Neutral Citation Number: [2023] EWHC 1382 (Ch)

Case No: PT-2020-CDF-000002

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS IN WALES
PROPERTY, TRUSTS AND PROBATE LIST (ChD)

In the Estate of Evan Richard Hughes deceased (probate)

Cardiff Civil Justice Centre
2 Park Street, Cardiff, CF10 1ET

Date: 12 June 2023

Before:

HIS HONOUR JUDGE KEYSER KC
sitting as a Judge of the High Court

- -

Between:

GARETH HUGHES	**Claimant**
- and -	
(1) CARYS PRITCHARD	
(2) GWEN HUGHES	
(3) STEPHEN HUGHES	**Defendants**

- -
- -

Penelope Reed KC and **Elis Gomer** (instructed by **Allington Hughes Law**) for the **Claimant**
Alex Troup KC (instructed by **Hugh James**) for the **Second and Third Defendants**

Hearing dates: 16 and 17 May 2023

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Approved Judgment

This judgment was handed down remotely at 10.30am on 12 June 2023 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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HIS HONOUR JUDGE KEYSER KC

HHJ Keyser KC:

Introduction

1. Evan Richard Hughes ("the Deceased") died on 7 March 2017 aged 84 years, having lived all his life on Anglesey. At the time of his death his main assets were the bungalow (Arfryn) where he lived, 79 acres of farmland known as Bwchanan, 58 acres of farmland known as Yr Efail, a cottage known as Derwyddfa, and a 50% shareholding in a family building company called J. Parry & Hughes Ltd ("the Company").

2. The Deceased was survived by two of his three children: Gareth Hughes, the claimant, and Carys Pritchard, the first defendant. Another child, Elfed Hughes, had predeceased the Deceased, having committed suicide in 2015. Elfed's widow, Gwen Hughes, is the second defendant. Elfed and Gwen Hughes had three children: Stephen Hughes, Siôn Hughes and Geraint Hughes. Stephen Hughes, the third defendant, represents himself and his siblings in these proceedings. For ease of reference and without intending any disrespect, I shall henceforth refer to the parties and other family members by their first names.

3. The Deceased had made three wills, dated respectively 18 December 1990 ("the 1990 Will"), 7 August 2005 ("the 2005 Will") and 7 July 2016 ("the 2016 Will"). The 2016 Will appointed Gareth and Carys as the executors and trustees of the will. It gave Arfryn and Derwyddfa to Carys and Yr Efail to Gareth. It gave the Deceased's remaining agricultural land, including Bwchanan, on trust for Gwen for life and thereafter in equal shares to such of her children as survived her. The residuary estate was left to the Deceased's eight grandchildren in equal shares. The main difference between the 2005 Will and the 2016 Will was that the former would have given all the Deceased's agricultural holdings, including Yr Efail, to Elfed or his family.

4. In these proceedings, Gareth claimed a grant of probate in solemn form of the 2016 Will. Gwen and Stephen resisted that claim on various grounds and cross-claimed for a grant of probate in solemn form of the 2005 Will. (Carys took no active part in the proceedings, other than giving evidence for Gwen and Stephen.) By an order made on 11 June 2021 after a trial His Honour Judge Jarman QC, sitting as a Judge of the High Court, held that the 2016 Will was invalid on account of the Deceased's lack of testamentary capacity and instead admitted the 2005 Will to probate. The neutral citation for Judge Jarman's judgment is [2021] EWHC 1580 (Ch). However, by a judgment dated 24 March 2022, with the neutral citation [2022] EWCA Civ 386, the Court of Appeal set aside Judge Jarman's finding that the 2016 Will was invalid for lack of testamentary capacity and pronounced for the validity of the 2016 Will in solemn form.

5. The Court of Appeal's decision made it necessary to consider the alternative head of Gwen and Stephen's cross-claim, which was that a proprietary estoppel arose in favour of Elfed's estate in respect of the Deceased's agricultural land including Yr Efail. Judge Jarman had held that, if he were wrong about the invalidity of the 2016 Will, such an estoppel would have arisen; though, as the point did not fall for his decision in the light of his finding as to the invalidity of the 2016 Will, he dealt with the point relatively briefly. The Court of Appeal granted Gareth permission to cross-appeal against Judge Jarman's conclusion that, if the 2016 Will were valid, Elfed's

estate would have been entitled to receive Yr Efail by reason of an equity arising under the doctrine of proprietary estoppel. It was common ground before the Court of Appeal that Judge Jarman's findings in respect of representations made to Elfed should stand. The Court held that his findings in respect of reliance were also sufficient and not open to challenge. However, the issues of detriment and remedy were remitted to this Court for further consideration. Those issues were argued before me over two days, on the basis of the evidence that was before Judge Jarman and an agreed note of the oral evidence[1], and this is my judgment upon them.

6. I am grateful to Miss Reed KC and Mr Gomer, counsel for Gareth, and to Mr Troup KC, counsel for Gwen and Stephen, for their detailed and helpful submissions.

Proprietary Estoppel: the Law

7. A claimant seeking a remedy on the grounds of proprietary estoppel is required to establish: (i) that a sufficiently clear and unequivocal representation or promise was made or assurance given to him by another (the promisor) in relation to identified property owned, or to be owned, by the promisor; (ii) that he relied on the representation, promise or assurance; and (iii) that he suffered detriment in consequence of his (reasonable) reliance. See, for example, *Thorner v Major* [2009] UKHL 18, [2009] 1 WLR 776, at [18], [29], [56], [61]. If those three requirements are met, the court must consider what if any remedy ought to be granted. The principle that has been said to permeate the different elements of the doctrine of proprietary estoppel is that equity is concerned to prevent unconscionable conduct. For this reason, the analytical framework of the doctrine is not intended to divide the elements of proprietary estoppel into watertight compartments. The court must look at the matter in the round and take a holistic approach. See *Gillett v Holt* [2001] Ch 210 at 225c-d; *Davies v Davies* [2014] EWCA Civ 568 at [58].

8. In the present case, Judge Jarman has determined that the first and second requirements (representation and reliance) have been met. I shall set out his specific findings later. The remaining questions are whether the third requirement (detriment) has been met and, if it has, what if any remedy ought to be granted.

9. In the course of the hearing I was referred to several authorities that were said to be relevant as demonstrating how the doctrine of proprietary estoppel has been applied to particular factual situations. I have considered these cases but shall not refer to them. Although such cases have some general value in giving one a "feel" for the operation of the doctrine, the court is ultimately tasked not with performing a "compare and contrast" exercise but with applying settled principles to the facts of the individual case.

Detriment

10. In *Gillett v Holt*, Robert Walker LJ said at 233:

> "The overwhelming weight of authority shows that detriment is required. But the authorities also show that it is not a narrow or technical concept. The detriment need not consist of the

[1] It is regrettable that problems regarding the recording of the original trial meant that no transcript could be obtained.

> expenditure of money or other quantifiable financial detriment, so long as it is something substantial. The requirement must be approached as part of a broad inquiry as to whether repudiation of an assurance is or is not unconscionable in all the circumstances.
>
> There are some helpful observations about the requirement for detriment in the judgment of Slade LJ in *Jones v Watkins* 26 November 1987. There must be sufficient causal link between the assurance relied on and the detriment asserted. The issue of detriment must be judged at the moment when the person who has given the assurance seeks to go back on it. Whether the detriment is sufficiently substantial is to be tested by whether it would be unjust or inequitable to allow the assurance to be disregarded—that is, again, the essential test of unconscionability. The detriment alleged must be pleaded and proved."

11. The court's estimation of the detriment is not an exercise in forensic accounting but rather an evaluative exercise. In performing the evaluation, the court must take into account any countervailing benefits obtained by the promisee as a result of his reliance. See *Davies v Davies* at [38], [51] and [56].

Unconscionability

12. Unconscionability is, perhaps, not so much a further element in the cause of action in proprietary estoppel but the thread that binds the other elements together. The matter was explained, with reference to the case before him, by Lord Walker of Gestingthorpe in *Cobbe v Yeoman's Row Management Ltd* [2008] UKHL 55, [2008] 1 WLR 1752, at [92]:

> "Mr Dowding [counsel for the appellant] devoted a separate section of his printed case to arguing that even if the elements for an estoppel were in other respects present, it would not in any event be unconscionable for Mrs Lisle-Mainwaring [the appellant] to insist on her legal rights. That argument raises the question whether 'unconscionability' is a separate element in making out a case of estoppel, or whether to regard it as a separate element would be what Professor Peter Birks once called 'a fifth wheel on the coach': *Birks & Pretto (eds), Breach of Trust* (2002), p 226. But Birks was there criticising the use of 'unconscionable' to describe a *state of mind* (*Bank of Credit and Commerce International (Overseas) Ltd v Akindele* [2001] Ch 437, 455). Here it is being used (as in my opinion it should always be used) as an objective value judgment on behaviour (regardless of the state of mind of the individual in question). As such it does in my opinion play a very important part in the doctrine of equitable estoppel, in unifying and confirming, as it were, the other elements. If the other elements appear to be present but the result does not shock the conscience of the court, the analysis needs to be looked at

> again. In this case Mrs Lisle-Mainwaring's conduct was unattractive. She chose to stand on her rights rather than respecting her non-binding assurances, while Mr Cobbe continued to spend time and effort, between Christmas 2003 and March 2004, in obtaining planning permission. But Mr Cobbe knew that she was bound in honour only, and so in the eyes of equity her conduct, although unattractive, was not unconscionable."

13. In *Guest v Guest* [2022] UKSC 27, [2022] 3 W.L.R. 911, Lord Briggs, with whose judgment Lady Arden and Lady Rose agreed, said at [61]:

> "Drawing together this lengthy review of the authorities and looking at the matter historically, I suggest that what has happened may be summarised in this way. For over a century, starting in the 1860s, the courts of equity developed an equitable estoppel-based remedy, the aim of which was to prevent the unconscionable repudiation of promises or assurances about property (usually land) upon which the promisee had relied to his detriment. The normal and natural remedy was to hold the promisor to his promise, because that was the simplest way to prevent the unconscionability inherent in repudiating it, but it was always discretionary, and liable to be tempered by circumstances which might make strict enforcement of the promise unjust, either between the parties or because of its effect on third parties. While reliant detriment was a necessary condition for the equity to arise, the court's focus on holding the promisor to his promise was not aimed at 'protecting' the promisee from the detriment, still less compensating for it. It was aimed at preventing or remedying the unconscionability of the actual or threatened conduct of the promisor, with the effect, but not the aim, that it tended to satisfy the expectations of the promisee."

Lord Briggs prefaced his conclusions on remedy with the following remarks at [74]:

> "I consider that, in principle, the court's normal approach should be as follows. The first stage (which is not in issue in this case) is to determine whether the promisor's repudiation of his promise is, in the light of the promisee's detrimental reliance upon it, unconscionable at all. It usually will be, but there may be circumstances (such as the promisor falling on hard times and needing to sell the property to pay his creditors, or to pay for expensive medical treatment or social care for himself or his wife) when it may not be. Or the promisor may have announced or carried out only a partial repudiation of the promise, which may or may not have been unconscionable, depending on the circumstances."

Remedy

14. In *Guest v Guest*, Lord Briggs discussed the courts' approach to remedy at length. I shall set out what seem to be, in this regard, the most helpful passages from his judgment. Regarding the general approach to remedy, he said:

> "5. Equitable remedies are generally more flexible than those afforded by the common law and they are always discretionary. … Under the doctrine of proprietary estoppel the specific enforcement of the promise or assurance is the primary remedy for the unconscionability threatened or occasioned by its breach.
>
> 6. Nonetheless there have been many cases where the court has recognised that full specific enforcement is not the appropriate remedy. The promise may be incapable of specific enforcement, for example where the underlying property is no longer in the hands of the promisor or his estate. The promised date for performance may lie so far in the future, or the date may be so unpredictable, that an order for performance on the promised date would be too insubstantial as a remedy. Or the early enforcement in full of a promise which, although repudiated, is years away from the due date for performance may give the promisee too much, or something radically different from that which was promised. The promisor may have other powerful equitable or moral claims on his bounty, so that the appropriation of the whole of the promised property to meet the claim of the promisee may be unjust to those other claimants, and be more the cause of unconscionable conduct than a remedy for it. Finally the magnitude of specific enforcement in full may be so disproportionate to the detriment undertaken by the promisee that something much less than full specific enforcement is needed to clear the conscience of the promisor.
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> 7. These real-life difficulties (and those outlined above are only a few examples) have come to mean that in the field of proprietary estoppel equity is regarded as being at its most flexible in terms of remedy. …"

15. Lord Briggs commented on the relationship between detriment and remedy:

> "10. … [T]he 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. Detriment is relevant to remedy because a slavish enforcement of the promise may be so completely disproportionate to the detriment that it goes much further than necessary to put right the unconscionability inherent in the repudiation of the promise. …

> 11. But the harm caused by the repudiation of the promise is not the same as the detriment. That lies entirely in the past. It cannot be undone and is in no sense caused by the repudiation, or by any wrong at all (unless the original promise was dishonest, in which there would be a cause of action in deceit). In a case like the present the harm consists of the soul-destroying, gut-wrenching realisation of being deprived, and then actually being deprived over the rest of a lifetime, of an expected inheritance of land upon which the promisee has spent the whole of his life and work to date and which, in due course, he expected to be able to pass on to one or more of his own children, making the same promise to them as his father made to him. Again that cannot necessarily be valued with any reliability, not least if (as here) the expectation of inheritance still lies mainly in the future at the time when the promise is repudiated. Discount for the accelerated receipt of a future benefit is an imperfect tool, as has been vividly demonstrated in the field of personal injuries litigation."

16. Lord Briggs set out his conclusions as to the correct approach to remedy in a lengthy passage (I omit, though do not ignore, his helpful illustrations and remarks that have no direct bearing on this case):

> "75. The second (remedy) stage will 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 the promise. … But the court may have to listen to many other reasons from the promisor (or his executors) why something less than full performance will negate the unconscionability and therefore satisfy the equity. They may be based on one or more of the real-life problems already outlined. …
>
> 76. If the promisor asserts and proves, the burden being on him for this purpose, that specific enforcement of the full promise, or monetary equivalent, would be out of all proportion to the cost of the detriment to the promisee, then the court may be constrained to limit the extent of the remedy. 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 between the parties. It will be a very rare case where the detriment is equivalent in value to the expectation, and there is nothing in principle unjust in a full enforcement of the promise being worth more than the cost of the detriment, any more than there is in giving specific performance of a contract for the sale of land merely because it is worth more than the price paid for it. …
>
> 77. There is in my view real merit in Lord Walker's spectrum (as he would now prefer to call it) between on the one hand a

> case where both the promise and the detriment are reasonably precisely defined by the time when the promise is repudiated, where the one is in a sense the quid pro quo of the other although falling short of contract, and on the other hand where either or both are left much less certain. The "almost contractual" end of the spectrum is likely to generate the strongest equitable reason for the full specific enforcement of the promise if the reliant detriment has been undertaken in full, regardless of a disparity in value between the two. At the other end there may be much greater scope for a departure from full enforcement, even if there are no other problems making it just to do so.
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> …
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> 79. I can see no principled justification for treating a perceived need to abandon full enforcement as a reason for moving straight (or at all) to compensation on the basis of an attempt to value the detriment. That would suggest something approaching a binary choice which would be alien to the flexible and pragmatic nature of the discretion. I recognise that, in a case where there is perceived to be a large gap between the respective values of the promise and of the detriment this may leave the judge with a wide range of options with little in the way of rules as a guide. … But where the only objection to full enforcement is that it will be out of all proportion to the detriment then the court will, in the words of Dillon LJ in *Burrows v Sharp*, just have to do the best it can.
>
> 80. In the end the court will have to consider its provisional remedy in the round, against all the relevant circumstances, and ask itself whether it would do justice between the parties, and whether it would cause injustice to third parties. The yardstick for that justice assessment will always be whether, if the promisor was to confer that proposed remedy upon the promisee, he would be acting unconscionably. 'Minimum equity to do justice' means, in that context, a remedy which will be sufficient to enable that unconscionability question to be answered in the negative."

Summary

17. Accordingly, the court's task where the promise and the reliance have been established may be summarised shortly as follows. First, the court must conduct an evaluative assessment of the detriment suffered by the promisee in reasonable reliance on the promise, taking into account any countervailing benefits obtained by the promisee by reason of his reliance. Second, the court must ask whether the promisor's failure to perform his promise was unconscionable; and in answering that question the court must look at the matter in the round, having regard to the nature and quality of the promise, the nature and extent of the detrimental reliance, and all other factors that may affect the conscionableness of the promisor's conduct. If the

promisor's conduct is held to be unconscionable, the court must seek to fashion a remedy that will remove the offence to the conscience. In most cases the remedy will be to give effect to the promise; however, consideration of all the circumstances might lead to the conclusion that some lesser remedy will be sufficient.

Death of the promisee

18. It is a relatively unusual feature of this case that the promisee, who is said to have relied to his detriment on the promise, predeceased the promisor and that the claim for a remedy under the doctrine of proprietary estoppel is brought by the promisee's estate. In the Court of Appeal, Asplin LJ made clear that it was too late for any question to be raised in these proceedings as to whether an equity could be granted in those circumstances, although she did indicate that consideration ought to be given to the effect, if any, of Elfed's death on the nature of any remedy: see paragraphs 121 and 122 of her judgment. Before me, it was common ground that, subject to the precise terms of the promise, the death of the promisee was not in principle a bar to relief under the doctrine of proprietary estoppel (cf. *Spencer Bower: Reliance-Based Estoppel,* 5th edition, para 6.13; *Hamilton v Geraghty* (1901) 1 SRNSW Eq 81; *Cameron v Murdoch* (1986) 63 ALR 575) but that it might be relevant to the questions of unconscionability and remedy.

The Facts

19. The Deceased was born in 1933. He lived all his life on Anglesey. His three children were born to his first wife: Gareth in June 1957, Elfed in September 1959, and Carys in July 1961. The Deceased's first marriage ended in divorce in 1984. He remarried, but that marriage too ended in divorce in 2003. Latterly the Deceased had been in a personal relationship with another lady. He died on 7 May 2017 at the age of 84 years.

20. The Deceased was described by his solicitor, Mr Rhys Hughes, as "a successful businessman and farmer" and "a forceful individual", and both parts of the description are amply borne out by the remainder of the evidence. According to Gareth, he was very forthright and could be very difficult, but he could also be kind. Again, the totality of the evidence bears that out: the Deceased was what might be called "old-school", could be demanding and was not effusive with his praise of others, yet there is plenty of evidence that his relationship with his children was close[2] and that he treated them with considerable generosity after his own fashion.

21. The Deceased was a cattle farmer. The size of his herd appears to have been relatively stable over the years, averaging about 130 cattle, though of course the numbers fluctuated. He inherited farmland from his family and his holdings increased over the years. At the time of his death he lived in a bungalow called Arfryn, which had agricultural land attached. He also owned some other pieces of freehold agricultural land, the two most important of which were Bwchanan (79 acres) and Yr Efail (58 acres), some three miles apart. The Deceased had a strong work ethic and brought up his children accordingly. From an early age Gareth and Elfed were expected to assist on the farm. It was Elfed, however, who took to farming as both a

[2] Gareth and Carys each claimed that the other's relationship with the Deceased was less than close and certainly less close than the relationship he or she and Elfed enjoyed with him. This seems to me unlikely to reflect anything beyond the normal disagreements and certain ongoing intra-family frictions.

career and a passion. As will be discussed in more detail below, he both worked on the Deceased's farm and from his mid-twenties built up his own farming business.

22. As well as being a farmer, the Deceased worked in the family building business, which had been started by his grandfather and was incorporated as the Company in 1963. From that date and until 1985 the issued shares in the Company were owned equally—300 shares each—by the Deceased and his cousin, Ian Hughes; they were also the directors of the Company. Ian Hughes dealt mainly with the administrative side of the business, such as tendering and pricing, while the Deceased spent more time on the construction sites.

23. All three children went to work for the Company. Gareth started work there at the age of 16 and later, having studied joinery at college, he qualified as an HGV driver. His evidence was that he worked full-time in the business and that "all the building problems and duties fell to [him] 7 days a week." There is an issue as to the extent if any to which Gareth assisted from time to time on the farm, but I do not regard the conflict of evidence on the point as being important for the determination of the outstanding issues in the case. Elfed studied at agricultural college and then, having worked for a year on another farm, where he learned about sheep farming, went to work for the Company, initially as a building labourer and subsequently as a JCB driver. As mentioned in more detail below, he combined this work with work on the farm. Carys attended a secretarial course and at the age of 17 went to work for the Company in the office. When Ian Hughes retired in or shortly after 1985, he sold his 50% shareholding in the Company to Gareth, Carys and Elfed (100 shares each) and they were appointed as directors of the Company, all receiving the same wage for their work. Gareth and Elfed continued to be engaged in the Company's on-site business, and Carys, who was also appointed as the Company secretary, was responsible for clerical, administrative and financial matters. Carys's husband, Ray Pritchard, also worked for the Company and had responsibility for tendering work. Initially he worked part-time, without pay, while he was employed full-time elsewhere, but from about 2009 he was employed full-time by the Company.

24. When Gareth married his first wife, Shân, they lived for a while rent-free at the previously vacant farmhouse at Bwchanan. They then purchased from the deceased a vacant bungalow that he had acquired as an investment property.

25. Elfed began farming on his own account in or about 1977. At that stage he had the rent-free use of his father's land. Elfed and Gwen were married in or about 1983 and moved into Bwchanan farmhouse, initially as tenants to the Deceased, paying a rent that included some adjacent agricultural land. They remained at the farmhouse throughout their married life and Gwen lives there still. By the time they moved in, Elfed had 200 or more sheep of his own. Shortly afterwards he purchased some 15 acres of agricultural land immediately to the south-west of Yr Efail. He acquired further land over the years and acquired more sheep as well as cattle. His accounts for the year ended 5 April 1987 already showed a net profit of £22,321, though it was only £10,712 the following year. His own land and that of his father were farmed as a single unit, although there was no partnership and accounts were kept separately and livestock and deadstock were owned separately. After the initial years, no rent was paid by either to the other. Elfed carried out a great deal of work on the farm; more will be said about this below. He also hired staff to work on the farm when required.

26. In 1984 Gwen and Elfed had their first child, Stephen. Siôn was born in 1985 and Geraint in 1989. All three sons were expected to work on the farm when they were young. As explained below, Geraint has followed his father and become a farmer. Siôn became a joiner and worked for the Company before leaving in 2015 to become self-employed. He still assists on the farm. Stephen became a journalist and is the only member of the immediate family to have moved away from Anglesey.

27. In 1989 the Deceased made a gift of Bwchanan farmhouse and 17 acres of adjoining land to Elfed and Gwen, though he retained the main part of the Bwchanan farmland. At around the same time, he gave Gareth and Carys a plot of land each, and the Company built a house for each of them on their respective plots at their expense but at cost price. Carys still lives at her house. Gareth and Shân were divorced in about 2008, and in the ensuing financial proceedings an order was made for the transfer of the house to Shân. In 2011 the Deceased gave Gareth a further house (said by Carys to have been worth £120,000, though given a value of £110,000 on the Deceased's IHT400) in Amlwch, Anglesey. In 2014 title to that house was registered in the names of Gareth and his present wife, Lyn. They let the property to tenants.

28. In 1993 Elfed and Gwen purchased a plot of land to the north-east of the Deceased's farm at Bwchanan.

29. In 1994 the Deceased and Elfed rented agricultural land at Rhosbeirio, immediately to the south and west of Yr Efail. They did so by two separate tenancy agreements: the Deceased rented 161.25 acres at a rent of £12,000 per annum; Elfed rented 103.93 acres at a rent of £26,000 per annum[3]. The entirety of Rhosbeirio under the two tenancy agreements was used for the mutual benefit and advantage of the Deceased and Elfed. Both Elfed's sheep and cattle and the cattle belonging to the Deceased grazed upon it. Mr Troup pointed to the significantly higher rent being paid by Elfed, but it seems to me to be simplistic to assert, as he did, that Elfed was "subsidising" the Deceased. For one thing, that sounds inherently implausible as well as being out of character for the Deceased who, though forceful and demanding, was generous to his children and by no means unfair or exploitative. For another thing, Mr Troup's simple reliance on arithmetic abstracts the transaction from any explanatory context; certainly, he pointed to none. Gareth's evidence was that it was Elfed who had wanted to rent Rhosbeirio—the whole of it—but that he was unable to afford to do so and, therefore, approached the Deceased, who agreed to assist. That evidence puts a rather different complexion on the matter. Mr Troup complained that Gareth had not explained how he knew these things, in particular Elfed's inability to rent Rhosbeirio by himself. However, Gareth's evidence on this point was not challenged before Judge Jarman. Further, it appears inherently plausible. It is not in dispute that the Deceased's cattle grazed the land and that Elfed built a shed on the land for the use of his and his father's cattle. However, the size of the Deceased's herd did not significantly increase over the years and no very good reason has been advanced why he should have needed to rent more land. It seems likely that the reason why additional land comprising nearly 300 acres was desired was primarily to provide grazing land for Elfed's sheep.

[3] New tenancies of Rhosbeirio were taken out in 2008. This time, the Deceased rented 192.67 acres at £13,300 per annum and Elfed rented 107.74 acres at £17,900 per annum. There is insufficient information to show why, on each occasion, the rental rates per acre differed from one tenancy to the other.

30. Later in 1994 Elfed purchased a nearby plot of agricultural land (known as land to the north-east of Tyddyn y Waen).

31. In 1999 Elfed purchased a farm called Hafod Llin Bach, which was adjacent to and to the east of Yr Efail and comprised 30 acres, a farmhouse and farm buildings. Originally there was no access from Hafod Llin Bach to Yr Efail. Elfed built a bridge to connect the two parcels of land. He also built on Hafod Llin Bach a large shed and a second bridge leading to a plot of land called Rhyd y Groes, which he rented and used only for grazing his sheep.

32. The Deceased retired from active work in the Company in about 2003, though he remained a director of the Company until his death. There is an issue as to the extent to which the Deceased continued to work on the farm. Gareth states that the Deceased "was still very active and would tend to his own cattle and oversee Elfed's herd on a daily basis whilst Elfed was at work on various building sites." He acknowledged, however, that the Deceased's physical contribution decreased as he grew older; and, of course, Elfed was able to work full-time on the farm during the last two years of his life, after he ceased working for the Company. Geraint's evidence, in contrast, was that for so long as he could remember the Deceased made no physical contribution to the work of the farm and relied entirely on Elfed, even leaving most of the decision-making to him. Judge Jarman made no specific finding of fact on this issue and it is unnecessary to pretend to know precisely how much active work the Deceased did at various times. I comment briefly on the matter below.

33. In the summer of 2011 Geraint graduated from university. Initially he obtained employment with a local authority at an annual salary of approximately £22,000. However, his father eventually succeeded in persuading him to leave that employment and in January 2012 he went to work on the farm for a wage of £9,600 p.a. Geraint's evidence, which Judge Jarman appears to have accepted, was that, when he complained to his father about the low pay, Elfed became annoyed and told him not to ask, as everything would be his one day. Geraint's evidence was that he understood this to mean that one day he would own all the farmland. In fact, as mentioned below, Elfed's will, made in 2007 and not changed thereafter, did not leave the farmland to Geraint: it left the entire estate to Gwen; and it provided that, if she did not survive Elfed by 30 days, the estate should be divided equally among all three sons. In view of the testamentary provision that Elfed was intending to make, it is unlikely that anything he said to Geraint could have amounted to a straightforward promise that Geraint would receive all of the land.

34. In 2012 Elfed purchased land and agricultural buildings at Plas Candryll.

35. By 2014 the Company's financial position had worsened significantly. It sold property to pay off debts, and Gareth, Carys and Elfed each injected capital. In 2016 the Deceased made a director's loan of nearly £108,000. However, the Company was incurring significant losses and work had dried up. The Company ceased trading at the end of 2016 and has not traded since. It has not, however, been dissolved and continues to own a piece of land with significant value. The shareholdings in the Company when the Deceased died were unchanged since 1985: as to 50% (300

shares) by the Deceased, and as to 16.67% (100 shares) each by Gareth, Carys and Elfed (or his estate).[4]

36. In May 2015 Elfed suffered a mental breakdown. He took his own life on 18 September 2015 at the age of 56 years. His will dated 22 February 2007 appointed Gwen as executrix and trustee and named her as the sole beneficiary. Gwen took a grant of probate on 4 October 2016.

37. The IHT400 showed that the gross total of Elfed's estate was £674,377, comprising the proceeds of a life insurance policy (£250,377) and farms, farmhouses and farmland (£424,000). The net value of the estate was £667,977. After Agricultural Relief and Spouse Relief, no Inheritance Tax was payable.

38. The IHT404 Schedule for jointly owned assets showed that Elfed and Gwen had, in addition, jointly owned assets with a total value of £1,029,550 comprising: the Bwchanan farmhouse (£325,000); 12.89 acres of land to the east of Bwchanan (£103,000); 16.01 acres of land at Plas Candryll (£125,000); 9.3 acres of land opposite Rhosbeirio (£75,000); live and dead stock (£186,450); and machinery (£215,000). The jointly owned assets were subject to a legal charge to secure an outstanding debt of £42,818. The net value of Elfed's share of the jointly owned assets, which passed to Gwen by survivorship, was £493,366 in respect of property and approximately £40,000 in respect of money in the bank.

39. In the light of Elfed's death, the Deceased altered his testamentary intentions. Judge Jarman succinctly explained how things stood until that time under the 1990 Will and later the 2005 Will:

> "8. For many years Evan Hughes had let his children and others know of his intentions regarding what would happen to his estate after his death, namely that his shares in the company would be left to his son Gareth and daughter Carys equally, and the farmland would be left to his son Elfed. He executed his first will on 18 December 1990 which put these intentions into effect. His second wife was given a right to reside for life in the bungalow at Arfryn, with remainder to his three children, who also shared the residuary estate equally.
>
> 9. After his second divorce, he executed a new will on 7 August 2005 which repeated the provisions of the 1990 will as to the company shares and farmland and the residuary estate. The bungalow at Arfryn together with garden land and his personal effects were left to his daughter Carys. All other freehold and leasehold property was given to his son Elfed. A pecuniary legacy of £2,000 was given to each of his eight grandchildren."

40. The 2016 Will was to the following effect. Gareth and Carys were appointed as the executors and trustees. Arfryn, with a garden but no agricultural land, was given to

[4] I mention, in order not to have to do so again, that the Deceased had executed a stock transfer form of some of his shares in favour of Gareth, but that the validity of that transfer had been challenged and Gareth has acceded to the urgings of the defendants' solicitors and does not now seek to rely on it.

Carys, as was Derwyddfa, which under the 2005 Will would have gone to Elfed. Yr Efail, which under the 2005 Will would have gone to Elfed, was given to Gareth. Bwchanan and the Deceased's remaining parcels of agricultural land, including the land adjacent to Arfryn, were given to Gwen for life, with the remainder to Stephen, Siôn and Geraint in equal shares. The residuary estate, which included the 300 shares in the Company, was left in equal shares to the Deceased's eight grandchildren (Gareth's three daughters, Elfed and Gwen's three sons, and Carys's son and daughter).

41. After Elfed's death, Geraint had taken over primary responsibility for the farm, including—at the Deceased's request—that part of it which was the Deceased's. Geraint says that he told the Deceased that it was unfair that he should look after the Deceased's cattle without pay and that the Deceased told him that he would "look after" him and that they—apparently, Elfed's family—would "own everything one day." (In the Court of Appeal, Asplin LJ said that "[t]he evidence was not seriously challenged and was accepted by the judge".) Geraint's evidence was that the Deceased relied entirely on him for all aspects of the farming. As it is common ground that the Deceased had slowed down significantly in the couple of years before his death, and as it is clear that he was deeply affected by Elfed's death, Geraint's evidence on this point is generally plausible. As for the suggestion that the Deceased did not, at any time within Geraint's memory, do any active work on the farm at all, I remark on this further below.

42. Geraint had found it hard to cope with the full extent of the farm, especially after a close friend committed suicide in April of that year. From mid-2016 Yr Efail was rented out to a third party. The Deceased's stock was sold later that year.

43. Geraint continues to farm at Bwchanan. His evidence in his witness statement made in September 2020 was that his mother, Gwen, offered practical support on the farm on a daily basis.

44. The Deceased died on 7 May 2017 at the age of 84 years.

45. The IHT400 in respect of the Deceased shows that the net value of his estate was £2,042,825 (£2,052,593 gross). The values attributed to his assets were: £31,750 for money and personal effects; £56,172 for his shares in the Company; £1,395,000 for agricultural land and premises (being £900,000 for the land at Arfryn, and £495,000 for Yr Efail); £401,252 for businesses and business assets; £60,000 for the freehold property known as Derwyddfa; £108,089 for debts due to the estate—presumably, from the Company. The shareholding attracted 100% Business Property Relief, the agricultural land and premises attracted 100% Agricultural Relief, and there was Business Property Relief on agricultural assets to the value of £345,410. Accordingly no Inheritance Tax was payable.

46. In the course of these proceedings, valuation evidence has been obtained regarding the assets in the Deceased's estate. In the light of that evidence, the effect of the 2016 Will in financial terms was broadly as follows.

- Gareth received Yr Efail, which was valued at £490,000 at the date of the Deceased's death and at £515,000 in February 2021.

- Carys received Arfryn (the bungalow, not the land) and Derwyddfa. These were valued at £270,000 and £70,000 respectively (total, £340,000) at the date of the Deceased's death and at £295,000 and £80,000 respectively (total, £375,000) in February 2021.

- Elfed's family received the Deceased's agricultural holdings other than Yr Efail (namely, those at Bwchanan, Arfryn, Y Felin and Tŷ Mawr). These were valued at £500,000 at the date of the Deceased's death and £520,000 in February 2021.

- The residuary estate was given to the Deceased's eight grandchildren. The relevant assets in the residuary estate were the Deceased's 50% shareholding in the Company and the debt owed to him by the Company in respect of his Director's loan. The most recent financial statements of the Company, prepared in accordance with the micro-entity provisions and signed by Gareth and Carys, show the financial position as at 5 April 2022. They show net liabilities of £73,126, on the basis of fixed assets valued at £101,260 and creditors falling due within one year in the sum of £178,198. There is little information to explain these figures. The Company owns a workshop and site at Llanfechell, Anglesey, which has been valued at £295,000 as at February 2023. This does not appear to be the referent of the fixed assets shown in the latest accounts, as the figure has been diminishing over time, which indicates the likelihood of depreciation of, for example, vehicles, plant and machinery. An entry in previous years for an "investment property" (valued at £150,000) was removed when the property was sold to raise funds. The workshop and site does not appear to be included in the balance sheet[5]. I also do not know how the debts are comprised, but I assume that the greater part relates to the Deceased's loan of about £108,000 to the Company and that the balance relates mainly to the loans made at around the same time by Gareth (£25,000), Carys (£20,000) and Elfed (£10,000). The maximum possible value of the Deceased's shareholding appears, therefore, to be slightly more than £100,000 if the debts (including the debt owed to the Deceased) are taken fully into account.

47. It should also be noted that Gareth and Carys took the benefit, outside the 2016 Will, of two insurance policies taken out by the Deceased. One policy paid out £48,474.79, the other £29,643.72. Thus each received £39,059.25.

Analysis of the Proprietary Estoppel Claim

Representations to Elfed

48. Judge Jarman's findings as to the representations made by the Deceased to Elfed are set out in the following passages:

> "8. For many years Evan Hughes had let his children and others know of his intentions regarding what would happen to his estate after his death, namely that his shares in the company

[5] There is a reference in the papers to an assertion by Ian Hughes that he has a beneficial interest in the workshop and site. I do not know whether that lies behind the omission of that property from the Company's balance sheet.

> would be left to his son Gareth and daughter Carys equally, and the farmland would be left to his son Elfed. He executed his first will on 18 December 1990 which put these intentions into effect. His second wife was given a right to reside for life in the bungalow at Arfryn, with remainder to his three children, who also shared the residuary estate equally."
>
> "78. Gareth Hughes to his credit in cross-examination accepted that it had long been an understanding in the family that he and his sister would inherit the shares in the company and his brother would inherit the farm and the land. He said that his father did not say this to him, but his sister implied it. In my judgment there is an impressive body of evidence that there was such an understanding over many years prior to the death of Elfed Hughes which his father shared within the family and to others. …"
>
> "113. I have already made some findings as to the understanding which Evan and Elfed Hughes had over many years as to what would happen to the land of the former after his days. It is true that some of the witnesses understood this in terms simply of the then current testamentary intention of the former. But as between father and son I am satisfied that their understanding went far beyond this. Particularly telling in this regard is the evidence of Gwen Hughes in her witness statement that her late husband always used to dismiss her when she told him, in the context of tending to his father's stock and land, that he was spending too much money on his father. Her husband would respond in Welsh 'da ni'n dallt ein gilydd', which in English means 'we have an understanding together.' She said that she knew that the understanding was that her husband would inherit the land. When she was cross-examined about how she knew, she replied that her husband told her that his father said that the land would be his.
>
> 114. That evidence is supported by Stephen Hughes who heard such conversations between his parents. He said he heard such conversations many times ever since he can remember. His mother would ask why they were paying bills in respect of her father-in-law's land and her husband replied that it was beneficial as he would own it one day.
>
> 115. I accept that evidence. In my judgment there was a sufficiently clear representation by Evan Hughes to that effect over many years."

Reliance

49. Judge Jarman's findings as to reliance are set out in paragraph 116 of his judgment:

> "116. As for reliance, it is not in dispute that Elfed Hughes lived for farming, worked very hard and successfully at it, maintained very high standards, and produced prize winning stock. This was clear from all the evidence including recordings of two television programmes in which he featured and which I have watched. Mr Gomer submits that that is why he farmed his father's land and not because of any promise on that part of his father. That may have been a part of it. However he maintained his father's stock and land for some 38 years. When he purchased farmland of his own in 1999, it was next to his father's farm so that he could work on both together. He built a bridge to link the two and a large cattle shed to keep his own and his father's cattle. Again, the conversations which he had with his wife as set out above are telling and in my judgment in that context it is likely that he did so also in reliance upon the representations."

Detriment

50. In the defence and counterclaim of Gwen and Stephen, detriment was alleged along with reliance in paragraphs 27 and 28:

> "27. In all the circumstances it was reasonable for Elfed to rely upon such assurances and representations, and Elfed did rely upon them to his detriment. In particular:
>
> a. Elfed worked extremely hard for long hours and with few holidays, to the detriment of his family life. He fed and cared for the Deceased's animals and carried out most of the work on the Deceased's farmland. He paid contractors to carry out such work on the Deceased's farmland as he did not carry out himself. He also paid for most of the farm equipment and its maintenance.
>
> b. When Elfed's 2 younger sons, Sion and Geraint, grew older, they too helped him with the work on the Deceased's farmland and tending to the Deceased's animals.
>
> c. Elfed was not paid by the Deceased for any of his work on the Deceased's farmland and stock. Likewise, neither of Elfed's 2 younger sons was paid for their work on the Deceased's farmland and stock.
>
> d. Had Elfed devoted his time exclusively to his own farming business, he would have been in a considerably better financial position at the time of his death.
>
> e. In 1999 Elfed purchased a farm known as Hafod Llin Bach. He regarded it as a good investment opportunity because it was situated next to Yr Efail, which was part

> of the farmland which the Deceased had promised that he would inherit. Since there was no access from Hafod Llin Bach to Yr Efail, Elfed built a bridge at considerable expense.
>
> f. In January 2012, Elfed asked his youngest son, Geraint, who was at that time a university graduate working for the local authority earning £24,000 per year, to give up his job and return home to work on the farm, including the Deceased's farmland. This involved Geraint taking a 50% pay cut and working full time on the farm with Elfed, and on behalf of the Deceased. Elfed told Geraint that Geraint would one day inherit the farmland, including the farmland owned by the Deceased.
>
> g. Later in 2012, Elfed put in a bid to buy a plot of land called Coeden, which he regarded as an investment opportunity because it was situated next to the Deceased's farmland and there was a footpath which provided access from one to the other, but Elfed was outbid by another purchaser.
>
> 28. In the circumstances it was unconscionable for the Deceased to resile from the promises and assurances which had been given by him to Elfed over the years by leaving a substantial part of his farmland, namely Yr Efail, to the Claimant in the 2016 Will."

51. Judge Jarman dealt with detriment in paragraphs 117 to 120 of his judgment, immediately after he had dealt with reliance.

> "117. The financial detriment relied upon is the value of such work, which the single joint agricultural expert Mr McVicar values at £158,415 on the craft rate or £181,875 at the managerial rate. In my judgment the latter is appropriate in this case given that Elfed Hughes was in charge of the farm work on his father's land. On top of that, he paid staff to work on his father's land as well as his own. Mr McVicar calculates that extent of such at 2,114 hours which he values at £378,802. Moreover he also paid by far the majority of expenses and for machinery. Only limited records still exist, but the respective farm accounts for the three years prior to his death and the existing invoices between 2008 and 2015 give a good indication that such payments were substantial over many years, as also indicated by his wife querying such expenses. There is also the end of tenancy claim in respect of Rhosbeirio, the cost of the bridge and cattle shed constructed by him on his own farmland, and his son Geraint's pay cut in 2012.
>
> 118. The non-financial detriment relied upon comprises the very long hours he worked, the lack of any holidays and the

> sacrifice of his family life. In my judgment it is right to take some of this into account, but also to recall that he was working for himself as well and given his personality it is likely that he would have worked long hours, although probably not as long, even without his father's land and stock.
>
> 119. As for benefits, in my judgment the gift of Bwchanan farmhouse in 1989 should not be taken into account in evaluating detriment. Similar provision was made to his other children early in their adult lives in order to set them up, as Gareth Hughes to his credit accepted in cross-examination.
>
> 120. Elfed Hughes was also able to run his stock on his father's land, but the reverse is also true. Before 1989 his father charged him rent for this, as shown in his 1987 and 1988 accounts and confirmed by his widow in cross-examination. Thereafter in my judgment, the arrangement was mutually beneficial and is a neutral factor in evaluating detriment. The detriment, which I accept, goes far beyond that and amounts to unpaid work over very long hours over many years, together with substantial expenses over the same period, and in particular the wages of staff and expenses of husbandry and machinery."

52. In the Court of Appeal, Asplin LJ did not express any criticism of the Judge's findings of fact but considered that the analysis of detriment was inadequate, in particular as regards the level of consideration given to "the advantages to Elfed of the symbiotic arrangement" and the lack of a proper assessment of unconscionability.

53. Mr Troup accepted that the arrangement between the Deceased and Elfed was symbiotic, working to their mutual advantage, but he submitted that several factors were non-symbiotic and showed that Elfed had acted to his detriment in reliance on the Deceased's assurances so as to make it unconscionable for the Deceased to resile from those assurances. It is important, I think, not to skate too quickly over the symbiosis, even at this stage. This case is decidedly unlike the classic case where the promisee has toiled in relative poverty with little or no reward in the expectation that the fruits of the promisor's death will make up for everything. In this case, Elfed and the Deceased operated practically as though in partnership; although each had his own animals and owned or rented his own land, all was farmed as a single unit. The arrangement worked to the benefit of both of them. Elfed was a successful farmer in his own right, both as regards the quality of his work and in terms of his financial profit as indicated in the estate he left at his death, and his success was due in large measure to the symbiosis. This is by no means the end of the matter, but it is a relevant context in which to consider the particular matters relied on to establish detriment.

54. Those particular matters were the following: first, the imbalance of the farming work done by Elfed and the Deceased; second, the construction by Elfed of sheds and bridges on the farm; third, the imbalance of expenditure on labour and machinery; fourth, the non-financial detriment of the sacrifice of family life on account of Elfed's work on the farm. It seems to me that this comes down to reliance on two matters,

namely working time and expenditure, as establishing that the burden of the arrangement rested on Elfed and that he suffered detriment that would make it unconscionable for his family not now to receive Yr Efail.

Labour

55. This is relied on both as financial detriment (the monetary value of Elfed's labour) and as non-financial detriment (the effect on his personal and family life). Both of these are relevant in principle, but it is necessary to consider them together and in the round and to avoid a form of double counting. Mr Troup's submission that, if Elfed had applied his labour solely to his own farming business, he would have been financially better off assumes that he would in any event have worked more or less as hard as in fact he did, which rather undermines reliance on non-financial detriment as though it were a purely additional detriment. One cannot pray in aid supposed financial detriment resulting from the diversion of part of one's labour from one's own business and at the same time rely on the non-financial effects of engaging in that amount of labour; that would be to eat one's cake and have it.

56. There is no doubt that Elfed did very much more work on the farm than the Deceased did. The Deceased spent most of his time in the construction business of the Company. Even so, I do not accept that he did no farming work at all. He was a farmer, not merely the owner of a farm, and the description of him as "a gentleman farmer", though not without an element of truth, goes too far. (I note that, at one point in his witness statement, Geraint used the Deceased's confusion of lambs and heifers as evidence of his declining mental state, commenting that this confusion was worrying "[f]or a man who had been farming his whole life and someone who was proud of his land".) Elfed appears to have inherited his work ethic from his father; he also provides an illustration of how work in the Company did not preclude work on the farm. The evidence shows that the Deceased bought and sold his own stock. Gareth says plausibly that he would assist with feeding the cattle. There is also evidence that he would routinely spend time on the farm, inspecting the stock. The quality of the evidence as to his active involvement in the work of the farm in other respects is limited, other than in respect of the Deceased's later years, when he would inevitably have been doing little if anything of a physical nature. In his witness statement, Geraint said that he assessed the Deceased's "physical input to the farm to be zero". That assessment can properly be read with caution: not only because of the adversarial context in which it was made and because Geraint, like his brothers, can have a relevant recollection only of the Deceased's later years, but because his own evidence points to some qualification of that broad assessment. Geraint's witness statement makes clear that even in his last few years the Deceased checked the stock daily; his gloss that Elfed had asked him to do so "to mostly keep him occupied" is too patronising of a proud, experienced and successful man to be read uncritically, at least insofar as it implies that the Deceased was not engaged in productive and valuable work. In seeking before Judge Jarman to illustrate the Deceased's failing mental powers, and thus his lack of capacity to make the 2016 Will, Geraint himself confirmed that as late as the spring and summer of 2016 the Deceased continued to go around the livestock while they were grazing in the fields; he made the point that in 2015 and 2016 the Deceased had left the gates open and that he had departed from his "normal routine". Of course, one would not expect the Deceased to be performing physically heavy work in his late 70s or early 80s, and doubtless his engagement in

such work had previously diminished over time; it had probably not been great since Elfed returned from his year of working on a sheep farm after attending agricultural college.

57. Even so, Elfed did much the greater part of the work on the farm. It was he, not the Deceased, who did the physical labour and, so to speak, got his hands dirty. I accept also that, even in respect of work relating to his father's land and cattle, he was not just doing the physical work but made decisions of a managerial nature.

58. It was not, however, until the last two years of his life that Elfed worked full-time on the farm. Until then, he worked broadly full-time in the business of the Company: his usual working hours were Monday to Friday from 7 a.m. until 5 p.m. (according to Gareth) or perhaps from 8 a.m. until 4 p.m. (according to Aled Williams, a friend and part-time employee of Elfed). Before and after his daily work for the Company, and at weekends, Elfed worked on the farm. At especially busy times for the farm, such as the lambing season, he worked reduced hours in the Company. Gareth's evidence, uncontradicted on this point in cross-examination and substantially confirmed by Stephen in oral evidence, was that after 1999, when Rhosbeirio was rented, Elfed did not work for the Company at all between Christmas and Easter or April, as the enlarged size of the entire agricultural holding required his greater attention. On the whole, however, Gwen's evidence doubtless provides a substantially accurate picture:

> "12. Elfed used to be up at the crack of dawn and would be out of the house by sunrise to go to work for the building company or the farms. He would come home roughly about five to have his tea and then he used to go straight back out to see to the farms: Bwchanan, Yr Efail and Hafod Llin Bach. Elfed used to work hard on all three farms and spend an equal time dealing with them all. He also farmed rented farms called Rhosbeirio and Rhyd y Groes.
>
> 13. During the summertime, Elfed would get home at approximately nine in the evening, and sometimes much later when he was very busy. Between October to December, it is a very quiet time for farmers and as a result Elfed could finish work at approximately six o'clock some evenings.
>
> …
>
> 15. Because of Elfed's commitment to the farm, he did not have much time to spend with the children when they were young. Elfed looked after the farm and I brought the children up. we held a very traditional household; tea would always be prepared when Elfed returned home and I undertook all of the domestic chores in the house.
>
> …
>
> 17. Holidays were very restricted for the family due to Elfed's work commitments. It always had to be at a time of year when the farm was at its quietest. …"

59. Elfed's work is relied on, first of all, as a financial detriment. In this regard, Gwen and Stephen relied on the written evidence of Mr Iain McVicar, a chartered accountant, who was instructed as a single joint expert to value the work that Elfed carried out on the Deceased's land and to calculate what it would have cost the Deceased to employ others to carry out that work. Mr McVicar commenced his calculation from June 1977, basing it principally on the information regarding Elfed's working patterns provided by Gwen and Stephen[6], and worked on the assumption that Elfed's work pattern did not change at all during the period examined. (Although he noted that Elfed worked full-time on the farm in 2014 and 2015, which might indicate increased hours, he also noted that the size of the farm and the number of animals had not increased.) In paragraph 3.21 of his report, Mr McVicar opined that Elfed worked 4,761 hours per annum. In paragraph 3.2 of his report he opined that the amount of time spent working for the Company was 1,250 hours per annum. Accordingly, he attributed 3,511 hours to Elfed's work on the farm each year. On the basis of the number of animals held by each (on average, the Deceased had 131 beef cattle, and Elfed had 145 beef cattle and 900 ewes plus lambs) he then apportioned that time as to 75% to Elfed's farm and as to 25% to the Deceased's farm. That equates to an average of 878 hours per annum spent on the Deceased's farming business. In paragraph 5.3 of his report, Mr McVicar opined that the total value of the work that Elfed had carried out for the Deceased from 1977 onwards was £158,415. In responses to questions, Mr McVicar said that, if Elfed's work were valued on the basis that he worked at farm management grade from 1983 onwards, the total value of his work would be £181,875.

60. The evidence in Mr McVicar's report and responses to questions is valuable. It clearly indicates, what could be inferred on other grounds, that Elfed's labour made a contribution of significant financial value to the Deceased's farm. Mr Troup rightly did not seek to rely on it for detailed arithmetical purposes, however. The evidence, though careful and valuable, is in the nature of a desktop exercise on the basis of fairly impressionistic, albeit generally fair, assessments of Elfed's work. It approaches the matter on the basis of the benefit to the Deceased—what it would have cost him to procure equivalent services—rather than the detriment to Elfed. In fact, the strictly relevant matter is detriment, not benefit. Although there is some obvious relationship between the two, the distinction is relevant. In particular, Elfed was farming in his own right and, although there was no partnership, the two farming businesses were for the most part run as a single operation. In those circumstances, reference to the enhanced rate for a farm manager as a basis for assessing detriment incurred by Elfed (rather than benefit to the Deceased) seems to me to be doubtfully appropriate, because the nature of his work in respect of the Deceased's land and livestock was of a piece with that in respect of his own. Further, the calculations take the entire period from 1977 until 2015 as an undifferentiated whole. This might work unfavourably to Elfed in respect of the years 2014 and 2015, because the fact that the farm did not increase in size need not mean that he did not do additional work on it. However, the justification for including the years 1977 to 1988 is unclear. As I mention below in more detail, neither the evidence nor Judge Jarman's finding of fact is precise as to the date when the Deceased first made the relevant representations to Elfed, but it seems to me that it may reasonably be supposed to have been shortly before the gift of Bwchanan farmhouse and the making of the 1990 Will. Even if

[6] Gareth disputed the information that they gave, but the information that he himself provided was too vague to be of assistance to Mr McVicar.

work done and money expended before the representations were made might perhaps be of some indirect relevance in assessing unconscionability in the light of all the circumstances of the case, it cannot constitute relevant detriment that might satisfy the third requirement of a claim in proprietary estoppel, because such detriment must be causally connected to the representations or assurances. Again, and in any event, it is in my view untenable to value Elfed's work in the years after 1977, when he was fresh out of agricultural college and still learning his trade, as equivalent to his work as a mature farmer[7]. Finally, the exercise that Mr McVicar was instructed to carry out did not involve any consideration of the value of work done on the single farm by the Deceased, which in my view is likely to have been greater in the earlier than in the later years.

61. Elfed's work is relied on also as giving rise to non-financial detriment. Judge Jarman dealt with this aspect in paragraph 118 of his judgment (above). I would not fundamentally differ from his balanced approach. But in my view, it is not possible to attribute any weight to this non-financial aspect when assessing detriment in the round. For Elfed, farming was not merely a job or a succession of tasks. Judge Jarman observed (paragraph 116): "it is not in dispute that Elfed Hughes lived for farming, worked very hard and successfully at it, maintained very high standards, and produced prize winning stock." According to a neighbouring farmer, Joseph Owen Wyn Rogers, who knew him well, Elfed was "a workaholic", who "appeared to love what he did." Siôn said in evidence: "Farming was his life. If anyone came to the house, he would like to show his cattle and sheep—that was his hobby, that was his life—it meant everything to him." Other evidence confirms this picture. It is possible that Elfed might have worked slightly fewer hours if he had not attended to his father's land and cattle, but I am not persuaded even of that, and I do not think that he regarded any of the work he did as an unwelcome chore. More importantly, I reject as unproven and, indeed, implausible the suggestion that the time spent by Elfed working on his father's farm resulted in the sacrifice of family relationships or such things as holidays or what is sometimes called "quality time" at home. The clear picture that emerges from the evidence is simply that of a traditional, rather old-school farmer who had a strong work ethic, was passionate about what he did, approached it seriously and took pride and pleasure in his farming. I see no reason to believe that his approach to family or domestic arrangements would have been any different if the Deceased had worked purely on his own account.

62. In oral submissions Mr Troup submitted that there was some evidence that Elfed's hard work contributed to his illness and death. On the basis of the evidence before me, I am certainly not prepared to make any such finding. More importantly, I can see no justification for any implication that Elfed's death was caused or contributed to by reliance on his father's representations.

63. Mr Troup also submitted that Elfed suffered detriment because, if he had not been expending his labour upon the Deceased's farm, he would have applied it to his own farming venture and would have expanded it, to his own greater financial advantage. I reject that submission for two principal reasons. First, it is not supported by anything other than speculation, and the speculation has not persuaded me that the conclusion is probable. Second, it abstracts Elfed's work from the symbiotic

[7] This, indeed, appears to have been accepted in the Defence and Counterclaim: paragraph 5 states of Elfed, "He farmed both his own and the Deceased's farmland, to the point where the Deceased no longer had to carry out any work on his own farmland save for selecting cattle to buy."

relationship that existed. Mr Troup's argument might carry weight in the classic kind of case, mentioned above, where someone works hard, but without immediate reward, in the expectation of a future inheritance. Then, one might say that the person would otherwise have obtained remunerative work. In this case, however, Elfed's success was due in large measure to the relationship with his father's farm; indeed, it was this symbiosis that enabled Elfed to expand his own business to the extent that he did.

64. Unpaid work on the farm by Siôn and Geraint, even if it involved work with the Deceased's animals, does not constitute relevant detriment for the purpose of giving rise to an equity in Elfed's favour. This case does not concern any claim by Geraint or Siôn for an equity in his favour.

Expenditure

65. Mr Troup relied on Elfed's purchase of farmland at Hafod Llin Bach adjoining or close to the Deceased's farmland. He submitted that the purchase was specifically so that the holdings could be farmed as a single farm and that it "would make no sense" for Elfed to purchase the surrounding farmland unless he were going to inherit Yr Efail. I accept that the purchase of adjoining farmland—at least, after the assurances were given—was in reliance on the Deceased's assurances; that was Judge Jarman's finding in paragraph 116 of his judgment[8]. It does not follow, however, that the purchase of that farmland constitutes a detriment if Yr Efail is not inherited. In my view, it is not a detriment. (Indeed, Judge Jarman did not find that it was a detriment.) The evidence does not establish that the purchase of Hafod Llin Bach was undesirable, inadvisable or uneconomic without Yr Efail, or that to hold it without Yr Efail makes "no sense".

66. Mr Troup also relied on the construction by Elfed of a bridge from Hafod Llin Bach to Yr Efail (counterclaim, paragraph 27(e)). I have seen photographs of this bridge. It is a metal bridge, gated at one end and railed on its sides, that unites two fields separated by a watercourse. This would certainly have involved some cost. It may be that the Deceased benefited from the bridge. But I do not think that it is indicative of any detriment to Elfed. He was farming on both pieces of land in his own right and benefited from the bridge for that reason. I see no reason to suppose that he would have acted any differently if he had not expected to inherit Yr Efail, and indeed he constructed other bridges between two pieces of land that he rented and, as mentioned below, between a piece of land that he owned and another that he rented. The bridge between Hafod Llin Bach and Yr Efail, isolated by the defendants in their analysis, is simply an incident of the symbiotic relationship and of Elfed's farming activities and I do not accept that it represents detriment.

67. An unsuccessful bid to purchase the land called Coeden (counterclaim, paragraph 27(g)) does not constitute detriment on the part of Elfed.

68. In submissions, Mr Troup sought to rely on a number of matters as establishing detriment, though they had not been pleaded as such in the counterclaim, as they ought to have been if they were to be relied on. I shall deal with them, nevertheless.

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[8] I note that Judge Jarman, who made no finding as to when the assurances were first given, did not make this finding of reliance in respect of the purchase of 15 acres before the gift of Bwchanan farmhouse. That is consistent with my view as to when the assurances must first have been given.

69. Mr Troup relied on the supposed subsidising by Elfed of the Deceased in respect of Rhosbeirio. I have already commented on this. I am not persuaded that Elfed was acting to his detriment in this respect.

70. Mr Troup relied on expenditure by Elfed on improvements to the land at Rhosbeirio, as reflected in a document, marked "Without prejudice and subject to contract", that was apparently an "end of tenancy claim" by Elfed's estate in respect of Rhosbeirio. The claim, in respect of landworks, gates and such like, was for £29,874.50. Mr Troup said that, as some of the items on the claim reflected depreciation over 20 or 25 years, the expenditure on the land would have been much greater. He observed that, "[t]ellingly", the Deceased made no such claim of his own. In my view, there is nothing of substance in this point. Elfed was a farmer on his own account, renting land and making his own decisions as to how to use the land that he rented. This particular claim must have been limited to the land comprised in Elfed's tenancy; Mr Troup confirmed that this was so. There is nothing "telling" about the apparent absence of any such claim by the Deceased or his estate: first, if, as is asserted, no such claim was made, I do not know why no claim was made; second, Mr Troup informed me in oral submissions that nothing came of Elfed's claim: the fact that an unsuccessful claim was made provides no telling point of contrast. I know nothing particular about the matters that comprised the claim made by Elfed's estate beyond the single document, nor do I know what led Elfed to incur the expenditure, but I can see nothing to suggest that he did so on anything other than prudent farming grounds. The very most that might possibly be inferred is that the Deceased benefited from Elfed's expenditure; though in the context of a symbiotic relationship that is not saying very much. It certainly does not establish that Elfed suffered any detriment in reliance on prior assurances, far less that any such detriment was significant.

71. Mr Troup relied on Elfed's expenditure on sheds that were used for the benefit of the Deceased's livestock as well as his own. The shed at Bwchanan was built on the Deceased's land, but the Deceased left Bwchanan to Elfed's family in accordance with the mutual understanding. The sheds at Hafod Llin Bach and Plas Candryll were built on Elfed's own land. Accordingly, Elfed's family has retained the benefit of all of these sheds; none of them have been withheld by the Deceased's failure to leave Yr Efail to his family. The matter comes down, therefore, to the fact that shared use that was made of these sheds by the Deceased and Elfed, although Elfed had paid for the sheds. I regard that as an incident of the symbiotic relationship and, in circumstances where Elfed's family has retained the benefit and ownership of the sheds, as not constituting a material detriment. On this point as on several others, Mr Troup appeared to confuse benefits accruing to the Deceased under the symbiotic relationship with relevant detriment to Elfed.

72. Mr Troup relied on the building by Elfed of a bridge from Hafod Llin Bach to Rhyd y Groes. I do not regard that as a material detriment. Elfed owned the former piece of land and he, not the Deceased, was the tenant of Rhyd y Groes, which was used only for grazing his sheep.

73. Mr Troup relied on Elfed's expenditure on general farm expenses and machinery. Gwen's evidence was that Elfed ensured that any repair works on Yr Efail were to a high standard—for example, he purchased expensive galvanised gates—and considered it to be an investment for the future. He had dismissed her complaints that he was spending too much money on his father by telling her that "they had an

understanding"; she "knew" this to refer to an understanding that Elfed would inherit all of his father's land. Mr Troup acknowledged that it was impossible to quantify Elfed's expenditure over the years, because there was only limited documentation. However, he referred to a couple of indicative matters that, he said, gave an impression. The first was a comparison of the respective accounts of Elfed and of the Deceased for the three years ending on 5 April in 2013, 2014 and 2015. The second was a summary of such of Elfed's invoices as still exist for the period from 2008 to 2015. These show substantial expenditure on tractors and other machinery. The only such item owned by the Deceased was (it is said) a single tractor; two of Elfed's invoices, one from 2014 and one from 2015, show that he spent slightly under £170 in respect of it. The principal point made is that Elfed incurred large expenditure on tractors and machinery that were used for the joint benefit of himself and the Deceased.

74. The available financial statements are very limited. There are accounts for the Deceased for the years to May 2006, 2007, 2008, 2010, 2011, 2012, 2013, 2014 and 2015. (There are also accounts for the period June 2016 to May 2017, but that was the period when the Deceased's farming business ended.) There are accounts for Elfed for the years to April 1987, 1988, 2013, 2014 and 2015. (There are also accounts for the year to April 2016, during which of course Elfed had died.) I shall not engage in a detailed analysis of the accounts; some observations, focusing on the three comparable years, will suffice.

- In 2013, Elfed's turnover (income from livestock and sundries) was £459,543, his gross profit was £136,939 and his net profit was £46,718. The corresponding figures for the Deceased were £190,103, £84,083 and something in the region of £50,000[9]. Elfed spent £89,817 on Feeds, Seeds and Fertilizers (compared to £18,777 by the Deceased); £659 on Haulage (compared to £352 by the Deceased); £41,687 on Agricultural Contractors and Subcontractors (compared to £6,960 by the Deceased); £7,635 on Vets and Service Fees (nothing was spent by the Deceased); £9,411 on Fuel and Tractor Expenses (nothing was spent by the Deceased, though there were motoring expenses); and £17,075 on Repairs and Renewals, including Repairs to Fencing and Gates (compared to £371 by the Deceased).

- In 2014, Elfed's turnover was £502,398, his gross profit was £142,302 and his net profit was £48,031. The corresponding figures for the Deceased were £157,276, £44,398 and in the region of £9,000 (the copy is incomplete). Elfed spent £128,190 on Feeds, Seeds and Fertilizers (compared to £18,887 by the Deceased); £723 on Haulage (compared to £1,206 by the Deceased); £46,662 on Agricultural Contractors and Subcontractors (compared to £7,050 by the Deceased); £7,067 on Vets and Service Fees (compared to £297 by the Deceased); £14,599 on Fuel and Tractor Expenses (compared to £1,954 by the Deceased); and £23,305 on Repairs and Renewals, including Repairs to Fencing and Gates (compared to £3,879 by the Deceased).

- In 2015, Elfed's turnover was £425,745, his gross profit was £153,291, and his net profit was £61,832. The corresponding figures for the Deceased were

[9] There are two sets of figures for 2013, presumably on the basis that the calculations were corrected in the following year. The copy of what I take to be the corrected figure is incomplete.

> £139,125 (a further £30,741 was received in grants and subsidies), £43,053 and £8,407. Elfed spent £91,972 on Feeds, Seeds and Fertilizers (compared to £24,801 by the Deceased); £4,807 on Haulage (compared to £1,232 by the Deceased); £46,647 on Agricultural Contractors and Subcontractors (compared to £11,514 by the Deceased); £8,180 on Vets and Service Fees (compared to £955 by the Deceased); £10,379 on Fuel and Tractor Expenses (compared to £1,944 by the Deceased); and £21,662 on Repairs and Renewals, including Repairs to Fencing and Gates (compared to £5,078 by the Deceased).

These figures indicate significantly different levels of economic activity. In particular, they tend to show that the turnover of the Deceased's business (which had remained broadly stable since 2006, with some fluctuations) was very roughly between one third and 40% of that of Elfed's business. In the nine years for which we have financial statements for the Deceased, he had spent an average of £5,177 per annum on agricultural contractors. That is very much less than Elfed had spent, certainly in the years for which a direct comparison can be made; however, Mr McVicar had calculated that the labour requirements would be 3:1, and the figures for turnover would tend, absent explanation to the contrary, to indicate that the weight of expenditure would fall heavily on Elfed's side, especially as he alone had sheep and lambs, which require more labour. Elfed spent very considerably more than his father on repairs and renewals; again, however, in the absence of detailed knowledge of the reasons for that expenditure it can hardly be taken as general evidence of detrimental reliance. (Some expenditure is known to be referable to Yr Efail, though it is not clear whether it appears in any accounts produced in evidence.)

75. On these matters of general expenditure I make the following observations.

1) Especially when taken with the rest of the evidence, the accounts tend to confirm that, at least in later years, there was probably a significant imbalance in the expenditure incurred by Elfed and the Deceased on matters that were beneficial to the joint farming enterprise, with Elfed bearing more of the expenditure on matters that were of mutual benefit.

2) However, it is very difficult and would be dangerous to try to draw precise conclusions on this matter. First, there is insufficient extant documentation. Second, neither Elfed nor the Deceased is around to explain the expenditure or the reasons for it. Gwen's evidence was that, though she was aware that Elfed was spending a lot of money for the Deceased's benefit while he was alive, it was only after Elfed's death that she became aware of the levels of expenditure. This illustrates that the sources for a clear understanding of the operation of the symbiotic relationship no longer exist. A comparison of financial statements is limited to a short period at the end of the relationship. Pointing to long lists of Elfed's invoices by themselves does not materially advance matters; identifying two small invoices paid by him in respect of the Deceased's tractor verges on the pointless. Third, and related to the second point, although the two farming operations were kept financially distinct, there was some interaction between the respective accounts, so that one man might pay for something this year and another pay for something else the next year (see paragraph 7 of the statement of Richard Williams, who was Elfed's accountant and latterly the Deceased's also). This highlights the need not only

for documentation but also for informed explanations of the documentation. Fourth, and doubtless for the foregoing reasons, no rigorous analysis of the position has been carried out. It is very true that detriment is not a forensic accounting exercise, but to the extent that reliance is placed on an imbalance of expenditure precision rather than impression is of assistance. Fifth, at the end of the relationship—which is where the financial statements can be compared—Elfed's own farming operation was much the larger.

3) To the extent that Elfed bore a greater financial burden for matters of mutual benefit, some weight is to be given to this in assessing the existence of detriment. This was also the view expressed by Judge Jarman: see paragraphs 113, 114 and 116 of his judgment. However, it is also the case that Elfed's improvement works to the land were motivated at least in part by an inner compulsion, as Judge Jarman noted in paragraph 116. Commenting in cross-examination on his father's expenditure on things he did not own, Stephen adverted to both aspects, though mentioning his own incomprehension and his father's "obsession" before reliance:

> "I am angry Dad spent so much money on things he did not own. Can't get my heard around it, the vast amount of money blows my mind, I just don't get it. He took pride and was almost too particular, attention to detail was almost an obsession, but when Mum asked Dad about invoices, he would say he would own it one day – it was worth investing in the best gates because he would own it one day."

4) In respect of expenditure on machinery and equipment, one should not forget that this was Elfed's and was reflected on the IHT404.

76. Mr Troup relied on expenditure incurred by Elfed in respect of labour attributable to the Deceased's farm. In response to questions following the production of his report, Mr McVicar attempted, first, to assess the theoretical number of Standard Man Days (8 hours) required to run the farms as a whole and, second, to apportion the number of Standard Man Days required to run each farm and to assess the number of hours of work needed by someone other than Elfed. He calculated the total number of Standard Man Days required for the farm as a whole as 1,523 per annum, of which 374 (25%) were attributable to the Deceased's farm and 1,149 (75%) to Elfed's farm. This indicated that a total of 2,992 hours per annum were required to run the Deceased's farm. If Elfed worked 878 hours per annum on the Deceased's farm, a further 2,114 hours of work per annum would be required by others to run the Deceased's farm. The total cost of that further work from 1977 onwards would be £378,802. This evidence, again, has some value. However, as with Mr McVicar's valuation of Elfed's own labour, it has to be approached with a degree of caution. First, it is a desktop exercise. Second, it is not based on actual costs or expenditure. Third, it ignores expenditure on labour by the Deceased and assumes that all labour expenditure was by Elfed, which is incorrect even for the late years for which a comparison can be made: see above. Fourth, it ignores the Deceased's own labour, which is likely to have been not negligible in the early years and continued, albeit at a greatly reduced level, later. Fifth, the use made of it by Mr Troup assumes that everything done since 1977 is capable of being referred to the Deceased's assurances, although that has not been proved on the evidence. (Again, I mention this further

below.) Sixth, insofar as Mr McVicar's calculations are used in conjunction with the accounts for 2013, 2014 and 2015, it is again to be borne in mind that Elfed's farm was more labour-intensive (it alone had sheep and lambs) and that by those years Elfed's farm was also larger than the Deceased's in terms both of turnover and acreage.

77. A specific matter raised by Mr Troup was Elfed's employment of Geraint from 2012 onwards at a wage of £9,600 per annum. I do not attribute any independent weight to this matter. Farming was Elfed's life and he naturally wanted one of his sons to follow in his footsteps. Labour on the farm was necessary. There is no justification for viewing expenditure on Geraint's wages as a matter of detriment in consequence on the Deceased's assurances.

Countervailing benefits

78. Miss Reed submitted that the gift of Bwchanan farmhouse and 17 acres in 1989 was a relevant countervailing benefit to be taken into account. Mr Troup submitted that it was not. Judge Jarman had previously accepted the same submission made to him by Mr Troup; see paragraph 119 of his judgment, quoted above. In my view, the gift is properly to be taken into account as a countervailing benefit when making an evaluative assessment of detriment. It is true, as Judge Jarman noted, that the Deceased had also made provision for Gareth and Carys in order to set them up in life. However, the manner in which he provided for them was quite different from the manner in which he provided for Elfed. Gareth and Carys each received a piece of land on which to build, at their own expense, a dwellinghouse. Elfed received a farmhouse and 17 acres of agricultural land. Not only was this a more substantial gift[10]; it was one that gave Elfed the makings of his own farming business.

79. A more difficult question, perhaps, is the relation of that gift to the arrangement of assurance and reliance between father and son. Judge Jarman did not make any explicit finding as to the initial date of the assurance given by the Deceased. Certainly, it would be quite impossible to pin-point a specific date in a context such as the present. But even if, as Lord Hoffmann remarked, the owl of Minerva spreads its wings only with the falling of the dusk, one does need to have some idea of when the sun rose, even if one cannot say precisely when first there was true and full daylight[11]. It is to be noted that the 1990 Will, which followed shortly after the gift of Bwchanan farmhouse, gave effect to the intention that Gareth and Carys would receive the shares in the Company and Elfed would receive the agricultural land. It is probable, in my judgment, that the assurances had shortly preceded the gift and that the gift is to be seen as integral to the mutual understanding between Elfed and his father. That, indeed, appears to be the case advanced by Gwen and Stephen: see paragraph 26 of the counterclaim.

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[10] At 2016 values, the plots given to Gareth and Carys were worth about £80,000 each and the gift to Elfed was worth about £428,000.

[11] Lord Hoffmann's Hegelian reference is in *Thorner v Major* at [8], where his point was that, in the context of an ongoing and informal relationship, it was only by looking back over the history from its end point that one could form a judgment as to whether assurances already given were sufficient to have justified reliance. Even if the point is sound, it does not affect the fact that, for a claim in proprietary estoppel, there has to be reliance on some assurance already given.

80. If I had considered that the gift of Bwchanan farmhouse and the 17 acres was not a countervailing benefit for the purpose of an assessment of detriment, I should nevertheless have regarded it as a matter that could be taken into account in the holistic assessment of unconscionability, because it would form part of the overall picture that the Deceased might properly have taken into account when deciding how he might fairly dispose of his estate upon his death.

81. The specific gift of Bwchanan farmhouse and the 17 acres is only a specific part of a more diffuse benefit received by Elfed. Through that gift, but also through the use of his father's initially much larger farm and through being enabled to work in what was operationally, though not economically, a single farming enterprise with the Deceased —a lifelong and successful farmer—Elfed was undoubtedly assisted in building up his own successful farming business. (By parity of reasoning with what has gone before, I bear in mind that, so far as the "springboard" relates to the period before about 1989, it is not strictly a countervailing benefit related to reliance on the Deceased's assurances.) It seems to me that this aspect of the matter is something of which Stephen and Geraint, in particular, have somewhat lost sight in their focus on the labour and money expended by Elfed for the Deceased's benefit.

Conclusion on Detriment and Unconscionability

82. So far, I have simply looked at individual matters and considered whether, so to speak, they tip the scale one way or the other. However, that is only preliminary to the necessary exercise of stepping back, looking at the matter in the round, and asking whether, in all the circumstances, Elfed suffered sufficient detriment to make it unconscionable for the Deceased to have failed to leave Yr Efail to his heirs in accordance with the representation and understanding found to have existed by Judge Jarman. In my judgment, the answer to that question is in the negative.

83. First, it is necessary to remember that the Deceased partially fulfilled his assurance to Elfed. He left to Elfed's family all of the agricultural land apart from Yr Efail, worth slightly more than half of the total value of that land.

84. Second, despite the tenor of Stephen and Geraint's evidence, I do not think that the relationship between Elfed and the Deceased worked materially to the disadvantage of Elfed. Stephen and Geraint think that it did, because they focus on one side of the matter and on disappointed expectations of inheritance. However, Elfed's considerable success, professional and financial, as a farmer was due not only to his own effort, commitment and ability but also to the assistance from his father: initially in the gift of a farmhouse and some land of his own, and over many years by way of the ability to use his father's existing farm rent-free, as well as the Deceased's willingness to facilitate the expansion into Rhosbeirio that was not required for his own business. It is neither necessary nor possible to make a precise arithmetical calculation of the balance of benefit. Taking matters in the round, and bearing in mind the work and money he expended to the Deceased's as well as his own advantage, I do not think that Elfed's farming operations resulted in a detriment to him. The financial statements and the record of the assets he and Gwen built up themselves suggest the contrary.

85. I ought to say that this conclusion is materially unaffected by my conclusion as to the appropriate starting date for considering detrimental reliance. If, contrary to my view

as expressed above (see paragraph 77), the relevant period started in 1977, there was corresponding "detriment" to Elfed in respect of the labour and expenditure he contributed from that date, but he had all the more benefit from being enabled to establish his own farming business by the use of the Deceased's farm.

86. Third, the very focus imposed on a case by a claim to proprietary estoppel makes it important to be aware of the risk of adopting too narrow a perspective. In the present case attention is necessarily directed to Elfed's detrimental reliance on the assurance given by his father regarding the farm. Yet that is not the entire picture. Judge Jarman's findings as to the Deceased's representations to Elfed, as set out in paragraph 113 and, in particular, paragraph 8 of his judgment, reflected what is clear from the evidence, namely that the Deceased's expressed intentions vis-à-vis Elfed were one part of his expressed intentions concerning all three of his children: his intended provision was that Elfed would get his farm and Gareth and Carys would get his shares in the Company. In her witness statement, Carys remarked, "This seemed logical given that Elfed has always been with a very keen interest in farming whilst I had always shown more interest in the Company"; and she proceeded to explain that she and her husband had relied on this understanding by devoting themselves to the Company in ways they would not otherwise have done (statement, paragraphs 17 to 19). Again, Siôn stated:

> "1 was also aware that Gareth was to inherit the shares my grandfather owned in the family building company, along with Carys. The company had always been very successful and was well-regarded in the local area. My father was a shareholder in the building company and would occasionally work on the building site during quiet periods on the farm, but this became less frequent in recent years. My father concentrated his efforts on the farm, with Carys and Gareth concentrating on the building company."

Stephen's evidence was to the same effect.

87. As things turned out, the Company proved not to be a source from which substantial financial provision could be made to Gareth and Carys. Mr Troup accepted that the failure of the Company was, in principle, capable of being relevant to the question of unconscionability. However, he went on to submit that it should be disregarded and treated as irrelevant, on the grounds that proprietary estoppel concerns the promisor's position only vis-à-vis the promisee and not as regards third parties. Although it is of course true that one is concerned with the conscionability of the promisor's conduct vis-à-vis the promisee, I do not accept that latter submission as it stands. It is to abstract the representation to Elfed from the context that was correctly identified by Judge Jarman. Mr Troup also submitted that there had been "a fork in the road", with Gareth and Carys taking one fork (that is, the Company) and Elfed taking the other (the farm) and that each must abide by his or her "bargain". This is not in my view an appropriate characterisation of the position, either legally or factually, and does not reflect the careful way in which Judge Jarman expressed his findings regarding representations and assurances. It is unhelpful to impose on the case an artificial analytical framework, although I certainly bear in mind that Elfed devoted himself to the farm while his siblings devoted themselves to the Company. Again, Mr Troup submitted that the failure of the Company ought to be disregarded because it was due

to Gareth's mismanagement. I do not consider that that is established by the evidence. Even if it had been established, it would at most be a matter to be taken into account; it would not justify disregarding the failure of the Company. I note, incidentally, that the Deceased clearly did not regard the failure of the Company as a misfortune to be visited on Gareth.

88. In my judgment, when making an overall assessment of unconscionability the court is entitled to take into account the failure of the Company and its implications for the Deceased's known desire to make substantial and broadly fair provision for all three of his children.

89. Fourth, that change of circumstance led the Deceased to make provision for Gareth by means of Yr Efail. The counterclaim being advanced by Gwen and Stephen would remove all provision from him. Mr Troup boldly submitted that the remedy for this would lie in Gareth's own hands, because he could bring his own claim in proprietary estoppel for the Deceased's shareholding. I did not regard that as an attractive submission: first, proprietary estoppel claims are often complex, time-consuming and expensive, as this case illustrates; second, as Mr Troup observed, Gareth was privy to the Deceased's decision to leave the shares in the residuary estate and would have a hard time complaining about it now; third, the shares do not have a very substantial value. The submission seems particularly unattractive, as it was Mr Troup's instructing solicitors who urged Gareth to forego any claim he might have to ownership of the Deceased's shares by *inter vivos* transfer. (As I understand it, Gareth's concession that he would not assert his right to the shares was made after the judgment of the Court of Appeal had been delivered.)

90. I should, perhaps, add that in his submissions Mr Troup raised the possibility that, if I were not minded to order full enforcement of the representations and direct the transfer of Yr Efail to Gwen, I might grant her an option to purchase Yr Efail at a heavily discounted price of one-third to one-half of its market value. That possibility, not previously raised, would leave Gareth with something from his father's estate. As I do not consider that any equity arises in the present case, I need not consider why justice might require such a course.

91. Fifth, there is the sad fact of Elfed's death. On behalf of Gwen and Stephen, Mr Troup accepted that this was potentially relevant to the assessment of unconscionability. The part it plays in that assessment must be a matter for me. In my judgment, it has substantial significance.

    1) The promise or assurance was that the farm would go to Elfed when the Deceased died. That became impossible. To regard this as relevant is not, as Mr Troup complained, to try to convert the representations found by Judge Jarman into conditional representations. It is, in the first place, to acknowledge that people commonly work on the basis of unspoken assumptions, often giving no thought to the possibility that the assumed facts may be falsified. I see no reason to think that the Deceased contemplated that most unthinkable of thoughts, that his son would predecease him. Anyway, it is a simple fact that Elfed was unable to inherit the land. Yr Efail could never be his.

2) That simple fact does not mean that no equity can arise in favour of Elfed's estate. Yet it remains relevant. The promise was given to him. Any reliance and any relevant detriment were his. It was he who was the passionate farmer; that is why he was to have received the land, not the shares.

3) Further, although the question of inheritance by Elfed's family remains, this is not a case that engages the "soul-destroying, gut-wrenching realisation of being deprived" of which Lord Briggs spoke in *Guest v Guest* when identifying the harm caused by repudiation of the promise. Stephen and Geraint, in particular, show significant displeasure at the fact that Yr Efail has not passed to Elfed's estate. But the promisee himself was never able to suffer the harm of which Lord Briggs spoke, for the sad but obvious reason that he was already dead.

4) As Yr Efail cannot go to Elfed, the counterclaim is for an order that Yr Efail be transferred to Gwen as executrix of his estate. Gwen would also be the beneficiary of the counterclaim, as she is the beneficiary of Elfed's estate. Gwen is not a farmer, though she is said to assist Geraint with his farming operation, and there is no reason to think that she has need of Yr Efail. Geraint does farm, but it appears that the scale of his operations is reduced from those of Elfed. The Deceased's cattle had been sold and Yr Efail let to a third party before the Deceased's death. The evidence does not establish that Yr Efail is required for Geraint's farming operations, and his witness statement made no attempt to suggest that it was. (Indeed, I note that in cross-examination Stephen denied that Elfed had needed the Deceased's land.) And as I have previously mentioned, Elfed's testamentary intentions, to which effect was given by his will, did not involve leaving the agricultural land to Geraint: everything was left to Gwen. Further, the provisions of the will were such that, if Gwen had predeceased Elfed, the farmland would not have gone to Geraint: the estate was to be shared equally among Stephen, Siôn and Geraint. All of this indicates what I think appears from the evidence as a whole, namely that the counterclaim is really about increasing the value of the assets available to Elfed's family. That is a perfectly legitimate purpose. But it has to be considered in the context of the other circumstances, including the changes of circumstance effected by Elfed's death and the failure of the Company.

92. In conclusion, having regard to all the circumstances, including the promises and the reliance, Elfed's expenditure of time and money and the substantial benefits he received from the symbiotic relationship with his father, the failure of the Company, Elfed's death, and the provision made in the 2016 Will both to Elfed's family and to others, I do not consider that it was unconscionable of the Deceased to leave to Elfed's family only the agricultural land apart from Yr Efail. For this reason, the question of remedy does not arise.

Conclusion

93. The counterclaim fails and will be dismissed.