PUMP COURT

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Proprietary Estoppel

Annie Ward

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The basics

The ingredients of estoppel:

- An assurance of sufficient clarity
- Reliance on the assurance
- Detriment flowing from the reliance

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The basics

Satisfying the equity:

- Do what is necessary to avoid an unconscionable result (Jennings v Rice [2002] EWCA Civ 159)
- Weigh the detriment against against any countervailing benefits (Henry v Henry [2010] UKPC 3
- If the assurance is clear enough to give rise to something close to a contract, then the equity is satisfied through those terms
- If the assurance is less clear, then the claimant should receive a benefit proportionate to the detriment, which must be arrived at on a "principled basis"

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Thorner v Major [2009] UKHL 18

- David Thorner worked for almost 30 years on no pay at his cousin Peter's farm, on the basis of vague promises that he would inherit it.
- Peter made a will leaving the farm to David, but later revoked that will because he changed his mind about another legatee. He never made a new will and died intestate. Under the intestacy, the farm went to Peter's siblings.
- David claimed an interest in the farm pursuant to proprietary estoppel.

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Thorner v Major

- At first instance the judge accepted that there had been an assurance, and that David had acted to his detriment. The siblings appealed
- In the Court of Appeal, the court found that in fact the assurances had been given, but were not intended to be relied upon. David Thorner appealed.
- The House of Lords allowed the appeal and set out the following guidance which remains the leading statement of this area:

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Thorner v Major

- To establish estoppel, the assurance has to be “clear enough”. This will always be fact specific and dependent on context.
- Therefore, between two “taciturn and undemonstrative men” an estoppel might arise on the basis of vague or infrequent comments as long as they were reasonably capable of being understood as assurances. The Court of Appeal had been wrong to reverse the court’s findings.
- The description of the property referred to (“the farm”) was sufficient, even though the extent of the land fluctuated, because both parties knew what was being referred to
- If the assurance giving rise to the estoppel was ambiguous, the ambiguity should not deprive a claimant who had relied upon it to his detriment. It might mean, however, that the least beneficial remedy might be accorded to it.

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Since Thorner

- Henry v Henry [2010] UKPC 3 – proportionality lies at the heart of every claim
- Suggitt v Suggitt [2012] EWCA Civ 1140 – where the court had accepted the estoppel and found that the appropriate remedy was a transfer of the farmland and the house (not just the land)
- Davies v Davies [2016] EWCA Civ 463 – where the Court of Appeal reduced an award of £1.3 million to £500,000 because it concluded that the judge at first instance had taken too much of a broad brush to the quantification of the claim

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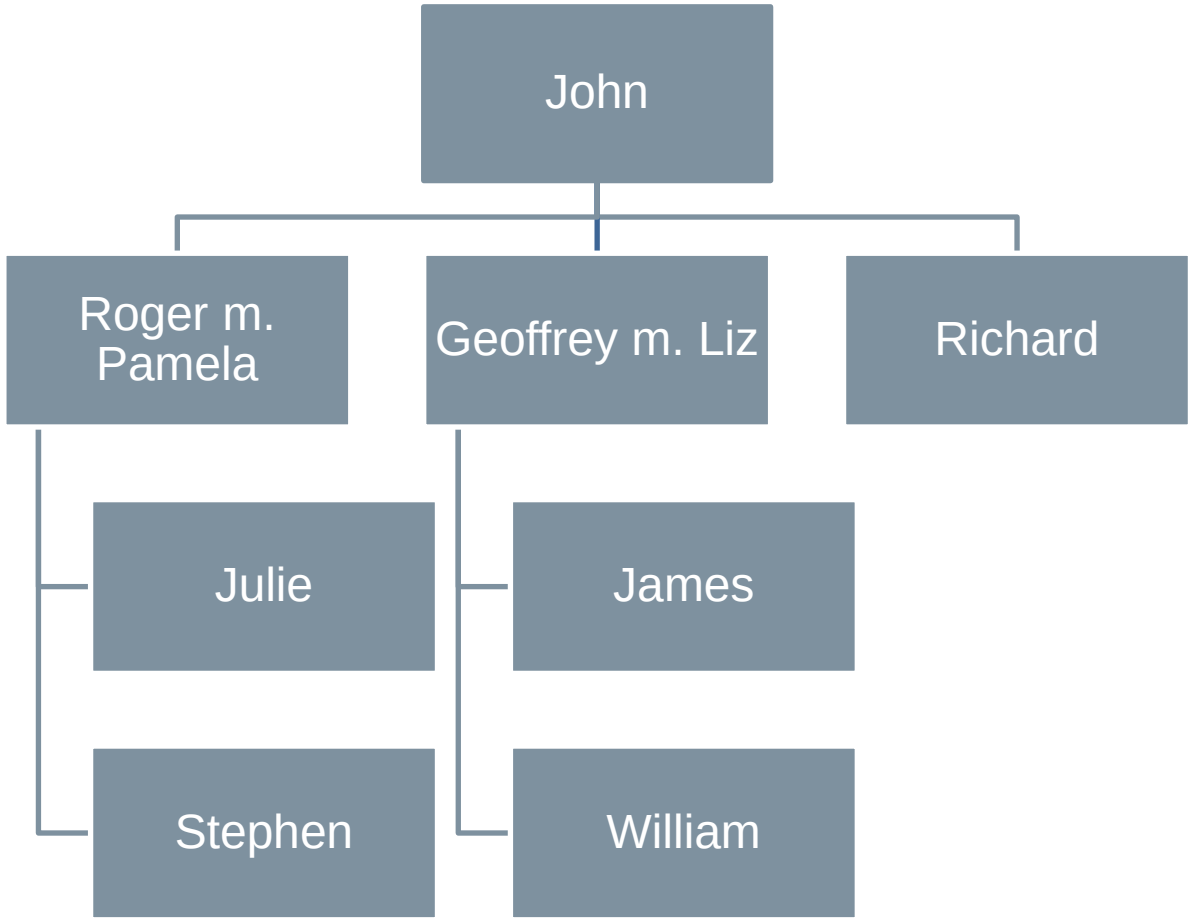
Moore v Moore [2018] EWCA Civ 2669



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Moore

- Roger and Geoffrey were given the farm by their father John and they farmed it together in a partnership.
- Of their four children, only Stephen wanted to farm, and he worked for low wages on the farm. He grew up with the expectation that he would end up owning the farm once his father and uncle had died, subject to the rights of their widows to be provided for.
- When Geoffrey retired he accepted £500,000 for his partnership share, even though it was worth £3 million, and passed that share to Stephen.
- This angered Pamela, who felt that Julie was being passed over. Relationships between the family members started to break down.

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Moore

- Stephen continued to farm in partnership with his father Roger, but this became difficult when Roger began to get Alzheimer's and Pamela became protective over her husband.
- In 2012 Roger tried to dissolve the partnership which would have triggered a sale of the farm. Stephen sought a declaration that the dissolution was ineffective in equity because he had an expectation of inheriting the farm.
- By the time of the trial Roger had lost capacity and his claim was brought by Pamela as his litigation friend.

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Moore

- At first instance Stephen got a good win. The court accepted that the assurances had been made. The court transferred the property assets to Stephen subject to life interests to enable his parents to continue living in the farm house, and income provisions to meet their needs.
- Roger appealed both the findings that the assurances had given rise to an estoppel, but also that the remedy given was far in excess of what Stephen was entitled to by bringing forward his ownership of the farm, and leaving his parents as life tenants.

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Moore

- Court of Appeal decided that the appeal against the finding that proprietary estoppel had been engaged should fail. It was based on findings of fact which the judge was entitled to make.
- However, the Court of Appeal agreed that the assurance given was that Stephen would own the farm on the last to die of Roger and Pamela, and so to bring his ownership forward was a benefit in excess of his reasonable expectation, and was manifestly prejudicial to Roger and Pamela.
- In addition, the remedy created by the first judge had overridden the rights of Pamela. She had an entitlement as Roger's wife which had been taken away from her without any justification.

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Moore

- The remedy created by the first judge kept the family all living together at the farm when their relationships had completely broken down. It was appropriate to create a “clean break” and remitted the case back to the first judge to determine the size of a lump sum payable by Stephen to Roger to enable him and Pamela to rehouse and have their income needs met for life.

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Anaghara v Anaghara [2021] 2 FLR 331

- A Nigerian Chief had three wives. He bought a house in London in 1976. In 1984 one of his wives, Alice, moved into the property and lived there with her three children until they grew up and moved out.
- The Chief died in 2007. His main UK asset was the property. His estate was inherited by his oldest son (from a different wife). In 2017 that son served a notice to quit on Alice (and one of her children who had moved back in).
- Alice claimed that the property was hers pursuant to a constructive trust and/or proprietary estoppel. She said the Chief had always reassured her that she owned it, and in reliance upon that she had not bought another property, and she had spent capital on maintaining and improving it.

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Anaghara

- The court accepted Alice's evidence, but it rejected her constructive trust claim. It gave her a life interest in satisfaction of her estoppel claim.
- The son appealed. He said that life interest was out of proportion with the detriment. He claimed that there could be no detrimental reliance where Alice had enjoyed the benefit of "rent free accommodation", that the money spent on maintaining the house had come from her son and not herself, and that there was no evidence that she would have been able to buy another house.
- The Court of Appeal said that to describe her occupation as "rent free accommodation" when she was a spouse who had raised three children was "inapt and unattractive". Also that the money her son had provided was a gift to Alice, and she had acted to her detriment in spending it on the house.
- Her real detriment was that she had not bought another property, and if she had lost the right to occupy her home, she would not have been able to buy one now as she had lost her mortgage capacity. The first judge was entitled to find that when she was younger and working, she would have been able to raise a mortgage.

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Rojob v Deb [2022] EWHC 1572

- The Claimants (Mr and Mrs Rojob) owned a family home in Oxford. They got into financial trouble and needed £205,000 to satisfy bankruptcy debts. They could not get a mortgage.
- The Defendant (Mr Deb) was a close friend. He could get a mortgage. The parties agreed that the title of the house would be transferred to Mr Deb and he would release £205,000 which he would give to Mr Rojob to pay off debt. Mr Rojob would pay the monthly mortgage instalment. If Mr Rojob was able to buy the house back at any stage during the next 3 years, Mr Deb would accept £205,000.
- The three year period ran from 2008 to 2011.

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Rojob v Deb

- In 2017 Mr Rojob's son told Mr Deb he wanted to buy the house back for £205,000. Mr Deb said no, the time limit has expired.
- Mr Rojob issued a claim for proprietary estoppel and constructive trust. There was no issue about the terms of the agreement, save for whether there had been a cut off date for the exercise of the buy back agreement.
- The issues of fact were determined in favour of the Rojob family, and the judge found that they had been assured that they would be able to buy the property back *at any time* for £205,000.

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Rojob v Deb

- Mr Deb said that was too great a windfall for the Rojob's, and that they were getting a house for £205,000 which was now worth considerably more than that (because of the passage of time).
- The court said that the Rojobs had given up the title to their house in exchange for £205,000 which was only two thirds of the value of the property at the time, and in the meantime they had paid the mortgage and maintained the property. The benefit of allowing them to buy the house for £205,000 was not disproportionate to the detriment.

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Williams v Williams [2022] EWHC 1717 Ch

- A farming case involving 3 siblings, Dorian, Gerwyn and Susan. Their parents had farmed two farms in Wales, Cefn Coed and Crythan. By the father's will, these farms were left between the three children.
- Dorian claimed that all the assets in fact vested in him because he had been in partnership with his father, the farms were both partnership assets, and on his father's death he became the sole owner. He also claimed that he had been assured by his parents that he would receive the farms.
- All of the children had worked on the farms as children and adults.

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Williams

- Gerwyn worked full time at the farm but got a job in 1982 and thereafter he only worked evenings and weekends for no pay until 2010 when he returned to work full time at the farm. He lived at the farm until 1991.
- Dorian worked and lived full time at the farm and never worked anywhere else.
- Susan did the vegetable round and cooked and cleaned for the men.
- A partnership was formed between Dorian and his parents in 1985 but the assets of the partnership are not described in the deed. It was signed before Cefn Coed or Crythan had been purchased (the parents were tenant farmers before that).

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Williams

- Dorian said his parents “drummed it into him” that he would get the farms, and in reliance upon that he spent his money on machinery and improvements, and took less of a wage than he would have done in employment.
- Gerwyn said his parents had also promised him a share.
- Susan said she understood that the farm would go to “the boys”. She sided with Gerwyn. Her and the other sister Rhian had inherited from grandparents instead.
- The parents had made wills which left everything to each other, and on the death of the survivor the assets were distributed in Dorian’s favour, but still benefitting Gerwyn and Susan.

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Williams

- The court rejected Dorian's evidence about the repeated assurances he said had been made. The court found that it was unlikely that the parents would have made those assurances at the same time as making their wills, and telling Gerwyn and Susan that the estate would be divided mainly between the boys, but with Susan having a smaller share.
- The court found that Dorian had suffered no benefit. He had been paid, and had never sought to work anywhere else. He had his board and lodging provided, and has been left with a share in Cefn Coed and the partnership.
- The court rejected the partnership claim as well. It based this on the source of the funding for the properties. Therefore whilst Dorian was the last surviving partnership, neither property was included as a partnership asset.