



**5 Stone
Buildings**

Impact of *Guest v Guest* on proprietary estoppel

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A. Introduction

- Guest v Guest [2022] UKSC 27: heard 2.12.21, judgment 19.10.22
- Lead judgment Lord Briggs (with whom Lady Arden and Lady Rose agree); dissent by Lord Leggatt (with whom Lord Stephens agrees)
- Issue was the basis of and appropriate remedy for a proprietary estoppel, where expectation of inheritance but parties had fallen out during promisors' lifetime
- Appeal allowed, but appellants' principal arguments as to aim of remedy rejected

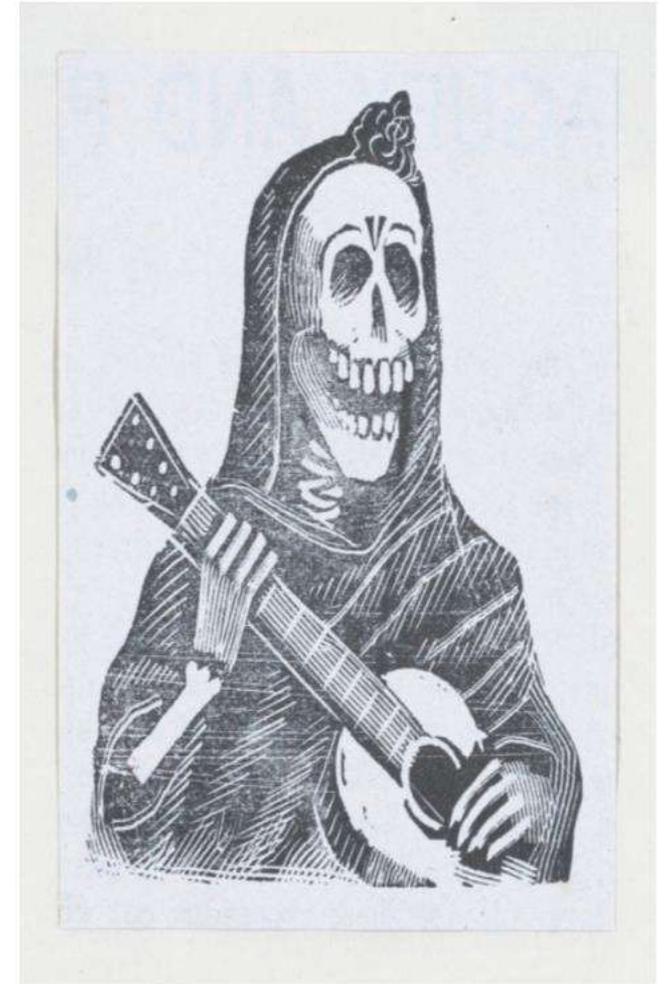
B. Briefly back to basics

- What are the features of a proprietary estoppel?
 - Promise, assurance or representation relating to an interest in property
 - Reliance by claimant on that assurance
 - Detriment to the claimant in consequence of reasonable reliance: *Thorner v Major* [2009] UKHL 18 [29]
- Claim frequently arises where promisor has died without giving effect to promise: e.g. *Thorner v Major*
- But can involve claims during lifetime of promisor: e.g. *Gillett v Holt*; *Davies v Davies*; *Moore v Moore*; *Habberfield v Habberfield*; *Guest v Guest*

C. The “lively” controversy

Jennings v Rice 2002 EWCA Civ 159 per
Walker LJ [42]

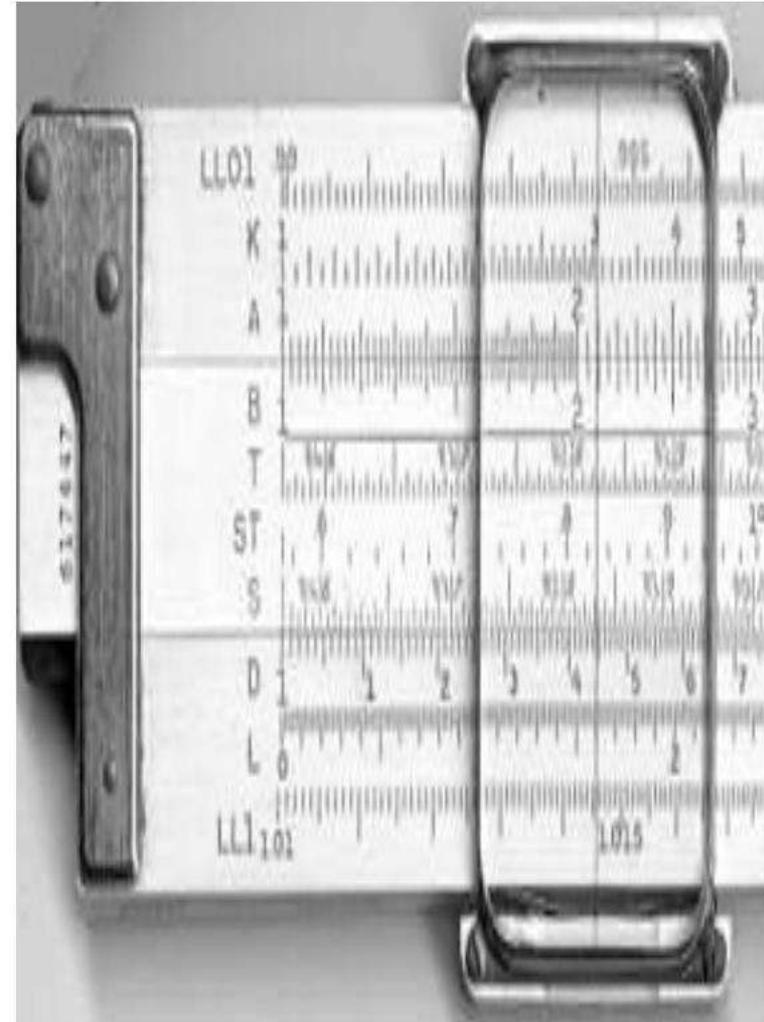
“whether the fundamental aim of this form of estoppel is to fulfil the claimant's expectations, or to compensate him for his detrimental reliance on the defendant's non-contractual assurances, or is some intermediate objective; and (following on from the identification of the correct principle) the nature of the discretion which the court exercises in granting a remedy to the claimant”



C2: The "lively" controversy

Jennings v Rice per Walker LJ [50]

“there is a category of case in which the benefactor and C have reached a mutual understanding which is in reasonably clear terms...In such a case the court’s natural response is to fulfil C’s expectation. But if C’s expectations are uncertain, or extravagant, or out of all proportion to the detriment C has suffered...C’s equity should be satisfied in another (and generally more limited) way.”



D: Guest: the lie of the land

- Tump Farm, Monmouthshire
- Parents- David and Josephine
- Children-Andrew (C), Jan, Ross
- Andrew and Ross farmed with parents, in separate partnerships,
- Andrew assured by parents would inherit part of farm: knew Ross had similar expectations
- Andrew and parents fell out
- By 2015 Andrew had left- after 33 years of work



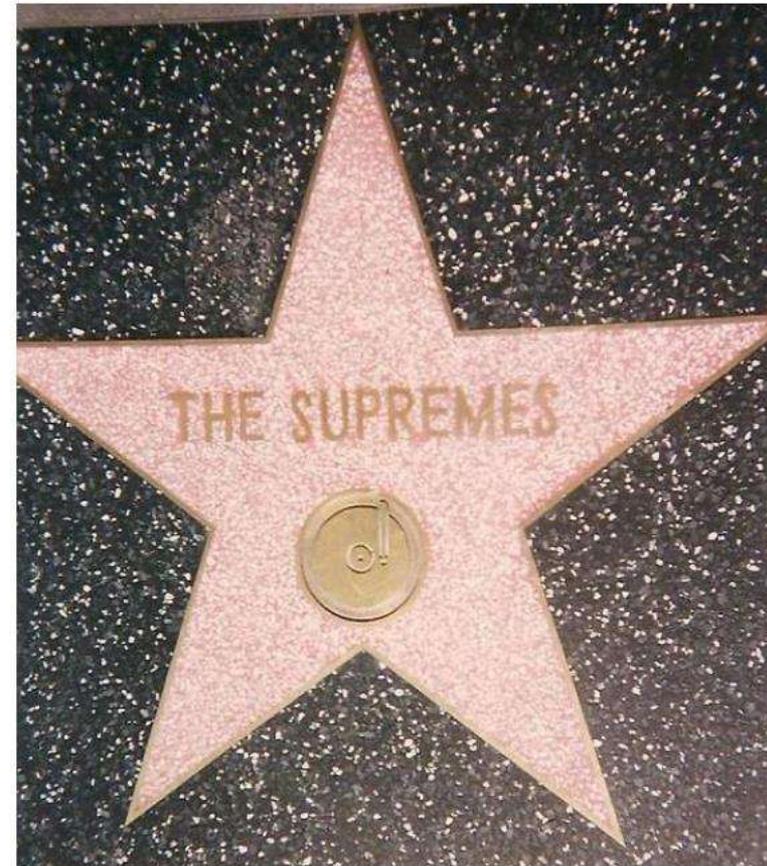
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D:2: Guest- before

- First instance (HHJ Russen QC):
 - Award =
 - 50% of partnership business (c.1/2 of £500k) +
 - 40% of farm (c.40% of £2.855m)
 - Less (a) tax and (b) life interest for parents in farm-house
- Court of Appeal (Floyd LJ; Newey LJ; Arnold LJ)
 - Appeal limited to remedy
 - Dismissed

Guest: D3: After

- Argued:-
 - Remedy be limited to compensation for underpayment
 - Award failed to recognise effect of acceleration
- Majority:-
 - For 40% of farm substituted (at parents' election):-
 - Either trust of 40% of farm, under which parents had life interest, remainder Andrew; or
 - Immediate payment to Andrew calculated as 40% of value of farm, discounted for parents' life interest
- Minority:-
 - £610,000, calculated as lost wages plus interest.



E: What's the point?

- Briggs: “notion that the problems about framing an appropriate remedy...can all be solved by identifying either compensation for detriment or fulfilment of expectation... as the true purpose of the remedy is misconceived. The true purpose....is dealing with the unconscionability constituted by the promisor repudiating his promise.” [13] (see also [94])
- Leggatt: “equity is to be protected from detriment that B will suffer if the promise is not kept. By making a promise on which, although not legally enforceable, B has reasonably relied, A comes under a responsibility to ensure B’s change of position does not operate as a detriment to B.” [190]

F: The majority's approach to remedy

- “normally start with the assumption (not presumption) that the simplest way to remedy the unconscionability is to hold the promisor to his promise.” [75]
- “If the promisor...proves...that specific enforcement would be out of all proportion to the cost of the detriment to the promise, then the court may be constrained to limit the extent of the remedy” [76]
- “This does not mean that the court will be seeking precisely to compensate for the detriment as its primary task, but simply to put right a disproportionality which is so large as to stand in the way of a full specific enforcement doing justice.”
- “There is in my view real merit in Lord Walker's spectrum...” [77]

G. What are the take-aways?

- In many cases expectation the likely starting point [94]
- Limited role of proportionality: is expectation “out of all proportion” to detriment [94]?
- Contrast Davies (para 38(viii)): “proportionality lies at the heart of the doctrine....if expectation is disproportionate to the detriment, court should satisfy equity in a more limited way”.
- Do other considerations of “practicality, justice between the parties or fairness to third parties” call for something different? [94]

H: On the other hand: acting for D

- What was the expectation? N.B. in Guest a “viable” part of farm
- Can D argue starting “assumption” here not expectation: the Jennings spectrum?
- Identify circumstances which justify departure from expectation starting point:
 - Detriment “out of all proportion” to expectation
 - Other “practical” problems- e.g. hardship; other claims [6]
- Unconscionability cross-check [80]



I: Not so fast: problems of “early” claims

- Overcompensation
 - Giving C promised interest early gives him more than his expectation
- Falsifies basis of D’s promise
 - From D’s perspective, has C really fulfilled his side?
- What about the possibility of later changes of circumstances for Ds? E.g. care needs
 - Trust with power to advance? Discount immediate award?
- Is clean break needed? Can it be achieved?
- Different tax implications of lifetime transfers vs post-death transfers



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Thank you,
any questions?

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