

## Example essay questions with suggestions for a good answer Chapter 7 – Licences and proprietary estoppel

**‘Moriarty describes the doctrine of proprietary estoppel as providing for “the informal creation of interests in land whenever a person has acted detrimentally in reliance upon an oral assurance or representation that he has such an interest.” That is, however, where the certainty ends as otherwise, the law of proprietary estoppel is replete with uncertainty, discretion, and ambiguity.’ Discuss.**

- Be sure to address the question set and not merely provide a description of all the principles of proprietary estoppel. The best answers will offer an impressive discussion of estoppel through the lens of ‘uncertainty, discretion, and ambiguity.’ Keep this as your central focus.
- You will want to consider the following:
  - What are the elements of proprietary estoppel? Is there even debate as to what the elements may be? Is unconscionability a distinct requirement or all-pervasive?
  - What are the elements of the modern law? Consider *Taylor’s Fashions* (1982) and how they differ from the old law. Has the law become more or less flexible?
  - Flexibility as to assurance/representation: *Thorner v Major* (2009); *Inwards v Baker* (1965); *Uglove v Uglove* (2004).
  - Detriment and reliance: the *Greasley v Cooke* (1980) reversal of burden of proof. Consider what amounts to detriment – the wide range of circumstances it can embrace.
  - Unconscionability – how different is this from the old law requirement of *Willmott v Barber* (1880)?
- Next, you should focus on how the court determines the remedy to be awarded – this is where your discussion of uncertainty and discretion will come into focus. Reflect on the role of proportionality: *Jennings v Rice* (2002) – bargain and non-bargain cases. Is the approach of the court really that ambiguous? Does Jennings not provide a structured approach to remedy? Consider the wide range of different remedies awarded and cases where no remedy was given.
- Conclude by drawing together the threads of your analysis – is the law too uncertain or have cases such as *Thorner*, *Greasley*, and *Jennings* offered a principled framework to the doctrine?