

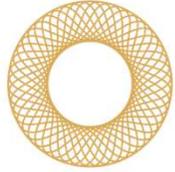
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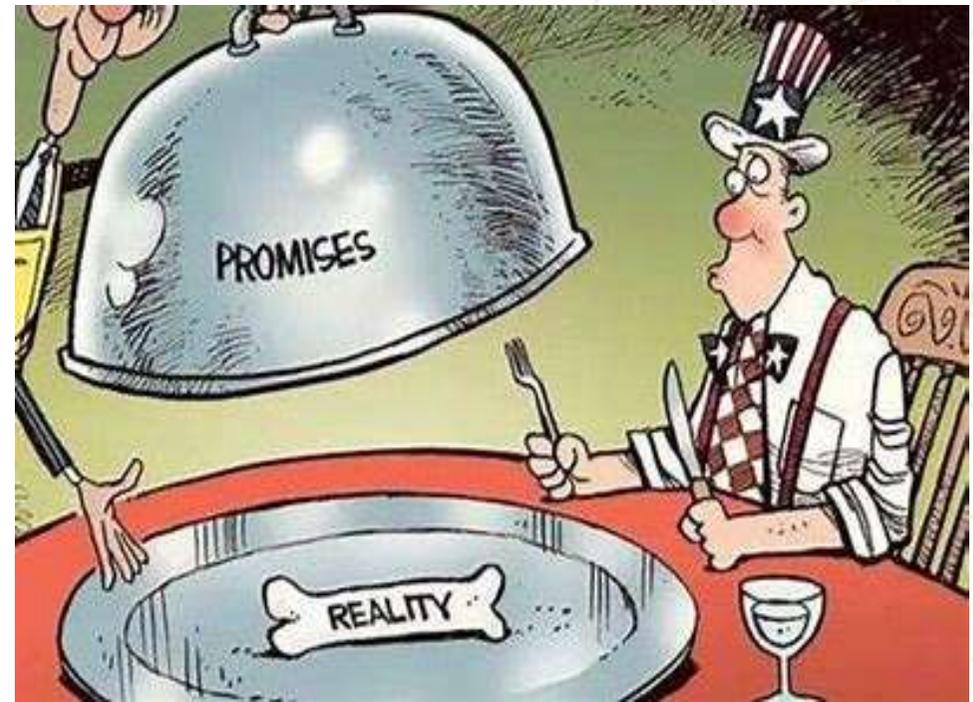
Going beyond *Guest v Guest*

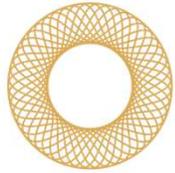
To what extent will the courts apply the decision from *Guest v Guest*, but reduce the award due to proportionality and/or unreasonableness, and by how much?

Tuesday 27th February 2024
David E. Grant KC



Establishing the equity



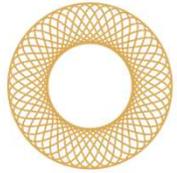


Davies v Davies [2016] EWCA Civ 463 [38]:

- a representation or promise;
- reliance by the representee or promisee on that representation or promise; and
- detriment consequently suffered by the representee or promisee.

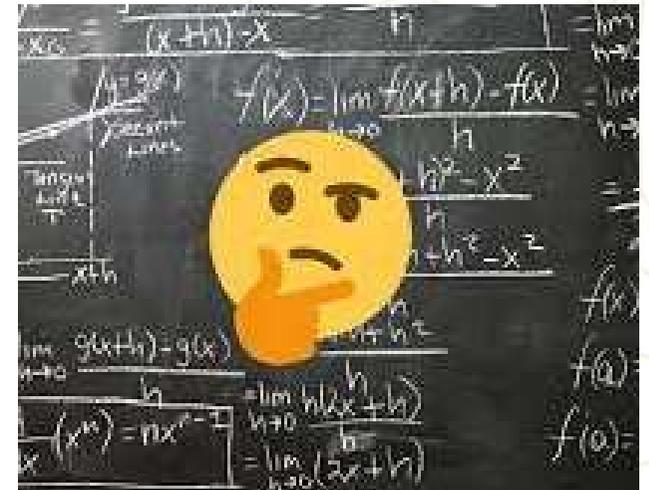
Cf *Hudson v Hathway* [2022] EWCA Civ 1648

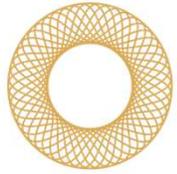




Live issues – mostly relate to remedy

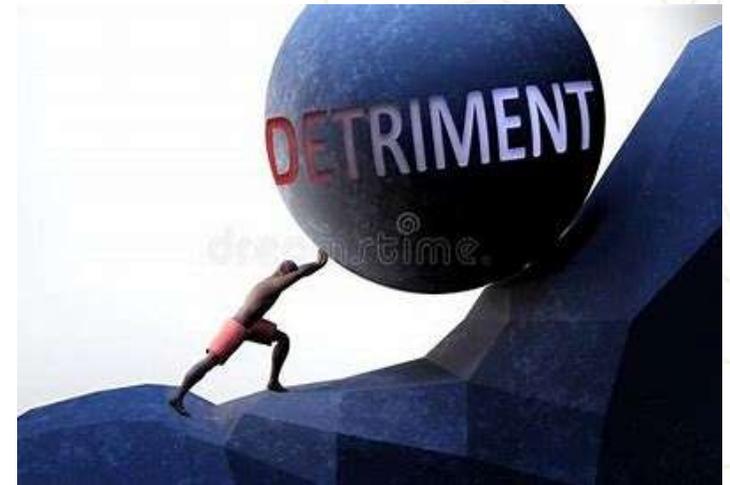
- Is proprietary estoppel remedy detriment-based or expectation-based? Answer: unconscionability-based (see below)
- How to translate vague promise into remedy
- “subject to unspoken and ill-defined qualifications”
- How to reflect accelerated nature in some cases
- When to depart from expectation

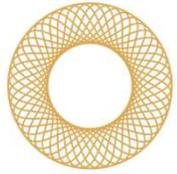




What will work as detriment 1

- (Fine line between assumption and assumption induced by things said – *Winter v Winter* [104])
- Detriment not a narrow or technical concept. Judged at moment of repudiation – see *Spencer v Spencer* at [30]
- Invariably expectation basis will be more significant than reliance loss

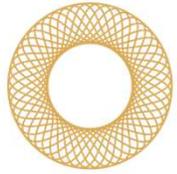




What will work as detriment 2

- See facts of *Guest v Guest* – minimal wages
- In *Morton v Morton* Alison gave up career in banking
- Cf *Winter v Winter* – retained interest in share in partnership and company [123]. Detriment still established [135]

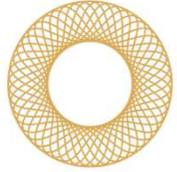




Significance of *Guest v Guest*

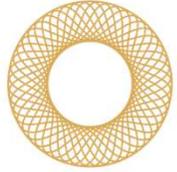
- Express examination of theoretical basis of proprietary estoppel
- Majority rejects idea that aim is detriment-based [71]
- Focus on promise – equitable wrong is unconscionable repudiation or non fulfilment of promise [61] [94]
- Minority raises question "*what proprietary estoppel is intended for*" [109]





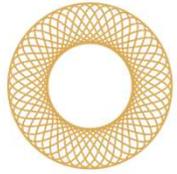
The aim of the remedy

"The aim [of the remedy] remains what it has always been, namely the prevention or undoing of unconscionable conduct. In many cases, once the equity is established, then the fulfilment of the promise is likely to be the starting point, although considerations of practicality, justice between the parties and fairness to third parties may call for a reduced or different award. And justice between the parties may be affected if the proposed remedy is out of all proportion to the reliant detriment, if that can easily be identified without recourse to minute mathematical calculation, and proper regard is had to non-monetary harm."
Guest v Guest [94]



Majority's 2 stage approach to proportionality

- [74] Whether any unconscionability at all
- [75] What should be done to negate unconscionability.
 - Assumption (not presumption) that simplest way is to hold promisor to promise
 - For promisor to show that specific enforcement out of all proportion.
 - Very rare case that expectation will be equivalent to detriment. No bar to expectation



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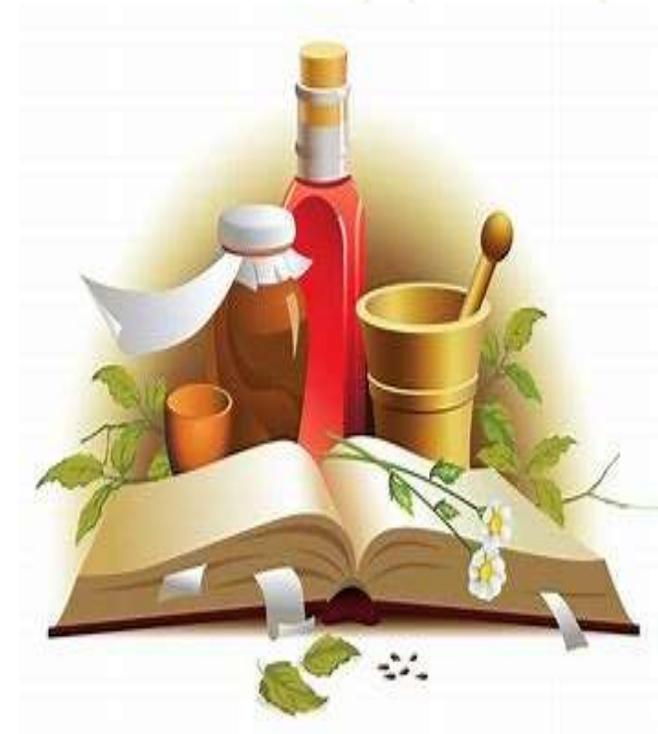
Remedy in Guest

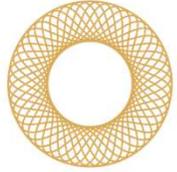
Majority gave parents choice between:

- Holding farm on trust for son subject to life interest /or
- Having immediate clean break by selling farm and distributing to son discounted benefit of promise in view of early receipt

[101]-[104]

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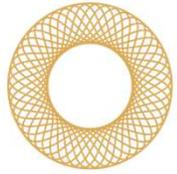




How will the courts follow *Guest v Guest*

- Nature of proprietary estoppel now settled
- Prospect of *Guest v Guest* being revisited is minimal
- Real question is how courts will go about quantifying the remedy
 - When disproportionate
 - Effect of accelerated receipt
 - When detriment not as clear as in some cases

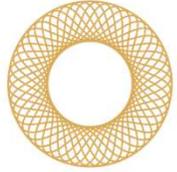




Summary of subsequent cases

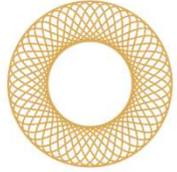
- *Morton v Morton* – impact on agreement pursuant to partnership agreement – appropriate to re-exercise option. In principle decision on remedy
- *Spencer v Spencer* – transfer of land excluding New Quarry Land – justice to Michael and justice to rest of family as it leaves non-agricultural land
- *Winter v Winter* – interest in market garden business operated as partnership





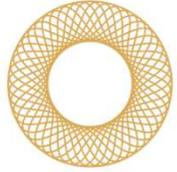
***Morton v Morton* [2023] EWCA Civ 700**

- Narrow decision on entitlement to interest under s42 Partnership Act 1890
- HHJ Halliwell held that equity best satisfied by setting aside contract which came into being when Simon and Alison served Option Notice
- Reminder that estoppel works differently from contract
- Useful example of how court will start from assumption of honouring expectation [45]



***Spencer v Spencer* [2023] EWHC 2050 (Ch)**

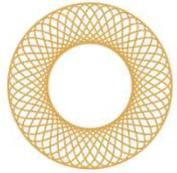
- Little disagreement on the law
- [102] "*The aim of proprietary estoppel is to remedy unconscionability mainly by satisfying expectation; Guest [68].*"
- [79] Rajah J found that there were assurances
- Cf [90] – not only reason that Michael stayed on the farm
- [109] how to judge detriment



Approach to proportionality - *Spencer* [31]

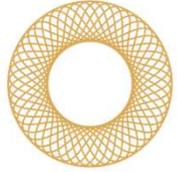
- Is repudiation unconscionable?
- If so, starting assumption to hold promisor to promise
- However, if specific enforcement disproportionate, question of limiting remedy





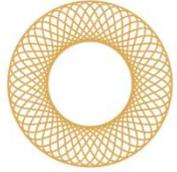
***Winter v Winter* [2023] EWHC 2393 (Ch)**

- 3 sons. Residue left to Philip. Claim by Adrian & Richard
- Zacaroli J upheld claim that assurance made that sons would have 1/3 interest after parents' death
- [40] appropriate remedy to be determined in accordance with *Guest v Guest*
- Detriment not as stark as *Thorner v Major*
- Unconscionable to renege despite conduct of Adrian [145]
- Realisation of shares not sufficient value [147]



Vasami v Hack [2023] EWHC 2431 (Ch)

- Unsuccessful claim
- Possession proceedings
- No dispute as to principles [34]
- Assurance no more than mere statement of present and revocable intention [44]
- Evidence as to why he farmed not altogether clear. No detrimental reliance [63]
- Not unconscionable to seek possession [64]

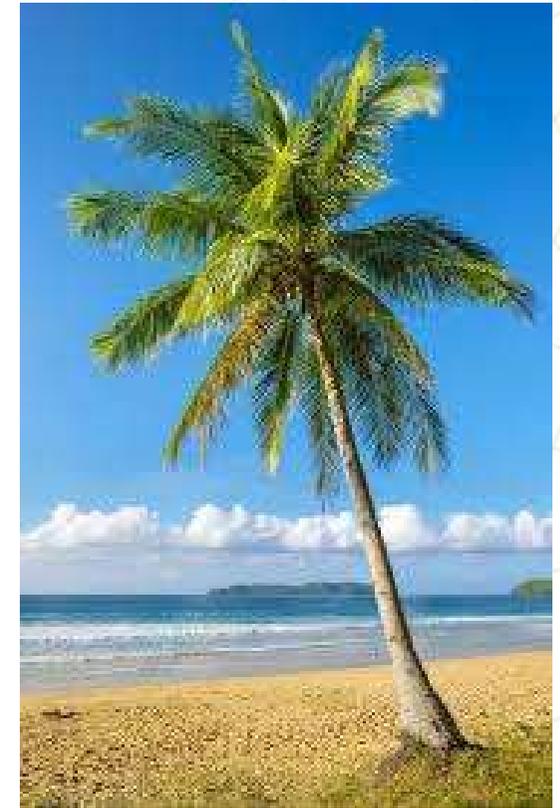


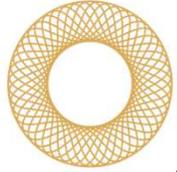
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Equitable Jurisdiction

- Proprietary estoppel is a discretionary remedy
- Court should have ability to deviate from what promised
- Will appellate courts be willing to exercise discretion afresh?
- What about where reliance loss more than beneficial than expectation loss?
- Relevance of *laches*?

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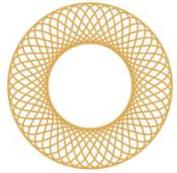
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Comparison with other areas – precise promise

- *Pallant v Morgan* equity – joint venture agreement
- estoppel by representation - Entitlement to pension *Catchpole v Alitalia*



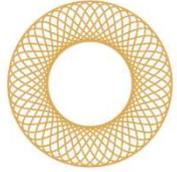


Possible options

- Seek declaration that entitled to equity (quantification/enforcement to be applied later) Pros and cons
- Cf in principle decisions. See *Spencer* at [111]:

It was agreed between counsel that I should decide the remedy in principle and leave the fine detail to be worked out in light of the findings of fact relevant to the question of remedy.

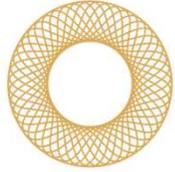




Going forwards generally

- No signs of cases abating
- How often will courts depart from enforcement of promise
- In which cases is this more likely

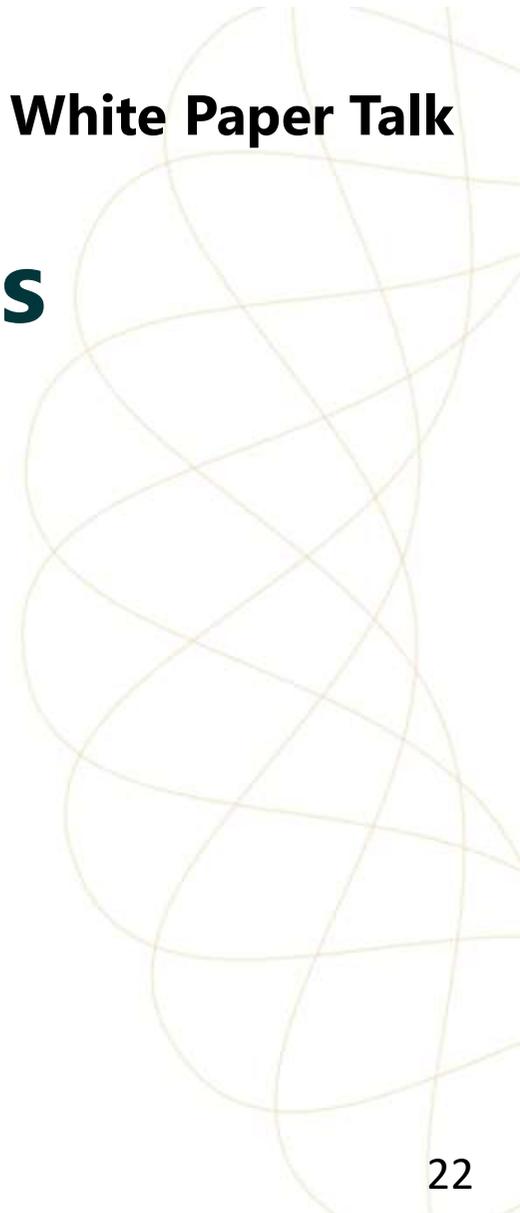


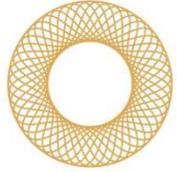


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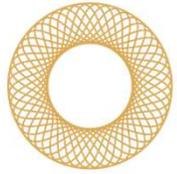
Concluding remarks & questions





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- *Pallant v Morgan* [1953] Ch 43
- *Catchpole v Alitalia* [2010] EWHC 1809 (Ch)
- *Davies v Davies* [2016] EWCA Civ 463
- *Guest v Guest* [2022] UKSC 27
- *Spencer v Spencer* [2023] EWHC 2050 (Ch)
- *Winter v Winter* [2023] EWHC 2393 (Ch)
- *Vasami v Hack* [2023] EWHC 2431 (Ch)
- *Morton v Morton* [2023] EWCA Civ 700



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Thank you



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