

UNIT 4: PROPRIETARY ESTOPPEL

Contents

- What is proprietary estoppel?
- Elements of a claim
- Establishing proprietary estoppel
- Satisfying the equity
- Impact on third parties
- Emerging issues

UNIT 4: LEARNING OUTCOMES

- Distinguish between different types of estoppel
- Explain in detail the elements of proprietary estoppel
- Identify third party rights in relation to proprietary estoppel
- Evaluate uncertainty in the practical application of proprietary estoppel
- Apply the law to a factual scenarios to advise a client

ICEBREAKER: RECAPPING COHABITATION

- Match the following terms introduced in unit 3 with their definitions

1) Resulting trust

A) The process of working out what % of equitable estate is owned by each party

2) Constructive trust

B) The parties formally record the division of their interests following the statutory formalities

3) Express declaration

C) An implied usually trust, where equitable interest results to those who contributed to purchase price

4) Quantification

D) An implied trust arising where the parties have a common intention to share the equitable interest, and the claimant has relied on that intention to their detriment

5) Sole ownership

E) The legal estate is registered in the name of one party only

INTRODUCING ESTOPPEL

- So far this module has explored the ownership and co-ownership of land.
 - Unit 2 introduced ownership and co-ownership and the formalities for creating, acquiring and transferring interests in land
 - Unit 3 explored the role of trusts in establishing beneficial interests in land, especially the family home
- Proprietary estoppel is an informal mechanism which offers a remedy where it would be unfair to deny someone of rights that they have been assured are theirs.
- Set of rules which provide protection to:
 - those who rely,
 - to their detriment
 - on an assurance made by a landlord
- Remedy derived from courts (equity): constantly evolving
- Recent innovation of proprietary estoppel has been to offer a remedy in family home cases
- Similarities with constructive trusts: some have argued better remedy in family home cases
- But proprietary estoppel is not a trust: but where successful court may impose a remedial trust or interest

PROPRIETARY ESTOPPEL: THE BASICS

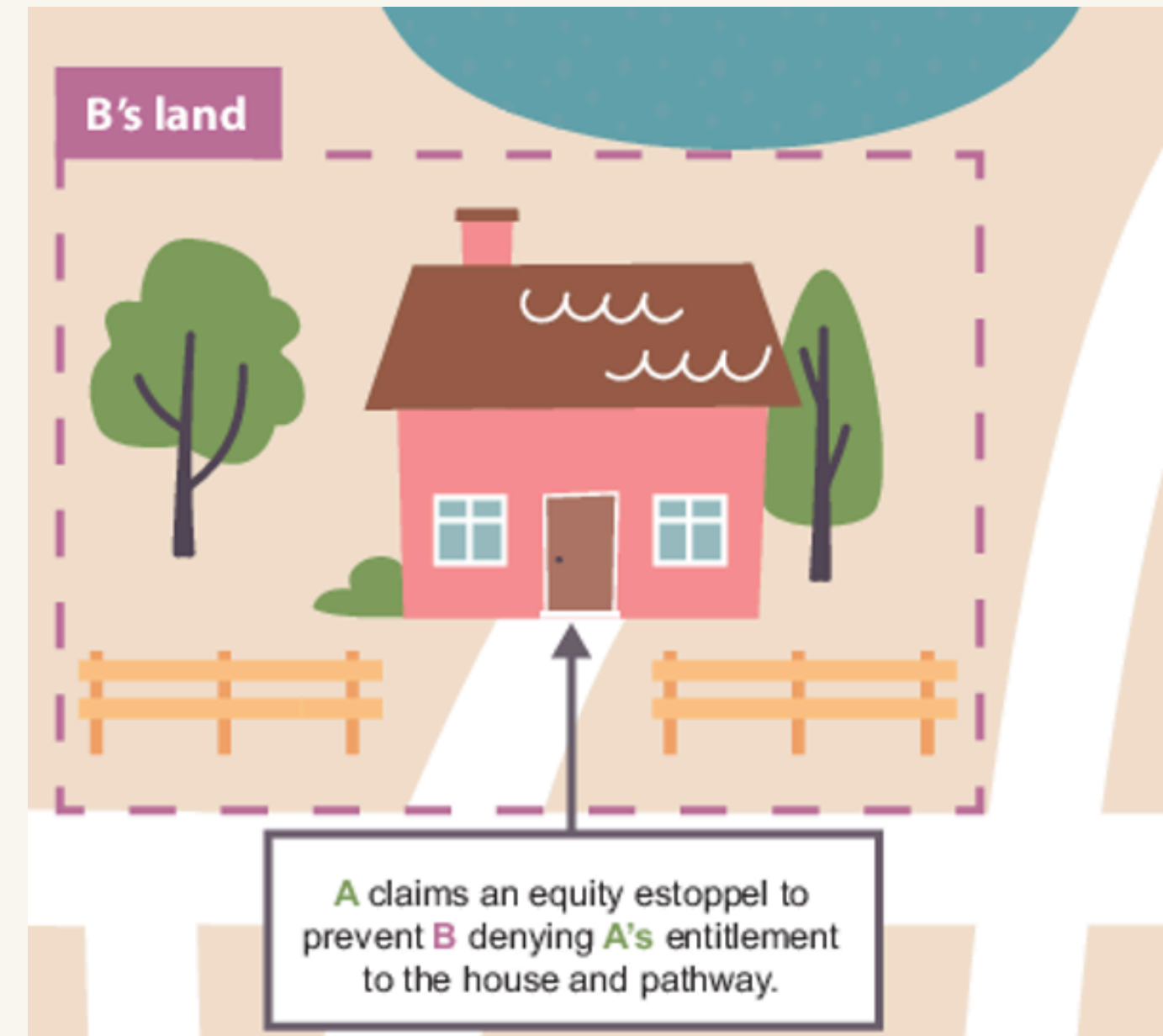
- Land law has (as other obligation based subjects) specific formalities which usually must be upheld to make an obligation legally binding
 - Creation, transfer, acquisition of estates/interests in land:
e.g . **Law of Property (Miscellaneous Provisions) Act 1989,**
s2: contracts in sale, in writing and incorporate all terms
- Estoppel provides an exception to general formality rules:
informal route to establishing proprietary rights: example of equity operating to prevent the harshness of formal legal rules causing an injustice to someone whose rights ought, in all fairness, to be recognised.
- minimum award necessary to do justice” in the circumstances:
***Crabb v Arun District Council* [1976] Ch 179**

In law, there are many different forms of estoppel but, in general, the term is used to refer to situations in which a party is prevented – that is, **stopped** or, in old French estopped – **from denying** the truth of a particular matter of fact or law.

(McFarlane, Hopkins and Nield, 2021, p. 344)

CLAIMING PROPRIETARY ESTOPPEL

- Two stages to a proprietary estoppel claim:
 - Person claiming an informal right, must demonstrate they have an equitable estoppel
 - Once demonstrated, they claim satisfaction of the equitable estoppel (i.e. a remedy)
- The claimant establishes an equity by asserting that the landowner is 'estopped' (prevented) from denying their entitlement to a proprietary interest
- Underpinning basis: would be unconscionable (unfair) to deny the claimant's rights
- After establishing: estoppel gives the claimant a remedy



WHEN CAN PROPRIETARY ESTOPPEL CLAIMS ARISE?

- Various different situations:
 - **farming cases:** one family member worked on farm on assurance would inherit the farm one day. Disappointed if relative dies intestate, or without benefiting them in will. Equity may step in to offer a remedy. *Thorne v Major* [2009] UKHL 18; *Davies v Davies* [2016] EWCA Civ 463 and [2014] EWCA Civ 568; *Habberfield v Habberfield* [2019] EWCA Civ 890
 - **easements:** one party relies on an assurance by neighbouring land owner that they can have access over their land, e.g. to gain access to utilities (pipes) or a highway. *Ward v Kirkland* [1967] Ch 194 *Crabb v Arun DC* [1976] Ch 179
 - **family home:** where one party makes assurances that another will be provided with accommodation, e.g. for rest of their life, or to have an interest in the home
 - **other types of claim:**
 - owner of a burial plot who was prevented from exhuming a relative's ashes when a relative was buried in the plot against the owner's wishes: *Re West Norwood Cemetery* [2005] 1 WLR 2176
 - a caravan site owner who was prevented from denying caravan occupiers the right to remain on the park for the entire year after they had been given assurances: *Brightlingsea Haven Ltd v Morris* [2008] EWHC 1928 (QB)
 - carers who have given up opportunities in order to look after an elderly person for little or no money on the assurance that they will inherit property: *Jennings v Rice* [2002] EWCA Civ 159
 -

ESTABLISHING THE EQUITABLE ESTOPPEL

- Four conditions must be met to establish the equitable estoppel:
 - a. Landowner gave claimant an assurance that they would have a right in the land
 - b. Claimant relied upon that assurance
 - c. Claimant suffered a detriment by relying on that assurance
 - d. Overall assessment as to whether it would be unconscionable for the landowner to refuse the claimant's right
- First three conditions practically intertwined and unified by unconscionability: **Yeoman's Row Management Limited v Cobbe [2008] UKHL 55**
- If these are satisfied, the claimant can claim a remedy

The person claiming the interest must establish that an estoppel has actually arisen ... This gives rise to an equity, which is different from an equitable interest: **all it means is that the claimant has established the right to go to court and ask for a remedy, because they have suffered unconscionable behaviour at the hands of the legal owner.**

Clarke and Greer, 2022, s 10.1

Key sources: *Taylor's Fashions Ltd v Liverpool Victoria Trustees Co Ltd* (1982) QB 133

INTRODUCING UNCONSCIONABILITY

- Unconscionability has been summarised as key to differentiating valid and invalid estoppel claims
- The courts have defined unconscionability through various cases. Dixon (2010) summarises that unconscionability has a specific meaning in proprietary estoppel cases:
 - *“unconscionability in fact has a reasonably clear meaning within the law of proprietary estoppel and ... it can be used to define and confine proprietary estoppel within **reasonably clear boundaries**. It seeks to explain that proprietary estoppel is at heart an **antidote to a lack of required formality** in the creation or transfer of property rights and, consequently, that the proper meaning of **unconscionability is linked to these formality requirements**. Unconscionability is therefore not a cover for unregulated judicial discretion, nor a loose term to describe a general sense of unfairness, but a concept **which can be used to discriminate objectively between valid and invalid estoppel claims**.”* (at p.408)

ESTOPPEL BACKGROUND

- Estoppel is an equitable doctrine
 - Doctrine = set of rules and principles develop by court
 - Equitable = established in the equitable jurisdiction
- Evolving doctrine, developed through courts over time:
 - as issues are litigated
 - responsive to evolving issues in society, and offering remedy where just to do so (not proactive).
- Judges need to balance interests of:
 - landowners who require protection from unfair/unreasonable claims
 - others who have legitimate claims despite absence of formalities
- Equitable jurisdiction allows for this type of weighing and balancing, accounting for interests and behaviours.



EQUITABLE IMPLICATIONS

- Because estoppel is an equitable doctrine, number of different implications:
 - continuous development by courts
 - judicial discretion applies (fairness)
 - no guarantee of a remedy (uncertainty)
 - may offer financial instead of legal interest: this may even be of a lower value
 - equitable maxims apply, e.g.:
 - he/she who seeks equity must come with clean hands
 - equality is equity
 - equity follows the law
 - equity regards as done what ought to be done
 - equity looks to intent rather than form.
 - 'unconscionability' assessment: no remedy if not met



SWORD AND SHIELD

- Usually, estoppel is considered from the perspective of operating on the basis of a shield and not a sword.
- Most cases, estoppel is relied upon as a shield to defend against a party seeking to account counter to assurances given (protecting claimant from unconscionable conduct).
 - e.g. to defend a possession claim
- Some instances, estoppel can be used as a sword: in pursuing a claim against a defendant
 - ***Guest v Guest* [2022] UKSC 27**: claimant brought claim against parents after they effectively disinherited him as he was led to believe would inherit farm



PROMISSORY V PROPRIETARY ESTOPPEL

- Estoppel has broad application across several areas of law, e.g. contract law as well as land.
- When applied in land law, the version of estoppel used is its nuanced form of proprietary estoppel.
- It is important not to confuse with other types of estoppel such as proprietary estoppel
- Both are similar:
 - equitable origin
 - prevent unconscionable behaviour
 - equitable maxims apply
- But core differences:
 - proprietary estoppel only applies to land (real property) whilst promissory estoppel applies to personal property
 - proprietary estoppel can be used to start litigation (sword), whilst promissory estoppel can only be used to defend (shield)
 - proprietary estoppel does not require a contractual relationship, whereas promissory estoppel requires a contractual relationship



PROPRIETARY ESTOPPEL IN OTHER JURISDICTIONS

- Many overseas common law jurisdictions have adopted the English and Welsh doctrine of estoppel
- But some jurisdictions have adopted a more unified approach. Care is needed when drawing on case law from other jurisdictions.
 - e.g. New Zealand has moved to a unified system of rules based on unconscionability: ***Wilson Parking New Zealand Ltd v Fanshawe 136 Ltd* [2014] NZCA 407, [2014] 3 NZLR 567; *Wham-O MFG Co v Lincoln Industries* [1984] 1 NZLR 641 (CA) at 649**



ACTIVITY 1: DEFINE PROPRIETARY ESTOPPEL

- In no more than 50 words, define proprietary estoppel

ESTABLISHING PROPRIETARY ESTOPPEL

- At its core there are some key steps to mounting a successful proprietary estoppel claim
- Establishing proprietary estoppel
 - assurance
 - reliance
 - detriment
 - unconscionability
- Claiming satisfaction in equity



Key source: *Thorner v Majors* [2009] UKHL 18; *Taylor's Fashions Ltd v Liverpool Victoria Trustees Co. Ltd* [1982] QB 133

ASSURANCE

- An assurance requires that the landowner:
 - Either
 - assured the person claiming a PE that they had or would have a proprietary interest
 - acquiesced in the person claiming assurance's mistaken belief that they had a proprietary interest
 - can be either by words or by conduct
 - the conduct can be either active or passive
 - the assurance can relate to a present proprietary interest or a future one
 - the assurance must be clear and more than a statement of intention to grant a proprietary interest.



Key source: *Knowles v Knowles*
[2008] UKPC 30

ASSURANCE

- McFarlane (2020), 3 strands of assurance from case law:
 - **Representation:** the landowner makes a representation to the individual and that individual relies on that representation to their detriment: *Thorner v Major* [2009] UKHL 18
 - **Promise:** the landowner makes a promise that the claimant will acquire an interest in land – for example, by way of testamentary gift: *Gillet v Holt* [2001] Ch 210
 - **Acquiescence:** landowner allows an individual to act on a mistaken belief that they have the right to use property: *Earl of Oxford's case* (1615) 21 ER 485
 -



PROVING ASSURANCE

- Landowner must have assured the claimant that they had or would have a proprietary interest: **Jennings v Rice [2002] EWCA Civ. 159.**
- Documentary evidence likely to be rare, but may have made an assurance in written form
- Providing interest in will shows an intention post-mortem: *Lissimore v Downing* [2003] Fam Law 566
- **Form of assurance can vary** can be expressed:
 - Active by words: ***Pascoe v Turner* [1979] 1 WLR 431.**
 - single certain representation
 - series of representations made throughout relationship: ***Murphy v Rayner* [2011] EWHC (Ch) 1**
 - passive by conduct: ***Williams v Bayley* [1866] LR1 HL 200. *Mohammed v Gomez* [2019] UKPC 46.**
- Must be 'clear enough in its context': ***Thorne v Major* [2009] UKHL 18.**
 - A representation in "oblique and allusive terms" can be sufficient where, having regard to the background circumstances and the knowledge of the promisor, it would be reasonable to interpret that the promisor had intended to provide the claimant a proprietary interest: ***Gill v Woodall* [2009] EWHC 3778 (Ch)**

PROVING ASSURANCE

- Can relate to a present proprietary interest or a future one: ***Habberfield v Habberfield* [2019] EWCA Civ 890.**
- More than a statement of intention to grant a proprietary interest: ***Thorner v Major* [2009] UKHL 18. *Yeoman's Row Management Ltd v Cobbe* [2008] UKHL 55. *Habberfield v Habberfield* [2019] EWCA Civ 890.**
 - A general promise that the defendant will provide for, or look after the claimant will **not** usually therefore be sufficient. E.g.
 - “[you]...should want for nothing...or...[you]...would be treated like other girlfriends” ***Lissimore v Downing* [2003] Fam Law 566**
 - “[you can have]...what emotional security I can give, plus financial security during my life, and financial security on my death” ***Layton v Martin* [1986] Fam Law 212**
 - “don’t worry about your future, you’ll be alright” ***Bostock v Bryant* (1990) 61 P & CR 23**
 - Might have been enough if accompanied with “all this will be yours.” ***Lissimore v Downing* [2003] Fam Law 566**
 - Comments referable to a better standard of living also **not** enough:
 - “this will benefit both of us” ***James v Thomas* [2007] EWCA Civ 1212**
 - or “because it is for us” ***Lissimore v Downing* [2003] Fam Law 566**
 - Comments could be sufficient include:
 - “all this will be yours one day” ***Davies v Davies* [2014] EWCA Civ 568**
 - or that the claimant will be provided a “home for their life” ***Campbell v Griffin* [2001] EWCA Civ 990**
- Generally not applicable in commercial context in pre-contractual negotiations between parties: ***Attorney-General of Hong Kong v Humphreys Estate (Queen's Gardens) Ltd* [1987] AC 114, PC. *Yeoman's Row Management Ltd v Cobbe* [2008] UKHL 55.**

RELIANCE

- Irrespective of how many assurances are given, the person seeking to establish proprietary estoppel cannot succeed if they have never relied upon those assurances.
- Party must show their behaviour was influenced or motivated by the promise made
 - “reliance is what a person does on the faith of some matter and detriment is usually the result.”

***Suggitt v Suggitt* [2012] EWCA Civ 1140**

- In practice, reliance is closely linked to assurance and detriment
- Proving reliance may be difficult. Party may have multiple reasons for acting in way they did
- Question of degree and the stronger the evidence of a detriment the stronger the likelihood the court will be prepared to find that the claimant had relied on the promise: ***Suggitt v Suggitt* [2012] EWCA Civ 1140**
- Where there is clear evidence of promise, court may be prepared to infer reliance from detrimental conduct: ***Wayling v Jones* [1995] 2 FLR 1029** – here burden shift to defendant to disprove reliance: ***Greasley v Cooke* [1980] 1 WLR 1306**

RELIANCE

- Some cases reliance on a promise obvious: e.g. claimant has structured life around it: **Wayling v Jones [1995] 2 FLR 102**
- Other cases, more easily rebutted: e.g. conduct explainable by another motive such as affection or their commitment to the relationship. **Coombes v Smith [1986] 1 WLR 808 and Lissimore v Downing [2003] Fam Law 566 cf Grant v Edwards [1986] Ch 638**
- Defence counsel may challenge claimant's motives in cross-examination, e.g. whether alternative explanation, or whether the claimant had already decided to pursue such action before assurance.
- Must also be reasonable to rely on promise: **Morris v Morris [2008] EWCA Civ 257; Thorner v Majors [2009] UKHL 18**
 - clarity of assurance
 - surrounding circumstances
- More likely reasonable in family context than commercial, where parties would be expected to have business knowledge or seek legal advice: **Yeoman's Row Management Limited v Cobbe [2008] UKHL 55**

DETRIMENT

- Detriment is central to operation of estoppel: makes assurance irrevocable Masson, Bailey-Harris and Probert (2008)
- Key to establishing proprietary estoppel is for the claimant to evidence that they have suffered a detriment (as a result of reliance on the assurance). ***Suggitt v Suggitt* [2012] EWCA Civ 1140**
 - Detriment must be substantial
 - Sufficient causal link: must exist between the detriment and the promise.
- This requires them to show that they have lost a substantial advantage from in expectation of receiving a proprietary interest (of which they were assured)
- Detriment is assessed at the time the landowner seeks to deny their proprietary interest
- Must be suffered by the person to whom the original assurance was made
- Not always a straight forward assessment. e.g. there may have been some degree of advantage, e.g. free accommodation in return for work
- In each case, the court will assess the extent to which detriment has been suffered and weigh up whether this reaches the level that justifies finding a proprietary estoppel.
- Detriment such that it would be unjust or inequitable to allow the assurance to be disregarded." ***Suggitt v Suggitt* [2012] EWCA Civ 1140**

DETRIMENT

- May be a single detrimental act, in others a series of detrimental acts ***Bradbury v Taylor* [2012] EWCA Civ 120**, structuring life around reliance: ***Suggitt v Suggitt* [2012] EWCA Civ 1140**
- Some form of conduct prejudicial to claimant
- In the familial/cohabitation context the courts will likely be searching for conduct that transcends what would usually be expected in the relationship. In practice the arrangement may be both beneficial and prejudicial to the claimant. ***Suggitt v Suggitt* [2012] EWCA Civ 1140; *Davies v Davies* [2014] EWCA Civ 568**
- Judges must evaluate and balance all the circumstances, the advantages and disadvantages, and determine whether there has been a sufficient detriment and reliance (i.e. by considering whether having regard to all the circumstances it would be inequitable to disregard the promise). ***Bradbury v Taylor* [2012] EWCA Civ 1208**

DETRIMENT

Examples where detriment found

- Working for the defendant for little or no pay: **Jennings v Rice [2002] EWCA Civ 159**
- Financially supporting the promisor/defendant for a long period of time: **MacDonald v Frost [2009] EWHC 2276 (Ch)**
- Declining other more lucrative employment: **Davies v Davies [2014] EWCA Civ 568**
- Moving home away from family: **Bradbury v Taylor [2012] EWCA Civ 1208**
- Building on the promisor's land: **Inwards v Baker [1965] 2 QB 29;**
- Surrendering occupation of a property where the claimant had a right to occupy or a secured tenancy and employment: **Jones v Jones [1977] 1 WLR 438**
- Purchasing a more expensive property: **Evans v HSBC Trust Co (UK) Ltd [2005] WTLR 1289**
- Completing or financing building works (or an extension) at the defendant/promisor's property (although alone this may be insufficient unless extensive: **Hussey v Palmer [1972] 3 All ER 744; Bradbury v Taylor [2012] EWCA Civ 1208**
- Caring for the defendant/promisor who is ill or elderly without any or only limited pay: **Campbell v Griffin and others [2001] EWCA Civ 990** (especially where the claimant has time taken out of their career to do so): **Ottey v Grundy [2003] EWCA Civ 1176**
- Living in as a maid and carer for promisor's disabled child without pay. **Greasley v Cooke [1980] 1 WLR 1306**

Examples where detriment not found

- Leaving a former partner: **Coombes v Smith [1986] 1 WLR 808**
- Cohabiting with the defendant as their new partner: **Lissimore v Downing [2003] Fam Law 566**
- Becoming pregnant and giving birth: **Coombes v Smith [1986] 1 WLR 808**
- Redecorating, Completing minor renovations and improvements: **Coombes v Smith [1986] 1 WLR 808; Windeler v Whitehall [1990] FCR 268; Bostock v Bryant (1991) 61 P & CR 23**
- Leaving employment generally and not seeking employment[7]
- Using personal savings to purchase something other than a property **Lissimore v Downing [2003] Fam Law 566**
- Trivial expenditure: **Windeler v Whitehall [1990] FCR 2686**
- or paying general expenses: **Orgee v Orgee [1997] EGCS 152**

Each case is case specific: success or failure in one case does not guarantee same outcome

ACTIVITY 2: AVOIDING DETRIMENT

- In groups identify:
 - some key steps or considerations that landowners can use to avoid potential claimants suffering a detriment on reliance of their promise

UNCONSCIONABILITY

- Finally, in establishing proprietary estoppel, must show that it would be unconscionable to allow the landowner to deny the claimant a proprietary right.
- **Yeoman's Row Management Ltd v Cobbe [2008] UKHL 55:**
 - to be sufficient to establish an estoppel, the behaviour of a person seeking to resile from an assurance should be enough to 'shock the conscience of the court'.
- Might be that all other elements are met, but would not be unconscionable to deny the claimant's proprietary rights. e.g.:
 - If landowner sells the land for charitable purpose, may not be considered unconscionable to deny someone's expected proprietary right
- Dixon (2010) – earlier slide, unconscionability having a clear meaning foundational to estoppel

UNCONSCIONABILITY

- Some examples of behaviour that the courts have held to be unconscionable:
- Landowner giving assurance of an interest in land, and the individual acts on it to their detriment, this can establish a claim: ***Gillett v Holt* [2001] Ch 210**
- Detriment to someone who has been given assurance outweighs benefit. ***Yeoman's Row Management Ltd v Cobbe* [2008] UKHL 55; *Sledmore v Dalby* (1996) 72 P&CR 196 e.g.:**
 - A worker receiving board and lodging may limit claims, but if they forgo earning opportunities elsewhere, detriment may be established.
 - If a tenant improves a property expecting tenancy extension, the cost of improvements counts as detriment, depending on the benefit from the improvements during tenancy: ***Taylor's Fashions Ltd v Liverpool Victoria Trustees Co Ltd* (1982) QB.**
 - Surrendering a secure tenancy to move in with a property owner on an assurance of a permanent home can establish detriment: ***Southwell v Blackburn* [2014] EWCA Civ 1347**

UNCONSCIONABILITY

- A landowner may still be considered unconscionable even if unaware of the individual's reliance on the assurance:
 - Constructing structures like a shed based on an assurance may count as detriment, making it unconscionable to deny interest: ***Joyce v Epsom & Ewell Borough Council* [2012] EWCA Civ 1398**
 - Using a right of way due to an assurance may establish an interest, even if the landowner was unaware of the usage: ***Hoyl Group Ltd v Cromer Town Council* [2015] EWCA Civ 321**



PART 3: **SATISFYING THE EQUITY**

UNIT 4: PROPRIETARY ESTOPPEL

CLAIMING SATISFACTION

- Once the claimant has proven that they are entitled to a proprietary estoppel (step 1) they have an estoppel equity
- This prevents the landowner enforcing their formal legal rights against the claimant
- Equity is deemed to have existed from the time the landowner gave assurance: ***Crabb v Arun DC* [1976] Ch 179**
- Court must next decide how to satisfy the equity
 - what is the extent of the equitable interest/right
 - what type of remedy to award
- Minimum necessary to do justice
 - no more than promised or assured
 - but equally no windfall for minimal detrimental reliance
- UKSC has clarified the approach to be taken



Key source: *Guest v Guest*
[2022] UKSC 27

LEADING TO GUEST V GUEST

- Mr Jennings worked as a gardener and unpaid carer for Mrs Royale, including overnight stays to assist her.
- Mrs Royale indicated he would inherit her house, but no will was made to this effect.
- After Mrs Royale's death, Mr Jennings claimed a right to the house based on her assurances.
- CA recognised an estoppel equity in Mr Jennings' favour.
- Awarding the entire property or its full value was deemed disproportionate to the detriment suffered.
- Mr Jennings' equity was valued at £200,000; the remedy was a monetary sum rather than property transfer.
- The court considered Mr Jennings' expectation but based the award on the detriment he suffered.



Key sources: : *Jennings v Rice*
[2002] EWCA Civ 159

LEADING TO GUEST V GUEST

- Jennings approach was confirmed in *Davies v Davies*. Lewison LJ proposed a proportionality approach as an alternative approach
 - The proportionality approach considers if the equity (interest in the property) is proportionate to both the claimant's expectation and the detriment suffered.
- Bevan (2022) identifies two strands in court approaches: 'bargain' cases and 'non-bargain' cases.
- Gardner (2006) suggests courts should move away from a strict expectations or detriment approach and instead assess unconscionability. This could increase equity in cases with lower detrimental reliance, avoiding overgenerous awards.
- In *Guest*, the UKSC established the expectations-based approach as the **starting point** in assessing remedies for proprietary estoppel cases.



Key sources:

Davies v Davies [2016] EWCA
Civ 463; *Guest v Guest* [2022]
UKSC 27

GUEST V GUEST

- Lord Briggs (with whom Lady Arden and Lady Rose agreed):
 - remedies in proprietary estoppel should be awarded on an expectation-basis.
 - The remedy is to compensate the unconscionable conduct, not the detriment suffered.
- Starting assumption is that the promise should be enforced: claimant will receive what they were promised (prevent landowner going back on their promise).
- This rule applies **except** if the promise is **out of all proportion** to the detriment suffered. In that case, the court will need to consider reducing the award, such that only unconscionability is satisfied.



Key sources:
Guest v Guest [2022] UKSC 27

EXAMPLES OF REMEDIES

Remedy	Case example
Transfer of freehold estate	<i>Pascoe v Turner</i> [1979] 1 WLR 431.
Grant of 99 year lease, rent free	<i>Yaxley v Gotts</i> [2000] 1 Ch 162
Grant of licence for life	<i>Matharu v Matharu</i> (1994) 26 HLR 648
Grant of easement (right of way)	<i>Crabb v Arun DC</i> [1976] Ch 179
Financial compensation	<i>Jennings v Rice</i> (2002) EWCA Civ 159; <i>Habberfield v Habberfield</i> [2019] EWCA Civ 890
Landowners given choice of trust or compensation	<i>Guest v Guest</i> [2022] UKSC 27
Where acrimony, clean break may be supported	<i>Guest v Guest</i> [2022] UKSC 27
No remedy	<i>Sledmore v Dalby</i> (1996) 72 P&CR 196

GUEST V GUEST

- Palser (2023): normally start with the assumption (not presumption) that the simplest way to remedy the unconscionability constituted by the repudiation is to hold the promisor to his promise". Full enforcement of the promise would not be met if "disproportionate".
- *Guest* has resolved reliance-based or expectation-based debate. Starting point is expectation.
- Saunderson (2023, p.188-190): "Points of ambiguity remain, particularly in the precise starting point for the analysis, the nature of unconscionability and, the proper formulation of the order.... unconscionability remains a conclusion rather than a test"
- Note remains some differences with other jurisdictions, e.g. NZ



Key sources:
Guest v Guest [2022] UKSC 27

THIRD PARTIES

- Not only the claimant and the landowner affected by estoppel
- Third party purchaser are normally able to discover all interests in the property that might impact their ownership of it before they buy the land
- Because rights under PE are informally created, not always recorded
- LRA 2002, s116: If equity provides a proprietary interest it arises from point claimant relies on assurance to detriment.
 - Registrable by notice
 - Overriding interest
- If remedy is not proprietary, but personal, e.g. financial or a licence, does not bind third parties



Key sources:
Land Registration Act 2002, s116

ACTIVITY 3: FINDING AND USING SOURCES

- Lawyers need evidence – it doesn't matter what we think or believe as lawyers, unless we can back it up with evidence!
- Many sources available to support your legal arguments.
- But where will you find them?
- How do you know which sources to use?
- Step 1: In groups, find a new source relevant to deepening your understanding of the welfare principle.
 - Group 1 will use google to find a relevant source
 - Group 2 will use the library catalogue
 - Group 3 will use Lexis Plus



ACTIVITY 3: LEGAL RESEARCH

- Use Lexis+ UK to find ***Guest v Guest* [2022] UKSC 27**
- Using the tools available in the database, locate one new source that would help you to understand the approach which the courts take in deciding satisfying the equity in PE cases.
- If you are unfamiliar with using Lexis to find new sources, from the case results page, do the following:
 - Lexis+ UK, on the right-hand side of the screen, under 'Related Documents', select one of the items in the menu (e.g. 'Cases' or 'Books & Journals') to find another resource.
- Choose one source.
- Draft its reference in the Harvard style
- How helpful was this technique in helping you to find related sources? How could this approach assist your legal research? Are there any limitations?

EVALUATING SOURCES (OPEN UNIVERSITY)

Presentation	Poor presentation and inappropriate or confusing use of language can hinder your use of content. Try not to let poor presentation stop you from using what might otherwise be good quality, relevant information.
Relevance	Relevance is not a property of the information itself, but rather of its relationship to the need you have identified. Consider geography, level and the emphasis of the content.
Objectivity	All information is presented from a position of interest, although this may not be intentional. You need to be aware of possible bias in what you read, and to take account of this when you interpret the information.
Method	Do not assume that because a research report has been accepted for publication, it is error free. You need to assess the accuracy of information produced as a result of using particular methods.
Provenance	The 'credentials' of a piece of information support its status and perceived value. It is important to be able to identify the author, sponsoring body or source of your information.
Timeliness	Timeliness is an aspect of relevance. You need to be aware of the date of production or publication, and assess whether this has been superseded, or is still useful to your needs.

LEGAL RESEARCH STRATEGY

- What do you need to find (primary and secondary)? Break the topic down into sub-issues.
- What are the key sources you will need and where can you find them?
- Identify key search words and phrases. What are your possible filters?
- Find and evaluate sources.
- Remember to keep a list of sources for referencing purposes.

ACTIVITY 4: ADVISING A CLIENT

- Seven years ago, after the birth of her son Troy, Kelly was living in bed and breakfast accommodation paid for by the council when they met Fatima, a wealthy businesswoman. Fatima invited Kelly to bring her baby and come and live in a self contained flat in her house. Kelly was unsure about this proposal but Fatima reassured her by promising 'you and Troy will always be right with me'. The next day a letter came offering Kelly a council flat. She wrote turning the offer down and explaining that a friend had offered a permanent home.
- After Kelly and Troy moved into the flat, Kelly became increasingly embarrassed and unhappy that she was 'doing nothing' for Fatima. Eventually, to cheer Kelly up, Fatima suggested that she could help around the house if it made her feel better. Every day from then on Kelly did all Fatima's washing , cooking and cleaning, and was so efficient that Fatima stopped employing her maid.
- Two years ago Fatima became ill. As she could not work her business collapsed and she began to run up debts. The following year Kelly won £10,000 on the lottery and gave it all to Fatima to enable her to re-roof the house and pay off some of her debts. Fatima was so grateful that she promised Kelly that she would leave the house to her by will. Kelly then saved up money from her part time job over the next 6 months and used it to redecorate the house.
- Earlier this month Fatima quarrelled with Kelly and burnt the will that she had made in her favour. After they had made up, Fatima collapsed and was taken to hospital where she died without regaining consciousness. As there was no valid will Fatima's next of kin are entitled to the house and they have now told Kelly that they intend to sell the house and flat with vacant possession.
- **Advise Kelly, in your answer, identify those factors which support and challenge Kelly's claim**

UNIT 4: LEARNING OUTCOMES

- Distinguish between different types of estoppel
- Explain in detail the elements of proprietary estoppel
- Identify third party rights in relation to proprietary estoppel
- Evaluate uncertainty in the practical application of proprietary estoppel
- Apply the law to a factual scenarios to advise a client

RECAP

UNIT 4: READING MATERIALS

- You can draw on the following chapters of your textbooks to deepen your understanding of the topics discussed in this unit.
- Bevan (2022) chapter 8
- Dixon (2024), chapter 10

EXPLORING FURTHER

- You may find the following sources of interest to you in exploring the topics discussed in this unit further. You are not expected to read these to pass the module, they are provided should you wish to explore the topics further.
 - Dzameh, N. (2022) Constructive trusts v proprietary estoppel. St John's Chambers webinar series. Available at: <https://www.youtube.com/watch?v=iqxnLxcoGus> (Accessed: 15 March 2023).
 - Dixon, M. (2010) 'Confining and defining proprietary estoppel: the role of unconscionability', *Legal Studies* (Society of Legal Scholars), 30(3), pp. 408-420.
 - Dixon, M. (2022) 'Reading Guest and the law of proprietary estoppel', *Conv.*, 4, pp. 337-340.
 - Gardner, S. (2006) 'The remedial discretion in proprietary estoppel – again', *Law Quarterly Review*, 122, pp. 492-512.
 - McFarlane, B. (2020) *The Law of proprietary estoppel*. 2nd edn. Oxford: Oxford University Press.
 - McFarlane, B., Hokins, N. and Nield, S. (2021) *Land law text, cases and materials*. 5th edn. Oxford: Oxford University Press.
 - Pearce, B. and Troup, A. (2022) 'Estoppel and equitable easements and protecting the family farm: some strategies for avoiding and defending proprietary estoppel claims against farms'. Proprietary estoppel webinar series. St John's Chambers. Available at: <https://www.youtube.com/watch?v=g9-zDdu00P0> (Accessed: 15 March 2023).
 - Petrylaite, R. (2004) 'Can the doctrine of equitable estoppel be applied against a government', *International Journal of Baltic Law*, 1(2), pp. 97-116.
 - Purewal, A (2023) Addressing the 'Lively Controversy' around proprietary estoppel: *Guest v Guest* [2022] UKSC 27, *Trusts & Trustees*, Vol 29(1) , Pp. 79-85. Available at: <https://doi.org/10.1093/tandt/ttac111>
 - Roberts, M. (2020) 'Equitable estoppel in New Zealand: one overarching doctrine and its limitations', *NZ L Rev*, pp. 567-600.