



PUMP COURT  
CHAMBERS

# ToLATA 1996 – Case Law Update

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# Savage v Savage [2024] EWCA Civ 49

The question:

Does section 15(3) of the Trusts of Land and Appointment of Trustees Act 1996 exclude consideration of the wishes of the holder(s) of a minority interest in trust property when those views conflict with the majority shareholder?

# Savage v Savage [2024] EWCA Civ 49

## The Facts

- Financial remedy proceedings between ex-spouses.
- Wife (Vanessa) had sought sale of three parcels of land, held on trust for the husband (Raymond) and his four nephews.
- The Appellant in the Court of Appeal was one of those nephews (Frank). He ran a site-based business (campsite) from one of the parcels of land. He was the holder of a minority interest, along with his other siblings.
- Frank and Raymond could not agree on the mechanism of sale. Frank wanted a right of pre-emption to buy out Raymond's interest in his parcel of land. Raymond wanted to sell all the parcels of land together on the open market and "move on".
- At trial, an expert gave evidence that the plots could be feasibly sold separately with little impact to the overall value (though it could pose some practical difficulty).

# Savage v Savage [2024] EWCA Civ 49

## Section 14 ToLATA 1996

### **Applications for Order**

- (1) Any person who is a trustee of land or has an interest in property subject to a trust of land may make an application to the court for an order under this section.
- (2) On an application for an order under this section, the court may make any such order—
  - (a) relating to the exercise by the trustees of any of their functions (including an order relieving them of any obligation to obtain the consent of, or to consult, any person in connection with the exercise of any of their functions), or
  - (b) declaring the nature or extent of a person's interest in property subject to the trust, as the court thinks fit.

# Savage v Savage [2024] EWCA Civ 49

## Section 15 ToLATA 1996

### **Matters relevant in determining applications.**

(1) The matters to which the court is to have regard in determining an application for an order under section 14 include—

- (a) the intentions of the person or persons (if any) who created the trust,
- (b) the purposes for which the property subject to the trust is held,
- (c) the welfare of any minor who occupies or might reasonably be expected to occupy any land subject to the trust as his home, and
- (d) the interests of any secured creditor of any beneficiary.

...

**(3) In the case of any other application, other than one relating to the exercise of the power mentioned in section 6(2), the matters to which the court is to have regard also include the circumstances and wishes of any beneficiaries of full age and entitled to an interest in possession in property subject to the trust or (in case of dispute) of the majority (according to the value of their combined interests).**

# Savage v Savage [2024] EWCA Civ 49

## The District Judge's first instance decision

- District Judge Owen granted Frank a right of pre-emption to purchase Raymond's interest in his parcel for £666,150 (less costs payable by Raymond to Frank).
- The District Judge held he was not precluded by section 15(3) from considering the wishes of the minority, or that he had to have regard only to the factors in section 15 when determining applications.
- The District Judge in particular referred to Bagum v Hafiz [2016] Ch 241, at [21] and [23-25].

# Savage v Savage [2024] EWCA Civ 49

## The Circuit Judge's decision on the first appeal

- HHJ Farquar: because there was a dispute between the beneficiaries, section 15(3) precluded the court from having any regard to the circumstances and wishes of Frank and the other siblings (as minority beneficiaries), and the only wishes and circumstances that could be taken into account were those of Raymond, as the majority beneficiary by value.
- Core of his reasoning is as follows:

“28. The wording of this particular sub-section can only make grammatical sense if the Court can only take one of the considerations into account. If that was not to be the case then what would be the purpose of the words “or (in case of dispute) of the majority.”? As suggested by Mr. Sinnatt on behalf of [Raymond] these words would simply be otiose and that cannot have been the intention of those drafting the Act.”
- The circuit judge there set aside the order giving Frank the right of pre-emption.

# Savage v Savage [2024] EWCA Civ 49

## The Court of Appeal's decision on the second appeal

- Snowden LJ, with Phillips LJ and Moylan LJ, found that HHJ Farquar's conclusions on the interpretation of the statute were wrong.
- Judgment focused on:
  - A. Interpretation of section 15 in light of the whole statute (words such as “include” and “have regard to” re the section 15 factors do not exclude other factors); and
  - B. Law Commission Report 1985 Working Paper (No.94) entitled “Trusts of Land” and its 1989 Report (No. 181) titled “Transfer of Land, Trusts of Land” .



# Savage v Savage [2024] EWCA Civ 49

## The Court of Appeal's conclusion on interpretation

- On statutory interpretation, the CoA, noted that the factors in section 15 were not exhaustive. The word “include” at section 15(1) indicates other factors may be taken into account.
- Section 15(3) takes the same approach: the court “must” take into account the wishes of the majority shareholder, but is not precluded, by doing so, by taking into account the wishes of the minority shareholder.

# Savage v Savage [2024] EWCA Civ 49

## Corroboration from the Law Commission

- The CoA identified some key passages from the Working Paper and Report which corroborated its views on statutory interpretation at [34-40]:
- Working Paper:

10.10: To sum up, we are suggesting that the court should have regard to the following matters:- (i) the purpose for which the property was purchased, so that if that purpose no longer exists, the property should normally be sold; (ii) where the property is occupied by co-owners as a family home, the welfare of any children who occupy and who are the children of any person entitled to occupy under the trust; (iii) the wishes of the tenant for life; (iv) the wishes of the majority in value of those holding interests in possession in the property.

Having considered all these factors, the court should still be able to take into account other relevant considerations.
- Report:

12.10 ... These guidelines are not designed to restrict the exercise of judicial discretion by either narrowing it in breadth or giving certain interests formal priority over certain others. They are simply designed to indicate some of the more important factors to which the courts should have regard.”

# Savage v Savage [2024] EWCA Civ 49

## Outcome

- HHJ Farquar was wrong in his interpretation of section 15(3). The second appeal was allowed.
- The Court of Appeal restored the order of the district judge, which was sensible and within his discretion.

## Dervis v Deniz [2025] EWHC 902 (Ch)

High Court appeal from HHJ Gerald at Central London CC, applying and considering Hudson v Hathway [2022] EWCA Civ 1648:

The questions:

- A. Was Ms Dervis permitted to pursue on appeal a claim based on emails purported to constitute a release, which was only touched on at trial, and had not been pleaded?
- B. If she were successful on the 1st point, did those email exchanges amount to a disposition of Mr Deniz's beneficial interest in the house to her?

# Dervis v Deniz [2025] EWHC 902 (Ch)

## The Facts

- Parties in a cohabiting romantic relationship.
- The house they lived in was purchased by Ms Dervis and her ex-husband in 2006. The Property was then transferred to Ms Dervis and her sister in 2013.
- Ms Dervis' sister no longer wished to be liable on the mortgage as she wished to buy a home with her future husband.
- In 2018, after discussions between the parties, the house was transferred into the joint names of Ms Dervis and Mr Deniz. Both assumed liability under the mortgage and Ms Dervis' sister was released from the mortgage, and did not make any claim to a share of the beneficial interest.
- The transfer included an express declaration of trust that stated the 2 were to own the property as joint beneficial owners.
- Their relationship broke down in 2018-2020, culminating in Mr Deniz' conviction for assault. The parties sent each other some emails concerning the Property.
- In March 2022 Ms Dervis' solicitors wrote to Mr Deniz, inviting him to consent to the transfer of the legal title to the Property into the sole name of Ms Dervis. He refused. Ms Dervis issued seeking declarations and consequential orders. Mr Deniz issued a counterclaim seeking an order for sale.

# Dervis v Deniz [2025] EWHC 902 (Ch)

## Section 36(2) of the Law of Property Act 1925:

*"(2) No severance of a joint tenancy of a legal estate, so as to create a tenancy in common in land, shall be permissible, whether by operation of law or otherwise, but this subsection does not affect the right of a joint tenant to release his interest to the other joint tenants, or the right to sever a joint tenancy in an equitable interest whether or not the legal estate is vested in the joint tenants:"*

As the release of an interest in a joint tenancy of the beneficial interest in land does not involve the legal estate in the relevant land, no deed is required (judgment, paragraph [59]).

There is only a requirement for signed writing, as set out in paragraphs (a) and (c) of Section 53(1):

*"(a) no interest in land can be created or disposed of except by writing signed by the person creating or conveying the same, or by his agent thereunto lawfully authorised in writing, or by will, or by operation of law;"*

*"(c) a disposition of an equitable interest or trust subsisting at the time of the disposition, must be in writing signed by the person disposing of the same, or by his agent thereunto lawfully authorised in writing or by will."*

## Dervis v Deniz [2025] EWHC 902 (Ch)

- No particular form of words required for release to be effective, all that required is objective clarity of intention [61].
- An email can satisfy the relevant formalities of the 1925 Act provided it is 'signed': *Hudson v Hathway* [2022] EWCA Civ 1648 [2023] KB 345.

# Dervis v Deniz [2025] EWHC 902 (Ch)

## The emails

Mr Deniz appeared to be seeking a reconciliation which Ms Dervis was not agreeable to.

Ms Dervis asked Mr Deniz:

**'In order to move forward with our lives, I am asking that if you are willing to be reasonable enough to provide consent to remove yourself from the mortgage so that you can no longer use this as a weapon to control me. I also ask that you pay off your 6K credit card debt which I have been covering.'**

The emails continued with Mr Deniz at one point making this statement:

**'I don't want the house it's yours it's always been yours! Let me tell you something the only thing I enjoyed doing with the house was doing it up and seeing u smile. Every BODY knows this and was against what I was doing, no one even wanted Me to be with you but I chose you, U made me happy my life was in your hands your control not for other ppls happiness or control!'**



# Dervis v Deniz [2025] EWHC 902 (Ch)

## The Emails (continued)

Mr Deniz:

**'I hate that house I want nothing to do with it. I wish you sell it and get a new place cosy, not a house full of history. Like you got dead ppl walking around in there. I would love to do that with u start fresh new area'.**

Ms Dervis replied:

**So why won't you come off the house if you want nothing to do with it? You attacked me, I don't want a future with a violent coward.**

After several more emails and a phone call between the parties, Mr Deniz sent an email stating

**'I give my full consent to be removed of the mortgage at [the Property].**

**I can be present to sign any documents needed.**

**Not seeking any financial interest in the property.**

**Give me till the end of the month I will transfer £6000 pounds to you'**

# Dervis v Deniz [2025] EWHC 902 (Ch)

## HHJ Gerald's first instance decision

- Two judgments:
- Judgment 1, day 1: the declaration of trust was binding (Goodman v Gallant [1986] Fam 106 etc). There was no scope for the doctrine of constructive / resulting trusts in the presence of an express declaration.
- Remainder of the trial concerned a £6000 unjust enrichment claim, and whether an order for sale should be made. Emails were referred to but the release claim was not pleaded or pursued. A claim for PI was abandoned (presumably for want of medical evidence).
- Judgment 2, day 3: order for sale made, unjust enrichment claim dismissed besides an admitted £3000, costs award to Mr Deniz.
- Emails dealt with very briefly: **“it cannot amount to a release or gift of his beneficial interest. Not only is that not pleaded, but of course it does not comply with the relevant formalities. All it is is evidence of somebody (the defendant) trying to re-establish a relationship with somebody (the claimant) who presumably they loved, notwithstanding the rather disgraceful way in which he had physically abused her before the relationship came to an end.”**

## Dervis v Deniz [2025] EWHC 902 (Ch)

- Ms Dervis' position on appeal:
- Interpretation of the emails was a 'pure point of law'.
- HHJ Gerald's decision was per incuriam, because Hudson v Hathway [2022] was directly binding and had not been cited, or referred to.

# Dervis v Deniz [2025] EWHC 902 (Ch)

## The High Court's decision on appeal

- Johnson J considered the 'release claim' based on the emails was a new point taken at appeal.
- Prudential Assurance Co Ltd v HMRC [2017] 1 WLR 4031 was cited by the judge in support of a robust approach to late amendments to pleadings or seeking to advance a point late.
- Johnson J needed to consider whether interpretation of the emails was a 'pure point of law', which could be raised on appeal: Singh v Dass [2019] EWCA Civ 360 and Notting Hill Finance Ltd v Sheikh [2019] EWCA Civ 1337.

# Dervis v Deniz [2025] EWHC 902 (Ch)

## The High Court's decision on appeal (continued)

- The release claim was not a 'pure point of law'.
- In Hudson v Hathway [2022], the emails were front and centre of the trial. Here, they were only briefly touched on [99-100].
- The factual matrix needed exploring, to interpret the emails in light of that matrix (albeit contractual interpretation of words is objective) [101-116].
- The point was not pleaded. Had it been pleaded and run, the evidence at trial would have taken a different course [117].
- This was not an exceptional case, and to allow Ms Dervis a second bite of the cherry would be prejudicial to Mr Deniz [118].
- Even if it were a pure point of law, the release claim needed to be pleaded; it was a whole new claim, not a sub-point in an existing claim. To allow it to be run would require the matter to be re-pleaded and run again at County Court level [120].
- The possible injustice arising out of the failure of a legal adviser to identify and run a point as identified by Nourse LJ in Pittalis v Grant [1989] QB 605, did not assist or apply in this case [122-128].

# Dervis v Deniz [2025] EWHC 902 (Ch)

## Conclusions and lessons

- Permission was not granted to run the new point, and the appeal was dismissed.
- Even in what may appear to be a straightforward case, the Court will almost always be justified in investigating the factual matrix behind communications said to comprise a disposition under LPA 1925, especially where the parties are not represented / in receipt of legal advice at the relevant time.
- Implications, perhaps, for summary judgment applications in cases where a disposition is said to have taken place?
- **PLEADINGS REMAIN IMPORTANT!**
- **IDENTIFY YOUR BEST LEGAL CASE AT THE PLEADING PHASE!**
- **... OR AT THE VERY LEAST, BEFORE TRIAL!**

- Williams v Williams [2024] EWCA Civ 42
- Begum v Miah [2024] EWHC 697 (Ch)

# Williams v Williams - Facts

- In 1986, freehold of farm transferred into joint names of father, mother and son, who were in partnership together.
- No express declaration as to how land was to be held. Restriction entered on the register.
- Various wills made by mother and father dealing with their share in the farm.
- Mother died in 2013. Father died in 2018.
- Two claims advanced by the son at trial:
  1. The farm was a partnership asset and therefore enured for his benefit.
  2. Proprietary estoppel.
- Both claims dismissed. Declaration that farm held as tenants in common.





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# Williams v Williams – Ground of Appeal

- The judge was wrong to find that the farm was purchased as tenants in common and ought to have found that it was held jointly in law and in equity.

## Williams v Williams – Law

- How is land held when no declaration of trust?
- Stack v Dowden and Jones v Kernott.

# Williams v Williams – Decision

- Does the principle in Stack apply? How wide is the principle that equity follows the law?
- As a general and abstract statement, Stack is correct.
- However, context is everything.
- Survivorship key in this context.
- Cf. domestic consumer context with a farm which was primarily a business providing their livelihood. Importantly, not acquired in name of mother and father alone.
- Co-owners acquiring property for business purposes do not intend survivorship.

# Williams v Williams – Thoughts

- Context and presumptions.
- What about a part-business, part-domestic property?
- The importance of express declarations.

## Begum v Miah – Facts

- Dispute between previous cohabitants as to beneficial ownership.
- Property purchased in joint names with no declaration of trust.
- Parties separated after 7 years and began discussions about how to sever financial ties.
- A meeting took place between the parties, their family members and friends. The parties signed an agreement, which included *inter alia*, a requirement for the property to be transferred to M “in due course”.

## Begum v Miah – Facts

- Trial judge found that the property was held in equal shares until the separation agreement, which demonstrated B's intention to transfer her interest to M.
- The agreement did not comply with s.52 LPA 1925 or s.2 LP(MP)A 1989 but did satisfy s.53(1)(c) LPA 1925. The parties had agreed that B would no longer have an interest in the property.
- Alternatively, there was a common intention constructive trust because M relied on the intention by taking on the sole mortgage payments.

# Begum v Miah – Grounds of Appeal

- Relying on Hudson v Hathway, it was argued that s.53(1)(c) required an intention to divest a person of their equitable interest in the property immediately.
- Insufficiently clear common intention upon which M was entitled to rely.

# Begum v Miah – Decision

- A statement that a person will transfer their interest in due course would not amount to a disposition with immediate effect. The separation agreement could not be a disposition of B's interest.
- The agreement could not refer to purely administrative matters. There was no distinction between transfer of legal interest and beneficial interest. Moreover, M was required to make lump sum payments to B.
- The separation agreement refers to a transfer at some unspecified time in the future. Therefore, there was no clear common intention on which M could rely.
- Payment of mortgage potentially detriment but no material reliance.
- Not a commercial or business situation.



# Begum v Miah – Thoughts

- Uncertainty and witness evidence.
- Common intention constructive trust not waved through.
- Mediation.