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Unconscionability

Kate Selway KC



Proprietary estoppel and Hungarian fraudsters



reach
right for what is thought
relation or from any point
point of view.
Unconscionable [ʌn'kɒn-
not right or reasonable
to be ashamed of it, esp
immoral, etc. that it sh
right for what is thoug
relation or from any p

immoderate
disproportionate
indefensible
depraved immoral unethical
unwarranted dishonest
inordinate unfair amoral
inexcusable shady underhand
unreasonable outrageous unprincipled
monstrous corrupt wrong unscrupulous
undue dishonourable

When does unconscionability arise in proprietary estoppel cases?

When the owner of land induces, encourages or allows the claimant to believe that they have or will enjoy some right or benefit over the owner's property, the claimant acts to their detriment in reliance on that belief, and the owner then seeks to take unconscionable advantage by denying the expected right or benefit



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“The flexibility of proprietary estoppel, in terms both of the factual situations which may fall within its scope and the remedies that a court can give to satisfy any equity which arises, is its strength and its weakness. The court’s freedom to mould the remedy to suit the circumstances precisely makes the outcome unpredictable. This is not conducive to the settlement of disputes and leads to costly litigation.”

Megarry & Wade, *Law of Real Property*, 10th edn, 15-001

The role of unconscionability

In *Cobbe-v-Yeoman's Row Management Ltd* [2008] UKHL 55, at [51] Lord Walker distinguished between a narrow and broad sense of the term "unconscionability"

- the promisor's state of mind at a particular point
- the general, overarching question of whether the position of the parties is such that the court is now justified in intervening

"the broad concept of unconscionability means that, even if the three main elements of the claim have been met [assurance, reliance, detriment] a court should still ask if A's repudiation of the promise is, in the light of B's detrimental reliance upon it, unconscionable at all. It may therefore, for example, allow a court to take account of a significant change of circumstances that has occurred since the making of A's promise ..."

Guest-v-Guest [2022] UKSC 27

- SC set out the principles to be applied where a promise-based proprietary estoppel claim is successful
- Minority view in *Guest*: the unconscionable behaviour of A consists of leaving B to suffer a detriment as a result of B's reasonable reliance on A's promise – and so the aim of relief is to ensure that such detriment is removed (so compensate A for the opportunities he had foregone) – unduly narrow?
- Majority view – a detriment focussed approach mischaracterises the nature of A's unconscionability in a promise-based case. Lord Briggs: **“it is the repudiation of the promised expectation which constitutes the unconscionable wrong”** and the harm, which the doctrine seeks to remedy, “is the non-fulfilment of the promise”.
- The harm caused by the repudiation of the promise is not the same as the detriment. The harm is “the soul-destroying, gut-wrenching realisation” of being deprived of the expected inheritance of the land.

Unjust enrichment as a back up?

- May be appropriate where proprietary estoppel fails
- Eg where the assurance is too vague or claimant's reliance does not meet the threshold for detriment
- 2 recent cases
- **Mate-v-Mate [2023] EWHC 238** - daughter failed in her estoppel claim but established unjust enrichment; land being sold for residential development
- **Rogers-v-Wills [2025] EWHC 1367** – daughter sought reimbursement from late mother's estate of the reasonable costs of having cared for her; unjust enrichment recognised

Undue influence as an alternative?

- A distinct equitable doctrine
- Was the claimant induced to act to their detriment due to improper pressure or manipulation?
- Interesting twist in **Murphy-v-Rayner [2011] EWHC 1**

Quiz – who said this and when?

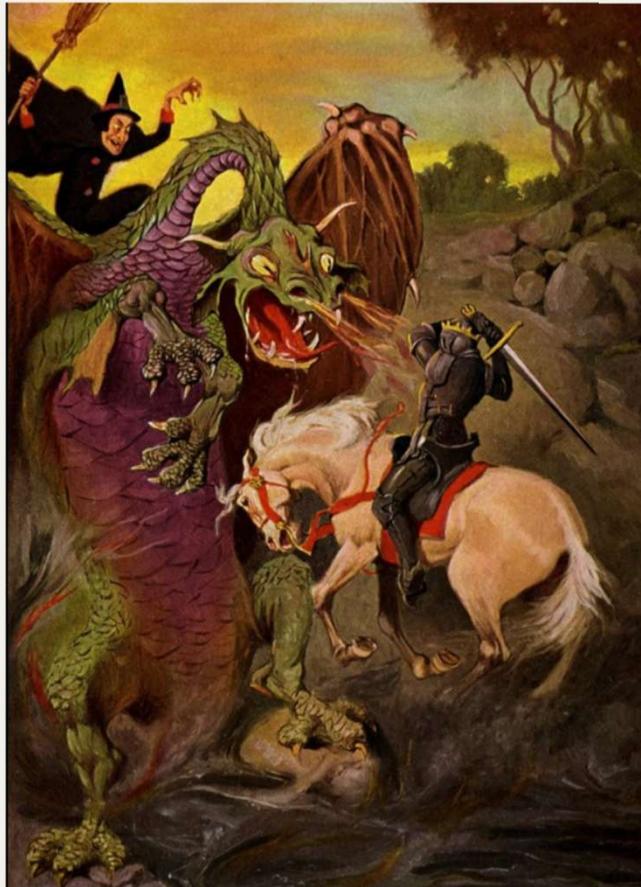
*If you had only a moderate amount of mutton chop for yourself it would not be **unconscionable** to charge a very high interest.*



Who is Gyula Kocsis?

(and what's happening at the Probate Registry?)

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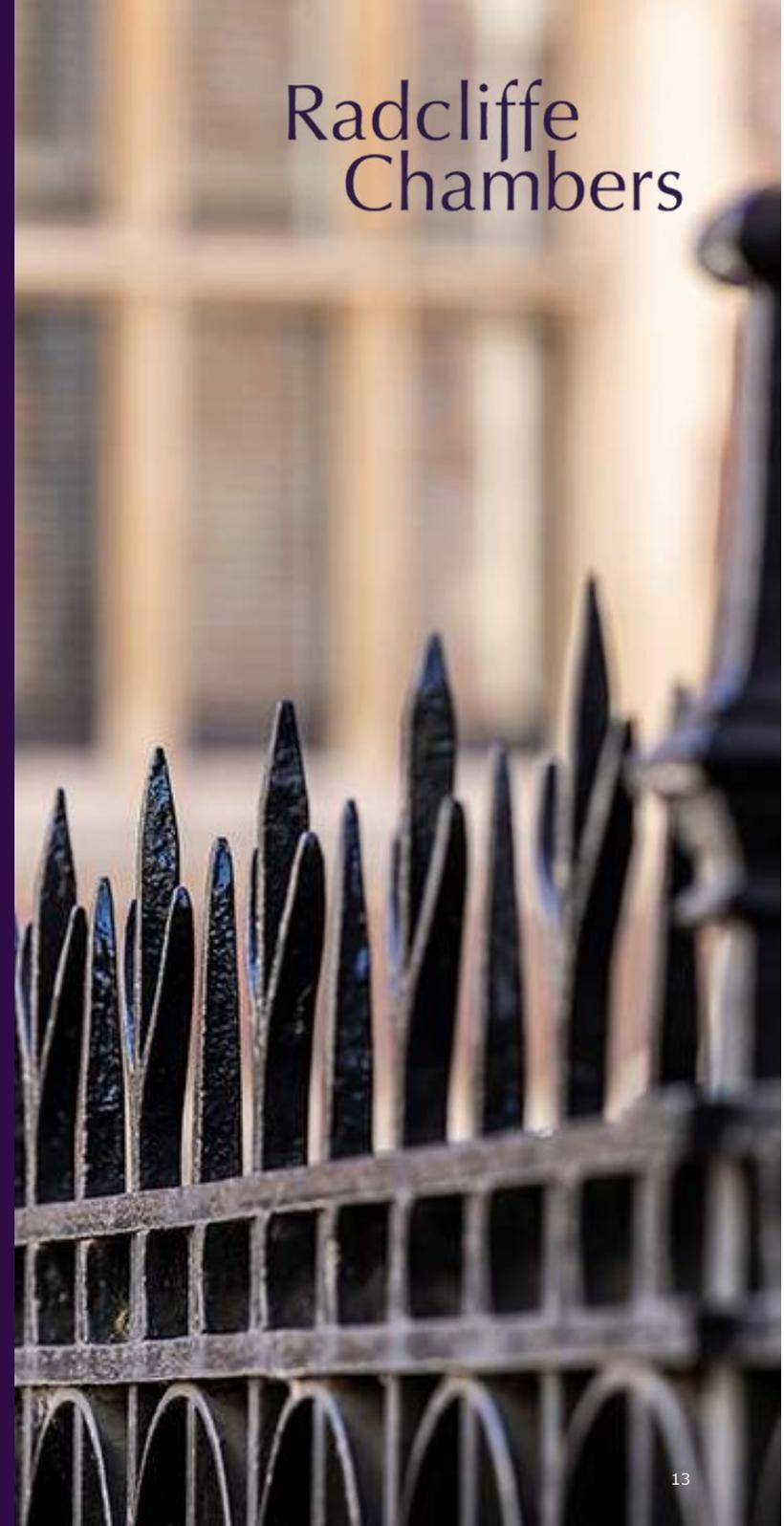
The Grave Robbers

Radio 4

The Grave Robbers: Shadow World
July / August 2025

Hungarian criminals are faking wills and filing them with Probate to claim homes and money. Sue Mitchell investigates the case of a wealthy civil servant whose will goes missing.

Where did the gang get the idea to use fake wills to steal the homes of the dead? Sue travels to Budapest to find out.



gov.uk announcement, 12th Jan 2026

Unclaimed Estates list reinstated following review

The Bona Vacantia unclaimed estates list has been reinstated following a review of its publication.

Publication of the list was suspended in July 2025 following allegations of fraud within the probate system. The review found no evidence the Bona Vacantia unclaimed estates list has been the source of fraud.

However, the Bona Vacantia Division (BVD) has concluded it is prudent to restrict the data provided to protect the list's integrity, whilst still providing sufficient information for people to identify a family member.

Information published may assist people to identify estates to which they could have an entitlement. To safeguard this list going forward, it will only display the deceased's name, date of death, area where they died and BVD case reference number.

Any requests for more information will be considered in accordance with all relevant statutory requirements.

The Bona Vacantia Division will continue to keep the list's publication under review and if there are any further allegations of fraud or misuse, access may be restricted or removed without notice.

Michael Easton

Died on his 88th birthday, 23rd
December 2023 at St Jude's
nursing home in Sutton, Surrey.

Until February 2023, he had lived
at 16 Dibdin Road in Sutton.



Timeline

Feb 2023	Mr Easton, aged 88, had a fall and became a resident at St Jude's
Autumn 2023	Sols helped Mr Easton manage his financial affairs
23 Dec 2023	Mr Easton died at St Jude's nursing home, intestate, no known family
3 Jan 2024	Sols contact LB Sutton
Jan-March	Estate appears on unclaimed estates list online
31 Jan 2024	Sols contact genealogists
31 Jan 2024	LB Sutton confirm they have contacted Treasury Solicitor
8 Feb 2024	Genealogists find Trevor Killick, a cousin
18 Feb 2024	Funeral
26 Feb 2024	Mr Killick instructs sols to apply for a grant
27 Feb 2024	Precautionary caveat lodged by sols
29 Feb 2024	Sols tell Treasury Solicitor that a cousin has been found
13 Mar 2024	GLD accept Crown has no interest in the estate

Timeline contd

25 Mar 2024	Sols submit IHT400 to HMRC (£447k IHT paid)
21 May 2024	Clearance received from HMRC
23 May 2024	Application for probate (PA1A) submitted to Newcastle DPR
28 May 2024	Sols send email requesting registry to lift caveat to enable grant to be made
31 May 2024	probate registry cancels caveat prematurely
7 Jun 2024	Grant of probate to Gyula Kocsis re the fraudulent will dated 4 Apr 2020
Late June	c.£452k cash assets stolen and laundered by mid July
Early Jul 2024	Post Office NI contacted sols about the grant of probate
16 July 2024	Property burgled

Particulars of fraud

- Executed during lockdown
- Witnesses and Mr Easton did not live near each other
- One witness dead – Lucille Reid – forged signature
- The other witness not connected with the address – Ernest Edward fictitious
- Mr K not living at address given in will at that time
- No known connection with Mr K; no entries in visitor's book
- Mr E had identified other friends who visited him at St Jude's
- Signature on will does not resemble deceased's signature
- Mr Easton had no known connection with the witnesses
- Mr Easton repeatedly told sols he hadn't made a will
- Mr K swore the estate at £317k – below the NRB so no IHT to pay

How did it happen?!

Leeds District Probate Registry
for caveats

Newcastle DPR or a PO box in
Harlow for grants.



Caveats

If you want to send the copy by post, send it to the Leeds District Probate Registry. Include a note to say whether you're applying for a caveat online or by post.

Newcastle District Probate Registry
2nd Floor
Kings Court
Earl Grey Way
North Shields
NE29 6AR

Apply for a caveat online

[Apply now >](#)

Grants

Where to send your application

If you're applying as an administrator without a probate practitioner, send your completed form and supporting documents to:

HMCTS Probate
PO Box 12625
Harlow
CM20 9QE

If you're applying as a probate practitioner, send your completed form and supporting documents to:

Newcastle District Probate Registry
2nd Floor
Kings Court
Earl Grey Way
North Shields
NE29 6AR

Who was responsible?



The proceedings

- Solicitors acted quickly after finding out about the grant
- Application issued for freezing injunction
- Hearing 15 July 2024 – freezing injunction granted without notice
- 16 July - restriction registered against title to property
- 17 July - Claim issued
- 29 July - return date hearing – Mr K did not turn up
- c.£122k frozen in 9 accounts (and ultimately recovered)
- 9 Sept - Application for receiver served – to preserve the property
- 19 Sept - Order appointing receiver
- 15 Jan 2025 - trial on written evidence and final orders made
- Feb 2025 – a call from the Essex police & a further £40k recovered

The downside

- Mr Kocsis never appeared
- A tracing agent could not locate him
- The costs of obtaining the relief were high
- The probate service has never explained what happened
- There were risks of obtaining further freezing injunction relief against Velafx (the main money launderer, but with no immediately apparent connection with Kocsis)
- The administrator and beneficiaries wanted to move on rather than take further risks

Questions?

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