quality of the representation, meaning that it was the sort of representation that would normally induce reliance, or that a reasonable man would rely upon. Materiality is put to use in estoppel in much the same way as it is in the contractual misrepresentation cases; causation is established by showing that the representation was made and that it was the sort of representation that might induce a reasonable man to enter a contract:

... on the question of the materiality of the statement, if the court sees . . . that [the statement] is of such nature as would induce a person to enter a contract, or would tend to induce him to do so, or that it would be a part of the inducement, to enter into the contract, the inference is, if he entered the contract, that he acted on the inducement so held out, and you want no evidence that he did so act.67

Similarly in some of the earliest estoppel cases the courts looked hard at the representation made to assess whether or not ‘any persons, and amongst others the defendant, would be naturally induced thereby to believe’ the substance of the representation.68 In Freeman v. Cooke there was no estoppel because the representation was not one that a reasonable man would rely upon.69 Materiality must comprise factors such as lack of ambiguity (as already considered), relevance to the action supposed to have been taken, and (for want of a better expression) the way the representation was made. Thus in Freeman v. Cooke the problem with the representation was that the owner of the goods first stated that they belonged to C, and then said they belonged to D, thus casting doubt on the accuracy of his first statement. Most of us would think twice before relying upon it.

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[...]
See Chapter 6, pp. 93 ff.


Smith v. Chadwick (1882) 20 Ch. D. 27, at p. 44.

Pickard v. Sears (1836) 6 Ad. & E. 469, per Denman CJ at p. 473.

(1848) 2 Exch. 654, at p. 664 (see Chapter 3 at n. 4). The case turned on whether or not the assignees of a bankrupt could claim his goods from a sheriff, who had seized them from another in execution of a debt: the defence, which failed, was that the bankrupt was estopped from denying that they were the debtor's property because, just before they were seized, he stated that they belonged to the other.

Referring Principles:

II.4 - Agency by estoppel / apparent authority