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I DESERVE MY FAIR SHARE

How Equitable Accounting Works

Helen Brander and Henry Hawkesworth

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What is an equitable account? (1)

- In cohabitation cases, parties account to one another for financial actions taken / omissions for actions they should have taken in certain circumstances.
- During the relationship, the accounting is taken as a given, unless something else is expressly agreed (in writing or orally, or sometimes through actions and behaviour) *(Cowcher v Cowcher* [1972] 1 All ER 943; [1972] 1 WLR 425).
- Upon relationship breakdown, separation of all parts of the relationship might occur: the home; investment properties; business relationships; entitlement to provision under family settlements / sharing in trust income and capital.
- The parties may have a fiduciary responsibility to each other, which the Court can, if asked, enforce. Equitable accounting is the way to deal with this.

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What is an equitable account? (2)

Lord Millet in the Hong Kong Final Court of Appeal in *Libertarian Investments v Hall* (2013) ITELR 1:

- [168] [A]n order for an account does not in itself provide the plaintiff with a remedy; it is merely the first step in a process which enables him to identify and quantify any deficit in the trust fund and seek the appropriate means by which it may be made good. Once the plaintiff has been provided with an account he can falsify and surcharge it. If the account discloses an unauthorised disbursement the plaintiff may falsify it, that is to say ask for the disbursement to be disallowed. This will produce a deficit which the defendant must make good, either in specie or in money….
- [170] If on the other hand the account is shown to be defective because it does not include property which the defendant in breach of his duty failed to obtain for the benefit of the trust, the plaintiff can surcharge the account by asking for it to be taken on the basis of 'wilful default'…on the basis the property should be treated as if the defendant had performed his duty and obtained it for the benefit of the trust. Since….the property has not been acquired, the defendant will be ordered to make good the deficiency by the payment of money and in this case the payment of 'equitable compensation' is akin to the payment of damages as compensation for loss.
- [171] In an appropriate case the defendant will be charged, not merely with the value of the property at the date when it ought to have been acquired or at the date when the account is taken, but at its highest intermediate value. This is on the footing either that the defendant was a trustee with power to sell the property or that he was a fiduciary who ought to have kept his principal informed and sought his instructions.
- [172] At every stage the plaintiff can elect whether or not to seek a further account or inquiry. The amount of any unauthorised disbursement is often established by evidence at the trial, so that the plaintiff does not need an account but can ask for an award of the appropriate amount of compensation. Or he may be content with a monetary award rather than attempt to follow or trace the money, in which case he will not ask for an inquiry as to what has become of the trust property. In short, he may elect not to call for an account or further inquiry if it is unnecessary or unlikely to be fruitful, though the court will always have the last word."

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What is an equitable account? (3)

AIB v Redler Solicitors [2015] AC 1503, per Lord Reed:

- In the *AIB* case solicitors holding £3.3m on trust for a mortgage lender were instructed not to release the balance to the borrower until they had paid off a first charge over the property for around £1.5m in favour of another bank (Barclays). In breach of trust, the solicitors released the remaining funds to the borrower when only £1.2m had been paid to Barclays, who therefore continued to hold a first charge over the property for (in round numbers) £300,000. The borrower later defaulted on the loan and the property was sold for only some £800,000. Of this, £300,000 had to be paid to Barclays because of their first charge. The solicitors argued that their liability was limited to compensating the lender for the loss caused by their breach of trust. That loss was the amount of £300,000 which had to be paid to Barclays out of the proceeds of sale of the property because Barclays' first charge had not been fully paid off before the balance of the loan was released to the borrower as it should have been. If the full amount covered by Barclays' first charge had been paid off, the lender's charge would have covered all the sale proceeds. But the rest of the money owing to the lender would have been lost anyway even if the solicitors had performed their duty to administer the trust fund correctly.
- The lender, however, sought to recover from the solicitors the entire amount of the trust fund of £3.3m (less the proceeds of sale) on the basis that the solicitors were liable to reconstitute the trust fund by restoring all the money which they had wrongly paid out without having removed Barclays' first charge over the property.
- The lender's claim for the higher amount failed. The Supreme Court unanimously accepted the solicitors' argument and expressly rejected the view that the accounting remedy can operate differently from the remedy of equitable compensation. In the words of Lord Toulson (with whose judgment as well as that of Lord Reed the other Justices agreed), "it would not … be right to impose or maintain a rule that gives redress to a beneficiary for loss which would have been suffered if the trustee had properly performed its duties": para 62.
- "135. The measure of [equitable] compensation should…normally be assessed at the date of trial, with the benefit of hindsight. The foreseeability of loss is generally irrelevant, but the loss must be caused by the breach of trust, in the sense that it must flow directly from it. Losses resulting from unreasonable behaviour on the part of the claimant will be adjudged to flow from that behaviour, and not from the breach. The requirement that the loss should flow directly from the breach is also the key to determining whether causation has been interrupted by the acts of third parties….
- 136. It follows that the liability of a trustee for breach of trust, even where the trust arises in the context of a commercial transaction which is otherwise regulated by contract, is not generally the same as a liability in damages for tort or breach of contract. [But] of course the aim of equitable compensation is to compensate: that is to say, to provide a monetary equivalent of what has been lost as a result of a breach of duty..."

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What is an equitable account? (4)

Recovery Partners GP Ltd v Rukhadze and Ors [2025] 2 WLR 529:

- *C, a company, incorporated by S Inc. to undertake asset recovery services for the deceased. Ds were S Inc. or C's senior employees, and fell out with S Inc. They resigned and agreed with the family of the deceased to provide the recovery services themselves. C claimed breach of fiduciary duty to S and / or C and won.*
- *On C's Claim for an account of profits, the judge ordered Ds make a payment of €134m plus interest, being net profits from providing the recovery services minus 25% by way of equitable allowance for D's work and skill.*
- *CA dismissed the Ds' appeal. Ds appealed again, contending that the SC should depart from the principle that the Ds had to account for all profits, and that it was not subject to a "but for" condition that the profits would not have been made without the breach.*
- Held, dismissing the appeal:
  a. Fiduciaries have to account to principal for any profits made from, out of, or sufficiently connected with the fiduciary relationship unless the principal has given his fully informed consent;
  b. The duty exists in its own right, and is imposed by equity on all fiduciaries as an inherent aspect of their undertaking of single-minded loyalty, rather than being a merely discretionary remedy (c.f Leggatt JSC);
  c. That the duty does not depend on a demand for an account (whether by principal or by order of the court) but arises at the moment when the profit is received;
  d. That determining whether profits fall under the principle, the question is whether the profit owes its existence from, out of, or is causally connected with the fiduciary relationship, i.e. did it exist as a result of application of property, information or some other advantage arising from the fiduciary relationship, or of an activity that conflicts with the principal;
  e. To do that, the Court looks at the facts, but is not concerned with what would happen in a counterfactual, "but for" situation which did not occur, i.e. that the profit would not have been made "but for " the breach, and that is the case whether or not it causes injustice to honest fiduciaries, who would otherwise be compensated by an equitable allowance, which "tempers the wind to the shorn lamb."
  f. Don't confuse equitable accounting with equitable compensation (as in *AIB v Redler*). The former is relevant to an account of profits, and the latter is to account by way of compensation for loss.

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Equitable Accounting: **When do we see it?**

- Times and instances when it arises are non-exhaustive. Made by credits and debits to be applied to sale proceeds where:

- There has been unmatched expenditure on the Property which has increased its value;

- An “occupation rent” arises, where a Party has been unable to enjoy a right of occupation (due to conduct by the Party remaining in occupation);

- Or where a Party has enjoyed a benefit from the Property which the other Party was entitled to receive, but has not received (eg: rental income).

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Equitable accounting: **When do we see it?**

- Griffiths LJ, in **Bernard v Josephs** [1982] 1 Ch 391,:

"When the proceeds of sale are realised there will have to be equitable accounting between the parties before the money is distributed. If the woman has left, she is entitled to receive an occupation rent, but if the man has kept up the mortgage payments, he is entitled to credit for her share of the payments; if he has spent money on recent redecoration which results in a much better sale price, he should have credit for that, not as an altered share, but by repayment of the whole or a part of the money he has spent. These are but examples of the way in which the balance is to be struck."

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Equitable Accounting: **When do we see it?**

- Property income –
  a. where joint owners of investment property are entitled to the income in their respective shares, but one manages it, then they must account to the other for income / expenditure.
  b. See also where one party transfers jointly-owned investment property to a third party in breach of their obligations to the other joint owner and the third party receives it knowing or believing, or ought to have known / believed that they were not receiving good title. An account has to be provided by the transferee and by the transferor to the innocent former owner. The innocent owner can elect an account in common form or on the footing of wilful default. The innocent owner elects the form of account.
- Corporate issues – see, e.g. *Rukhadze*. Also relevant in much smaller companies in which both cohabitees are directors / shareholders – secret profits / mismanagement as a result of information acquired in the fiduciary role.
- Trust assets – the same principles apply where one trustee of a trust with the cohabitees as beneficiaries (and perhaps both are trustees) go rogue.

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Equitable accounting: **When does it run from?**

- What were the intentions of the Parties? **Wilcox v Tait** [2006] EWCA Civ 1867 at (74):

"in an ordinary cohabitation case equitable accounting is only likely to come into play in respect of the period following the termination of the relationship between the co-owners. However, there can be no absolute rule as to that."

- Why? **Clarke v Harlowe** [2007] 1 FLR:

37. In the ordinary case of cohabitation the common purpose of the implied trust subsists whilst the relationship subsists. During that period whilst the ordinary arrangements for the discharge of the outgoings subsist there is no breach or failure by any one of the parties to honour any obligation owed to the other. Thus in the usual case there is no room or reason for equitable accounting. It is common ground, for example, that Christopher Harlowe paid all the mortgage instalments in respect of Bank House prior to the separation. It is not suggested (and could not be suggested) that Margot Clarke was under any obligation to reimburse him any part of those payments at the time. It thus could not be suggested that there was any basis for equitable accounting in respect of the mortgage instalments prior to the separation.

38. After the relationship ends and the parties separate the common purpose of the implied trust has generally come to an end. At that stage there are no common arrangements between the parties with the result that each ought to discharge his or her proportionate share of the outgoings. There is thus at that time an obligation on each of the parties. If one party fails to honour its obligation an appropriate account can be taken on the sale of the property. As is clear from the authorities the account can include an obligation to pay an occupation rent.

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Equitable accounting: **When does it run from?**

- BUT:

- **Marsh v von Sternberg** [1986] 1 FLR 526: court found that there had been an agreement for both parties to pay 50% of the mortgage each during the currency of the relationship, and so this was included in the account.

- Scope of the equitable account depends on what the common intentions of the Parties were. Absent evidence of some agreement, general expectation is that parties in a relationship do not tend to expect to account to each other.

- Commercial context likely to be very different.

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When does it run from? (Cohabitation)

- Runs from the date of the breach in more complex, commercial contexts – more formal fiduciary relationships, even where those duties fall in the context of a cohabiting relationship – *Rukhadze.*
- Accounting takes place after substantive disputes are resolved, e.g. interests in property are defined; breaches of fiduciary relationships are found to have occurred.
- Fiduciaries have to account to their principals throughout, however. The duty is ongoing - *Rukhadze*

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Occupation Rent: **What is it?**

- Equitable or statutory compensation where a beneficiary has been excluded from a co-owned Property or where enjoyment of it has been restricted.

- Mechanism to do justice, having regard (where applicable) to factors in section 15 TOLATA 1996 (**Murphy v Gooch** [2007] EWCA Civ 603) [12].

- *"…there ought to be some conduct by the occupying party, or at least some other feature of the case relating to the occupying party, to justify a court of equity concluding that it is appropriate or fair to depart from the default position and to order the occupying party to start paying rent."* **Davis v Jackson** [2017] EWHC 698 at [61].

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Occupation rent: **The court's jurisdiction**

- **Cohabitation cases / cases where there has been exclusion of a beneficiary by a trustee (acting as trustee)**: Sections 12-15 TOLATA 1996 (in particular, section 13(6), section 14(2)(a), and section 15(1)) (**Stack v Dowden** [2007] UK HL 17 (93-94)).

- **Trustee in bankruptcy cases / cases where there has not been exclusion within section 13 TOLATA 1996**: equitable principles under the older case law.

- Results are often the same. Section 15 TOLATA 1996 is not exhaustive (does not exclude any other factor).

- See interesting discussion on statutory v equitable regimes in **Davis v Jackson** [2017] EWHC 698 from [37] to [48].

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Occupation rent: **The leading authority**

Re Pavlou [1993] 1 WLR 1046; 1050; Millet J *(emphasis/paras added)*:

"I take the law to be to the following effect.

First, a court of equity will order an inquiry and payment of occupation rent, not only in the case where the co-owner in occupation has ousted the other, but in any other case in which it is necessary in order to do equity between the parties that an occupation rent should be paid. The fact that there has not been an ouster or forceful exclusion therefore is far from conclusive.

Secondly, where it is a matrimonial home and the marriage has broken down, the party who leaves the property will, in most cases, be regarded as excluded from the family home, so that an occupation rent should be paid by the co-owner who remains. But that is not a rule of law; that is merely a statement of the prima facie conclusion to be drawn from the facts.

The true position is that if a tenant in common leaves the property voluntarily, but would be welcome back and would be in a position to enjoy his or her right to occupy, it would normally not be fair or equitable to the remaining tenant in common to charge him or her with a occupation rent which he or she never expected to pay. "

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Occupation rent:
Exclusion (other helpful authorities)

- **Amin v Amin** [2009] EWHC 3356 (Ch) at (289): "It cannot, I think, be maintained that a person's entitlement to occupy can only be excluded by actual physical exclusion or a demand by the trustees to vacate. If a person is effectively excluded by threat or unpleasantness, that must surely qualify as exclusion. It will be a matter of fact and degree in any particular case whether there has been exclusion within the statutory sense. However, whatever does or does not amount to exclusion, the exclusion must be by the trustees."

- **Murphy v Gooch** [2007] EWCA Civ 603 at (18): "But even if ouster were necessary, it is quite clear that Ms Murphy left the Property on the breakdown of her relationship with Mr Gooch and I am satisfied (as the Judge was clearly satisfied) that, when she left the Property, she should be regarded (in the same way as a wife leaving a joint home on a breakdown of the marriage) as constructively excluded from the Property."

- **Ali v Khatib and Ors** [2022] EWCA Civ 481 at (73): "It follows it cannot be right, as a matter of principle, that the obligation to pay occupation rent should turn on the reasonableness or otherwise of the behaviour of the non-occupying party in not occupying the property. Yet that is the effect of Blackburne J's analysis in French v Barcham, which appears to me, with the greatest respect, to be based on a mischaracterisation of the underlying rationale of earlier authorities such as In re Pavlou. There may be all kinds of scenarios in which it is reasonable for a co-owner of property not to exercise his right of occupation, but it does not follow that this automatically provides justification for making the co-owner who is in occupation of that property pay him rent."

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Occupation rent: **How is it quantified?**

- *"On the basis of the rental value of the trust property concerned"* (**Stack v Dowden** [2007] UKHL 17 (para 157); Lord Neuberger (nb dissented on other issues).

- Generally applied for the period of exclusion up until proximately to the sale (whatever appropriate period is to do justice).

- **Rowland v Blades** [2021] EWHC 2928 (Ch).

- **Dennis v McDonald** [1982] Fam. 63: CoA said correct quantification was under Rent Act 1977 (n.b. hardly any Rent Act tenancies remaining, so analogous to a fair market rent).

- Quantum of the rent will be proportionate to the number of co-owners (ie a 50% co-owner will receive 50% of the rental value for the relevant period).

- **So remember to get permission from the court for a report from a chartered surveyor if you are claiming a rent (or alternatively to agree a mechanism with the other side, and seek the court's approval for such a mechanism prior to the trial).**

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Equitable accounting: **Unmatched mortgage repayments by the party remaining in occupation**

- Where the party who remains in occupation meets the mortgage repayments in full after the other party vacates, these tend to offset an occupation rent (n.b. be sure however that the non-occupying party would have been entitled to an occupation rent in the first place):

- **Bernard v Josephs** [1982] Ch. 391; **Re Gorman (a bankrupt)** [1990] 1 WLR 616; **Re Pavlou** [1993] 1 WLR 1046; **Leake v Bruzzi** [1974] 1 WLR 1528; **Byford v Butler** [2003] EWHC 1267 (Ch).

- Only a "convenient mechanism". No absolute rule.

- **Leake v Bruzzi**: interest element of mortgage only offset an occupation rent. The occupying husband was then entitled to credit for 50% of the capital repayments.

- **Byford v Butler:** occupying wife who had made all of the mortgage payments between bankruptcy of her husband and the sale could only claim credit for these payments if there was a set off for occupation rent.

- No modern test case on the issue of what happens where there is a gross disparity between the rental value of a property and the mortgage repayments, or whether interest only, or interest plus capital, is sufficient to offset an occupation rent.

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Equitable accounting: **Unmatched mortgage repayments by the party remaining in occupation**

- Where a party makes unmatched mortgage repayments, these tend to be accounted for in an equitable account.

- The paying party recovers the relevant proportion of the payments made, (usually 50%, in a case where there are two beneficial owners) against the sale proceeds.

- Same would tend to apply for any unmatched capital repayments made.

- Rental income?

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Equitable accounting: **Home improvements**

- Party (usually the one who remains in occupation) unilaterally makes changes to Property, falling within the currency of an account:

- **Re Pavlou** [1993] 1 WLR 1046 *(emphasis added)*:

"I must make it clear of course that, in deciding as I do that the wife is entitled as against the trustee in bankruptcy to credit for one half of any repairs or improvements, **there has to be an inquiry as to the amount expended and the increase**, if any, in the value of the property thereby realised. Much expenditure on property is not reflected in any increase in value, and most expenditure on property results in a much smaller increase in value than the amount expended. **The wife will be entitled, as against the trustee in bankruptcy, to credit only for one half of the lesser of the actual expenditure and any increase in the value realised thereby.**"

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Equitable accounting: **Home improvements**

- **Re Pavlou** [1993] 1 WLR 1046 still appears to be the binding authority

- (Principle could include **"very significant"** repairs - Lord Neuberger; **Stack v Dowden** [2007] UKHL 17; at (139); *but n.b. dissent, and no test case*).

- So the formula, if a person alleges that they should be accounted to for home improvements is:

    1. **Find / prove total cost of expenditure on improvements;**
    2. **Find / prove total increase to value of Property by virtue of the improvements; (EXPERT EVIDENCE?);**
    3. **Which is the lower of those two?**
    4. **Party who carried out the works entitled to 50% credit (or other appropriate share, if there are more than 2 beneficial owners) of the figure arrived at from the above steps.**

- Rationale: Millet J at 1048 G "the guiding principle [is] that neither party [can] take the benefit of an increase in the value of the property without making an allowance for what had been expended by the other in order to obtain it: see Leigh v. Dickeson (1884) 15 Q.B.D. 60."

- Nb: **Davis v Jackson** [2017] 2 FLR 1153: a case where a claim for an account based on repairs failed due to no evidence the property value had been increased.

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Court Procedure

- Part 7 / Part 8: Plead it - Prayer – include in both POC and / or in the witness statement in support of a Part 8 Claim.
- Once substantive issues are dealt with, an account will be ordered with directions.
- CPR PD 40A (Accounts, Inquiries, etc);
- Chancery Guide 2022 (currently the September 2025 Revision) Chapter 29.
- Types of account:

a. Accounting for property held in a fiduciary capacity (common form (where fiduciary must account for the fund they have received and make good loss) or wilful default (where fiduciary has failed by their default to bring into the fund property they should have brought in, e.g. sale at an undervalue, and so the account will be surcharged with the property which ought to have been included, with the fiduciary making compensation for loss);

b. Partnership accounts – accounting for assets / liabilities of partnership on dissolution (Chapter 18 Chancery Guide);

c. Account of profits (to establish the true measure of profit / benefit obtained), often after breach of fiduciary duty or confidence upon an infringement of intellectual property rights;

d. Co-ownership accounts (income, capital, expenses, dealings with co-owned property, occupation rent, allowance for improvements / liabilities).

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Important cases:
Re Pavlou [1993] 12 WLUK 78

- Wife obtained a decree for divorce at the same time as her husband was declared bankrupt.
- The beneficial joint tenancy in which they had held the matrimonial home was severed on the husband's bankruptcy, and the property thereafter held by them as tenants in common.
- The trustee in bankruptcy sought a declaration as to the interest of each party in the property.
- As the wife had spent considerable sums on the property, effecting repairs and paying the mortgage instalments, she was entitled to have this expenditure taken into account when determining the shares in the property.

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Important cases:
Re Pavlou [1993] 12 WLUK 78

- Trustee in bankruptcy case. Laudably brief authority.
- Pre-TOLATA 1996. But sets out the law in equity on equitable accounting, and results nowadays are 'likely to be the same' applying the s.15 criteria.
- For purposes of equitable accounting there was no distinction to be made between beneficial tenancy in common and beneficial joint tenancy.
- Remaining cohabitant entitled to credit for significant improvements which increase value of property (lesser of 50% of the increase in value, or 50% of expenditure).
- No need for ouster for a party to count as excluded in a spouse / romantic relationship context; the party leaving property following relationship breakdown would tend to be considered 'excluded'.

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Important cases:
Stack v Dowden [2007] UKHL 17

- D and S had purchased the house in their joint names using the then current land registry form, which contained no declaration of trust.
- Parties met outgoings in unequal shares.
- When they bought the house, D and S had been cohabiting for 18 years and had four children.
- Nearly all aspects of their respective finances had been kept separate.
- Nine years post purchase, the relationship broke down. Agreed an FLA 1996 order that excluded S from the house, and required D to pay S for the cost of his alternative accommodation.
- S then successfully sought a declaration that the house was held upon trust by the couple as tenants in common in equal shares and an order for its sale.
- D appealed. CoA ordered that the net proceeds be divided 65 per cent to her and 35 per cent to S on the basis that the declaration as to the receipt for capital money in the transfer document could not be taken as an express declaration of trust, nor could it infer an intention that the beneficial ownership be equal, because there was no evidence that either of them had understood the declaration to carry such significance.

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Important cases:
Stack v Dowden [2007] UKHL 17

- Mostly a case about beneficial ownership, but highest decision on equitable accounting in a cohab scenario.
- Where regime in TOLATA 1996 applies to exclusion, statutory regime applies (section 12-15) (Baroness Hale, at [53]).
- Considered statutory compensation / occupation rent:

> "The property had been bought as a home for the parties and their children. By October 2004, three of the children were still minors. Both parties had the responsibility of providing them with a home. Ms Dowden remained responsible for the upkeep and outgoings on the home until it was sold. Mr Stack had to provide himself with alternative accommodation but had nothing to pay in respect of the upkeep of the familyÕs home until he was able to realise his share in it upon sale. While, therefore, a case could be made for compensating him for his exclusion, it has to be borne in mind that he had agreed to go in the course of proceedings under the Family Law Act 1996. The reason given by the judge took no account, as he was required to do, of the statutory criteria. The fact that the house was to be sold as soon as possible, so that Mr Stack would not be kept out his money for long, was if anything a factor telling against the exercise of this discretion. I would therefore agree with the Court of Appeal on this point."

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Important cases:

Ali v Khatib [2022] EWCA Civ 481; [2022] 4 WLR 50

- C was son of deceased D1. Ds 2-4 were D1's daughter-in-law (as PR of her deceased son) and her other two children. Dispute over the family home of D1 and her pre-deceased husband.
- D2 and her deceased husband lived in what had been the family home. D1's 2003 Will bequeathed it to D2. That Will was set aside years after her death and a 1997 Will pronounced for leaving her estate (including the house) to her 4 children in equal shares.
- C and the Ds had earlier settled C's claim for capital from the estate and an £80k payment had been made to him.
- C claimed an occupation rent from D2 who had remained living there. D1 had moved out some 15 years earlier and had his own home.
- At first instance the judge found an occupation rent was not payable. C's appeal was dismissed.

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Important cases:

Ali v Khatib [2022] EWCA Civ 481; [2022] 4 WLR 50

- Per Asplin LJ at [14]: The default position at common law, where one co-owner was in occupation and the other was not, was that occupation rent was not payable. The position was the same in equity unless there has been an ouster or a letting to a stranger for rent; *(Jones (AE) v Jones (FW*) [1977] 1 WLR 438 (Lord Denning MR); *Dennis v McDonald* [1982] Fam 63 (CA).
- Per Asplin LJ at [66]: A broader approach has since been adopted. A court of equity will order an inquiry and payment of occupation rent, not only where the co-owner in occupation has ousted the other, but in any case in which it is necessary to do equity between the parties that an occupation rent should be paid (*In re Pavlou* [1993] 1 WLR 1046; *Chhokar v Chhokar* [1984] FLR 313; *Byford v Butler* [2004] 1 FLR 56; *Murphy v Gooch* [2007] EWCA Civ 603*).*
- Per Asplin LJ at [66]: Where the property is a matrimonial home or the joint home of a cohabiting couple, the party who leaves will, in most cases, be regarded as excluded, such that an occupation rent should be paid. This is not a rule of law but a statement of the prima facie conclusion to be drawn from the facts. If one party leaves voluntarily but would be welcome back and able to enjoy his or her right to occupy, it would normally be fair to charge the other co-owner with an occupation rent (*In Re Pavlou* at 1050 per Millett J).
- Per Andrews LJ at [72]: the starting point is that a co-owner is not obliged to pay occupation rent merely because he is living there and the other co-owner is not. Something more has to be shown which makes it just and equitable that the person in occupation should pay the other co-owner for his use and occupation of the property, such as that he is exploiting the property for his own financial gain, or that he has precluded the other from exercising a right of occupation that he or she wished to exercise. The focus must therefore be on the behaviour of the person in occupation.
- Per Andrews LJ at [73]: a matter of principle, it cannot be right that the obligation to pay occupation rent should turn on the reasonableness or otherwise of the behaviour of the non-occupying property in not occupying the property.
- Per Andrews LJ at 74: There is no special rule in bankruptcy cases and *French v Barcham* [2009] 1 WLR 1124 turns on its own facts (see *Davis v Jackson* [2017] EWHC 698).
- Where a party not in occupation (including a trustee in bankruptcy) has not contributed to the mortgage but has benefited during his or her period of non-occupation by an increase in property value, it may not be fair to order an occupation rent in his or her favour.
- Per Asplin LJ at [68]: The court is required to do broad justice between co-owners and to determine what would be fair.

THANK YOU

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