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Proprietary Estoppel – Where are we?

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The ambit of this talk

1. An overview of the doctrine of Proprietary Estoppel.

2. The procedure to be followed in cases with an Inheritance Act or other civil claim overlap.

3. The overlap with/procedure to be followed in Matrimonial Finance cases.

4. The jurisprudence on relief.

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Proprietary estoppel: overview

- Can modify rights over property
- Can give rise to a new cause of action (a 'sword')

Three key elements (derived from case law, including *Davies v Davies* [2016] EWCA Civ 463)

1. Representation / promise / assurance / other encouragement by D giving rise to an expectation by C that C would have a certain proprietary interest
2. Reliance by C upon that expectation
3. Detriment to C in consequence of C's reasonable reliance

- Not watertight compartments
- Unconscionability

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Representation / promise / assurance

- It need not be clear or unequivocal but needs to be "*clear enough*": *Thorner v Major* [2009] 1 WLR 776

- Includes acquiescence e.g. *Taylor Fashions Ltd v Liverpool Victoria Trustee Company Ltd* [1982] QB 123

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Reliance and detriment

Reliance

- Representation / promise cases: no requirement for D to be aware that C relied on it
- Part of the broad question of unconscionability

Detriment

- Detriment to C in consequence of their reasonable reliance
- At the point when D seeks to go back on the assurance
- Sufficient link between assurance and detriment
- Financial expenditure is not necessary
- Net substantial detriment is required (having weighed up positives and negatives)
- Acquiescence cases:
  - C would have acted differently if D had asserted their rights
  - Has unconscionability been established?
  - Only where C believes they have already acquired an interest

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Civil Procedure

White Book at 57.16.9 suggests:

Combining claims under the Act with other claims.

As claims under the Act are required to be made by issuing a Pt 8 claim, they cannot be combined in one claim form with other claims which are likely to involve substantial disputes of fact and for which the Pt 8 procedure is not appropriate or which, as in the case of probate claims, must be commenced using the Pt 7 procedure. An application may instead be made in an appropriate case for a claim under the Act to be tried together with another claim under CPR Pt 3.1(2)(h).

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Civil Procedure

Combining a PE claim with a Part 8 claim.

Bhusate v Patel & Ors. [2018] EWHC 2362 (Ch)

Chief Master Marsh:

…the claimant was right to proceed in that way, despite seeking wider relief that might more naturally have been claimed using the Part 7 procedure. The Part 8 claim form is accompanied by a document entitled "details of claim"…

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Civil Procedure

Bhusate v Patel & Ors. [2018] EWHC 2362 (Ch)

…the claim should continue under Part 8 until further order and …the defendants were to file and serve points of defence and any counterclaim with the claimant serving a reply and defence to counterclaim. Part 8 does not contemplate a procedure in this form. However, it is a convenient way of proceeding in some cases because it obviates the need to convent the claim to a Part 7 claim which can lead to wasted expenditure.

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Civil Procedure

Chancery Guide 13.29 – 13.30, Cathay Pacific v Lufthansa Technik AG [2019] EWHC 484

(The Court) …*may direct the claimant's evidence to stand as particulars of claim, or direct that the claimant must file particulars of claim or short points of claim. The court will wish to avoid adopting a procedure which incurs unnecessary expense. Part 8 is flexible and the court can adopt a hybrid procedure…*

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Proprietary estoppel and matrimonial finance

- Most common scenario: third parties claiming an interest in a property and joining as intervenors

- Proprietary estoppel often pleaded in the alternative to a common intention constructive trust
  - Proprietary estoppel generally seen as more flexible
  - In a proprietary estoppel claim there is discretion as to remedy

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Procedure: intervenors

- FPR, not CPR
- *TL v ML & Ors (Ancillary Relief: Claim Against Assets of Extended Family)* [2005] EWHC 2860 (Fam)
  - Join the third party at the earliest opportunity
  - Points of claim and points of defence
  - Separate witness statements in relation to this dispute
  - Preliminary issue hearing before the FDR
- Occasionally consideration of staying proceedings pending the outcome of separate civil proceedings (rarer, and case-specific)

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FDR before preliminary issue hearing?

- Court to take a pragmatic approach
- Holding the FDR first can potentially avoid a costly preliminary issue hearing – case-specific
- *A v A* [2007] EWHC 99 (Fam), Munby J
- *Shield v Shiel*d [2013] EWHC 3525 (Fam), Holman J

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A v A [2007] EWHC 99 (Fam)
Munby J

- "23. The Deputy Judge recorded, at para [35], the complaint of counsel in that case that the issues had never been "properly defined, pleaded or particularised" and went on to suggest, at para [36], how such issues should in future be handled by way of appropriate case management. I am sympathetic to the approach being suggested by the Deputy Judge, though I would not wish to be quite so prescriptive as he appears to be. **Vigorous judicial case management in such cases is vital, but the appropriate directions to be given in any particular case must reflect the case managing judge's appraisal of how, given the forensic realities of the particular case, the issues can best be resolved in the most just, effective and expeditious manner**.

- 24. **I do, however, entirely share the Deputy Judge's view that directions should normally be given for such issues to be properly pleaded by points of claim and points of defence**. In the present case the muddle, confusion and ambiguities in the wife's case would have been more pitilessly exposed, and at a much earlier stage in the proceedings, had the presentation of her case been exposed to the intellectual discipline which is one of the advantages of any system of pleading. Moreover, if the wife had been required to plead her case everyone would have had a much clearer idea, and at a much earlier stage, as to exactly what she was or was not asserting and as to exactly what the husband and the interveners were or were not saying by way of defence. As it was, matters were wholly unclear even as late as the first day of the final hearing." (*emphases added*)

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Shield v Shield [2013] EWHC 3525 (Fam)

Holman J

"17. […] **But I do record my personal regret that in this particular case an FDR was not fixed before, rather than after, the trial of the preliminary issue**. I am of course well aware of the argument and consideration that is invariably raised, that an FDR cannot be effective until it is known what the assets are. That may be a particularly cogent argument where there is a third party claim by somebody who is not himself part of the close family at all. In this particular case, the third party claim is made by a man who is the son of this husband and this wife. **This entire litigation essentially concerns just three people: a mother, a father and their son, although I appreciate that it may impact also on the three daughters of the family. I would have thought that in this case this was a particularly opportune moment to have assembled all concerned (not necessarily the husband himself if he was physically or mentally unfit to attend) in a forum such as an FDR and to have a sustained attempt to see if a resolution to this awful conflict could not be found at a stage when there may be high litigation risk for all concerned**. However, the preliminary issue is now fixed for only three weeks from now, and patently there is now no opportunity at all to interpose a court FDR, for which a minimum of one day would have to be found. But I have to say, as I leave this very long day, that I do so with a feeling of the utmost despair that this family could have spent three quarters of a million pounds just to get to this stage. They are likely to spend some hundreds of thousands of pounds in preparation for, and at the hearing of, the preliminary issue, and even that is only the preliminary issue. This family appears to be tearing itself apart, and it fills the sympathetic but detached observer such as myself with nothing but despair." (*emphases added*)

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Costs - intervenors

- Clean sheet applies to intervenor cases
- Sometimes seen as following a soft costs follow the event principle: see e.g. *Baker v Rowe* [2009] EWCA Civ 1162
- *Calderbank* offers can be made

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Guest v Guest [2022] UKSC 27

Background

- Son contributed decades of labour to a family farm for modest remuneration.
- He received consistent assurances regarding his inheritance.
- The relationship deteriorated, leading the parents to revise their wills.
- The battleground was reliance v expectations, with consideration given to the concept of “minimum equity.”

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Guest v Guest [2022] UKSC 27

- The remedy should generally seek to satisfy the claimant's expectations.
- However, this is subject to considerations of proportionality and fairness.
- In this case, awarding full expectation damages would unfairly disadvantage the parents. Therefore, options included permitting the parents to buy out the son's interest or deferring payment until their death. The case was remitted.

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Guest v Guest [2022] UKSC 27

- The court rejected any mechanistic reliance-based formula.
- The court rejected treating detriment as a "cap".
- The decision maintains discretion and flexibility.

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Contrast with Davies v Davies [2014] EWCA Civ 463

- The claimant daughter was likewise employed on a family farm but assurances were comparatively varied and inconsistent.

- There was evidence of detriment, yet the expectations remained imprecise and variable.

- The Court of Appeal granted a relatively modest ”reliance” based relief.

- The judgment relies heavily upon proportionality and avoidance of excessive compensation.

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Comparative Remedy

Proprietary Estoppel v Trusts of Land Per Guest v Guest [2022] UKSC 27:

The court has a flexible discretion to fashion a remedy which does justice in the circumstances of the particular case. But, in exercising this discretion, the aim is to award a remedy which does all that is necessary, but no more than is necessary, to prevent B from suffering detriment as a result of having relied on a promise of a gift of property which A no longer intends to make.

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Comparative Remedy

Contrast: **Parris v Williams [2008] EWCA Civ 1147**

Detriment that was substantial in the sense of being more than trivial was sufficient to bind the promisor to his promise.

Whereas in Guest the discretionary remedy reduced the expectation loss from £1.3m to £610,000.

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Common Ground

Hudson v Hathway [2022] EWCA Civ 1648

Lewison LJ:

A party claiming a subsequent increase in her equitable share as a result of a post-acquisition changed common intention must show detrimental reliance on that changed common intention.

Referring to **Guest v Guest [2022] UKSC 27** at para 10:

…detriment is relevant to both the arising of the equity and to the remedy. Without reliant detriment there is simply no equity at all. This reflects the notion that it is the reliant detriment which makes it unconscionable for the promisor to go back on his promise.

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Alternative Remedy

Hudson v Hathway [2022] EWCA Civ 1648

Husband (later bankrupt) sent the following e-mails:

Which leaves the house, a bad asset which is preventing all of us [from] .. moving on with our lives…. You know what, I want none of the proceeds of that either. Take it.

Under this arrangement, I've no interest whatsoever in the house, so whilst I will continue to contribute, I won't do so forever

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Alternative Remedy

Hudson v Hathway [2022] EWCA Civ 1648

Those e-mails bearing the word “Lee” at their conclusion were “signed” for the purposes of s.53 (1)(a) and (c) of the LoPA 1925.

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Alternative Remedy

Reid-Roberts & Anor. V Mei-Lin & Gudmundsson [2024] EWHC 759

Whats App messages do not conclude with the Bankrupt's name, but his name is in the header to the messages for the purpose of identifying the Bankrupt as the sender and authenticating the message as originating from him.

Some question as to the quality of that authentication as it can be edited by the recipient. Maybe a call for expert evidence in an appropriate case.

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Counterveiling Benefit

Henry v Henry [2010] UKPC 3 – licensee harvesting crops.

Jennings v Rice [2002] EWCA 159 – live-in carer granted accommodation.

Sledmore v Dalby (1996) 72 P&CR 196 – son-in-law paying no rent to parents-in-law after death of his wife

Anaghara v Anaghara & Others [2020] EWHC 3091 – occupation of matrimonial home.

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Thank you.