



PUMP COURT

CHAMBERS

TLATA – effective challenges

Mark Dubbery



The ambit of this talk

1. A brief consideration of proposed legislative reform.
2. A review of key recent cases.
3. Some short practical and procedural considerations.

Proposed legislative Reform

The TLATA regime has been under sustained scrutiny for some considerable time.

- The 2011 Law Commission report: “Intestacy and Family Provision Claims on Death” addressed intestacy and family provision for cohabitants. It produced a draft bill and recommended *inter alia*:
 - (i) Provision on intestacy for unmarried partners who had lived together for five years;
 - (ii) Where the couple had a living child at the date of the deceased’s death this would be reduced to 2 years
 - (iii) S1(1)(ba) of the 1975 Act would be extended to all cohabitants who had a child together regardless of the length of that cohabitation.

Proposed legislative Reform

The House of Commons Women and Equalities Committee supported those recommendations (and those of a previous 2007 report) in its own report: “The rights of cohabiting partners” (19 July 2022).

Response

“the Government is of the view that reform of inheritance and family provision rights for cohabitants needs to be considered as part of the wider approach to reform of the law on cohabitation rights, so that a consistent approach is taken.

...the Government intends to take a cautious approach in this area and would want to consult ahead of pursuing any reforms.”

Proposed legislative Reform

Labour manifesto 2024 contained a commitment:

“...to strengthen the rights and protections of women in cohabiting relationships”.

Proposed Legislative Reform

Law Society Gazette 24th February 2025:

Reform of the law on cohabitation could come sooner than expected after the government confirmed it will consult on the issue this year.

Asked by the House of Commons justice select committee for a timetable on reform, Lord Ponsonby of Shulbrede, the minister in charge of family justice, marriage and divorce, said that a formal consultation will be issued this year ‘to build public consensus on what cohabitation reform should look like’.

Proposed legislative Reform

The minister said the current government did not share the previous administration's view that cohabitation reform must wait until existing work on marriage and divorce law have concluded.

Family law group Resolution has previously said the current 'unfair' cohabitation laws consign too many families to misery and dire financial hardship.

Nilsson & Anor v Cynberg [2024] EWHC 2164 (Ch)

A property was purchased by a married couple subject to an express declaration of beneficial joint tenancy. The parties later agreed it was to be the wife's alone.

Held (*contra* **Re Iqbal [2024] EWHC 49**) that a subsequent common interest constrictive trust was within the ambit of Baroness Hale's analysis in *Stack v Dowden* [2007] UKHL 17: “...an express declaration of trust is conclusive unless varied by subsequent agreement or affected by proprietary estoppel”.

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.

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

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.

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.

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

Xydhias v Xydhias [1999] All ER 386 *provides binding authority to the effect that whilst the parties to the divorce proceedings can engage in negotiations to resolve issues in relation to a property adjustment order, any agreement they reach will have to be approved by the judge having the conduct of the matter. It will then be recorded in the appropriate Court order.*

Ali v Khatib [2022] EWCA Civ 481

Re: occupation rent in the context of administration of an estate.

Andrews LJ:

The starting point in every case is that a co-owner in occupation is not obliged to pay occupation rent merely because he is living in the property and the co-owner is not.

Ali v Khatib [2022] EWCA Civ 481

Something more has to be shown which makes it just and equitable that he should pay that other owner for his use and occupation of the property – for example, that he is exploiting the property for his own financial gain, or that he has precluded the co-owner from exercising a right of occupation that he (or she) wished to exercise. The focus should therefore be on the behaviour of the person in occupation.

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.

Tactics and Procedure

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.

Tactics and Procedure

Combining a Trusts of Land claim with a Part 8 claim.

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

...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”.

Tactics and 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 convert the claim to a Part 7 claim which can lead to wasted expenditure.

Thank you.