



Neutral Citation Number: [2025] EWHC 2796 (Ch)

Case No: PT-2018-000874

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

Rolls Building
Fetter Lane,
London, EC4A 1NL

Date: 29 October 2025

Before :

MR JUSTICE RICHARDS

Between:

ADAM CLIVE SCOTT

Claimant

-and-

- (1) THE ESTATE OF RICHARD NORMAN SCOTT**
(2) JENNIFER SCOTT
(3) TANYA SIMISTER
(4) REBECCA ELIZABETH HORLEY
(5) GORDON REDGRAVE SCOTT
(6) WILLIAM REDGRAVE SCOTT
(7) SARAH JANET SCOTT

Defendants

Constance McDonnell KC and Amy Proferes (instructed by JMW Solicitors LLP) for the Claimant

Alex Troup KC and Daniel Soar (instructed by IDR Law Limited) for the Second Defendant

Hearing dates: 9-29 July 2025

Approved Judgment

This judgment was handed down remotely at 10.30am on 29 October 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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Mr Justice Richards:

PART A - INTRODUCTION

Overview of the dispute and the key individuals involved

1. This is a dispute about the estate of the deceased, Richard Norman Scott (**Richard**), who died on 3 June 2018 and promises that he is said to have made to one of his children, Adam Clive Scott (**Adam**).
2. The dispute sadly involves a number of members of the same extended family. In those circumstances, I will tend to refer to family members, and people close to the family, by their first names as that is the way they referred to each other in their witness statements, oral evidence and contemporaneous documents. I adopt this approach only in the interests of readability and intend no disrespect or lack of formality in doing so.
3. The individuals central to the dispute can best be described by reference to the three enduring romantic relationships of Richard's life. Richard's first marriage was to Janet Bradshaw (**Janet**), who sadly died in a car accident in 1976. Richard and Janet had six children, of whom Adam was the second oldest. After Janet's death, Richard had a relationship with Valerie Haberfield (**Valerie**) although they never married or had children. In August 1993, Richard met Jennifer Redgrave (**Jennifer**), who was many years his junior. Richard and Jennifer had seven children together including the Fifth and Sixth Defendants (**Gordon** and **William** respectively) and were married in April 2016, just over two years before Richard's death. Richard also had other children from more casual relationships over the years bringing to at least 19 the total number of children that he fathered.
4. There are three distinct strands to the dispute that I must resolve in this judgment:
 - i) the **Proprietary Estoppel Claim** by which Adam asserts that he is entitled to an equitable remedy arising out of promises that Richard made to him during his lifetime;
 - ii) the **Probate Claim**, by which Adam asks the court to determine that wills that Richard made in September and December 2016 (the **Disputed Wills**) were invalid because Richard lacked testamentary capacity and/or that those wills had not received Richard's knowledge and approval;
 - iii) the **Sham Tenancies Claim**, by which Jennifer asks the court to declare that certain tenancies that Richard granted to Adam during his lifetime were shams and thus of no legal effect.
5. Before the trial commenced, there were other matters for determination:
 - i) Adam sought injunctions restraining Jennifer, Gordon and William from trespassing on his land or performing acts of harassment. That claim was compromised by Jennifer, Gordon and William giving undertakings to the court. I was not invited in closing submissions to make any findings as to the extent of any harassment or trespass that had taken place historically.

Approved Judgment

- ii) Adam sought orders that Jennifer should not be permitted to act as executor to the extent that either of the Disputed Wills was found to be valid. The parties agreed that any question as to Jennifer's ongoing suitability as executor or otherwise was best deferred until after judgment since by then the extent of the interests of the various parties in Richard's estate would have been clarified.
 - iii) Adam also made an application under s117 of the Senior Courts Act 1981 seeking the appointment of an independent professional to administer Richard's estate pending judgment. After hearing brief oral argument, I made an interim order and gave oral reasons, adjourning the substantive application until after judgment.
6. The following table summarises key individuals who will be referred to throughout this judgment.

Name	Referred to in judgment as	Description
Richard Norman Scott	Richard	The deceased
Adam Clive Scott	Adam	Second child of Richard and Janet. Claimant
Richard Harry Scott	Richard Harry	Richard's eldest child (with Janet). Witness for Adam
Rachael Shorthose	Rachael	Child of Richard and Janet. Witness for Adam
Rebecca Elizabeth Horley	Rebecca	Child of Richard and Janet. Fourth Defendant. Witness for Adam
Giles Scott	Giles	Child of Richard and Janet. Witness for Adam
Sarah Scott	Sarah	Child of Richard and Janet. Seventh Defendant. Witness for Adam
Jennifer Scott	Jennifer	Richard's wife at his death. Second Defendant
Gordon Redgrave Scott	Gordon	Richard's eldest child (with Jennifer). Fifth Defendant
William Redgrave Scott	William	Child of Richard (with Jennifer). Sixth Defendant
Valerie Haberfield	Valerie	Richard's former partner and long-term friend. Witness for Adam
Melanie Seymour	Melanie	Adam's former wife. Witness for Adam
Kate Sutherland	Mrs Sutherland	Paralegal who drew up the Disputed Wills. Witness for Jennifer
Louise Eccleston	Ms Eccleston	Solicitor and partner at Storrar Cowdry. Acted for Richard in connection with proceedings in Court of Protection
Professor Alistair Burns	Professor Burns	Consultant psychiatrist. Jennifer's expert witness on mental capacity
Dr Hugh Series	Dr Series	Consultant psychiatrist. Adam's expert witness on mental capacity
Rostons	Rostons	Single joint expert on valuation

7. The third Defendant is not a family member and is party to this litigation in her capacity as executor of the Disputed Wills.

The Farm and the land comprised in it

8. All of the various strands to the dispute touch upon the ownership of farm land in the north of England (the **Farm**). Adam's legal team helpfully prepared a table summarising the various parcels of land which I have adapted as follows:

Description	Referred to in judgment as	Current valuation	Further information
Moat Hall Farm (including land at Pear Tree Farm and Beech Farm Marthall)	Moat Hall Farm	AVVP: £3,139,460 MVVP: £3,589,460 MVET: £2,153,676 AVET: £1,883,676	166.25 acres. Currently owned by Richard's estate. Richard lived here. Bed and breakfast (B&B) conducted in other buildings here. Tenancies over fields at Moat Hall Farm and Beech Farm Marthall are the subject of the Sham Tenancies Claim.
Hole Farm, Wilmslow	Hole Farm	AVVP: £1,000,000 MVVP: £1,950,000	61.54 acres. Currently owned by Richard's estate.
Beech Farm Wilmslow	Beech Farm, Wilmslow	AVVP: £1,074,240 MVVP: £1,074,240	59.68 acres. Currently owned by Richard's estate. Richard originally purchased in Valerie's name. 49 Hough Lane (see below) was carved out of this title.
49 Hough Lane	49 Hough Lane	MVVP: £600,000	2.12 acres. Currently owned by Adam. A source of friction between Richard and Richard Harry (see paragraph 141). Richard arranged for Jennifer and her children to live here between 2002 and 2016.
Giantswood Farm (aka Manor Farm and Claphatch Farm)	Giantswood	AVVP: £1,253,400 MVVP: up to £3,683,200 (see paragraph 13 below).	Richard transferred to Adam in 2002. Currently 53.67 acres, after Adam sold 35 acres to Castle Green Homes in 2021 for £8,750,000.
Land on A34 near Congleton	Verlux Land	AVVP: £77,500 MVVP: £77,500	5.17 acres. Purchased into an offshore company as part of Richard's and Adam's dishonest, but never implemented, plan to deal with tipped waste at Giantswood (see paragraphs 159 to 161). Adam acquired title by adverse possession by concealing material facts (see paragraph 175). He has transferred some land to the Council for no consideration pursuant to a compulsory purchase order and Rostons' valuation is of the part remaining.
Marthall Mill	Marthall Mill	MVVP: £2,290,000	3.13 acres. Adam's residence which he obtained from Richard in 1986 effectively at no cost as part

Approved Judgment

			of Richard's fulfilment of his promise to set Adam up in farming (see paragraph 106.i))
Land at Hulme Walfield, Smithy Lane	12 acres at Congleton	AVVP: £208,250 MVVP: £208,250	12.25 acres. Currently owned by Richard's estate.
Stocking Moss Field	Stocking Moss Field	AVVP: £128,550 MVVP: £128,550	8.57 acres. Freehold currently owned by Estate
Land at Fallows Hall	Fallows Hall Farm	AVVP: £61,250 MVVP: £61,250	2.45 acres. Currently owned by Richard's estate.
Strip of land at Thrushes Mead	4.5m Strip	AVVP: £10,000	Currently owned by Richard's estate. Strip of land within Beech Farm, Wilmslow. Provides access to 49 Hough Lane.

Valuation matters

9. The table in paragraph 8 above draws on the conclusions of Rostons' report as single joint expert on valuation matters. By way of explanation:
 - i) "AVVP" refers to the agricultural value of land assuming vacant possession. That is the value of the land assuming that it could be used only for agricultural purposes.
 - ii) "MVVP" refers to the market value of land assuming vacant possession. Market value may be higher than agricultural value where, for example, it is used, or could be used, as a dwelling or number of dwellings.
 - iii) "AVET" and "MVET" refer to valuations assuming that land is encumbered by the tenancies whose validity is disputed as part of the Sham Tenancies Claim. Rostons' conclusion is that the tenancies in question reduce the value of the relevant land by some 40%.
10. Even though Rostons were single joint valuation experts, both Adam and Jennifer invited me to depart from their valuations in certain respects. Jennifer's evidence was that Rostons' valuations were in some cases at odds with (higher) offers that she had received to purchase part of the estate and suggested, therefore, that in some cases Rostons had undervalued the estate. Adam suggested that Rostons' valuation of 49 Hough Lane was too high as it overlooks the fact that the property is landlocked and can be accessed only via the 4.5m Strip.
11. Adam resisted Jennifer's suggestion that the valuation should be increased. He argued that the "offers" on which Jennifer relied were insufficiently firm to have any impact on valuation. He came close to suggesting that Jennifer had engineered a situation where friends of hers made artificially high offers with a view to influencing values and so increasing the consideration that she and others would share if Adam did indeed have an option to purchase property at probate value. Mr Troup KC realistically accepted in closing submissions that it was difficult for the court to assess the genuineness or otherwise of offers that Jennifer had received. Rostons provided their perspective on the effect of those offers in a further written report and concluded that they had no effect on

Approved Judgment

value. Their analysis struck me as cogent and reasonable. I see no reason to depart from conclusions on value expressed by an independent expert.

12. In a similar vein, I see no reason to reduce the valuation of 49 Hough Lane. I have only Adam's non-expert and self-interested opinion that 49 Hough Lane is indeed "landlocked" and I have no reliable alternative expert opinion as to the value of 49 Hough Lane even if Adam were correct.
13. In answer to questions from the parties, Rostons acknowledged in a letter of 8 July 2025 that their report overlooked that part of Giantswood benefited from outline planning permission for commercial development and so may be worth £2,595,000 although they acknowledged that this value may not be achievable as the cost of electricity connection might be high. The remainder has agricultural value only which Rostons put at £1,088,200. I have concluded that the MVVP of Giantswood is somewhere between £1,253,400 (the value in Rostons' original report) and £3,683,200 (the value derived from their letter of 8 July 2025). I express no view on where precisely in the range the MVVP falls. That is because Rostons, having overlooked the planning permission that benefited part of Giantswood, as they accept, have not performed a rigorous valuation of that part of the land, including by considering the practicability or otherwise of securing an electricity connection to that part of the site.

The testamentary documents

14. Richard executed a large number of documents expressed to be wills during his lifetime. Many of these could not take effect as valid wills because, for example, they were not witnessed by two witnesses. In some cases there is a dispute as to whether an invalid "will" represented Richard's testamentary intentions at all, with Adam arguing that Richard prepared some of these documents to placate Jennifer, perhaps knowing that they were invalid when executed.
15. Without in any way pre-judging this debate, I will as a shorthand refer to all of the documents that Richard executed that were expressed to be wills as "**Wills**" whether or not they could validly take effect as wills. By far the most important of the Wills are the following:
 - i) The valid will of 23 June 1995 (the **1995 Will**) as that is the Will which Adam says embodies the promises that form the basis of the Proprietary Estoppel Claim, principally the asserted promise that (i) Adam would obtain a long-term tenancy of the Farm after Richard's death and (ii) would have the right to purchase the entire Farm (as encumbered by that tenancy) for its probate value.
 - ii) The invalid Wills of 22 January 2003 and 24 September 2007 (the **2003 Will** and the **2007 Will** respectively) since Jennifer argues, but Adam disputes, that these show a change in Richard's testamentary intentions that was communicated to Adam at the time of their execution.
 - iii) The valid Will of 12 May 2015 (the **May 2015 Will**) since this is the first valid will that Adam argues fails to give effect to promises made during Richard's lifetime.

Approved Judgment

- iv) The valid Will of 25 May 2016 (the **May 2016 Will**) which all parties agree to be valid and, in particular, to have been executed at a time when Richard had testamentary capacity.
 - v) The valid Wills of 9 September 2016 and 19 December 2016 (the **September 2016 Will** and the **December 2016 Will** respectively) since these are the two Disputed Wills that are the subject of the Probate Claim.
16. Adam's legal team prepared a very helpful schedule setting out all Wills that were disclosed and summarising their key terms. In preparing this judgment, I have read all the Wills referred to in that schedule. This, however, is not a case that centres on the meaning of particular provisions in particular Wills and, where it is necessary to refer to particular terms of Wills, I will do so in the text of the judgment that follows. It is sufficient to note by way of introductory remarks that none of the Wills made after 1995 contains any of the promises summarised in paragraph 15.i) which form the basis of the Proprietary Estoppel Claim.

PART B - UNCONTROVERSIAL CHRONOLOGY

17. The function of this Part B is to set out a broadly uncontroversial chronology of relevant events which will serve as a framework for the findings in disputed areas that follow in later sections.
18. Richard was born on 27 July 1936. He had three siblings and, when his father died, he inherited one quarter of his father's farm which was then known as Moat Hall Farm. To address the problem, familiar in the farming community, of a farm being subdivided into shares too small to make each individual share viable, Richard bought out his three siblings' shares.
19. Richard married Janet in 1960. He and Janet had six children: Richard Harry, Adam, Rebecca, Rachael, Giles and Sarah.
20. During his marriage to Janet, Richard had various extramarital relationships which produced six other children. Richard had little contact with these other children with the exception of Dr Julie Ann Walkden (**Dr Walkden**) who traced Richard in 2008 and re-established contact with him.
21. Richard augmented the inheritance that he had obtained from his father by purchasing other farmland in Cheshire and, to his mind, "improving" that land. In the 1960s, he enlarged Moat Hall Farm by purchasing adjoining land at Pear Tree Farm and Beech Farm Marthall, Fallows Hall and Davenport House Farm.
22. In 1974, Richard was sentenced to five years in prison for arson. He was released from prison in 1976.
23. Janet died in a road traffic accident on 29 February 1976. Richard formed a relationship with Valerie in 1977 and she moved in to Moat Hall Farm. Valerie and Richard's mother helped to bring up Richard's children although four of them, Richard Harry, Adam, Rachael and Giles were also sent to boarding school.

Approved Judgment

24. In June 1979, Richard purchased Beech Farm, Wilmslow (including the site that was to become 49 Hough Lane). By this time, it had become clear that Richard's ideas of what constituted an "improvement" to farmland did not always coincide with those of the planning authority or his immediate neighbours. Richard deployed a number of sharp practices in connection with this purchase to circumvent likely objections (see paragraph 86). Those practices included purchasing the land in Valerie's name rather than his own.
25. Adam started at Liverpool University in 1980. He graduated with a BA honours degree in Geography and Biology in 1984. While Adam was at university, Richard was convicted of perverting the course of justice and reckless driving on 1 November 1983 and sentenced to 12 months in prison. Adam took on a leading role at the Farm while Richard was in prison, working extremely hard to combine this work with his academic studies.
26. Richard was released from prison in 1984. There was tension between Richard and Adam following his release described in more detail in paragraph 100. Following an argument in 1985, Adam left the farm to take a job as a kitchen designer in Liverpool. However, a reconciliation followed shortly thereafter and Adam returned to work on the Farm. In paragraphs 102 to 105 I make factual findings on the circumstances that persuaded Adam to return.
27. In 1986, Adam acquired a three-acre plot of land at Marthall Mill from Richard and, after a tussle with the planning authorities, obtained planning permission to build his house there which was completed in around 1994. These circumstances are the subject of detailed factual findings in paragraphs 107 and 108 below.
28. On 24 April 1987, Richard transferred 49 Hough Lane to Richard Harry. He did so hoping that Richard Harry would stay at the Farm and could build a house there. However, there were difficulties in securing the necessary planning permission and Richard Harry ultimately left the Farm following an argument with Richard. Certain aspects of later transactions involving 49 Hough Lane are disputed and are the subject of findings in paragraphs 138 to 144 below.
29. In 1988, Adam purchased Beech Farm Marthall at auction for £32,010, funding that purchase with a bank loan. He subsequently sold Beech Farm Marthall to Richard for £32,500 in 1993. Adam's case is that he gave £30,000 of the sale proceeds to Richard to enable him to settle a tax liability. That is disputed and the transactions in Beech Farm Marthall are the subject of specific findings in paragraphs 135 to 137 below.
30. On 30 November 1988, Richard granted the first tenancy (the **1988 Tenancy**) that is at issue in the Sham Tenancies Claim. That tenancy was, or purported to be, of a total of 145 acres of land at Moat Hall Farm comprising Bin Field, Front Field, Moat Croft, Oliver's Field, Middle Field, and Egerton Field. The annual rent expressed to be payable was £7500.
31. In March 1989, Richard sold the farmhouse at Moat Hall Farm and moved into a bungalow (the **Bungalow**) at Pear Tree Farm.
32. Adam met Melanie in the autumn of 1990 and they were married on 1 October 1994. They went on to have three children: Hannah born in June 1997, James born in March 1999 and Sophie born in February 2004.

Approved Judgment

33. In 1992, Adam injured his back in a car accident. Shortly thereafter he stopped working full-time at the Farm and took a job at an estate agents in Macclesfield (**Bridgfords**). In 1993, he moved into the financial services division of Bridgfords which put prospective homebuyers in touch with prospective lenders in return for a commission. Adam's starting salary at Bridgfords was £6,000 per year with a £30 commission payable for each of his sales that proceeded to exchange of contracts. After he moved into the financial services division, his basic salary increased to £8,000 per year with commission payable in addition.
34. On 31 January 1993, Richard granted or purported to grant Adam the second tenancy that is at issue in the Sham Tenancies Claim (the **1993 Tenancy**). The 1993 Tenancy was expressed to be over some 12.6 acres at Beech Farm Marthall in return for an annual rent of £600.
35. By 1993, Richard's romantic relationship with Valerie had come to an end and she moved out of the Bungalow. Richard met Jennifer in or around August 1993.
36. In 1994, Richard and Richard Harry had a serious argument that resulted in Richard Harry leaving the Farm and not speaking to his father for several years. At or around this time Adam left his job in Bridgfords and returned to working full-time on the Farm. The circumstances that led to Adam returning to the Farm are considered in paragraphs 110 to 120 below.
37. Between late 1994 and early 1995, Richard and Adam entered into a partnership whose business involved running car boot sales on various fields at the Farm. I refer to the partnership, its business and individual car boot sales generically as the "**car boot**" which was the expression that Richard, Adam and others in the family used at the time. The car boot became very successful with some findings as to its profits, and how those profits were split, set out in paragraphs 146 to 156.
38. On 23 June 1995, soon after Gordon was born, Richard made the 1995 Will. The terms of the 1995 Will are considered in paragraph 114. However, by way of very broad overview the 1995 Will sought to keep the Farm intact and gave Adam a central role in the future of the Farm by granting him tenancies and the right to purchase the Farm at probate value.
39. In around 1998, Richard converted two tractor sheds close to the Bungalow for the purpose of starting a bed & breakfast business (the **B&B**). Valerie returned to the Farm to help to run the B&B. There is a factual dispute as to who was entitled to profits of the B&B business between 1998 and 2011 when the business was acquired by Moat Hall Motel Limited which is addressed in paragraphs 183 to 184 below.
40. In May 1998, Cheshire County Council (the **Council**) required Richard to remove waste dumped on Giantswood within nine months. That marked the beginning of a protracted dispute with the Council that caused Richard real anxiety. Richard and Adam contemplated an underhand solution to the issue that involved moving the waste to the nearby Verluxe Land hoping that, since the Verluxe Land was owned by an offshore company, the Council would be powerless to take action. However, they never implemented that plan since the Council was ultimately persuaded to permit the waste to remain on Giantswood provided that it was incorporated into the construction of a fishing pool. As part of that arrangement, Richard transferred Giantswood to Adam in 2002 for

Approved Judgment

a consideration of £500. Fuller findings on this important episode are set out in paragraphs 157 to 173 below.

41. Between the date of the 1995 Will and the date of the 2003 Will, Richard had four more children with Jennifer in addition to Gordon: Zoe, Beatrice, William and Connie. The invalid 2003 Will made provision for all of Richard's children with Jennifer. The terms of the 2003 Will were significantly different from those of the 1995 Will. In particular, it did not seek to preserve the Farm intact and did not give Adam the central role that he enjoyed pursuant to the 1995 Will. It is a matter of significant dispute whether the 2003 Will represented Richard's true testamentary intentions and whether Richard told Adam about it at or around the time he made it. Findings on these issues are set out in paragraphs 121 to 127 below.
42. By the time of the invalid 2007 Will, Richard and Jennifer had had two further children: Lewis and Angus. Similar issues arise in relation to the invalid 2007 Will which had a similar structure to the 2003 Will, albeit with somewhat different detailed terms.
43. In 2010, Adam and Melanie separated. They divorced in 2012. Adam and Richard between them sought to hide some of Adam's assets from Melanie hoping that this would result in Adam having to pay a lower amount by way of divorce settlement. Instances of this behaviour are set out in paragraph 153 and 162 below.
44. In 2010, the Council published the Local Plan Strategy for Cheshire East 2010-2030 (the **Local Plan**) that identified part of Giantswood as being suitable for development for housing and industrial use. Publication of the Local Plan did not of itself mean that Giantswood would be developed, but the value of Giantswood increased because of the likelihood that it would.
45. In 2011, Richard started to suffer from disrupted speech. It took some time for doctors to diagnose Richard's condition correctly. Initially, it was thought that he had a language presentation of Alzheimer's disease. However, it ultimately became clear that he was actually suffering from fronto-temporal dementia (**FTD**) with progressive nonfluent aphasia (**PNFA**). Findings as to Richard's medical condition, and the various diagnoses and mis-diagnoses that were made, are set out in paragraphs 243 to 262.
46. In late 2011, the B&B business was acquired by Moat Hall Motel Limited, a company of which Adam was the sole director and shareholder.
47. On 2 July 2012, Richard made lasting Powers of Attorney (**LPAs**) giving Adam and Jennifer the power to act on his behalf in relation to both health/welfare and property affairs. The LPAs were registered with the Office of the Public Guardian (**OPG**).
48. On 6 September 2013, in response to various incidents of erratic behaviour, at Adam's instigation, Richard's GP, together with a psychiatrist (Dr Kumar), the police and two nurses visited Richard at the Bungalow to assess whether he should be sectioned under the Mental Health Act 1988. Richard was not sectioned. Richard was angry and upset when he discovered that Adam was behind the attempt to have him sectioned.
49. In 2013 and 2014, Richard made a number of invalid home-made Wills in substantially similar form. These Wills contained different terms from the 2003 Will and 2007 Will but, like those Wills, did not confer on Adam the central role that he had under the 1995

Approved Judgment

Will such as the right to a tenancy of the Farm or the right to purchase the Farm at probate value.

50. On 23 December 2013, Adam took a copy of one of these Wills to Napthens solicitors (**Napthens**) to request advice on whether Richard was entitled, as Adam saw it, to resile from promises that he had made during his lifetime. Napthens advised that Adam could not bring a proprietary estoppel claim during Richard's lifetime. It was common ground before me that this advice was incorrect and that the fact that Richard was still alive did not preclude a claim.
51. Adam's concerns about Richard's mental state continued. In July 2015, he contacted Richard's GP and social services saying that Richard was being violent to Jennifer and her children. That led to an investigation by the social services which was eventually closed, but Richard and Jennifer's children were placed on a safeguarding register for a period. Richard was angry with Adam for reporting him to the social services in this way.
52. In 2016, Jennifer and Richard decided to marry. They fixed on a date of 1 April 2016. However, the wedding did not go ahead on that date because Adam expressed concerns about Richard's mental capacity. The wedding did go ahead some three weeks later on 22 April 2016 with the registrar of marriages being satisfied that Richard had capacity.
53. On 25 April 2016, Richard sent a letter to the OPG revoking the LPAs he had given to Adam and Jennifer (see paragraph 47 above). He would eventually replace these LPAs with new LPAs granted to Jennifer and Gordon which were registered with the OPG on 27 January 2017.
54. Jennifer and her children moved into the Bungalow in May 2016. At or around this time, Adam gave Richard notice that he wished to dissolve the car boot partnership. Richard also made the May 2016 Will following meetings with Mrs Kate Sutherland of Beswick's solicitors. All parties agree that the May 2016 Will is valid.
55. Sometime in 2016, after Richard and Jennifer got married, Moat Hall Motel Limited was dissolved. In early 2017, the B&B business became owned by a different company, Chelford B&B Limited. Chelford B&B Limited had 12 shares in issue, with Richard, Jennifer and Gordon holding four shares each. Richard, Jennifer and Gordon were the three directors of Chelford B&B Limited.
56. In June 2016, Adam issued proceedings in the Court of Protection seeking a determination that Richard lacked capacity to manage his own affairs.
57. Throughout 2016, there were disputes between Richard (and Jennifer) and Adam that eventually became litigious. Jennifer and Richard believed that Adam was trespassing on Richard's property and misappropriating his farm machinery. In August 2016, Geoffrey Cogan (**Mr Cogan**) of Storrar Cowdry agreed to act for Richard in connection with that dispute and sent a letter to Adam's solicitors requiring Adam to cease the conduct complained of.
58. On 5 August 2016, Adam applied to be registered as proprietor of the Verluxe Land by way of adverse possession. That application was successful and he was registered as proprietor with possessory title in February 2017.

Approved Judgment

59. In September and December 2016, Richard had discussions with Mrs Sutherland, a paralegal, about what was to become the September 2016 Will and the December 2016 Will. Mrs Sutherland made notes of some of her discussions with Richard and findings as to her views on Richard's capacity at these times are set out in paragraphs 275 to 277 below.
60. The Court of Protection proceedings required that there be an independent assessment of Richard's mental capacity. That assessment was performed by Professor Burns on 19 November 2016. Professor Burns concluded in his report of 2 December 2016 (the **2016 Burns Report**) that Richard had sufficient capacity to manage his own property and affairs. Conclusions on the competing expert opinions of Professor Burns and Dr Series as to Richard's mental capacity are set out in paragraphs 301 to 310 below.
61. On 27 July 2017, the Council formally adopted the Local Plan. This resulted in a further increase in the value of Giantswood since the prospects of development increased further.
62. Richard died on 3 June 2018.
63. In February 2021, Adam sold 35 acres of Giantswood to a developer for £8,750,000. Findings on this increase in Giantswood's value are set out in paragraphs 171 to 173.

PART C – CONCLUSIONS ON WITNESS EVIDENCE

64. The Proprietary Estoppel Claim involves assertions about promises that Richard is said to have given Adam up to 40 years ago as part of oral discussions between members of the same family. Of course, Adam's recollection of these promises is not the only evidence that is tendered in support of his case. He has also called a large number of witnesses who had some connection with him or the Farm at the relevant time to provide their own recollections of what Richard, Adam and others were saying and doing at the relevant times. However, it is appropriate to bear in mind the well-known observations of Leggatt J (as he then was) in *Gestmin SGPS S.A. v Credit Suisse Limited* [2013] EWHC 3560 (Comm) at [15] – [22] as recently summarised by Mark Cawson KC sitting as a deputy High Court judge (now Cawson J) in *Glenn v Walker* [2025] EWHC 1286 (Ch) at [10] to [17]. Shortly put, human memory is fallible. The process of repeatedly recalling events that took place a long time ago as part of a protracted litigation process can result in a witness inaccurately reconstructing those events so that they support a particular side's case. This can happen without any deliberate attempt to give false evidence but inevitably the risk is greater in the case of a witness who is a party to the litigation and who has a self-interest in a particular factual position being accepted as true.
65. Because of this risk, I will throughout this judgment seek to test the evidence of witnesses' oral recollections against contemporaneous documents and events, and other known or agreed facts (see, for example the observations of Males LJ in *Simetra Global Assets Limited v Ikon Finance Limited* [2019] EWCA Civ 1413 at [48]).
66. I also assess the witness evidence by considering the inherent probability of their evidence (judged against contemporaneous documents and events) and also my conclusions as to the reliability of that witness's evidence. By "reliability" I do not mean impressionistic observations as to the demeanour of a particular witness when giving evidence. Rather, I consider, for example the internal consistency of that evidence with what the witness has said or done on other occasions. I also consider whether there are

Approved Judgment

reasons why the witness might not be telling the truth or whether there might be other reasons, such as self-interest or a personal animus against other individuals, that might cause that witness's perception of events to be distorted.

67. I will not provide a thumbnail sketch of all the many witnesses who gave evidence as any such sketch would necessarily be very roughly drawn and unnecessary. Unless I say otherwise, it can therefore be assumed that I considered all of the witnesses who gave evidence were seeking to assist the court even if I have not ultimately accepted the version of events that they put forward. Rather, I focus on those witnesses whose evidence was at the centre of the dispute and whose credibility was the subject of significant challenge.

Adam

68. The parties agreed that Adam should be treated as a vulnerable witness for the purpose of Practice Direction 1A. He suffers from dyslexia and I had findings and suggestions from Ali Comline, a specialist assessor, as to adjustments that could usefully be made for him when he was being cross-examined. Happily, the parties were able to agree the necessary adjustments between themselves. Mr Troup KC agreed to avoid long phrases, unnecessary terminology and "two-staged questions" during cross-examination. Frequent and regular breaks were scheduled during Adam's cross-examination. I took care to ensure that Adam had sufficient time to assimilate parts of a written document to which he was referred before being called upon to answer a question.
69. In my judgment, the arrangement held up well. On a few occasions Ms McDonnell KC intervened, justifiably, during cross-examination to ask that a question be split into component parts. However, those occasions were few and overall I concluded that Mr Troup KC adhered to the agreed ground rules. I also observed Adam carefully during his cross-examination. Although he was cross-examined for a long time, I did not at any point feel that he was struggling to understand questions that were put to him or extracts from documents that he was invited to read. While it was clear that he found cross-examination tiring, that is true of most witnesses and in my judgment, the regular breaks meant that he did not find the process more tiring than a witness without dyslexia would find it. I do not accept Ms McDonnell KC's submission that Adam struggled to follow long questions or could not follow questions put to him about asserted inconsistencies between his witness evidence and his pleaded case. Aside from the small number of occasions on which she asked for questions to be rephrased, no such suggestion was made during Adam's cross-examination.
70. It became clear during Adam's cross-examination that he is prepared to act in a misleading and underhand way to further his interests. For example, he sought to hide his assets from Melanie during the course of their divorce. He made misleading statements to support his claim for adverse possession of the Verluxe Land. He was prepared to go along with Richard's dishonest plan to move tipped waste from Giantswood to the Verluxe Land and also the plan to understate the takings of the car boot. These instances, of course, do not of themselves mean that Adam was lying in sworn evidence given in these proceedings. However, they have introduced real doubt in my mind as to whether Adam can be relied upon to give dispassionate and objective evidence on matters within his own knowledge and concerning his own interest. I have therefore tested his evidence carefully by reference to contemporaneous documents and events.

Approved JudgmentJennifer

71. I have also treated Jennifer's evidence with a good degree of caution. It became clear shortly before the trial that Jennifer has been using assets of Richard's estate to fund her personal interests in this litigation without disclosing that to Adam. When cross-examined, Jennifer appeared to accept that this was wrong but said that she had no other option available to her. This episode did Jennifer no credit. Whether she felt she needed the money or not, it was simply not hers to use and the failure to disclose the matter was an aggravating factor.
72. That does not of course mean that other parts of Jennifer's evidence were necessarily untrue. However, it does raise the question as to whether she truly would give objective, dispassionate and complete evidence on matters solely within her own knowledge. My concerns in that regard were amplified by the fact that she holds a strong personal animus against Adam. That caused aspects of her evidence to be at odds with reality. For example, she was quite wrong to suggest that Adam's role on the Farm was simply akin to that of any farm hand, or that Richard regarded Valerie as just "staff". Her suggestion that Adam was to blame for the fact that Richard chose to house her and her family in caravans and a windowless home strained credulity. So did her statement in cross-examination that all of the witnesses Adam had called to give evidence on things that Richard said while working on the Farm were lying. I doubted Jennifer's ability to give dispassionate evidence on matters in which Adam was involved and my impression of her evidence has therefore suffered as a result.

Valerie

73. Valerie is elderly, but there was no suggestion that she was a vulnerable witness. She gave her evidence remotely over Microsoft Teams. No one suggested during Valerie's cross-examination that she was having difficulty following questions that were put to her. However, in closing submissions, after she had given evidence that conflicted with that of Adam about whether there were meetings in 2003 to discuss the 2003 Will, Adam submitted that Valerie was "suggestible, compliant and quick to agree with points put to her" and that she "seemed confused, particularly when taken quickly through documents and in respect of dates when the subject jumped from one time period to another". It was suggested that it was significant that her answers were primarily "yes" or "no".
74. I do not agree with Adam's characterisation of Valerie's witness evidence. My own impression of her evidence was that her answers were often brief, but she considered questions carefully and if she disagreed with something put to her, would say so. She was alive to nuance. So, for example when she was asked about £40,000 in cash that Melanie found hidden in Adam's toilet cistern and it was suggested that Adam would not need to hide "perfectly legitimate money" she made the entirely valid point that the money might be "legitimate" but Adam might nevertheless not want Melanie to know about it. Valerie's evidence was that Adam had no involvement in the B&B until 2011 and when it was put to her that "Richard and Adam" paid her a wage for running the B&B, she was quick to say that Adam paid her nothing because he was not involved in the business.
75. There were occasions on which Valerie became muddled in her timelines. She agreed with a question to the effect that the 1993 Tenancy was granted so that Richard and Adam could hold more car boot sales. That cannot have been correct because the car boot business did not start until 1994. However, Valerie was being asked questions on a

Approved Judgment

chronology of events over 30 years ago. It is not at all surprising that she occasionally got the order of events wrong.

76. Overall, I considered Valerie to be a reliable and honest witness doing her best to assist the court with genuinely objective and dispassionate evidence.

Mrs Sutherland

77. It was, perhaps, slightly surprising that Mrs Sutherland did not know more about the regulatory environment applicable to non-solicitors and the restrictions on conducting reserved legal activities. However, this is not a case that concerns the regulation of legal professionals and her relative lack of knowledge on this topic has not caused me to doubt her evidence. I consider that she was a transparently honest and reliable witness doing her best to assist the court.

Ms Eccleston

78. I do not accept Adam's characterisation of Ms Eccleston as a "defensive and argumentative witness with an obvious investment in [Jennifer's] case". Nor do I accept that her evidence was tainted by undue concern with her professional reputation. I regarded Ms Eccleston as an impressive, reliable and honest witness.

Dr Walkden

79. I agree with Adam that Dr Walkden was a poor witness. She frequently gave long speeches in cross-examination that did not address the question that she had been asked. She also had a strong animus against Adam. I formed the view that Dr Walkden had, in her conversations with Richard late in his life, uncritically accepted his version of his disputes with Adam and others. Lacking the lifetime's knowledge of Richard's character that others had, she was perhaps not equipped to spot Richard's manipulative tendencies or other unsavoury aspects of his character that suggested that his version of events might not be the only one. I have approached Dr Walkden's evidence with caution.

The expert witnesses

80. Various criticisms were made of the expert evidence of Professor Burns and Dr Series. I will deal with those criticisms later in this judgment when considering their evidence on Richard's testamentary capacity. For the time being, I simply record my conclusion that both experts gave their evidence in a dispassionate, independent and scholarly manner although ultimately I have preferred the opinion of Professor Burns to that of Dr Series.

Other witnesses

81. I also had a large quantity of evidence from people who either worked on the Farm, or who knew Adam and Richard (**farm witnesses**), testifying to Richard's repeated public statements that, after he died, the Farm would be Adam's. I am satisfied that all of this evidence was honestly given and reject Jennifer's suggestion in cross-examination that they were all lying.
82. It was helpful to hear that evidence since, given Adam's obvious self-interest, it showed that the evidence of Richard's promises did not just come from Adam's recollections. However, as I have noted in paragraph 88, Richard was quite a private man when it came

Approved Judgment

to sharing the detail of his personal and family arrangements. Richard would not have gone into the details of the 1995 Will with most of the witnesses who gave evidence of his general statements over the years. Therefore, these witnesses could not have spoken to the detail of any promise that Richard gave Adam. Given their lack of knowledge of that detail, in most cases they could not give first-hand evidence as to whether Richard was merely expressing a present intention as to how the Farm would be dealt with, or whether he had crossed over into making promises to Adam.

83. Moreover, the promises that Adam wishes to enforce were detailed and technical. It is said that Richard promised that Adam would obtain a 40-year lease of the Farm after Richard's death and would be granted an option to purchase the Farm at its probate value. None of the witnesses could testify to Richard referring to these promises while working on the Farm. Therefore, there was something of a disconnect between the promises that Adam was seeking to show Richard to have made and the evidence given by the farm witnesses. Adam attached significance to the fact that much of the evidence given by the farm witnesses was not challenged in cross-examination and his legal team prepared a document setting out the evidence that was not challenged. That was helpful to me when navigating the lengthy evidence given. However, since the evidence of these witnesses could say little about the detail of the promises given, it is not significant, at least in most cases, that much of their evidence was ultimately unchallenged.

PART D - FINDINGS OF FACT ON CONTROVERSIAL MATTERS (OTHER THAN THOSE RELATING SOLELY TO THE PROBATE CLAIM)

Richard's character

84. Richard was a domineering individual. He knew his own mind and would frequently become verbally abusive if others did not fit in with his wishes. He sought to exert control over his children both while they were growing up and after they became adults. A telling example of that trait was his insistence that Richard Harry separate from his girlfriend (Maureen) described in paragraph 110 and 111 below and his heartless reaction when Richard Harry would not do so.
85. Richard could be callous and unkind to women with whom he had relationships. Rebecca gave unchallenged evidence of an occasion when he had had a relationship with a woman called "Joan" with Joan claiming that he had made her pregnant. Richard's response was to claim that Joan was lying about the pregnancy and had "just stuffed a cushion up her jumper". He sent Rebecca, then 17, to tell Joan that he would not be seeing her again.
86. Richard was devoted to getting his own way and did not always care how he did so. His first prison sentence, for arson, was a striking manifestation of that character trait. When Richard realised that he could not sell a particular farm and buildings for the price he wanted, he decided to burn down some buildings and obtain his return by making a fraudulent insurance claim instead. However, that was by no means the only example. Richard could be both "sharp" and downright dishonest in his business dealings. When he was purchasing Beech Farm, Wilmslow, he formed the view that the vendors (the Atkins) would not sell if they knew he was the purchaser. He and Valerie therefore pretended that Valerie was the purchaser and Richard pretended to be Valerie's adviser. He persuaded the vendors to let him access the land before completion and took the opportunity to remove trees and hedges so as to forestall tree preservation orders that he thought the local council would make. A still further example of Richard's appetite for

Approved Judgment

dishonesty and sharp practice can be seen in his proposed solution to the problem of tipped waste at Giantswood described in paragraph 159.

87. Richard's love of getting his own way also caused him to be manipulative and deceitful in his dealings with family and friends. A number of witnesses spoke of Richard's "empty promises": made to persuade family members to do something with no intention that Richard would ever honour them. Richard did not just act with cunning and planning to obtain his own way. He would do so impulsively as well. He would give a "clip round the ear" or a "backhander" to children who transgressed. He would throw his wooden clogs at people not performing tasks on the farm to his satisfaction.
88. For all his abrasiveness and appetite for conflict, Richard was quite reserved when it came to discussing personal and financial matters. He tended to discuss matters such as these with his inner circle that consisted of Adam, Jennifer and Valerie. While he was prepared to shout publicly about what might happen to the Farm after he died (generally when berating a member of the family for what he regarded as inadequate work on the Farm), he discussed the detail of those arrangements largely with that inner circle.
89. Richard also had an attractive and charming side. He could be generous. He funded a private education for four of his children with Janet and a number of his children with Jennifer. I do not believe that he did so simply so that he could boast about his children attending private school. Richard did not seem to care much what other people thought about him. Rather, I consider that he had a genuine belief in the value of education, respected knowledge and intellect and was prepared to pay for his children to obtain a good education. I also consider that Richard had a genuine affection for children, at least up to the point at which they became old enough to answer him back.
90. Adam's case involves playing down the importance of Richard's relationship with Jennifer and Jennifer's children with a view to accentuating the importance of promises that he said Richard made to him. In my judgment, that case is overstated. Richard certainly displayed callousness in his dealings with Jennifer. She bore him seven children (with another sadly dying at birth). Between 1994 and 2016, Richard did not live with Jennifer and her children who lived in Jennifer's own house in Macclesfield. In 2002, Richard arranged for Jennifer and her children to live in cold and damp caravans stationed by 49 Hough Lane. From 2008 matters improved because Richard arranged for a cowshed at 49 Hough Lane to be converted into a habitable dwelling. However, Richard's tendency to operate outside the law manifested itself in this as well. Since he had not obtained planning permission for the dwelling, he insisted that the outside windows be boarded up so that passers-by could not see that a family was living there, hoping that if he could get away with this for six years, he would be able to apply for a Certificate of Lawful Use. That cannot have been the ideal environment for Jennifer to bring up a young family.
91. Richard did not permit Jennifer to name him as the father of their children on their birth certificates. However, while callous, there was a reason for this: Richard believed rightly or wrongly that Jennifer's entitlement to state benefits might be affected if he were named as father.
92. A moving letter that Jennifer wrote Richard late in their relationship bears witness to the lack of attention that he gave her. However, for all his callousness, I consider that Richard had some genuine affection for Jennifer and more so for their children (see paragraph 89

Approved Judgment

above). Even when he was living separately from Jennifer, he would spend evenings and nights with her after working on the Farm. He could have treated Jennifer like “Joan” when she first became pregnant with Gordon but he did not do so. He could have declined to marry Jennifer at all, yet he decided to do so and his capacity for marriage is no longer challenged.

93. Richard was a believer in gender stereotypes when it came to his children. He was quite prepared to ask his daughters to work outside at the busy harvest time. However generally his view was that his daughters should do “inside” work and his sons the “outside” work. That meant that when, before he had children with Jennifer, Richard was seeking to identify who would take over the running of the Farm following his death, there were only two candidates: Richard Harry and Adam (Giles being much less interested in the Farm than his brothers). Richard Harry was the older of the two and so, applying traditional criteria, would be considered Richard’s more obvious successor.
94. However, Richard had a much better relationship with Adam. That was partly because, although Richard Harry was a very hard worker, Richard respected intellect and he believed that Adam was cleverer than Richard Harry. However, that was not the only reason. Richard Harry was more obstinate than Adam and would not always fall in with Richard’s wishes (as his relationship with Maureen demonstrated). Moreover, Richard Harry disapproved of Richard’s dishonesty and sharp practice: in his witness statement he described Richard as “bent as a nine bob note” and cited this as a reason why he left the Farm in 1994. Adam was much more tolerant of this: in cross-examination he described his father as an “astute businessman” for the way in which he purchased Beech Farm Wilmslow described in paragraph 86. Adam was also willing to be complicit in his father’s sharp practices (see, for example, his involvement in the plan to move waste from Giantswood to the Verluxe Land described in paragraphs 159 to 162 below, and the under declaration of the car boot turnover described in paragraph 153 below).
95. In his closing submissions, Adam sought to portray his father as motivated by a love of the Farm for its own sake and by a wish that the Farm should in all events continue with a “Scott name” at the helm after his death. I consider that to be overstated. Richard certainly loved farming, although he was adept at ensuring that others did the hard work rather than him. However, Richard was a pragmatist rather than an idealist. He saw the land comprised within the Farm as a means of making money, not necessarily from farming. So, for example, he was astute to the possibility of making large sums of money by operating the car boot at the Farm. He was quite prepared to sell land when he thought he could do so advantageously (for example selling a barn conversion on Pear Tree Farm for £550,000 in August 2002). He was particularly proud of land that he owned in the “golden triangle” in Wilmslow not because of its quality as farmland but because he considered it to be the passport to significant wealth due to its development potential. I acknowledge that when Richard was standing for election, perhaps to a parish council, he prepared a manifesto that emphasised his credentials as a farmer. That does not alter my conclusion on this issue since Richard had an obvious incentive to emphasise (and perhaps exaggerate) those credentials when standing for election.
96. Jennifer gave evidence that Richard turned down an offer by Travelodge to purchase the Bungalow and the B&B for £10 million in 2010. If that were true then it might call into question the analysis that I have set out in paragraph 95 above. However, I was shown no documentary evidence of any such offer being made and have concluded that Richard received no such offer.

Representations Richard made about ownership of the Farm and their effectBefore 1985

97. For much of the period up until 1985, Adam was a child. Richard required both him and his siblings to work on the Farm from an early age and I accept Adam's evidence that he himself did so from about the age of 9. However, Richard made no promises to Adam while he was a child (i.e. up to 1981) that Adam would inherit any particular interest in the Farm when Richard died. Richard's continuing refrain was that the Farm was a family enterprise that provided the funds necessary for the family to enjoy what they had and that it was mandatory for the children to help in that family enterprise. That refrain did not involve Richard bargaining with his children, it involved him imposing his will on them.
98. After Adam started at Liverpool University in 1980, he continued to work at the Farm. That was because he was developing his own strong interest in agriculture, but not because any representations were made to him that he would obtain an interest in the Farm. Adam himself accepted in paragraph 47 of his Fourth Witness Statement that, until the mid 1980s he only had a "hope" that he "would be the farmer for our family one day".
99. After Richard was sent to prison for the second time in November 1983, Adam's efforts at the farm increased. He played a leading role in running the Farm helped by Richard's mother and family friends. Again, however, that was not because Richard made any representations about ownership of the Farm. In part, Adam's work was borne of the necessity that came with his father being imprisoned. In part it was inspired by his burgeoning love of farming.

1985 to 1994 – promises to "set Adam up in farming"

100. Richard's release from prison in July 1984 came at around the time that Adam was completing his university studies. Richard's return caused tension. Adam had been used to playing a senior role at the Farm when his father was in prison, and felt that Richard was continuing to treat him as just another farm worker, without acknowledging either the expertise that he had built up or his wish to develop that expertise further. In early 1985, Adam and Richard had a huge row about whether a field was suitable for lime to be spread on it. Richard would not listen to Adam's (correct) diagnosis that the field was not suitable. Adam left the Farm and took a job as a kitchen designer in Liverpool. Adam's explanation for the reasons he left in cross-examination, which I accept, was as follows:

I wanted to be shoulder to shoulder with my Dad and I wanted him to take me on a journey with the farm. I wanted to be his partner. I wanted him to respect me and help me to become the person I am today, or to become this complete person, to become this person. I did not want to stay being a farm worker. I was better than that.

101. Adam's departure from the Farm suited neither him nor Richard. Adam did not want to be a kitchen designer, as his true love was farming. Richard had lost an able and enthusiastic worker with potential to develop. Both sides were open to a reconciliation which duly came just a few months later.

Approved Judgment

102. I accept Adam's evidence that, as part of the reconciliation, Richard promised Adam that, if Adam returned to work on the Farm, Richard would "set him up in farming". There was considerable debate as to what this promise meant. In my judgment, the promise has to be understood in the context of the row that led to it, and Adam's wish to be "shoulder to shoulder" with his father. Adam and Richard had not fallen out because Adam was pressing for assurances about future ownership of the Farm. They had fallen out because Adam felt he was being treated as just another farm worker and not being afforded the opportunity to develop as a farmer. A promise about future ownership of the Farm after Richard's death would not have addressed Adam's sense of grievance: Richard was just 49 in 1985 and could be expected to live many more years. What Adam felt he needed was an opportunity while his father was still alive.
103. I conclude that the promise to "set [Adam] up in farming" was not a promise about an ownership interest in the Farm after Richard died. Rather, it was a promise about opportunities that Richard would make available to Adam in the years after 1985 while he (Richard) was still alive. Richard was promising that he would ensure that Adam had some land that he could farm as his own, in addition to the work that Adam would be doing on the Farm itself. For that promise to be viable, Adam would need somewhere close by to live. Richard therefore promised Adam that he would sell him some land on which a house could be built. Adam and Richard understood that the necessary planning permission for that house would be forthcoming only if it could be demonstrated that Adam truly had been "set up in farming" so that the house was being used in connection with Adam's profession as a farmer in his own right. "Setting up Adam in farming" would therefore achieve two related aims: it would enable Adam to develop his skills as a farmer and it would be the passport to a successful application for planning permission for a house for Adam.
104. Adam's case is that the promise went further. In his witness statement, he said that the assurances given in 1985 were also to the effect that ultimately he would inherit the Farm and that the Farm would be "mine [i.e. Adam's] to farm as he [i.e. Richard] had". There was some dispute as to whether this formed part of Adam's pleaded case. I consider that it was: it is an aspect of Adam's general case pleaded in paragraph 74 of his Re-Re-Amended Particulars of Claim (**RRAPOC**) that:

Throughout his life Adam had repeatedly been assured by Richard that on his death, Adam would inherit the family business and would be able to farm the entirety of the Farm for the rest of his life.

105. There is some basis in the evidence for a conclusion that Richard made promises of this kind in 1985 as part of the resolution of the row. For example, Rachael's recollection set out in her witness statement was that Richard promised Adam that the Farm would be his to induce him to return. Philip Hampson, who gave Adam flying lessons at the time, recalls Adam telling him that he was not interested in becoming a professional pilot because "his dad promised the farm to him, and he didn't want to give that up". However, these are recollections, well over 30 years after the event of oral conversations. On balance, I conclude that no promises were made in 1985 to the effect that Adam would inherit the Farm on Richard's death because:
- i) A promise of this kind would not address the root cause of the row between Adam and Richard (see paragraph 103 above).

Approved Judgment

- ii) Richard showed himself to be a prolific will-writer. Had he made a promise of this kind, I consider it would have been recorded in either a professionally drawn, or home-made, will.
 - iii) Richard had not yet alighted on the idea (ultimately embodied in the 1995 will) of giving Adam a 40-year tenancy of the Farm, coupled with a right to buy it at probate value which would enable Adam to continue farming while preserving some benefits for his siblings. If Richard promised Adam the Farm in 1985, he would be promising it at the expense of his other children and I do not consider he would have done that since Richard showed a constant preoccupation, throughout his life, of reconciling the competing interests of his many children.
106. Between 1985 and 1994, Richard sought to honour the promises that I have summarised in paragraph 103:
- i) In 1986 Richard sold Adam land at Marthall Mill. The purchase price expressed to be payable was £3,182.75. At the time, Adam did not have that amount of money. Richard arranged for Adam to “borrow” the purchase price from his mother (Adam’s grandmother). Adam was unable to say whether he ever repaid his grandmother and I conclude that he did not. Adam therefore effectively obtained Marthall Mill for no consideration.
 - ii) Some time in 1987 Richard helped Adam to enter into an informal arrangement under which Adam farmed some 340 acres at Hulme Hall. The farm was held by a Mr Arthur Frith under a tenancy granted by ICI. Mr Frith was in financial difficulties and could not farm the land himself. Richard helped to secure an arrangement under which Adam farmed the land instead, in return for a rent paid either to ICI or to Mr Frith.
 - iii) Richard granted Adam the 1988 Tenancy and the 1993 Tenancy whose validity is challenged as part of the Sham Tenancies Claim.
107. Richard and Adam hoped that, having been set up in farming, Adam could make a successful application for planning permission to build a home at Marthall Mill (see paragraph 103 above). The letter setting out the decision on Adam’s successful appeal referred to in paragraph 27 reveals that the Planning Inspectorate attached significance, when considering the viability of Adam’s proposed farming operation, to the 1988 Tenancy. Little significance was attached to the 340 acres at Hulme Hall because the Planning Inspectorate concluded that the arrangement under which Adam farmed that land was insecure. The Planning Inspectorate considered the “reality” of Adam’s leases from Richard concluding “I am in no doubt that [Adam] is setting up a different farming unit from his father”.
108. Following the grant of planning permission, Adam proceeded to build a house at Marthall Mill. Much of the work done by specialist tradesmen, such as bricklayers, electricians and plumbers, was paid for by Richard. Adam and Richard Harry also contributed to a “team effort” performing non-specialist tasks. Marthall Mill was not available for use as a home until around late 1994.
109. Some circumstances beyond Richard’s control resulted in setbacks to the promise to “set Adam up in farming”. In November 1992, ICI took back possession of the land at Hulme

Approved Judgment

Hall that Adam was farming (see paragraph 106.ii) above). ICI paid some compensation to Mr Frith and Mr Frith evidently shared some or all of that with Adam, who received some £27,000. However, both Richard and Adam had honoured the bargain that they struck in 1985 and were working well together.

1994 to 2003 – promises regarding ownership of the Farm

110. Richard's thoughts started to turn to what would happen to the Farm after he died. In 1994, he was 58 and suffered, or thought he suffered, from poor health. He had recently started his relationship with Jennifer, who was many years younger than him and was pregnant with Gordon, who would be born in September 1994. On 5 April 1994, Richard executed a home-made will that was validly executed and witnessed by two witnesses. This document is deeply flawed in terms of its drafting and clarity. However, it provides a good insight into Richard's preoccupations at the time:
- i) He sought to balance the interests of his 6 children by Janet with the interests of Gordon (as yet unborn). He clearly did not consider his children by Janet all to deserve the same inheritance. Richard Harry was to get nothing unless he gave up his relationship with his girlfriend at the time (Maureen). Giles and Rachael were to get much less than Rebecca and Sarah.
 - ii) He did not want the Farm to be sold in the short term. That gave rise to a conundrum as, since the Farm was his main asset, his children could not receive anything unless the Farm was sold. His (imperfect) solution to the conundrum was that Adam was to be given five years "to sort things out in an ongoing way". When those five years had elapsed it was assumed that Adam would be "ready to distribute my assets".
 - iii) He must have regarded this will as a means of exerting his will over Richard Harry. There would be no point in making a will like this and not telling Richard Harry about it. Richard had clearly taken against Maureen, wanted Richard Harry to give up his relationship with her and hoped that the threat of no inheritance would induce him to do so.
111. The 1994 Will gives some insight into the very difficult relationship between Richard and Richard Harry that I have already mentioned in paragraph 94. Richard was unkind to Richard Harry. He compared him unfavourably to Adam, belittled him, and sought to control him by demanding that he bring his relationship with Maureen to an end. Even when giving evidence at trial 30 years later, Richard Harry was still obviously hurt by these events. In 1994 Richard Harry decided that he had had enough. He left the Farm, took a job as an HGV driver and did not see his father for at least 10 years.
112. Richard Harry's departure from the Farm meant that Richard needed Adam's help at the Farm. In 1992, when Adam took his job at Bridgfords, Richard considered that it would be useful experience for Adam, and experience on which Richard could draw, since the farming business necessarily involves buying and selling land from time to time. However, Adam's "sabbatical" at Bridgfords had shown him another possible career. Working at Bridgfords was far from being Adam's vocation. He much preferred working on the Farm with his father. However, Adam showed real aptitude for the job at Bridgfords. Shortly after starting, he was outperforming his much more experienced colleagues in terms of the value of sales made. Adam moved over to the financial services

Approved Judgment

division of Bridgfords where there was the opportunity to earn significant sums in commission from introducing prospective home purchasers to mortgage lenders.

113. Richard had kept Adam on relatively short rations since 1985. However, by October 1994, Adam was married to Melanie. It was realistic to expect that they would have children and that Adam would need more money. Adam was earning a decent salary at Bridgfords with the prospect of earning more and was working much less hard than he did at the Farm. In those circumstances, Richard would have realised that, if he did not offer Adam more, the risk was that he would no longer be willing to work at the Farm, much as he loved the farming business.
114. Conceivably, Richard could have offered Adam “more” by paying him money. A calculation from around this time suggests that Adam believed that he was owed some £106,000 by Richard that related to receipts of the farming business that Adam carried on alone but which had been paid into Richard’s account. However, Richard placated Adam, not with a payment of money, but with assurances as to ownership of the Farm after Richard’s death. Those promises were embodied in the 1995 Will executed on 23 June 1995, the salient features of which were as follows:
 - i) Adam was to have the right to farm various farms specified in the will (the **1995 Will Farms**) for a period of 40 years in return for a rent of £10,000 per year together with Adam’s agreement to pay interest on debt secured on the Farm. A specimen form of agricultural tenancy was annexed to the 1995 Will.
 - ii) After legacies of £10,000 to Valerie and Jennifer, the residue of the estate was left to Richard’s six children with Janet together with Gordon, who was around 9 months old at the time. (The effects of the row with Richard Harry lingered as he was to take his share only on attaining the age of 65).
 - iii) Adam was to have the right (exercisable within 5 years of Richard’s death) to purchase the 1995 Will Farms at their probate value. Since the 1995 Will Farms would be encumbered by the tenancies described in paragraph i) above, that would be a significant discount to the unencumbered market value of those farms.
115. Adam argues that these promises were made much earlier: oral closing submissions on Adam’s behalf suggested that they might have started in 1991. I do not agree. In 1991, as I have concluded in the preceding section, Richard was focusing on fulfilling the promises to “set Adam up in farming”. I am quite prepared to accept that, in 1991, Richard was starting to float the idea that Adam would take over some ownership interest in the Farm and I quite accept that workers on the farm at that time might have heard statements from Richard that were consistent with that idea. However, a catalyst was needed for that idea to harden into a promise and that catalyst was Richard Harry’s departure from the Farm.
116. The Defendants invite me to conclude that Richard did nothing more than tell Adam of his then present intention to deal with the Farm in that way. They invite me to conclude that Adam’s recollection that Richard made a promise as to how the Farm would devolve after his death is self-serving and untrue in the light of their criticisms of Adam’s reliability and credibility as a witness.

Approved Judgment

117. I do not accept that. In paragraph 70, I have set out above my conclusions on Adam's credibility as a witness. Those conclusions have caused me to assess his evidence critically. However, I have accepted Adam's evidence that, in or around 1995, Richard promised him that the Farm would be dealt with in the manner summarised in paragraph 114 above provided that Adam continued to work at the Farm. I reach that conclusion, not just because of Adam's evidence, but because it is consistent with the matters described in paragraphs 109 to 113. Richard needed Adam at this point in his life. He would have felt that a mere statement of present intentions would be insufficient.
118. The Defendants placed some emphasis on aspects in which Adam's witness statement was said to go further than his pleaded case on the 1995 Will. However, I did not regard these instances as significant. Adam's pleaded case in paragraph 41 of his RRAPOC was that the 1995 Will embodied promises that had been made to him orally. I did not consider it to be objectionable that Adam's witness statement provided more colour to that pleaded case. Nor do I accept the Defendants' argument that Richard did not even show Adam the 1995 Will and that Adam only found out about it when (on the Defendants' case) he stole some of Richard's private papers in 2016. The document was intended to reflect promises that Richard made to Adam in or around 1995 and would have been shown to Adam when executed.
119. The Defendants place much emphasis on Richard's tendency to make "empty promises" to which I have referred in paragraph 87 above. They point out that Adam's pleaded case was that Richard had promised him, following the transactions involving Beech Farm Marthall described in paragraphs 135 to 137 that Adam would have that farm back when Richard died and a tenancy for life in the interim. However, the 1995 Will made no special provision for Beech Farm Marthall. I agree that Richard did, on occasions make "empty promises". The arrangement in relation to Beech Farm Marthall clearly altered after 1993. However, even if he broke other promises, the promise that I have summarised in paragraph 117 was genuinely made and Richard intended Adam to act on it by committing his future working life to the Farm. Moreover, it was reasonable for Adam to expect the promises to be honoured: he was being asked to make a significant decision about his future career on the strength of Richard's promises and could reasonably expect that Richard would be true to his word even if he had made empty promises in the past.
120. The promises that Richard made acted as an inducement to Adam to continue to work on the Farm and not to pursue other careers (for example a career at Bridgfords) for which he had aptitude. I do not accept Jennifer's argument that Adam would have acted as he did, even without promises by Richard, because of his love of farming. Working at Bridgfords was certainly not Adam's dream job. Farming with his father was. However, many people, constrained by matters such as the need to earn a reliable income at a particular level, decide not to take their dream job and instead do something more humdrum. In my judgment, the promises that Richard gave to Adam made it practicable for him to take his dream job at the Farm. Without those assurances, he would, no doubt reluctantly, have decided to do something like the job at Bridgfords.

2003 to 2007 – the landscape changes

121. Adam does not plead that Richard made any further promises as to his future ownership of the Farm after he acquired Giantswood in 2002. Adam's case rather is that he continued to rely on the representations that were reflected in the 1995 Will.

Approved Judgment

122. On 22 January 2003 and 24 September 2007, Richard purported to make two further wills (the **2003 Will** and **2007 Will**) which were invalid because they were witnessed by only a single witness. By the time of the 2003 Will, Richard had four more children with Jennifer. By the time of the 2007 Will, he had two further children with Jennifer (see paragraph 42 above).
123. Both the 2003 and the 2007 Will were imperfect documents. The 2003 Will was in the form of a draft that had been prepared by a firm of solicitors which Richard simply purported to execute (even though it still contained empty square brackets in which further details were intended to be included). The 2007 Will was home-made and although it dealt with certain of Richard's properties, it contained no express gift of residue. The 2007 Will was accompanied by a "Letter of Wishes", also home-made, in which Richard expressed the hope that Jennifer, Adam and Valerie would "co-operate in the interests of those who have the greatest need, which are Jennifer's children".
124. The 2003 Will and 2007 Will set out a very different vision from that contained in the 1995 Will. Whereas Adam was at the centre of the 1995 Will, was to be granted 40-year tenancies of the 1995 Will Farms and had an option to purchase those farms at probate value, he had no such central role in the 2003 Will and the 2007 Will. Strikingly, the 2003 Will and 2007 Will contain no mechanism to require the Farm as a whole to continue to be operated as a farm. The 2003 Will provided for certain specific land to pass to Adam. It also envisaged that Jennifer could call for a tenancy of properties in the parish of Marthall. However, those provisions aside, the 2003 Will contained no provisions that would have prevented the Farm being sold and proceeds distributed to beneficiaries. The 2007 Will positively required Adam and Valerie to surrender "certain very loose tenancies". Absent the hope set out in the Letter of Wishes, the 2007 Will does not seek to prevent any sale of the Farm.
125. Adam denies having been told about either the 2003 Will or the 2007 Will when they were made. Jennifer says that Richard discussed both Wills with her, Valerie and Adam at meetings at the Bungalow at or around the time they were made. I have concluded, on a balance of probabilities, that Jennifer is correct and that Richard did discuss the Wills with Adam and so did tell him that his plans for the Farm after his death had changed. I reach that conclusion for the following reasons:
 - i) Adam presents the 2003 Will and 2007 Will as documents that Richard prepared, perhaps knowing that they were invalidly executed, to placate Jennifer. That does not sit comfortably with my conclusions as to Richard's personality: he showed little tendency to placate anyone whose wishes were at variance with his own.
 - ii) There was an objectively comprehensible reason why Richard might want to change his mind about the division of the Farm after his death. He had had many more children with Jennifer and treated those children much like his children with Janet: paying for a private education for them, for example. Adam argues that the structure of the 1995 Will was just as appropriate once those further children were born as they could share, just like the other children, in Richard's estate after effect was given to his 40-year tenancy and option to purchase. However, that overlooks an important point. The more children Richard had, the greater Adam's proportionate interest was compared with each of those other children. It made sense that Richard might revisit whether the arrangement set out in the 1995 Will remained fair.

Approved Judgment

- iii) Richard might, perhaps, have kept the 2003 Will and 2007 Will secret from Adam if he felt that they were somehow discreditable or short-changed Adam. He might also have done so if he and Adam were not getting on well at the time. However, in both 2003 and 2007, Richard and Adam were getting on well. Richard could quite genuinely feel that, viewed in the round, Adam was not being short-changed. Since the 1995 Will, Adam had received Giantswood that, even in 2003 was generating sufficient farming subsidies to help to pay for a private education for two of his children (see paragraph 171). Adam was also doing well out of the car-boot business.
 - iv) In cross-examination, Valerie accepted that she had been present at a meeting in Richard's bungalow at or around the time of the 2003 Will. She said that Richard and Adam had also been there, although she could not be sure whether Jennifer was there too. She agreed that Richard explained to Adam that events had moved on since the 1995 Will since Adam had received Giantswood and Richard had had more children with Jennifer.. Adam argues that I should give this evidence little weight as Valerie was suggestible and her cross-examination was characterised by her giving short "Yes" answers to questions. I do not agree: see my conclusions on Valerie as a witness set out in paragraphs 73 to 76.
 - v) I accept, of course, that Valerie's recollection might be faulty. However, she was not just recalling a particular meeting in 2003. Her evidence was that there was a pattern of behaviour that involved Richard discussing important changes to his wills with herself and Adam and, perhaps, Jennifer. On balance, I consider that Valerie's recollection, being consistent with other evidence, is likely to be correct. Since Richard explained the 2003 Will to Adam, I infer he did the same with the 2007 Will. I am reinforced in that conclusion by the fact that the Letter of Wishes that accompanied the 2007 Will included statements to the effect that Jennifer, Adam and Valerie "have said that if all the others act sensibly and honourably they will all cooperate with one another". That is suggestive of the kind of prior discussion that Valerie mentioned and I see no reason why Richard would wish to record conversations that had not taken place.
 - vi) Jennifer relies on an entry she made in her diary on 14 September 2007 reading "Meeting with Adam, Val, me & Richard at Bungalow!". Adam has served a notice under CPR 32.19 requiring the authenticity of that entry to be proved at trial. Submissions on Adam's behalf came close to suggesting that Jennifer had forged the diary entry, but no allegation of forgery was put to her in cross-examination. I will not conclude that the diary entry was forged. Rather, since it is consistent with the reasoning outlined above, I conclude that there was, as Jennifer says, a meeting in the Bungalow on that date at which the 2007 Will was discussed.
126. Adam argues that he cannot have been told about the 2003 Will or the 2007 Will at the time they were made because, if he had, he would have taken legal advice on his rights as he did in 2013 (see paragraph 50 above). I do not agree. The fact that Adam took legal advice in 2013 does not compel the conclusion that he would have considered the terms of the 2003 Will and the 2007 Will to be objectionable at that earlier stage in his life. In 2003 and 2007, Adam was still married to Melanie and so did not have the financial obligations associated with his divorce settlement. In 2003 and 2007, Adam and Richard were getting on well and working effectively together with none of the bitterness and rancour that characterised their relationship after 2013.

Approved Judgment

127. I conclude that:

- i) The 2003 Will and 2007 Will, even though they were not valid wills, represented Richard's testamentary intentions at the time.
- ii) The change in testamentary intentions as compared with the 1995 Will was driven by a change in circumstances, principally the fact that Richard had had more children with Jennifer and the fact that Adam had benefited from the transfer of Giantswood to him.
- iii) Adam was told about the 2003 Will and the 2007 Will at or around the time they were made. He was told that Richard no longer stood by the promises that had been embodied in the 1995 Will. Adam was, at the time, satisfied with the arrangements in the 2003 Will and 2007 Will because he was doing a job that he enjoyed, was doing sufficiently well financially from that job, from farming subsidies at Giantswood and from the car boot to enjoy a good lifestyle that involved sending his children to private school.

2007 to 2013

128. Adam does not plead that Richard made any new representations to him about ownership of the Farm in this period. However, Adam continued to work very hard at the Farm between 2007 and 2013 and argues that he did so in reliance on the earlier promises that were recorded in the 1995 Will. For reasons set out below, I am unable to accept that submission.
129. Adam was told both in 2003 and in 2007 that, because of a change in circumstances, the original promises were no longer operative. Adam was not, at the time, disposed to object to the change in the arrangement. I am quite prepared to accept that Adam might have hoped that Richard might change his mind in the way that people often hope that they will obtain more than they are expecting. However, that hope did not represent the operative reason why Adam continued to work at the Farm. He certainly could not have continued to work on the Farm because he expected Richard to honour promises embodied in the 1995 Will as he had been told unambiguously that those promises were no longer operative.
130. I infer that Adam continued to work on the Farm between 2007 and 2013 at least initially for the same reasons that caused him not to object to the terms of the 2003 Will and the 2007 Will described in paragraph 127.iii). His financial situation worsened after he divorced from Melanie as he needed to pay Melanie £1,500 per month and pay £2,182.42 per month on his loan from Barclays (see paragraphs 179 and 181 below). His evidence was that at this time, Richard was still paying him just £1,000 per month. I infer that this modest sum, when put together with his share of profits on the car boot, and farm subsidies on Giantswood were sufficient to enable Adam to pay his increased expenses and have something left over for his own use. Adam may well have been short of money after his divorce from Melanie, but that does not mean that he was working on the Farm in reliance on promises made in 1995.
131. I do not consider that analysis to be altered by the fact that, in law, neither the 2003 Will nor the 2007 Will was valid. The significant point is that Richard told Adam that his intentions had changed and that the original promise, embodied in the 1995 Will, was no

Approved Judgment

longer operative. Adam's evidence was not that he was told about the 2003 Will or the 2007 Will but, because he believed them to be invalid, he thought that the 1995 Will and the promises documented in it remained operative. Instead, his evidence, which I have rejected, was that he was never told about the 2003 Will and 2007 Will. I am not prepared to find that Adam believed the 2003 Will and 2007 Will were invalid when he was told about them.

132. Nor do I accept Adam's point that it was not put to him in cross-examination that, between 2007 and 2013, he was no longer relying on promises embodied in the 1995 Will. Adam's whole case was that he was continuing to act in reliance on those promises because he was unaware of the 2003 Will and the 2007 Will. That case was appropriately challenged by testing Adam's evidence as to awareness of those two wills. Now that I have found, contrary to Adam's case, that he did know about the 2003 Will and the 2007 Will the task becomes to determine, by inference from the other facts and evidence, what was operating on Adam's mind between 2007 and 2013.
133. I have reflected carefully on the fact that witness evidence from this period still records Richard, when he was working on the Farm with Adam, referring to what would happen when the Farm became Adam's. Sean Brookes, for example, speaks of an incident in 2010 when Richard was trying to persuade Adam to execute a dangerous manoeuvre when emptying a grain silo saying, "when it's yours, you will have to!" I have no doubt that Sean Brookes was telling the truth about this incident, but it simply emphasises some of the difficulties with the evidence of farmworkers that I have discussed in paragraphs 82 to 83 above. I do not regard Sean Brookes's evidence as inconsistent with the conclusion I have expressed. At this time, Richard was still hoping that Adam would have a central ongoing role in running the Farm after his death as, in the Letter of Wishes, he had expressed the hope that Adam and Jennifer would work together to keep their business intact. Richard was not making a statement about legal and beneficial ownership of the Farm during the incident at the grain silo. Nor was he making a statement about leases, or options to purchase at probate value. He was simply saying that, after Richard had died, he hoped that Adam would still be involved in running the Farm and, if he was, he would have to undertake uncomfortable and unpleasant tasks.

2013 onwards

134. There is no suggestion that Richard made any further representations to Adam after 2013. Nor can I accept that Adam continued to work at the Farm in continued reliance on the 1995 promises. Those promises had been decisively withdrawn and were never revived as none of the Wills from 2013 onwards contains provisions anything like those in the 1995 Will. Moreover the relationship between Adam and Richard started to become rancorous after 2013, although I agree with Adam that it was punctuated with periods of civility and warmth. In my judgment, Adam continued to work at the Farm after 2013 because it was still giving him a decent income (even noting the increase in his expenses following his divorce from Melanie). Additionally, staying at the Farm, and continuing to engage with Richard, was a natural way of countering what Adam saw as the increasing influence of Jennifer over Richard's life.

Beech Farm Marthall

135. There is no dispute that Adam purchased Beech Farm Marthall at auction in 1988 and sold it to Richard in 1993 as described in paragraph 29. What is not agreed is (i) whether

Approved Judgment

Adam sold Beech Farm Marthall to Richard at an undervalue or (ii) whether Adam provided Richard with £30,000 of sale proceeds to enable him to discharge a tax liability.

136. Adam did not strongly pursue either allegation in closing. The only real mention of the issue was in paragraph 69.1 of his written closing submissions which contained an assertion that Richard benefited “by purchasing Beech Farm, Marthall at an undervalue” thereby dealing with assertion (i) in paragraph 135 but not assertion (ii).
137. I reject the argument that Richard purchased Beech Farm Marthall at an undervalue for the simple reason that I have not been shown evidence as to its value in 1993. I also reject the argument that Adam gave Richard £30,000 of the sale proceeds to pay a tax liability. Contemporaneous documentation suggests that Adam used the sale proceeds to discharge a loan from Barclays Bank and that Richard discharged a tax liability of £36,000 that arose in the 12 months preceding 23 May 1994 out of the profits of his farming business. In his RRAPOC, Adam pleaded that Richard had made a specific promise that Beech Farm Marthall would be transferred back to him on his death. It was not clear to me whether that case was pursued in closing. However, for completeness, I find that there was no such promise since there was no reason for it in circumstances where I am not persuaded that Richard had purchased Beech Farm Marthall at an undervalue or that Adam gave Richard the purchase price back.

49 Hough Lane

138. The parties agree about the events described in paragraph 28. However, various aspects of subsequent transactions involving 49 Hough Lane were more controversial and I make the following findings.
139. As I have noted, Richard liked to use nominees to hold property when it suited him. He came to persuade himself that the transfer to Richard Harry was not an outright transfer, but rather involved Richard Harry holding the property as his nominee. I make no finding as to whether that was correct as a matter of law. Richard’s view was probably influenced by his perception that a purpose of the transfer was to help Richard Harry to secure planning permission. When that planning permission was not forthcoming, and particularly after his falling-out with Richard Harry, Richard concluded that the transfer had never been made outright.
140. Even though it had been registered in Richard Harry’s name since 1987, Richard treated 49 Hough Lane as his own, arranging for Jennifer and her children to live there, first in static caravans, and later in the converted cowshed (see paragraph 90).
141. In 2013, Richard asked Richard Harry to give him 49 Hough Lane back, because he wanted to transfer it to Jennifer. Richard Harry did not want to do so but also did not want a protracted row with his father following a refusal. He therefore transferred 49 Hough Lane to Giles reasoning that Giles would be better placed to bear the brunt of Richard’s wrath when the property was not transferred back. Richard was very angry about this manoeuvre since he believed that the property was not Richard Harry’s to deal with and that 49 Hough Lane belonged, and continued to belong to him (Richard).
142. Giles eventually transferred 49 Hough Lane back to Richard Harry in 2017. By then, Jennifer and her children were no longer living there as they had moved into the Bungalow. Richard Harry perceived, rightly or wrongly, that Jennifer had left the

Approved Judgment

property in a poor condition. Richard Harry, Adam and a friend of theirs called Peter Clodd-Broom visited Hough Lane in 2017 to secure the property and change the locks. They met Jennifer there. Some sort of row ensued and the parties have very different accounts of what happened. However, no side invites me to make findings as to what happened and I will not do so.

143. In 2020, Adam bought 49 Hough Lane from Richard Harry for a purchase price of £40,000. Later that year he obtained a valuation from I C Macklin FRICS who valued the property at around £45,000. That valuation conflicts sharply with Rostons' valuation of £600,000. Adam's explanation is that, when the valuation of £45,000 was obtained, he had not been able to find the Certificate of Lawful Use which enabled 49 Hough Lane to be used as a dwelling (thereby significantly increasing its value) whereas Rostons had found that document.
144. At first sight, that is a slightly surprising explanation. I C Macklin is a Fellow of the Royal Institute of Chartered Surveyors and could be expected to find a Certificate of Lawful Use in just the same way as Rostons. However, I C Macklin's report stated expressly that it had been prepared having been "informed" (I infer by Adam) that no Certificate of Lawful Use was ever issued. Therefore, the report suggests that I C Macklin did rely on Adam's researches as to whether there was a Certificate of Lawful Use. I am prepared to accept that Adam might not have found that, even though Rostons did. Moreover, if Adam had bought the property for just £40,000, knowing that it could lawfully have been used as a dwelling, he would necessarily have been practising a deceit on his brother that cost him a large amount of money. I see no reason why Adam would behave that way to his own brother, and indeed Richard Harry did not suggest in his own evidence that he felt he had been cheated.
145. Adam's other reason for the low valuation of £45,000 was that 49 Hough Lane was effectively "landlocked" without the benefit of the 4.5m Strip. I do not accept that. I C Macklin's report is expressly prepared on the assumption that access from the carriageway is available.

The car boot

146. Richard and Adam agreed that profits generated by the car boot partnership would be split 50-50. Planning requirements meant that only 14 car boot sales could be held on any particular field at the Farm. Richard granted, or purported to grant, leases of particular fields to Adam and to Valerie and eventually persuaded the Council that 14 car boot sales could be held on each field meaning that up to 42 car boot sales could be held per year. That was plenty from Richard's and Adam's perspective since the car boot sales would be most lucrative at weekends and bank holidays when the weather was good.
147. The business model of the car boot involved charging prospective purchasers a relatively modest sum to visit and park their car. When the car boot started in 1994, purchasers were charged £1 per car with the price rising to around £3 per car by 2014. Sellers would be charged more: a seller would be charged £10 per car and £15 if it had a trailer. A seller arriving in a van would be charged around £20 for admission.
148. Richard and Adam also charged Jayne Henderson, who ran a catering business, "rent" for the right to sell food at car boot sales. Initially, she paid that on a weekly basis out of revenue that she generated from sales. However, as the car boot became more successful,

Approved Judgment

she paid a flat rate per year for the right to operate burger vans at the car boot. In 2014 she was paying somewhere between £20,000 and £25,000 per annum (which she paid in two equal instalments).

149. Adam did disclose accounts for the car boot business. However, most of those did not find their way into the trial bundle, perhaps because Jennifer has changed solicitors in the course of this litigation. I was shown a set of accounts for the year ended 5 April 2014 which suggested that the car boot business had a turnover of £55,660 in that year and £54,380 in the previous year to 5 April 2013.
150. It is quite clear that the accounts to 5 April 2014 were inaccurate and the car boot business generated much more than those accounts stated. Adam accepted as much in cross-examination. Terry Henderson's evidence was that there were "normally" around 300 to 400 sellers and there must have been many more customers to make the event worthwhile for that number of sellers. Valerie was prepared to accept that on one really good day, the car boot had generated £20,000 in revenue from buyers and sellers.
151. There was a reason to understate the car boot's turnover. Adam and Richard had received advice to the effect that their partnership was a separate entity for VAT purposes and therefore they would not need to account for VAT on admission charges provided that the partnership had a turnover below the relevant VAT threshold (some £81,000 in 2013).
152. Adam sought to blame Richard for the under-declaration of the turnover of the car boot business. He said that he received only the £12,086 stated in the 2014 accounts and Richard must have taken the balance of the partnership's true profits. He said that, because of concerns that he might be made jointly and severally liable for tax on the partnership's profits and/or unpaid VAT, in later years he refused to sign the partnership accounts.
153. I do not believe that Adam was the innocent he claimed to be in this regard. He had shown a willingness to be involved in his father's dubious activities involving the Verlux Land (see paragraphs 161 and 162) and I infer that he would have been just as willing to go along with the plan to understate the car boot's turnover. Moreover, when Adam was in the process of getting divorced from Melanie, Adam and Richard concocted a plan to obscure the extent of Adam's interest in that business in the hope that it would lead to a reduced divorce settlement. Richard deployed a stratagem with which he was familiar by purporting to make Valerie a partner in the car boot business in Adam's place so as to give the misleading impression that Valerie was entitled to 50% of the car boot profits rather than Adam. However, Valerie was a partner in name only: she had no entitlement to profits at all, as she accepted in cross-examination. Adam would only have gone along with this scheme if he felt that there was something valuable worth hiding from Melanie.
154. While she was in the process of getting divorced from Adam, Melanie found £40,000 in cash in a toilet cistern at Marthall Mill. That cash must have come from the car boot business as there was no suggestion that any other operation at the Farm generated this quantity of ready cash. More specifically, it must have come either from Jayne Henderson as described in paragraph 148 or by abstracting it from the general cash receipts of the business. Adam's case is that the money was not his: it belonged to Richard and, because Richard was spending his nights with Jennifer he asked Adam to look after it to guard against the money being stolen in a burglary. That matter was not explored with Adam

Approved Judgment

in cross-examination and I am prepared to accept that the particular £40,000 belonged to Richard rather than Adam.

155. However, that simply emphasises that the car boot business was generating a large quantity of cash profit that was not reflected in the formal accounts. The car boot was a 50-50 partnership between Richard and Adam. While Richard and Adam were trying to hide Adam's share from Melanie during their divorce, Valerie certainly was not receiving 50% of the profits. Adam's case is that he obtained a share only of the car boot's declared profits with Richard pocketing the undeclared profits. I consider that to strain credulity. It would make no sense for Adam to work in the car boot business, take the risk associated with being a 50-50 partner in a business that was not recording its full takings to HMRC and yet share in none of the cash that was abstracted from the business. Moreover, Adam's account involves the proposition that Richard was cheating him, by keeping all of the abstracted cash, and then emphasising the scale of that cheating by asking him to look after £40,000 of the proceeds. That too strains credulity. I recognise that Melanie gave evidence suggesting that only Richard benefited from undeclared cash at the car boot, but I have concluded that Adam did not give her the full picture (see paragraph 182 below).
156. Closing submissions on behalf of Adam emphasised that he had disclosed all accounts of the car boot partnership. I accept that. However, in circumstances where the accounts of the partnership did not reflect the true position, this is not indicative of complete transparency as regards the car boot. I conclude that Adam benefited from 50% of all profits of the car boot business, including those profits that were not recorded in the partnership accounts. I cannot quantify those sums. I conclude only that the benefits were significant. Moreover, the benefits were connected with Adam's decision to work at the Farm since the car boot was an aspect of the wider business conducted at the Farm. If Adam had decided, for example, to keep working at Bridgfords, Richard would not have made him a 50% partner in the car boot. None of Adam's siblings who left the Farm to pursue other careers had an interest in the car boot.

Giantswood and the Verlux Land

Tipped waste at Giantswood and the acquisition of the Verlux Land

157. Adam acquired Giantswood from Richard on 21 March 2002 for £500. At the time Giantswood extended to 100 acres. Adam described that purchase as a "hospital pass" in his oral evidence. Jennifer's analysis is the polar opposite: she describes the purchase as being very much to Adam's benefit and, in substance, advance payment of the inheritance he had been promised.
158. The reason for this divergence in views was that, in the 1990s, while he owned it, Richard had allowed some 24,000 m³ of building waste to be dumped unlawfully on Giantswood, in return for payment. The Council required Richard to remove the waste and dispose of it lawfully and Richard's appeal against that decision failed in May 1998. The loss of that appeal was a source of significant anxiety for Richard. Removing the waste could cost more than £700,000 and the value of Giantswood, even with the waste removed, was only some £300,000. Moreover, Richard also faced possible prosecution for allowing the waste to be tipped. In June 1998, Richard's doctor, Dr Reeves, concluded that Richard was depressed and prescribed anti-depressant medication.

Approved Judgment

159. Depressed though he was, Richard looked for an unlawful way out of this predicament. On 3 October 2000, Richard exchanged contracts to purchase the Verluxe Land for £75,000. He then assigned the benefit of that contract to a company incorporated in the British Virgin Islands (BVI), Verluxe Trading Limited. Richard's plan was that, if necessary, he would transfer the building waste to the Verluxe Land hoping that the Council would be stumped by the interposition of Verluxe Trading Limited and not realise that the Verluxe Land was, in reality, under his control. He hoped that any proceedings taken against Verluxe Trading Limited would not have consequences for him.
160. Adam's position in his witness statement was that he knew, in 2000, that Richard had a plan to dump the building waste on the Verluxe Land, but he did not know of Richard's connection with Verluxe Trading Limited because:

If Dad was up to anything he shouldn't have been then he would always keep me out of it because he wanted to protect me.

161. I do not believe that. The establishment of Verluxe Trading Limited involved Adam driving Richard to Luxembourg to meet a Mr Gresty, an acquaintance of Richard, who was in a position to provide some advice as to the establishment of an offshore ownership structure. Richard and Adam must have discussed the plan during their long drive together. I was shown an undated attendance note (quite possibly of advice given by Mr Gresty). That note records preliminary advice on the structure and contemplated that there might in fact be two offshore companies and that Adam might as act as "agent for purchase" and "Offshore Company No.2 leasing the 'good' land to yourselves for a nominal sum" (my emphasis). The flavour of this attendance note is that it records advice given to both Richard and Adam.
162. Moreover, in 2006, Adam was signing authorities giving Mr Gresty and a Ms V Lamy permission to make relevant searches into a company described as "Verluxe (BVI) Company". In July 2010, Adam signed a document that referred to the fact that he had transferred his rights in Verluxe Trading Limited to Richard. At that time, Adam was in the process of getting divorced from Melanie and I infer that the transfer was effected as an attempt to put assets beyond the reach of a divorce settlement, just as had been done with the car boot partnership (see paragraph 153). A file note prepared, apparently, by a solicitor acting for Richard in 2017 (RJB) records that when fees connected with Verluxe Trading Limited's incorporation in the BVI went unpaid, so that the company was on the verge of being struck off, Philippe Aflalo, an agent who helped out with the administration of the company, called Adam with a view to sorting out the problem. M. Aflalo must have thought of Adam as someone who knew about Verluxe Trading Limited and its business.
163. I accept Adam's unchallenged evidence that Richard would frequently ask him to sign paperwork and documents, which he did without question, not wanting to lose time working on the Farm. I can, therefore, quite accept that Adam would not have understood the precise legal effect of some documents that he signed in connection with Verluxe Trading Limited. However, I conclude that Adam understood at least the following matters in general terms:
- i) Verluxe Trading Limited was an "offshore" company in which he and Richard had some sort of shared interest in 2000.

Approved Judgment

- ii) The Verlux Land was to be owned by Verlux Trading Limited from early 2000.
- iii) At least initially, it was necessary for Adam's and Richard's shared interest in Verlux Trading Limited to be kept obscured. That was one of the reasons why the company was incorporated in the BVI. To that end, Verlux Trading Limited would be managed by Philippe Aflalo.
- iv) As part of arrangements to hide his assets from Melanie, Adam transferred his rights in Verlux Trading Limited to Richard in July 2010.

The solution to the tipped waste problem

164. In fact, the plan to move the waste from Giantswood onto the Verlux Land was never implemented because the Council was persuaded to grant planning permission for the construction of a "recreational fishing pool" on Giantswood that incorporated the waste into its construction. Provided that fishing pool was constructed using the waste, a "paragraph 19 exemption" meant that the Council would no longer require the waste to be removed. Given Richard's previous disputes with the Council, it is more likely than not that such an accommodation could not be reached if the Council was relying on Richard to perform his end of the bargain and build the fishing pool using the waste. Therefore, either because the Council insisted, or because Richard and Adam thought it made a deal with the Council more likely, it was decided that Richard would transfer Giantswood to Adam so that Adam, rather than Richard, assumed the obligation to the Council to construct the fishing pool (and so suffered the consequences if the fishing pool was not constructed).

165. To that end, the following steps took place:

- i) In the first few months of 2002, the Council indicated that it would be minded to grant planning permission (to Adam) provided he entered into an agreement under s106 of the Town and Country Planning Act 1990 (a **Section 106 Agreement**) obliging him to construct the fishing pool using the tipped waste.
- ii) The Council's solicitors and Adam's solicitors duly negotiated a Section 106 Agreement before the formal grant of planning permission.
- iii) On 21 March 2002, also before planning permission was granted, Richard transferred Giantswood to Adam for a consideration of £500.
- iv) Negotiations on the Section 106 Agreement concluded satisfactorily. On 9 May 2002, planning permission was formally granted and Adam entered into the Section 106 Agreement with the Council.

166. I infer that it would make little sense for the Council and Adam to spend the time and money in negotiating a Section 106 Agreement unless both sides felt that planning permission was likely to be granted, assuming those negotiations went well. Adam accepted as much in his evidence. I therefore conclude that, on 21 March 2002, when Richard transferred Giantswood to Adam, they would both have thought that there was a good prospect that planning permission would be granted and the waste would not have to be removed. They could not have been certain of this as at 21 March 2002. However, Adam and Richard must have believed the chances were good because Adam said in his

Approved Judgment

witness statement that Giantswood was transferred after planning permission was secured. That was factually incorrect as the chronology in paragraph 165 demonstrates. However, the fact that Adam made this mistake in his witness statement is consistent with him having a recollection that the transfer took place at a time when there was a good chance that planning permission would be granted.

167. That said, Adam took on the obligation to construct the fishing pool. Moreover, the Section 106 Agreement set out certain milestones associated with the construction together with associated financial penalties should the milestones not be met. If Phase One engineering works were not completed within 18 months, Adam would be obliged to pay the Council £250,000. If Phase Two landscaping works were not completed within 12 months after Phase One was completed, Adam would have to pay the Council £140,000. If Phase Three maintenance conditions were not completed within 5 years thereafter, a further £60,000 would be payable. The Section 106 Agreement required Adam to provide a performance bond issued by Barclays Bank Plc that effectively guaranteed those payment obligations.

A “hospital pass”?

168. Adam’s position that the transfer of Giantswood was a “hospital pass” rests on the analysis that he was, personally, taking significant financial risk in agreeing to assume the liability to construct the fishing pool, and the consequences should he fail to do so. His statement, in paragraph 109 of his First Witness Statement, that the transfer of Giantswood released Richard from a threat of bankruptcy, and corresponding risk to the Farm, was not challenged in cross-examination. However, while I can quite accept that Giantswood had been a source of some anxiety to both Adam and Richard, the risk that Adam identifies would materialise only if he was unable (or unwilling) to construct the fishing pool. Ultimately the fishing pool was constructed without the performance bond being called on.
169. Adam has given little contemporaneous documentary evidence as to how the fishing pool came to be constructed, or who paid for it. In paragraph 112 of his First Witness Statement, he stated that he “took out a loan by extending my overdraft in the sum of £50,000 to fund the work required to build the fishing lake and, as mentioned above, gave a £250,000 performance bond in favour of Cheshire County Council”. He suggests that he did that in 1999, but that is likely to be a mistake as he only became obliged to give the performance bond in May 2002. In paragraph 116 of his First Witness Statement, he suggests that he worked on the fishing pool for two years after August 2002 and that the fishing pool project “was finished but came in over budget and required me to extend my overdraft facility to £100,000”.
170. However, even these statements are opaque and do not explain how much the fishing pool cost, or how much of that cost Adam paid himself. Even if Adam did extend his overdraft to £100,000, that does not mean that the fishing pool cost £100,000 to build: if Adam had fully drawn down his overdraft facility of £50,000, then extending that facility to £100,000 is consistent with the fishing pool costing £50,000. Moreover, Trevor Brookes’s evidence is that the fishing pool was relatively small at “about 50 foot”. Given my assessment of Adam’s evidence set out in paragraph 70 above, I approach his evidence on Giantswood with a degree of scepticism since he has an obvious self-interest in exaggerating the amount he spent on the Giantswood fishing pool and he has provided

Approved Judgment

little contemporaneous documentation to back up his assertions. Doing the best I can with the material I have been given, I reach the following conclusions:

- i) Adam did pay for the fishing pool to be constructed and doing so cost him around £50,000. That figure is consistent with Adam's witness evidence. If he had wished to put forward a higher cost, he should have said in his witness evidence what that cost was and backed it up by contemporaneous documentary evidence.
 - ii) The work was completed by August 2004 and Adam and Richard would both have realised well before the works were actually completed that the danger posed by tipped waste at Giantswood had been averted.
 - iii) Taking into account the purchase price of £500 that Adam paid, he therefore spent £50,500 on Giantswood. In return, he obtained a piece of land that was thought to have a value of around £300,000 in 2002 provided that it was not encumbered by any obligation to remove the tipped waste.
 - iv) Therefore, while I can accept that there was some residual anxiety associated with Giantswood when Adam acquired it in March 2002, that anxiety was rapidly allayed. At the point when Adam and Richard realised that the fishing pool could be built on time and for around £50,000 (see paragraph ii) above), it would have been clear that, far from being a "hospital pass", Adam had obtained a real benefit from his acquisition of Giantswood.
171. The nature of the benefit that Adam obtained from Giantswood increased over time. Since he was the owner of Giantswood, Adam became entitled to Government subsidies associated with that farmland. The receipt of those subsidies emerged during Melanie's evidence and was not mentioned in Adam's witness statement. I will not conclude that Adam consciously sought to conceal the existence of those subsidies, but I will conclude that they were material in amount because Melanie said that private school fees for two of her and Adam's children were paid for "out of the subsidies that Adam received from the government and he also had an overdraft with Barclays Bank". {Day 7 p1048}.
172. The value of Giantswood increased significantly when the Council published the Local Plan (see paragraph 44). Publication of the Local Plan prompted Adam to make planning applications in 2014 and 2015. Those planning applications were not approved, but nevertheless the value of Giantswood increased again on 27 July 2017 when the Local Plan was formally adopted. At the time of Richard's death, it would have been clear that Giantswood had high development value.
173. Adam turned some of that development value into cash after Richard's death when, in February 2021, he sold part of Giantswood to a developer for £8,750,000 albeit with £500,000 of that being potentially repayable depending on how issues associated with electricity supply turned out. Adam said in paragraph 237 of his First Witness Statement that he had a capital gains tax liability of £2m on that sale. That was not challenged and I accept it. I do not consider that anything specific happened between the date of Richard's death (in 2018) and February 2021 to increase the development value of that land. In particular, Adam sold the land without planning permission. I conclude that the sale price of £8,750,000 represented the fruition of the development value that was present in 27 July 2017 when the Local Plan was adopted, plus whatever general increase in land value took place between that date and February 2021.

Approved JudgmentAdam's acquisition of the Verlux Land by adverse possession

174. In 2016, Adam applied to be registered as proprietor of the Verlux Land by way of a claim for adverse possession. In connection with that application he signed a statement on Form ST1 that contained a statement of truth. This statement was at the very least materially misleading because it failed to disclose important matters of which Adam was aware.
175. The whole flavour of Adam's statement in box 5 of the Form ST1 was that he knew the Verlux Land was owned by Verlux Trading Limited but knew nothing about that company and was using the land without its permission. For example:
- i) Adam stated that he "accessed the Land on numerous occasions after October 2000, initially wondering what use the owners of the Land were going to put the Land to and what it was suited to". Adam knew very well how the land came to be owned by Verlux Trading Limited and its intended use (see paragraph 161 above).
 - ii) Adam's statement gives the deliberately misleading impression that he somehow stumbled on the Verlux Land, which was not apparently being used by anyone else, and accessed the land without permission or consent of any other person. Yet he knew in 2000 that the land was owned by a company that was an emanation of Richard and in which he had some sort of shared interest. He knew there was no question of him being on the land without consent.
 - iii) Equally misleading was the statement that "no individual ever verbally or in writing ever questioned or challenged my presence on the Land". That statement was no doubt true so far as it went but neglected to explain that since he and Richard ultimately controlled Verlux Trading Limited until 2010, it was entirely within their control whether anyone questioned or challenged Adam's presence on the land.
176. In his response to Part 18 requests, Adam accepted that the Form ST1 was inaccurate insofar as it stated that he had accessed the land without the permission or consent of any other party or used the land without such permission or consent.
177. Richard was cross when he discovered that Adam had obtained adverse possession of the Verlux Land. He regarded the Verlux Land as "his". In forming that view he was, of course, overlooking the interest of Verlux Trading Limited in the land. However, following Adam's transfer of his interest in that company to Richard in 2010 (see paragraph 162 above), Richard owned all of the rights over Verlux Trading Limited. He would not be the first person to consider that he "owned" assets that were in fact owned by a company he controlled. He instructed solicitors to recover the Verlux Land.

Adam and Melanie's divorce

178. I have concluded that the demands that the Farm placed on Adam's time contributed to his divorce from Melanie. However, there were other factors as well. Melanie and Richard did not get on and Melanie clearly found it a strain to have to live in close proximity to Richard and see him every day. Melanie's unchallenged evidence was that she left Adam "because his dad was impossible and he wouldn't let him be in control of his own life". She mentions asking Adam to walk away from the Farm but that he would

Approved Judgment

not do so. I accept that evidence but conclude that there was also a further factor. A particular source of annoyance to Melanie was the fact that Adam could not go on holiday with her and their children and/or that Richard would not permit Adam to go. However, as Valerie explained in her evidence, Melanie sometimes wanted to go on holiday at harvest time which was naturally a particularly busy time the Farm. That was unrealistic and I have concluded that Melanie perhaps underestimated the demands that working on the Farm would naturally place on her husband.

179. After their divorce, Adam was ordered to pay Melanie a capital sum of £400,000. He did so. Adam was also ordered to pay her £1,500 per month. I accept Melanie's evidence that Adam paid each monthly instalment due.
180. A divorce settlement of this magnitude demonstrates that in 2012, and despite his attempt to hide his income and assets from Melanie, Adam was perceived to have significant capital assets and a solid income. There was a dispute as to how Adam financed the payment of the £400,000. Adam's evidence was that he took out a loan from Barclays bank. I was shown a facility letter dated 22 December 2011 in which Barclays Bank plc offered to lend Adam up to £456,000 "to assist with divorce settlement". However, I was shown no evidence of a drawdown under that facility or its repayment. Against that, the evidence of Jennifer and Valerie was that Richard funded Adam's divorce settlement on the understanding that Adam would repay him.
181. I prefer Adam's evidence. He could be expected to know his financial situation better than Jennifer or Valerie and the fact that Adam secured a facility letter from Barclays Bank plc strongly suggests that he drew down on that facility. I conclude that Adam was obliged to repay the loan of £456,000 in 300 equal monthly instalments of £2,182.42, that being the repayment schedule stipulated in the facility letter.
182. I have commented in various places on Adam's attempts to hide various assets from Melanie while they were in the process of getting divorced. There would have been little point to such a stratagem if Adam had previously been giving Melanie full information on his financial circumstances. I conclude that, even before they contemplated divorce, Adam did not give Melanie full information on those financial circumstances, including the full extent of his receipts from the car boot.

The B&B

183. There was a factual dispute as to who was entitled to profits of the B&B business. Valerie had worked in the B&B since 1998 and her evidence is that Adam had no interest in the business until 2012. Angela Brookes could only speak to the position from 2009 onwards when she started working at the B&B but her evidence was that she and Valerie accounted to Adam for profits. Melanie's evidence was that the B&B was nothing to do with either her or Adam. Adam accepted that the B&B was "his business" but did so in a passage of cross examination in which the evidence of Angela Brookes, dealing with the position after 2009, was being explored with him.
184. I have little material with which to resolve this dispute and neither Adam nor Jennifer said much about it in their written or oral closing submissions. Adam did not qualify his acceptance that the B&B was "his business" by reference to a particular period of time. When challenged as to why he had not disclosed accounts of the business, he did not defend himself by saying that the business was his for only part of the time. There is

Approved Judgment

room in the evidence for the conclusion that Adam was entitled to the profits of the B&B business from its inception. However, Jennifer's closing submissions invite me to conclude only that it was Adam's business after 2009. That is the finding that I will make because it is consistent with Adam's evidence, and he can be expected to know his financial circumstances, and it is consistent with the evidence of Angela Brookes. Melanie's lack of awareness of Adam's involvement was either because she had forgotten about it or because Adam never told her about it.

185. Something strange, and not satisfactorily explained, happened to Richard's shares and directorship in Chelford B&B Limited (the company that carried on the B&B business after Moat Hall Motel Limited was dissolved) in the days surrounding his death. On 3 June 2018, the day he died, Richard apparently resigned as director. On 2 June 2018, the day before he died, Richard apparently transferred his shares in the company to someone else. In cross-examination, Jennifer disavowed any knowledge of these transactions saying that her accountants (Watkinson Black) must have made the necessary arrangements. I do not accept that a firm of accountants would unilaterally update Companies House records to show a transfer of shares, and a resignation of Richard as director. However, I will not make the inference that Jennifer was wrongly dealing with Richard's assets as he lay on his death bed. Jennifer and Gordon did at that stage hold an LPA: it is realistically possible that they were entitled to deal with assets on his behalf.
186. In a similar vein, Jennifer was asked about the circumstances in which Beatrice came to be appointed as a director of the company on 22 January 2019. Jennifer's explanation was that this was done because an impending committal application in this litigation could result in her and/or Gordon being sent to prison and the company would need a director in place to deal with that eventuality. That explanation was clearly wrong because the committal application was not made until 18 June 2019. However, I regard that as an instance of Jennifer muddling up the timeline rather than giving deliberately untrue evidence. On 22 January 2019, Jennifer and Gordon between them owned two-thirds of the shares in Chelford B&B Limited. They would have been entitled to appoint Beatrice as director for whatever reason they chose.

PART E -PRINCIPLES OF LAW APPLICABLE TO THE PROPRIETARY ESTOPPEL CLAIM

General principles

187. There was much common ground between the parties on the principles applicable to Adam's proprietary estoppel claim. They were agreed that, even though it is described as an "estoppel", Adam is entitled to pursue it as a cause of action that establishes his entitlement to proprietary rights over the Farm with the elements of that cause of action being the following (as described by Lord Walker in *Thorner v Major* [2009] 1 WLR 776 at [29]):
 - i) A representation or assurance made to the claimant (to which I will refer by way of shorthand as a "promise", terminology that the Supreme Court used in *Guest v Guest* [2024] AC 833);
 - ii) reliance on that promise by the claimant; and
 - iii) detriment to the claimant arising from (reasonable) reliance on the promise.

Approved Judgment

188. While these are certainly necessary ingredients of a successful claim for proprietary estoppel, they should not be regarded as “watertight compartments” in the words of Robert Walker LJ (as he then was) in *Gillett v Holt* [2001] Ch 210 at 225. Thus, for example, the quality of relevant promises might well inform the court’s assessment of whether the claimant relied reasonably on them. Issues of reliance and detriment are often intertwined. Relatedly, the majority in *Guest v Guest* approved the idea that there is a “spectrum” of cases. At one end of that spectrum are cases where “both the promise and the detriment are reasonably precisely defined by the time the promise is repudiated, where the one is in a sense a quid pro quo of the other although falling short of contract”. At the other end are cases where either or both the promise and the detriment are “left much less certain”.
189. Also in the words of Robert Walker LJ in *Gillett v Holt*, “the fundamental principle that equity is concerned to prevent unconscionable conduct permeates all elements of the scheme”. That does not mean that the court can proceed directly to a purely impressionistic analysis of whether it would be “unconscionable” for a promisor to resile from a promise. All of the three elements set out in paragraph 187 must be present before the doctrine can be engaged. However, as Lord Walker said at [92] of *Cobbe v Yeoman’s Row Management Ltd* [2008] UKHL 55 “[i]f the [three elements referred to] appear to be present, but the result does not shock the conscience of the court, the analysis needs to be looked at again” and equity may give no remedy.
190. To a significant extent, the dispute between the parties is as to how the three elements, and the overarching questions of “unconscionability” should be approached in the light of the evidence. I do not, therefore, need to set out an extensive treatise on the law in order to determine most of the matters that lie between the parties in relation to Adam’s proprietary estoppel claim: the short summary of the law above is sufficient in many respects. I will therefore tailor my fuller analysis of the law so that it equips me to deal with those aspects of the debate on which the parties approached the law slightly differently. For convenience, I order that analysis under the three headings set out in paragraph 187 above, together with the overarching question of “unconscionability” without approaching matters on the basis that those headings are “watertight compartments”.

Promise

191. The promise relied upon must, in the words of Lord Walker in *Thorner v Major*, be “clear enough”. The promise may be made by words, conduct or both. Whether a particular promise is “clear enough” will be “hugely dependent on context”. The facts of *Thorner v Major* provide a vivid illustration of this requirement: the promisor in that case was a man of few words, prone to express himself somewhat elliptically. For example, when he said to a farm hand, “What are you doing tomorrow?” he was in reality asking the farm hand whether he could come and work for him tomorrow. Given that mode of expression, when the promisor gave the promisee a bonus notice on two life assurance policies on his own life saying “That’s for my death duties”, he could be understood as assuring the promisee that a farm would be his following the promisor’s death.
192. However, the promise must still articulate a commitment, as distinct from a (revocable) statement of current intention. Wills are revocable. A testator is free to make a new will that revokes previous wills for so long as he or she has testamentary capacity. However, proprietary estoppel can still give effect to promises to leave specified property to a

Approved Judgment

beneficiary in the promisor's will. In such cases, equity can be seen as giving effect to a promise not to revoke a will even though in law, the will is revocable (see [74] of *Thorner v Major* and 228H of Robert Walker LJ's judgment in *Gillett v Holt*).

193. Because context is so important, it is possible that apparently unqualified promises are, properly understood, "implicitly qualified in ways which take account of events unforeseen and not expressly catered for" in the words of Mummery LJ at [29] of *Uglov v Uglov* [2004] EWCA Civ 987. Given that the elements of a proprietary estoppel claim are not "watertight compartments", this may mean that the promise is, in reality, conditional in some way. Alternatively, it may mean that it was not reasonable for a promisee to rely on it, or even that it would not be unconscionable for the promisor to change his or her mind if circumstances change. Examples of this principle at work can be seen in *Shirt v Shirt* [2013] 1 FLT 232 where the judge at first instance found that a promise by a farmer to his son that the farm "would be coming to him" was conditional on the son proving himself and the Court of Appeal declined to interfere with that conclusion.
194. However, the mere fact that a promisor gives a promise as to how he will leave property in a will, with his death expected to occur many years in the future does not, of itself mean that the promise is conditional on circumstances not changing. The promise may be "clear enough" to found a claim for proprietary estoppel and the court may instead take into account any changed circumstances as part of its overall assessment of whether it would be unconscionable for the promisor to resile from it (see, for example, [19] and [57] of *Thorner v Major*).

Reasonable reliance

195. Paragraph 12-044 of the current edition of *Snell's Equity* suggests some uncertainty about aspects of the test of "reliance" that is to be applied. However, the parties do not invite me to address that uncertainty in this judgment. In closing submissions, Ms McDonnell KC submitted that the question of "reliance" should be approached by applying a standard "but for" test: i.e. whether Adam would have acted to his detriment but for any promises made by Richard. Adam also submits, by reference to 232E to F of Robert Walker LJ's judgment in *Gillett v Holt*, that it is necessary only to establish a "sufficient causal link" between promises that Richard made and the detriment that Adam suffered by relying on them. Therefore, he argues, Richard's promises do not have to be the sole inducement to Adam's detrimental reliance: it is sufficient if they are an inducement. Jennifer does not dispute this analysis and I will apply it.
196. On that approach, if Adam would have acted as he did, even without assurances from Richard because, for example of his love of farming, the necessary reliance would not be present. Ms McDonnell KC acknowledged this as a theoretical possibility but argued that it is not made out on the evidence. By contrast, if Richard's promises provided some inducement for Adam to act as he did, and it was reasonable for Adam to rely on those promises, the necessary reliance is present.
197. There can only be "reliance" on a promise after that promise is made. However, that does not render irrelevant any analysis of Adam's conduct in working on the Farm when he was a child and before it is even asserted that Richard made any promises to him. Since the elements of an estoppel claim are not watertight compartments, that conduct might

Approved Judgment

variously shed a light on the quality or meaning of any promises made to him and the reasonableness or otherwise of his reliance on such promises.

198. Both Adam and Jennifer referred to authorities on the applicable principles if a promise is withdrawn. Jennifer relied on *Creasey v Sole* [2013] EWHC 1410 (Ch) and paragraph 4.73 of *McFarlane on The Law of Proprietary Estoppel* (2nd Edition) for the proposition that, if a testator has made it clear that he no longer intends to honour his original promise, any subsequent action taken by the claimant cannot have been reliance on the original promise. For his part, Adam referred to *Habberfield v Habberfield* [2019] EWCA Civ 890, arguing that it supports the proposition that, unless it is made absolutely clear that a promise is being withdrawn, it is in principle reasonable for a promisee to continue to act in reliance on that promise.
199. I consider that these submissions involve exercises in matching the facts to previously decided cases rather than any statement of authority. In my judgment, if a promise is clearly withdrawn, there is no longer any operative promise and so there can be no reliance, reasonable or otherwise, on it. By contrast, if the status of the original promise remains unclear, it may, depending on the facts, continue to be reasonable to rely on it.

Detriment

200. A significant aspect of the dispute on the proprietary estoppel claim relates to the question of detriment (and unconscionability). Shortly put, Jennifer’s position is that Adam did very well by remaining at the Farm. For example, he obtained a house at Marthall Mill (currently valued at £2,290,000). He obtained Giantswood of which he sold part for £8,750,000 with the retained part being worth up to £3,683,200. She argues that these benefits more than compensate for Adam’s asserted “detriment” and mean that he has suffered no net detriment at all sufficient to ground a claim for proprietary estoppel.
201. Adam strongly disputes the validity of that analysis but agrees that the question of detriment must be approached on a “net basis” in the sense that benefits must be set off against detriments. As Newey LJ put it at [40] of *Winter v Winter* [2024] WTLR 1559 [2024] EWCA Civ 699:

... when deciding whether a claimant has suffered detriment as a result of reliance on an assurance, the Court must weigh any non-financial disadvantage against any financial benefit, even where the disadvantage is not susceptible to quantification. The exercise may be a difficult one, but it still has to be undertaken.

202. The detriment that Adam asserts in this case is a “whole-life” commitment to the Farm which involved him working extremely long hours for low remuneration and at considerable cost to his personal and family relationships. I will perform the necessary balancing exercise later in this judgment, but for the time being note the parties’ common position that asserted detriment of that kind can count, even though it is not readily expressible in financial terms. For example, Adam does not need to produce evidence of the money he could have earned had he pursued an alternative career and compare that with the amounts he obtained from his involvement at the Farm.

Approved Judgment

203. I also take it to be common ground that the task is to consider whether relying on the assurance resulted in a “net detriment”. Benefits and detriments suffered or obtained otherwise than in reliance on the assurance are not subjected to the weighing-up exercise.
204. While acknowledging the need for the comparison mandated by *Winter v Winter*, Adam argues that this comparison must be informed by the approach to the whole doctrine of proprietary estoppel set out in *Guest v Guest*. The whole point of the doctrine is to deal with the unconscionability that would follow from a promisor repudiating a promise. The “harm” that flows from a promise being repudiated in a case such as this is, he argues, largely non-monetary consisting, in the words of Lord Briggs in *Guest v Guest*, of:
- ... the 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...
205. Moreover, Adam argues that the majority in *Guest v Guest* firmly rejected the notion that the purpose of a remedy in proprietary estoppel is to compensate for detriment. Rather, its purpose is to deal with the unconscionability of the promisor repudiating a promise on which a promisee has acted to their detriment. In those circumstances, Adam argues that the *Winter v Winter* balancing exercise should not be unduly skewed by an analysis of the undoubted financial benefits that he obtained from his involvement with the Farm. I will deal with those arguments more fully when I perform the balancing exercise. For the time being, I simply record my conclusion that the analysis of *Guest v Guest* that Ms McDonnell KC advanced on behalf of Adam in this regard was correct and not really disputed, although the outcome of the requisite balancing exercise certainly was disputed.

Unconscionability

206. Proprietary estoppel engages equitable remedies which are necessarily discretionary. The parties agree that, if the ingredients of a proprietary estoppel claim are made out, I must consider whether it would be unconscionable for any promises that Richard made to be repudiated.
207. At [37] of *Guest v Guest*, Lord Briggs held that this question of unconscionability must be assessed “when the promisor seeks to repudiate the promise”. However the parties had different views on when that date falls:
- i) Adam’s position is that the repudiation took place when Richard first made a valid will that did not give effect to the promises he asserts Richard to have made. He puts that date at 12 May 2015, the date of the May 2015 Will.
 - ii) Jennifer’s position is that the repudiation took place on Richard’s death since until that point he could have made a will giving effect to any promises he had given. (I pause to note that this assertion might not be strictly correct. It appears highly likely that Richard had no testamentary capacity for some months before his death, without in any way prejudging the dispute between the parties as to his testamentary capacity in September and December 2016. Therefore, it might be said that the logic of Jennifer’s position is that repudiation took place on either (i) the date of death, if Richard had testamentary capacity then or (ii), if not, the date

on which he lost testamentary capacity, it being common ground that all wills after 2015 failed to give effect to the promises on which Adam relies).

208. I do not consider that anything of significance turns on that debate. That is because, even if Adam is right, and the assessment of unconscionability must be performed on 12 May 2015, he does not argue that events after 2015 must be ignored. Rather, he accepts that, on his analysis given Lord Briggs's statements at [80] of *Guest v Guest*, the court must form a view on a "provisional remedy" considering matters as at 12 May 2015. Having done so, it should ask itself whether in the light of developments between then and the date of trial, that provisional remedy would do justice. Therefore, in my judgment, there is no practical difference between the respective approaches of Adam and Jennifer:
- i) On Jennifer's approach, the court considers all relevant events as part of an assessment of "unconscionability" performed at the date of death. Those relevant events factor into the court's assessment of any appropriate remedy.
 - ii) On Adam's approach, only events that occurred up to 12 May 2015 inform the analysis of "unconscionability" and so the court's provisional remedy takes into account only those events. However, events after 12 May 2015 are still taken into account as part of the court's assessment of whether the provisional remedy is indeed fair.
209. In case the point is significant, I prefer Jennifer's approach. It is important to keep in mind two different situations involving assurances that property will pass to a promisee after the promisor's death. In the first situation, (a "during life case") the promisor may purport to repudiate the promise during his or her lifetime and the promisee may bring a proprietary estoppel claim such that the court is asked to enforce the promise while the promisor is still alive. That is the "difficult" case referred to at [78] of *Guest v Guest* with the difficulties arising because the promise was of an ownership interest after death, but the court is being asked to fashion a remedy before the promisor's death. For example, if the promisor is still alive, he or she may need the property to pay for nursing care.
210. It is in that situation that Lord Briggs determined that there should be an assessment of "provisional remedy" at the time of repudiation which is then tested against the possibility of injustice in the light of subsequent events. Lord Briggs' comments at [37] of *Guest v Guest* were made in the context of the judgment of the Court of Appeal in *Sledmore v Dalby* (1996) 72 P&CR 196 which was just such a case.
211. However, there is another category of case in which the promise relates to property disposed of, other than in accordance with the promise, by a will or on intestacy. If the court is asked (in such a "post death case") to fashion a remedy for proprietary estoppel after the promisor has died, none of the difficulties referred to at [78] of *Guest v Guest* arise. In such a case, there is no need for the kind of "provisional remedy" referred to at [79] and [80] of *Guest v Guest*. Rather, the court can fairly and justly approach matters by, as Hoffman LJ said in *Walton v Walton* [1994] Lexis Citation 3926:

[looking] backwards from the moment when the promise *falls due to be performed* and [asking] whether, in the circumstances which have actually happened, it would be unconscionable for the promise not to be kept. (emphasis added).

Approved Judgment

212. In *Walton v Walton* Hoffman LJ considered the situation as at the promisor's death. Lord Neuberger did the same in *Thorner v Major*: see [101] of his judgment citing *Walton v Walton* when doing so. Adam argues that Lord Neuberger's basis for doing so was that the promisor had died intestate, so there was no earlier repudiation on making a will that failed to honour the promise. However, if that was the basis for Lord Neuberger's approach, I consider he would have said so particularly since in *Walton v Walton* itself, the deceased died having made a valid will.
213. In a "post death case" such as the one before this court, I consider that the approach in *Walton v Walton* should be followed.

Remedy

214. Following *Guest v Guest*, where the ingredients of a proprietary estoppel claim are present, the court's normal starting point when choosing a remedy will be to hold the promisor to the promise. That, however, is not an absolute rule: there will be cases where a remedy of that kind would be unjust. For example, in a "during life case" of the kind described in paragraph 209 above, ordering simple performance of the promise may unjustly accelerate a promisee's receipt of a benefit.
215. The majority in *Guest v Guest* rejected the idea that enforcement of the promise would only be an appropriate remedy if the value of the promise is, in some general sense, proportionate to the cost of the detriment (see [72] of Lord Briggs's judgment). However, considerations of proportionality still serve as a useful cross-check. If the proposed remedy is "out of all proportion" to the detriment, the court will wish to reflect on whether the remedy truly is just. As Lord Briggs put it:

In my view the best summary of the proportionality test is that the remedy should not, without some good reason, be out of all proportion to the detriment, if that can readily be identified. If it cannot, then the proportionality test is unlikely to be of much use.

216. Moreover, the proportionality cross-check should not be applied on the basis of a purely financial comparison. If a promisee has spent the whole of their working life on a family farm, in reliance on a promise that he or she would inherit the farm on the promisor's death, the detriment should not be valued in purely financial terms by reference to the wages of agricultural workers. Such a financial comparison might lead to the wrong conclusion that the farm (valued in money) is worth much more than the "cost" of the detriment so that enforcing the promise would be disproportionate. That conclusion would be wrong because of the theme running through the judgment of the majority in *Guest v Guest* that the harm consists of the failure to honour the promise and that, if a promisee fulfils their end of the bargain, it is only fair and proportionate that the promise should be honoured.

PART F – DISCUSSION OF THE PROPRIETARY ESTOPPEL CLAIM**Representations**

217. I have concluded that:

Approved Judgment

- i) Richard did not make any promises to Adam about his future ownership of the Farm until 1995. The promises made prior to then, including those to “set Adam up in farming” did not relate to ownership of the Farm (see paragraphs 102 and 103 above).
- ii) Richard’s promises about future ownership of the farm remained operative from 1995 until 2003 when Richard told Adam that, because of changes in circumstances, he was withdrawing them (see paragraph 129 above).
- iii) Richard made no further promises about Adam’s future ownership of the Farm after he withdrew the original promises in 2003.

Reliance

218. I have concluded that:

- i) Adam relied on Richard’s promises in 1995. It was reasonable for him to do so (see paragraphs 119 and 120).
- ii) Adam ceased to rely on Richard’s promises in 2003 when he was told about the 2003 Will (see paragraph 129). That was because he was told that there was no longer any promise on which he could rely.

The benefits and detriments that Adam obtained from acting in reliance on Richard’s promisesDetriments

219. I have concluded that Adam suffered the following detriments from continuing to work at the Farm in reliance on the promises as to its future ownership:

- i) He worked long hours at the Farm, forgoing the opportunity to pursue a more comfortable and less time-consuming career which would have offered him a more independent lifestyle and would have been open to him given the talents he demonstrated in his work at Bridgfords.
- ii) Those long hours did not consist only of physical work and the Farm. Adam also devoted his time and energy to obtaining planning permissions that benefited the Farm and corresponding with planning authorities with a view to persuading them that the parts of the Farm should be earmarked for development.
- iii) The demands placed on Adam were a contributing factor to the failure of his marriage to Melanie, although not the only factor (see paragraph 178). (Jennifer argues that this detriment is not pleaded but I do not agree: it is a corollary of the detriment pleaded in paragraphs 77(a) and 77(d) of the RRAPOC that deal with the hard work that Adam put in on the farm and the fact that he relinquished a more independent lifestyle with a lighter workload).
- iv) He compromised what he believed to be a good claim that Richard owed him £106,000 (see paragraph 114 above). The breakdown of that claim suggested that some £30,000 of it related to dealings in Beech Farm, Marthall. That element of

Approved Judgment

the £106,000 was not sustainable because, as noted in paragraph 137 above, Adam did not actually pay over £30,000 of the purchase price he received to Richard.

- v) He assumed personal risk associated with the remediation of Giantswood as described in paragraph 167.

220. In paragraphs 77(j) and (l) of the RRAPOC, Adam pleaded that discharging certain expenses incurred in connection with the Farm such as the costs of insurance chemicals fertiliser and feed and similar matters also constituted a detriment. I did not understand that point to be pursued in closing. Although Adam claimed in his oral evidence that “sometimes” he paid for insurance premiums out of his personal account, no attempt was made to quantify the sums in question. Therefore, to the extent that Adam did pay Farm-related expenses personally, I conclude that the detriment involved was modest.

221. Adam also pleaded a detriment consisting of a sale of Beech Farm Marthall at an undervalue. I do not accept that he incurred any such detriment (see paragraph 137 above).

Benefits

222. I conclude that Adam obtained the following benefits from acting in reliance on Richard’s promises:

- i) Adam’s unchallenged evidence is that from 1997 until 2012, Richard paid him £1,000 per month for working on the Farm. (That increased to £2,000 per month in 2012, although by that time Adam had ceased acting in reliance on Richard’s promises. From 2013 onwards, payments from his father “petered out”). Sums that Adam received while he was relying on Richard’s promises until 2003 were a “benefit” in the sense that they represented a net cash inflow for Adam. Moreover, the £1,000 per month that Adam was receiving from his father in 1997 was higher than his basic salary while he was working at Bridgfords. However, I am prepared to accept that there was more “upside” potential at Bridgfords in the sense that Adam could expect, over time, that his total remuneration, including both salary and commission might increase to more than the £1,000 per month his father was paying.
- ii) He obtained Giantswood, which was not the “hospital pass” that Adam portrayed it to be (see paragraphs 168 to 170). By 2003, when Adam ceased to act in reliance on Richard’s promises, Giantswood had not experienced the surge in the value that would follow when it was earmarked for development in 2010. However, even in 2003, it was thought to be worth £300,000 once the problem with the tipped waste was sorted out. Adam only needed to pay £50,500 to acquire Giantswood and to sort out the tipped waste problem by building the fishing pool. Adam therefore realised a financial benefit out of the Giantswood transaction of some £249,500 by 2003.
- iii) Even in 2003, Giantswood generated agricultural subsidies that made a contribution to the private school fees that Adam paid for his children’s education.
- iv) He obtained 50% of the profits of the car boot, both declared and undeclared with those profits being significant (see paragraph 156 above).

Approved Judgment

223. Jennifer urges me to include Marthall Mill in the category of “benefits”. I will not do so because, in my judgment, Adam did not obtain Marthall Mill by acting in reliance on Richard’s promises that found the Proprietary Estoppel Claim. Rather, he obtained it in satisfaction of Richard’s promise to “set him up in farming” which was not a promise that is relevant to the Proprietary Estoppel Claim. In a similar vein, I will not include profits of the B&B which Adam started to receive in 2009 (see paragraph 184) since that was after he ceased acting in reliance on Richard’s promises. Nor will I include “benefits” arising from Giantswood’s subsequent surge in value after 2010 since those benefits were realised outside the period in which Adam was relying on Richard’s promises.

A net detriment?

224. Adam invites me to approach the exercise of weighing up benefits and detriments that I have summarised in paragraph 201 above on the basis he suffered a “whole life” detriment of the kind summarised in paragraph 204. I do not accept that. The promises on which Adam relied were operative for some eight years. This is not a case in which Adam experienced the “gut-wrenching realisation” described by Lord Briggs on finding out, late in the day, after it was too late to do anything else, that promises had not been honoured. Adam was told in 2003 that the promises were being withdrawn for understandable reasons. At the time, he was not discontented with that outcome for the reasons described in paragraph 127. The undoubted ill-feeling, rancour and disappointment which feature in this litigation are the product of events after the promises were withdrawn.

225. Even putting that point to one side, Adam has enjoyed significant financial benefits from acting in reliance on Richard’s promises. Doing my best on the relatively little evidence I have on Adam’s financial position, I have concluded that the financial benefits referred to in paragraphs 222.ii), 222.iii) and 222.iv) outweigh the financial detriments referred to in paragraphs 219.i), 219.iv) and 219.v). That is because the benefits derived from Giantswood were so significant. Against that £30,000 or so of his “claim” for £106,000 was unsustainable and, while I acknowledge that Adam could have earned a good living if he had stayed at Bridgfords, and more than the £8,000 plus commission that he was earning there in 1993, I am not satisfied on the evidence that his salary expectations were so high as to counteract much of the benefits obtained from Giantswood and the car boot.

226. I recognise some of the detriments that Adam suffered are incapable of being expressed in financial terms. I need therefore, to perform the difficult task of comparing detriments of that kind with the financial benefits that Adam obtained:

- i) I acknowledge that the long hours that Adam worked contributed to the breakdown of his marriage with Melanie. However, without in any way understating what must have been a very sad event both for Adam, Melanie and their children, it is an unfortunate fact that many relationships break down for a variety of factors. The sadness that Adam and his family must have experienced is, unfortunately, not an abnormal experience. Moreover, Adam’s marriage to Melanie started to break down in 2009 whereas, on my findings, he ceased to put in the long hours on the Farm in reliance on Richard’s promises in 2003.
- ii) Adam certainly suffered a lack of autonomy during the time he was working on the Farm. Richard was a difficult taskmaster who made significant demands on his time. This was certainly a detriment: Adam would have experienced nothing like

Approved Judgment

it had he continued to work at Bridgfords. However, the detriment was not unalloyed. Demanding though Richard was, Adam enjoyed seniority at the farm, was Richard's second-in-command, and would have enjoyed the respect of others working at the farm. Adam also had a role in the senior level decision making at the Farm including by being close to Richard's more underhand and sharp practices.

227. After giving due weight to the detriments that are simply not capable of being valued in financial terms, I conclude that Adam has not suffered a net detriment.

Unconscionability

228. The conclusion that I have set out in paragraph 227 means that the Proprietary Estoppel Claim fails. I therefore state briefly my reasons for concluding that the test of "unconscionability" is not met either.
229. Richard made his promises to Adam in 1995 when he had had just one child with Jennifer. Moreover, in 1995 Richard did not promise Adam that he would transfer Giantswood to him for just £500. The car boot was just starting and neither Richard nor Adam appreciated how substantial the profits of that venture would become. By 2003 matters had changed significantly. Adam had received Giantswood and was benefiting from substantial profits from the car boot. Richard had had four more children with Jennifer. Looking at matters at the date of Richard's death, in my judgment it is not unconscionable that Richard departed from those promises in the light of those changed circumstances.
230. In my judgment, whichever of the approaches set out in paragraph 208 is followed, the surge in value of Giantswood should be taken into account when assessing "unconscionability". That surge in value was largely complete by the time of Richard's death (see paragraphs 172 and 173).
231. If one just focuses on Giantswood, and leaves Marthall Mill out of account for the reasons set out in paragraph 223, it can be seen that Adam has received £6,750,000 (net of tax) from the part of Giantswood already sold and retains the remainder with a value of at least £1,253,400. Making allowance for the £50,500 he paid to acquire Giantswood and build the fishing pool, he has derived a capital benefit from Giantswood alone which, ignoring agricultural subsidies Giantswood generated, totalled £7,952,900. (I accept that he might have to pay £500,000 of that benefit back depending on issues relating to electricity connectivity, but I had little evidence suggesting that was a high risk.) The rest of the properties listed in the table in paragraph 8 that formed part of Richard's estate on his death are, on Rostons' highest valuations, together worth £7,021,750. Even if no effect is given to Richard's promises in 1995, Adam has obtained, from Giantswood alone, more than Richard's 18 other children and his wife can possibly obtain from Richard's estate.
232. If Richard were held to the promises he made in 1995, Adam would obtain still more. Richard's estate would be required to grant him a long agricultural tenancy of the Farm for an annual rent of around £10,000 (perhaps adjusted to reflect the different size of the Farm on Richard's death as compared with its extent in 1995). A tenancy on those terms would depress the value of the Farm. Rostons have not valued the whole Farm on the basis that it is subjected to such a tenancy, but their conclusion was that the 1988 Lease depressed the value of Moat Hall Farm by 40%. If the effect of the lease that Adam seeks

Approved Judgment

of the Farm is similar, the result would be to reduce other beneficiaries' shares by £2,808,700 and increase Adam's share by the same amount.

233. Taking into account the points I make on non-financial detriments in paragraphs 224 and 226 above, I do not regard it as unconscionable that Richard, faced with a significant change in circumstances in 2003, resiled from his promises. Richard obviously could not have foreseen that Giantswood would subsequently surge in value. However, he did see that continued adherence to the promises in the 1995 Will risked giving Adam too much given the changes in circumstances. Resiling from those promises avoids what I consider to be an outcome that is unduly generous to Adam having regard to those changed circumstances.

Remedy

234. Given my conclusions in paragraphs 227 and 229 above, the Proprietary Estoppel Claim fails and I do not need to consider what remedy to give Adam. I simply record my conclusion that the line of reasoning set out in paragraphs 231 to 233 also leads me to consider that holding Richard to the promises in the 1995 Will would give Adam a remedy that is "out of all proportion" (in the words of *Guest v Guest*) to the detriment that he suffered for just 8 years' reliance on Richard's promises. Adam argues that this proportionality "cross-check" is inapposite because [72] of Lord Briggs's judgment in *Guest v Guest* states that the cross-check should be performed only where the detriment can "readily be identified". He argues that his detriment is a "whole life detriment" which cannot be so identified. However, I have rejected that analysis in paragraph 224 above.
235. Since the Proprietary Estoppel Claim does not entitle Adam to any remedy, I do not need to consider Jennifer's arguments that Adam is not coming to equity with "clean hands" with the result that he is, in any event, entitled to no remedy. In the interests of completeness I will, however, set out some conclusions on this issue.
236. In closing arguments on behalf of Jennifer, Mr Troup KC referred to the following behaviour as disqualifying Adam from any remedy:
- i) Adam's general behaviour to Richard in the last years of his life that led Richard to make a "non-provision declaration" in both Disputed Wills. That "behaviour" included matters such as bringing the Court of Protection proceedings, making the complaints to social services recorded in paragraph 51 above, seeking to frustrate Richard's marriage to Jennifer and allegedly stealing Richard's private papers and dead stock sometime between April and September 2016.
 - ii) The claim for adverse possession of the Verlux Land.
 - iii) Allegedly false evidence that Adam has given in connection with the Proprietary Estoppel Claim.
237. It was common ground between the parties that for the "clean hands" doctrine to deprive Adam of entitlement to an equitable remedy, the conduct complained of must have "an immediate and necessary relation to the equity sued for", and that it must be shown that the claimant is seeking "to derive advantage from his dishonest conduct in so direct a manner that it is considered unjust to grant him relief" in the words of Aitkens LJ in

Approved Judgment

Royal Bank of Scotland plc v Highland Financial Partners LP [2013] 1 CLC 596, at [158] to [159].

238. I do not consider that the behaviour alleged in paragraph 236.i) establishes any lack of “clean hands”. Adam had a genuine concern that Richard lacked mental capacity. No doubt that concern was to an extent influenced by self-interest, but it was nevertheless genuine. Moreover, there was an objectively good reason for Adam to hold those concerns. I quite understand that Richard found Adam’s concerns about his capacity hurtful, but they do not engage the “clean hands” concept.
239. I am not satisfied that Adam did indeed steal Richard’s private papers or dead stock in 2016 and even if he did, I do not consider that the conduct to have an immediate and necessary relation to the Proprietary Estoppel Claim.
240. Adam did make misleading statements in connection with the claim for adverse possession. However, that too lacks the “immediate and necessary relation” to the Proprietary Estoppel Claim.
241. It goes too far to characterise Adam’s evidence as being in any general sense false and misleading. I have not believed all the evidence that Adam has given in connection with the Proprietary Estoppel Claim. However, this is not a case like *Gonthier v Orange Contract Scaffolding Ltd* [2003] EWCA Civ 873 in which a litigant has fabricated documents.
242. Had it been necessary to consider the point I would have rejected Jennifer’s “clean hands arguments.”

PART G – THE PROBATE CLAIM

Richard’s neurological condition and its symptoms

Overview of Richard’s condition

243. Both Dr Series and Professor Burns agree that, at the time he made the Disputed Wills in 2016, Richard suffered from FTD with PNFA (see paragraph 45).
244. FTD, as its name suggests, is a form of dementia. It is a different condition from the more well-known Alzheimer’s disease. FTD is a neurodegenerative condition which particularly affects the frontal and temporal lobes of the brain. It is a progressive condition: it gets worse as the deterioration to the frontal and temporal lobes of the brain increases.
245. Richard’s PNFA was a manifestation of his FTD and arose because of the damage to the brain that it caused. “Aphasia” is a general term that describes difficulties with language. Patients with PNFA speak slowly and with hesitancy, with speech gradually becoming worse, sometimes to the point of mutism. It is common ground that Richard’s condition caused him to have difficulties in expressing himself.
246. Much more controversial is the extent to which it caused him to have difficulties in understanding what was said to him, with this dispute being at the heart of the issue of testamentary capacity and his knowledge and approval of the Disputed Wills. Professor Burns and Dr Series agree that Richard’s condition could impact a patient’s

Approved Judgment

understanding of what is said to them. However, the parties do not agree on the extent to which Richard's understanding and cognition were actually affected by his condition.

247. Also controversial is the extent to which Richard's condition affected his judgement. FTD can cause patients to exhibit poor impulse control and disinhibited behaviour. The parties do not agree on whether this was true in Richard's case. Part of that disagreement stems from Richard's personality even before he started to show symptoms of FTD. There is a broad consensus that he was short-tempered by nature, with the result that the parties do not agree on whether certain instances of impulsive and reckless behaviour at or around the time of the Disputed Wills was an aspect of his pre-existing personality or his neurological condition.
248. In this section, I simply make findings on Richard's condition, the symptoms he manifested and the treatment he received with a particular emphasis on the nature of his condition at the time of the Disputed Wills. Later in this judgment I will reach a conclusion on questions of testamentary capacity, and his knowledge and approval of the Disputed Wills.

Diagnosis and misdiagnosis

249. Richard's speech disturbance started in around January 2011: a letter from Dr Dick, a consultant neurologist of 27 October 2011 describes a "nine-month history of worsening speech disturbance". It took some time for the opinions of the various doctors and specialists who saw him to coalesce around a diagnosis of FTD. In April and June 2012, Dr Richardson, a consultant neurologist, believed that Richard's symptoms were most consistent with a linguistic presentation of Alzheimer's disease. She recommended that he take donepezil (brand name Aricept) in June 2012. It is not clear when Richard started on donepezil but he had certainly started by 12 March 2013 because Dr Richardson wrote a letter on that date saying as much. Donepezil can be an effective treatment for patients with Alzheimer's disease. However, for patients like Richard who had FTD, donepezil is not an effective treatment. Indeed for patients with FTD, donepezil can, though does not in every case, make matters worse by making the patient restless and sometimes aggressive.
250. Dr Dick was less convinced that Richard had a linguistic presentation of Alzheimer's disease. A letter of 18 October 2012 records his view that Richard "possibly" had Alzheimer's disease, but "possibly" had FTD. He deferred to Dr Richardson's view because she was a member of the Cerebral Function Unit at Hope Hospital who he considered to be "the acknowledged world experts in this differential diagnosis [i.e. of Alzheimer's disease with a linguistic presentation]".
251. Various specialists saw Richard thereafter. On 2 September 2013, a Dr Kumar saw him and recorded a diagnosis of Alzheimer's disease. He noted that Richard had been taking donepezil and recommended that treatment continue.
252. Following instances of Richard behaving aggressively, Adam arranged for him to be assessed under the Mental Capacity Act 2005 (the **Mental Capacity Act**) on 6 September 2013 with a view to his possible admission (against his will) to a mental health facility. On the same day, Dr Kumar also wrote to the DVLA to recommend that Richard's driving licence be withdrawn, a suggestion that the DVLA followed.

Approved Judgment

253. However, the conclusion of Dr Kumar and Richard's GP was that he would not benefit from admission to a hospital and he was prescribed risperidone with a view to alleviating his aggressive behaviour. Richard probably did not take the risperidone and on 7 October 2013, Dr Kumar, having consulted with Dr Richardson, recommended that Richard cease taking donepezil. After ceasing to take donepezil, Richard behaved much less aggressively and erratically to the extent that, on 13 January 2014, Dr Kumar felt able to recommend that Richard's driving licence be reinstated. Dr Kumar considered that stopping donepezil was the cause of his improved behaviour, saying in a letter of 1 May 2014 that "[Richard's] son and friend both felt that the treatment trial with Donepezil had backfired causing significantly worse agitation and activation of behaviour than he is normally prone to. Stopping the medication has brought about significant relief from these symptoms".
254. In the same letter of 1 May 2014, Dr Kumar recorded his conclusion that "the diagnosis of Alzheimer's can be more or less excluded completely". From this point onwards, those treating Richard proceeded on the basis of the diagnosis of FTD that is now agreed to be the correct one.

Communication

255. On 28 October 2014, Dr Richardson saw Richard and recorded that he was able only to speak odd words, rather than full sentences. This was perhaps too sweeping a conclusion based no doubt on Dr Richardson's experience on that particular day. On 27 March 2015, Dr Dick recorded that "Interestingly in spoken language there are moments when he is able to come out with a near complete sentence, though for much of the time he has difficulty getting beyond a single word." However, it is clear that from October 2014, Richard's ability to speak was limited indeed.
256. Nevertheless, even after this point, he retained an ability to make himself understood. He was able, for example to use gestures to express either agreement or disagreement with a proposition. He could accompany those gestures with sounds to signify the extent of agreement or disagreement. He was able to write words although his spelling was sometimes poor. Moreover, he could use a written document as a starting point. This meant that, even after he ceased to be able to speak whole sentences, he could hold a conversation in which he could communicate things that he wanted, convey instructions and respond to things that other people said. I reach that conclusion for the following reasons:
- i) The evidence at the trial included a number of recordings that Adam made from 2013 of conversations involving Richard made, no doubt, because of Adam's concerns about Richard's mental capacity. An example from 4 October 2016 shows Richard unable to speak much more than the occasional word but nevertheless, by means of gestures and writing conveying the message that, if Adam returned certain cars and tractors that Richard felt he had taken possession of wrongly, then Richard would make provision for Adam in his will.
 - ii) Adam's recording of the conversation of 4 October 2016 makes another point. Adam started that recording by noting that he was "just at the bungalow now to see Dad, to see what he's got to say". The whole premise of the recording is that Adam, who knew Richard as well as anyone, expected to obtain some articulation of his position on some matters. He was not expecting the conversation to be a waste of

Approved Judgment

time because Richard could neither understand nor make himself understood. On the contrary, Adam was proceeding on the basis that something that could properly be termed a conversation, with an exchange of views, would ensue.

- iii) Mrs Sutherland made an attendance note of a meeting with Richard on 8 September 2016 to discuss his will which shows that he and she had a conversation that followed the pattern I have described. Her oral evidence, which I accept, was that she had a conversation with Richard “in our way, whether it is writing, nodding, thumbs up, thumbs down”. Richard had other tools at his disposal. For example, at the same meeting on 8 September 2016 he communicated to Mrs Sutherland an intention that Adam was not to be a beneficiary of, and that Rebecca was not to be an executor of, the September 2016 Will by underlining their names in the appropriate clauses of a previous will. Jennifer was present at that meeting and helped Mrs Sutherland to understand what Richard was saying. However, I am satisfied from the totality of the evidence on how Richard communicated that, if he thought Jennifer was misunderstanding him, he had ways of expressing that disagreement.
- iv) Ms Eccleston describes much the same pattern of communication as discussed in paragraph 264 below.

257. The distinct, but related, question of whether Richard could understand matters that were communicated to him is considered in paragraphs 301 to 312 below in the light of the expert evidence of Professor Burns and Dr Series.

Impulsive/unsocialised behaviour and violence

- 258. Even before his diagnosis of FTD, Richard had an impulsive nature. When people did not do what he wanted them to do, he had a tendency to express his disapproval immediately, and sometimes physically. A number of witnesses commented on his tendency, even before his FTD, to tow away the cars of customers at the car boot who had parked outside designated bays. The issue considered in this section is whether certain instances of impulsive, disinhibited or violent behaviour to which Adam refers were aspects of his FTD.
- 259. A number of witnesses commented on Richard’s tendency in 2016, and perhaps earlier and later, to kiss the hand of medical and legal professionals at the beginning or end of consultations with them. Mrs Sutherland mentioned this habit in her witness statement, but she formed the view that it was his way of dealing with his lack of speech. Mrs Sutherland was entitled to form that view by reference to her own interactions with him. However, Richard also kissed the hands of male professionals on greeting them: Professor Burns noted as much in his report of his visit to Richard’s home on 19 November 2016 but considered the behaviour was Richard’s way of saying “thank you” for performing an assessment that was not as unpleasant as Richard had perhaps feared. Richard hugged and kissed Dr Hafsi, a consultant psychiatrist who visited him at home in April 2016 and Dr Hafsi regarded this as “moderately disinhibited behaviour”.
- 260. Dr Series referred in his medical report to incidents where (i) when Richard was verbally aggressive towards nurses after he had been hospitalised following an incident in which he crashed his Land Rover while herding some cattle and (ii) when he drove his car aggressively towards some of his children during a car boot sale. Incident (i) took place

Approved Judgment

in July 2013 with incident (ii) taking place in or around September 2013. Both incidents occurred while Richard was taking donepezil. I have concluded that they occurred because of his adverse reaction to the donepezil which, with hindsight, can be seen to have been prescribed wrongly. I do not consider that these incidents are in themselves indicative of an inability to control impulses caused by Richard's FTD.

261. However, I do consider that Richard's FTD exacerbated his natural personality trait which tended towards impulsivity and aggression when he perceived he was being crossed. For example, on 10 July 2015, after William refused to do some work on the farm with a roller, Richard tried to punch him in the mouth and in the stomach. A scuffle ensued between Richard (then aged 79) and William (then aged 15). Before onset of his FTD, Richard would frequently give his children a "backhander" or a "clip round the ear" if he thought that they had transgressed. In this sense, a physical reaction to William's refusal was not atypical. However, the magnitude of it was, which is why I consider it to be an instance of Richard's FTD exacerbating his natural tendency toward poor impulse control.
262. I have concluded that, at the time of the Disputed Wills, Richard did exhibit disinhibited behaviour, such as the hand-kissing, that was caused by his FTD. His natural personality trait that tended toward poor impulse control was also exacerbated by his FTD. The witness evidence that I saw was consistent with Richard being able to be on his "best behaviour" when he was seeing medical and legal professionals. Therefore, I regard the hand-kissing as an aspect of disinhibited behaviour that survived Richard's attempts at control when seeing legal and medical professionals. I consider that Richard would have been more disinhibited, and less able to control impulses, when he was with his family and not in the company of medical or legal professionals (see, for example, his fight with William).

Assessments of Richard's capacity during his lifetime

263. Adam was entitled to have concerns about Richard's mental capacity in 2013. He was not to have known that donepezil might have been a contributing factor to Richard's erratic behaviour. I have already mentioned in paragraph 253 the conclusions of medical professionals following a visit in 2013. I need not deal with other opinions on Richard's capacity before 2016, since it is capacity at the time of the Disputed Wills that matters.
264. In June 2016, Adam issued proceedings in the Court of Protection for the determination of Richard's capacity. Richard instructed Storrar Cowdry, a firm of solicitors to act for him in those proceedings. Ms Eccleston, who is currently Head of Private Client at Storrar Cowdry acted for Richard in those proceedings with Richard advancing the case that he had capacity under the Mental Capacity Act with the result that the Court of Protection lacked jurisdiction. Adam characterises Ms Eccleston's sole function as being to arrange the assessment performed by Professor Burns described below. I do not accept that. Ms Eccleston was an experienced solicitor, with over 20 years' experience at the time. She was familiar with both the Mental Capacity Act test of capacity and the common law test in *Banks v Goodfellow*. She formed the clear view that Richard had capacity for the purposes of the Mental Capacity Act. I will consider later whether that view is correct or not. However, I reject Adam's suggestion that she came to her view following a flawed process. Ms Eccleston made detailed attendance notes of her discussions with Richard. Those discussions revealed Richard to be using similar communication strategies considered in paragraph 256 above. On 11 August 2016, with

Approved Judgment

Jennifer's assistance, and using maps that Ms Eccleston downloaded from HM Land Registry, Richard was able to convey information as to the extent of, and location of, his real estate assets. Ms Eccleston did not know that Richard had been diagnosed with FTD. However, she met Richard face to face and knew what she was looking for in terms of Mental Capacity Act capacity. There was a clear, and well documented basis for Ms Eccleston's conclusions.

265. There was some indication that a Mr Stephen Lawson of Forshaw Davies Ridgeway might have come to a different view. In an attendance note of 9 August 2016, Ms Eccleston recorded that Jennifer approached Mr Lawson (perhaps to draft a will) but when "he was told that Richard lacked capacity he said he would act for Jennifer". I have no evidence of whether Mr Lawson reached the view that Richard lacked capacity (Ms Eccleston's note suggests that he was "told" that by someone else).
266. Mr Cogan, a senior solicitor at Storrar Cowdry, acted for Richard from August 2016 in connection with various disputes with Adam, including allegations that Adam was trespassing on Richard's property and using harassing and threatening behaviour. Mr Cogan also formed the view that Richard had capacity under the Mental Capacity Act. In cross-examination, it was suggested to Mr Cogan that he had been wrong to continue to act for Richard in 2017 and 2018, relying on instructions given by Jennifer, without reconsidering the question of Richard's capacity. I do not need to address that criticism since it is Richard's capacity in 2016, at the time of the Disputed Wills that matters. I consider that Mr Cogan would have been influenced in his opinion as to Richard's capacity by Ms Eccleston's views as she was a private client specialist. However, I am quite satisfied that Mr Cogan reached his own view on the matter and that there was a reasonable basis for it.
267. In November 2016, Professor Burns visited Richard at home to perform an assessment of capacity for the purposes of the Court of Protection proceedings. In her witness statement, Rachael asserted that Jennifer had "prepped" Richard for Professor Burns's visit. However, that assertion was not seriously pursued in closing in the light of Rachael's acceptance in cross-examination that "prepped" was probably the wrong word. Professor Burns performed much of his examination with Richard alone (although he did initially speak to both Richard and Jennifer together to put Richard at his ease). I conclude that Professor Burns's assessment was not affected by intervention from Jennifer, or indeed anyone else.
268. In the 2016 Burns Report Professor Burns concluded that Richard had capacity for the purposes of the Mental Capacity Act. I am quite unable to accept Adam's argument advanced in closing that Richard's mental condition was not "properly assessed by Professor Burns in November 2016 (despite his reputation)". I conclude that Professor Burns's assessment was appropriate, and his professional opinion entirely reasonable. I address Adam's more significant criticisms as follows:
 - i) Professor Burns volunteered during his cross-examination that he had attended one or two car boot sales on Richard's land before he performed his assessment, although he could not recall the precise dates. He had not told the parties to the Court of Protection proceedings of this before he was instructed to provide the assessment. I attach little significance to this. I reject Adam's submission that this gave Professor Burns a "personal connection" with Richard that influenced his assessment.

Approved Judgment

- ii) Adam submits that Professor Burns “modif[ied] the assessment process to give Richard the best chance of ‘passing the test’”. That was a reference to the fact that Professor Burns administered part, but not all, of two standard diagnostic tests, the “Mini-Mental State Examination” and the “Montreal test” and found that Richard had capacity despite apparently poor performance on the parts that were administered. I do not accept that. Richard was a non-standard patient: he had extreme difficulties in communicating and Professor Burns’s task was to look past those difficulties to assess whether there was a failure of cognition or, as he put it, “executive function”. He had to engage his experience and judgment in order to decide how to assess Richard’s capacity and what weight to give to various aspects of Richard’s performance during the assessment. I am not satisfied that Professor Burns’s approach was unreasonable or infected by any subjective wish that Richard should “pass”.

The process by which the Disputed Wills were prepared and executed

The role of Mrs Sutherland

269. Both Disputed Wills were prepared by Mrs Sutherland. At the time, she was unmarried and was known as Ms Kate Bloor. She worked at Beswicks, a firm of solicitors with whom Richard had a long-standing relationship: by 2015, they had worked on some 35 matters for Richard.
270. Mrs Sutherland had worked at Beswicks since 2010 as a “probate executive”. Her role involved her taking instructions from clients for the drafting of wills and preparing wills in accordance with those instructions. She also dealt with the administration of estates, helped to prepare applications to the Court of Protection and dealt with applications for statutory wills.
271. Mrs Sutherland had a law degree, but was neither a qualified solicitor nor a legal executive. She had passed two examinations set by the Society of Trust and Estate Practitioners (STEP) in the administration of estates and probate. She knew about the *Banks v Goodfellow* test for testamentary capacity. During cross-examination, it became clear that Mrs Sutherland was not fully on top of the restrictions that applied to persons, such as her, who were not qualified lawyers carrying out reserved legal activities. I conclude that, while she was at Beswicks, she did not consider whether she was permitted to perform the activities that Beswicks asked her to, but instead undertook those activities, assuming that she was permitted to do so.
272. Even though she was not a qualified solicitor or legal executive, Mrs Sutherland had, by 2015, when she drafted her first will for Richard, built up substantial practical experience in the drafting of wills and surrounding issues, including questions of testamentary capacity. She had first-hand experience of situations where she concluded that she could not properly prepare a will for a client because she formed the view that the client did not have testamentary capacity. Her practice was a busy one: she said that her typical schedule involved her seeing four new clients for a will on each working day.
273. In total, Mrs Sutherland prepared five wills for Richard dated 12 May 2015, 30 June 2015, 25 May 2016 and the two Disputed Wills that were dated 9 September 2016 and 19 December 2016 respectively. I need say little about first three wills. No-one suggests that these wills are invalid for want of testamentary capacity or knowledge and approval.

Approved Judgment

While I could no doubt make a finding on these issues despite a case not being advanced by any party to this effect given the court's broad inquisitorial jurisdiction, I simply lack any secure basis in the evidence to do so. In any event, it is common ground that the two wills of May and June 2015 were revoked by Richard's subsequent marriage to Jennifer. It is sufficient to note that, as would be expected, all the wills that Mrs Sutherland prepared proceeded incrementally with Mrs Sutherland (and Richard) taking each will as the starting point for the next one and making amendments to give effect to the changes that Richard sought.

274. When preparing the two Disputed Wills, Mrs Sutherland was well aware that there was a question of testamentary capacity on which she needed to satisfy herself. She had seen a letter from Dr Dick dated 27 April 2015 that referenced the diagnosis of FTD. The same letter referred to Richard's lack of insight into the reasons why the DVLA would only issue him with a 12-month driving licence with Dr Dick recording that "His lack of insight into this issue probably reflects the frontal behavioural abnormality that is likely to eventually emerge or may reflect a linguistic failure of comprehension". She was also aware that Court of Protection proceedings were ongoing.
275. Mrs Sutherland prepared three significant attendance notes recording her meetings with Richard regarding the Disputed Wills:
 - i) A note of a meeting on 8 September 2016, at which Richard, who was accompanied by Jennifer and Zoe, gave instructions for what was to be the will of 9 September 2016.
 - ii) A note of a meeting on 9 September 2016 at which Richard executed his will at Beswicks' offices. Richard was initially accompanied by Jennifer and "his daughter" (probably Zoe), but the attendance note records that they did not take part in the meeting at which the will was executed.
 - iii) A note of a meeting on 14 December 2016 at which Richard, who was accompanied throughout the meeting by Jennifer, gave instructions for what was to become the will of 19 December 2016.

The September 2016 Will

276. Mrs Sutherland's file notes relating to the September 2016 Will show that she formed the genuine and clear view that Richard had testamentary capacity. She came to that view knowing that there were pending proceedings in the Court of Protection that would consider whether he had capacity for the purposes of the Mental Capacity Act. With that knowledge, Mrs Sutherland advised that she needed to receive a copy of doctor's report concerning capacity that was to be produced in connection with the Court of Protection proceedings when it was available. In her attendance note of 9 September 2016, Mrs Sutherland summarised constituents of the *Banks v Goodfellow* test and recorded her view that the test was met.
277. In closing submissions, Ms McDonnell KC criticised Mrs Sutherland for not following the "golden rule" of having the September 2016 will witnessed by a doctor who was satisfied as to Richard's capacity and understanding and who recorded reasons for that conclusion. She characterised Mrs Sutherland's attendance note of 9 September 2016 as a "box ticking" exercise, noting that Mrs Sutherland recorded no reasons for concluding

Approved Judgment

that Richard had testamentary capacity. I accept that it might well have been better for a doctor to witness the September 2016 Will given concerns about Richard's capacity. However, that does not of itself call into question the genuineness or reasonableness of Mrs Sutherland's view at the time as to Richard's capacity. Her two attendance notes paint a clear picture of Richard, certainly with Jennifer's assistance, and certainly in the manner described in paragraph 256 above, (i) communicating instructions as to how he wanted his property to pass on death and (ii) responding to questions designed to clarify those instructions. Ms McDonnell KC's characterisation of that process as involving Mrs Sutherland asking a succession of closed questions with Jennifer providing the answers is not an accurate description of that process as it does not capture the extent of the, admittedly unconventional, dialogue that Mrs Sutherland was recording or Richard's participation in that dialogue. Nor do I accept the criticism as to the lack of recorded reasons for Mrs Sutherland's view on testamentary capacity. The attendance note of 9 September 2016 recorded that Mrs Sutherland knew what she was looking for in terms of testamentary capacity. The correctness of her conclusion will be considered later but it was genuinely held, reasonable and based on a secure appreciation of the *Banks v Goodfellow* test.

278. Mrs Sutherland's attendance note of the meeting at which Richard executed the September 2016 Will records that, before he did so, Mrs Sutherland read through the will with him. I find that she did so.

The December 2016 Will

279. Mrs Sutherland's attendance note of the meeting on 14 December 2016 describes a process in which Richard gave instructions in a manner very similar to that employed on 8 September 2016. Moreover, by 14 December 2016, Mrs Sutherland had received a copy of the 2016 Burns Report that concluded that Richard had capacity for the purposes of the Mental Capacity Act.
280. There is an oddity in the December 2016 Will. Mrs Sutherland's attendance note records Richard giving instructions on 14 December 2016 that Rebecca should not be included as a beneficiary in that will. Yet Rebecca was a beneficiary of the December 2016 Will as executed. No attendance note of the meeting at which Richard executed the December 2016 Will can be found, although Mrs Sutherland's evidence, which I accept, is that her usual practice would be to make an attendance note of such a meeting.
281. Adam invites me to conclude that Mrs Sutherland made a mistake which Richard failed to notice because of his lack of capacity. Mrs Sutherland's evidence is that Jennifer remembers Richard changing his mind at the last minute so that Rebecca was reinstated as beneficiary following changes made during the meeting of 19 December 2016 at which the will was executed. Mrs Sutherland's evidence is that she has the same recollection, although she noted fairly in her witness statement that it was prompted by Jennifer's recollection.
282. I am treating Jennifer's recollection evidence with caution. I am alive to the potential unreliability of Jennifer's recollection, not least since it suits her narrative as to Richard's capacity. I also note that Mrs Sutherland might well be pre-disposed to agree with Jennifer's recollection as it would mean that she had made no mistake drafting Richard's will. However, Mrs Sutherland struck me as an honest and careful witness and not the kind of person to seek to gloss over imperfections in her advice or processes. Her witness

Approved Judgment

statement spoke of “many sleepless nights” spent worrying about the missing file note of the 19 December 2016 meeting.

283. Jennifer’s recollection is not inconsistent with contemporary documents. The 14 December 2016 attendance note records Richard as spotting that Dr Walkden should not be referred to in the will as “Julie Augusto” as she had ceased to use that name. If he could spot that, I conclude that he could have spotted Rebecca’s continued presence in the December 2016 Will if that truly were objectionable to him. I conclude that there was no mistake about Rebecca’s inclusion in the December 2016 Will that Richard failed to spot.
284. Notwithstanding the lack of a file note of the execution of the meeting at which the December 2016 Will was executed, I conclude that Mrs Sutherland read through that will with Richard before he executed it. That was her practice in September 2016 and I conclude that it would not have changed in December 2016.

Testamentary capacity – the law

285. The parties agree that the question of whether Richard had testamentary capacity at the time of the Disputed Wills must be determined by reference to the common law test set out in *Banks v Goodfellow* (1870) LR 5 QB 549. Using the exact words of the test, but breaking it down into its separate limbs, the requirements are that:

it is essential...that a testator (i) shall understand the nature of the act and its effects, (ii) shall understand the extent of the property of which he is disposing; (iii) shall be able to comprehend and appreciate the claims to which he ought to give effect; (iv) and, with a view to the latter object, that no disorder of the mind shall poison his affections, pervert his sense of right, or prevent the exercise of his natural faculties – that no insane delusion shall influence his will in disposing of his property and bring about a disposal of it which, if the mind had been sound, would not have been made.

286. Both parties accept that the common law test of capacity set out in *Banks v Goodfellow* is different from that applied by statute in the Mental Capacity Act.
287. At [152] to [164] of *Leonard v Leonard* [2024] EWHC 321 (Ch), Joanna Smith J provided a survey of the relevant principles that should be applied when applying the *Banks v Goodfellow* test. Both parties were content to proceed on the basis of Joanna Smith J’s survey with the only major point of difference being as to the correctness of [152(k)] of her judgment, which I address below.
288. I bear in mind the totality of Joanna Smith J’s comprehensive survey of the law and should not be taken as doing otherwise by emphasising particular principles that are of particular resonance in the circumstances of this case:
- i) [152(a)] – The question is not whether the Disputed Wills are “fair”. The law recognises that people can make wills that are unexpected, inexplicable, unfair and even improper when influenced by caprice, passion or the power of new ties.

Approved Judgment

- ii) [152(b)] – That said, if the terms of the Disputed Wills are surprising, inexplicable or irrational, that may well be relevant to the court’s assessment of whether Richard had testamentary capacity (and whether he knew and approved the terms of those wills).
- iii) [152(c)] – Even if Richard suffered from reduced cognitive abilities owing to a mental illness, that does not of itself mean that he lacked testamentary capacity. The question is whether his mind was so unsound as to mean that he could not understand “what he was about” or that his ability to make a rational decision was absent.
- iv) [152(d)] and [152(g)] - Limbs (i) to (iii) of the *Banks v Goodfellow* test do not set out a memory test. Richard did not need actually to know the full extent of his property, for example. Deficiencies in his memory are not the equivalent of a lack of capacity.
- v) [152(f)] – In a similar vein, the test is concerned with the ability to make decisions and not merely the ability to understand a given transaction or a particular choice that has already been made. Issues such as those fall to be considered when considering whether there was the necessary “knowledge and approval”.

289. Paragraph [152(k)] of Joanna Smith J’s summary is as follows and is controversial:

(k) The question with which the court is concerned when considering the *Banks* test is transaction and issue specific. The testator must have the mental capacity (with the assistance of such explanation as he may have been given) to understand “the particular transaction and its nature and complexity” (see *Hoff v Atherton* at [33] and *Hughes v Pritchard* [2022] Ch 339 at [65]). This would appear to encompass not only the complexities in the will itself (limb 1), but also the complexity of the testator’s property (limb 2) and of the moral claims on his estate (limb 3).

290. The Defendants invite me to conclude that this paragraph is wrong. They argue that it confuses testamentary capacity, the ability to make a decision, with knowledge and approval, which requires the ability to understand, and actual understanding, of the particular will being executed. I was referred to *Theobald on Wills* (19th edition) at [4-011] in support of that argument. I was also referred to the judgment of Michael Green J in *Maile v Maile* [2025] EWHC 2494 (Ch) in which a similar point was made but Michael Green J concluded that he did not need to express a conclusion on it.
291. I will not depart from Joanna Smith J’s principle summarised at [152(k)] of *Leonard v Leonard*. First, I agree with Adam that Joanna Smith J’s analysis is supported by Court of Appeal authority at [65] of *Hughes v Pritchard* which reads as a binding statement of the law by the Court of Appeal. I acknowledge that, at [103] of *Hughes v Pritchard*, the Court of Appeal stated that it was “common ground that capacity must be considered in relation to the transaction in question” which leaves open the question whether the similar statement at [65] is a statement of the parties’ common ground or a binding determination. However, whatever the status of the Court of Appeal’s determination at [65] of *Hughes v Pritchard*, I do not accept that [152(k)] of *Leonard v Leonard* elides any distinction between “knowledge and approval” and testamentary capacity. Joanna

Approved Judgment

Smith J's point simply is that any consideration of capacity takes place in a context, with that context being provided by the will in question. I find it difficult to see how the position could be otherwise. For example, I do not see how limb (i) or limb (ii) of the *Banks v Goodfellow* test could be considered without having at least some regard to the terms of the will in question.

292. Nor do I accept the Defendants' submission that Joanna Smith J was concluding that a testator might need "more" capacity for a "complex" will or "less" capacity for a "simpler" will. Her point simply was that there is a single test of capacity that is set out in *Banks v Goodfellow*, but that capacity has to be considered in the context that is provided by the particular will in issue.
293. Indeed, I do not consider that the debate on [152(k)] of *Leonard v Leonard* has any practical effect in this case. Even if the Defendants are right and that paragraph is properly concerned with "knowledge and approval" rather than capacity, Richard's understanding of the particular will still needs to be considered since both knowledge and approval and capacity are at issue in this case.
294. At [64] of *Hughes v Pritchard*, the Court of Appeal explains where the burden of proof lies. If a "real doubt" is raised as to the testator's capacity, the burden is on the persons propounding the will to establish that the testator had capacity.
295. Paragraphs [75] to [80] of *Hughes v Pritchard* deal with the weight to be given to the evidence of a solicitor who acts for a testator in drafting and executing a will and who reaches a conclusion that the testator had capacity. Such evidence is not definitive, and does not set up any legal "presumption" that the testator had capacity. It is evidence to be weighed in the balance but is likely to be of considerable importance that should be given "due weight".

Testamentary Capacity – the Disputed Wills

296. No-one invites me to conclude that Richard had testamentary capacity at the time he made one of the Disputed Wills but lacked such capacity when he made the other. I will therefore consider the issue of testamentary capacity as of the date of the December 2016 Will on the footing that this will also determine the question of capacity in relation to the September 2016 Will.
297. Professor Burns and Dr Series, two eminent and independent experts, have expressed different views on the question of Richard's capacity. That in itself suggests that there is real doubt on the question. Further doubt comes from reports of medical practitioners during Richard's life. For example, on 4 October 2016, following a brief cognitive evaluation, Professor Snowden, a consultant neuropsychologist wrote that Richard's:
- ... communication problems extend beyond the realm of expressive language. He has difficulty in comprehension and use of syntax, in keeping with agrammatism.
298. On 27 April 2015, Dr Dick expressed the view that, although in face to face conversation, Richard appeared to know his own mind, "his ability to comprehend complex material may be limited". Given that real doubt, the burden is on Jennifer to establish that Richard had testamentary capacity at the time of the Disputed Wills.

Limbs (i) to (iii) of the *Banks v Goodfellow* test

299. I take limbs (i) and (iii) together since they engage most directly with the issues of cognition and executive function that Professor Burns and Dr Series analyse in their reports.
300. Ultimately it is a matter for me to determine whether the Defendants have discharged their burden. However, I naturally give significant weight to the opinions of Professor Burns and Dr Series. Professor Burns concludes, on a balance of probabilities that Richard satisfied limbs (i) to (iii) of the *Banks v Goodfellow* test at the time of the Disputed Wills. Dr Series concludes that there was “insufficient information here to show that on balance the Deceased was able to hold the complex information about the extent of his estate and particularly the claims of various potential beneficiaries in his mind to weigh it up to make a valid will”.
301. As foreshadowed in paragraph 246 above, the difference between Professor Burns and Dr Series was whether Richard’s obvious difficulties in using language to make himself understood (expressive language) were accompanied by difficulties in absorbing and understanding what was said to him (receptive language). Professor Burns considered that any such difficulties were insufficient to cause him to fail limbs (i) to (iii) of the *Banks v Goodfellow* test. Dr Series disagreed. On balance, I prefer the opinion of Professor Burns for the reasons set out below.
302. Professor Burns had met Richard, once, while he was alive. but Dr Series had never met him. Adam seeks to position this as putting Professor Burns at a disadvantage, suggesting that it caused Professor Burns to be “invested in his own assessment of Richard having had capacity [in his report of December 2016]... from which he understandably found it difficult to resile”. He also suggests that Professor Burns fell into the same “trap” as Mrs Sutherland, Ms Eccleston and Mr Cogan of assuming that, because Richard could write single words, or nod to indicate assent with something Jennifer had said, he satisfied limbs (i) to (iii) of the *Banks v Goodfellow* test.
303. I do not accept that. Professor Burns is a consultant psychiatrist, well equipped to look beyond the occasional nod or written word and assess the extent of Richard’s cognition. I do not agree that Professor Burns was “invested” in his December 2016 report: as I have explained in paragraphs 80 and 268.i) above, I consider both he and Dr Series were seeking to assist the court with dispassionate expert evidence.
304. Moreover, given the nature of the disagreement between Professor Burns and Dr Series set out in paragraph 301 Professor Burns had additional material, unavailable to Dr Series, on which he could draw. That additional material was valuable: both Professor Burns and Dr Series were well placed to assess the extent of any difficulties that Richard had with receptive language. However, only Professor Burns was able to do so by reference to actual conversations with Richard. I do not consider that it matters that Professor Burns was assessing capacity in 2016 under the Mental Capacity Act rather than in accordance with *Banks v Goodfellow*. Professor Burns’s advantage comes not from the conclusion that he expressed in December 2016, but rather from the fact that he spoke to Richard during his lifetime.
305. Adam rightly praises Dr Series’s detailed consideration of Richard’s medical records which he recorded in a detailed chronological table in his report. However, this is not a

Approved Judgment

point of distinction: Professor Burns considered the same medical records as Dr Series did.

306. Dr Series placed some emphasis, in paragraph 12.1.2 of his report on his understanding that the Disputed Wills purported to dispose of 49 Hough Lane and “land situated 3 miles from Congleton Town Hall” even though Richard did not himself own that land. Dr Series considered that to cast doubt on whether limb (i) of the *Banks v Goodfellow* test was satisfied. Dr Series could not, however, have known about Richard’s tendency to use nominees and his belief that 49 Hough Lane belonged to him (see paragraph 141 above). Nor could he have known that Richard regarded the Verluxe Land as his (see paragraph 177). I infer that, when he was giving instructions for the December 2016 Will, Richard believed that both 49 Hough Lane and the Verluxe Land, which was 1.8 miles north of Congleton, did belong to him. Moreover, even putting the Verluxe Land to one side, Richard did own 12 acres of land at Congleton, 2.3 miles north of Congleton. The emphasis in paragraph 12.1.2 of Dr Series’s report is, in my judgment, misplaced.
307. Although Dr Series did not mention it specifically in his expert report, a similar point arises in relation to Manor Farm. By Clause 5.2.1 of both the September 2016 Will and the December 2016 Will, Richard wrote:

For the avoidance of doubt I give my land at Hulme Walfield
(known as Manor Farm, Hulme Walfield Congleton) [to my said
son Adam Scott]

308. This land was part of Giantswood. Richard did not own Giantswood at the time he made either will. Adam argues that, in purporting to deal with land that he did not own, Richard was showing that he did not satisfy limb (i) of the *Banks v Goodfellow* test. I acknowledge that a valid question is raised in this regard. However, when considered in the light of the other evidence, I consider that the point is not as significant as it might appear. First, limb (i) of the test does not set out a “memory test”. Even if Richard had thought, wrongly, that he still owned Manor Farm, that would not deprive him of testamentary capacity. There is competing evidence that suggests that, when prompted with appropriate maps and plans, Richard had the ability to give an accurate list of his real estate assets (see paragraph 264 above). Second, the purported disposition of Manor Farm is expressed to be “for the avoidance of doubt”, a phrase that is not used of other gifts. On balance, I consider that Richard may well have included this phrase to emphasise that, although both Disputed Wills made no provision for Adam, he was still retaining Giantswood (of which Manor Farm formed part). Put another way, the reference to Giantswood could simply be a reference to Richard’s use of nominees: Richard believed that some property that he had ostensibly transferred outright to family members was actually held as nominee for him (for example 49 Hough Lane). The “for the avoidance of doubt” reference to Giantswood could simply be intended to explain that Richard was not asserting the presence of any such nominee arrangement in relation to Giantswood.
309. In the sections dealing with Richard’s behaviour, Dr Series quotes a number of examples that were drawn from the period when Richard was taking donepezil. I consider that Dr Series has under-estimated the effect of donepezil on Richard’s behaviour leading him to over-attribute certain episodes of erratic behaviour to his FTD.
310. Professor Burns’s report also suffered from a deficiency. On page 16, he quoted extracts from Richard’s medical records prepared while he was alive. He purported to quote

Approved Judgment

directly from Professor Snowden's report referred to in paragraph 297 above. However, his quote did not include the reference to Richard's "difficulty in comprehension". That was a material omission given the disagreement between him and Dr Series. However, Professor Burns must have read Dr Snowden's report in order to extract quotes from it. Professor Burns should have taken more care when extracting quotes that he did. However, I regard this as a mistake rather than a defect so fundamental as to vitiate the entirety of Professor Burns's conclusions.

311. Having explained why I prefer Professor Burns's opinion, I now put that opinion together with other relevant findings:

- i) I give a good degree of weight to Ms Eccleston's view that Richard had capacity for the purposes of the Mental Capacity Act. I acknowledge that she was considering a different test from that set out in *Banks v Goodfellow*. However, that test too considers cognition and understanding. Just as important as Ms Eccleston's conclusion is the process of reasoning that led her to it. She knew what she was looking for in terms of capacity and was therefore considering not just whether Richard could impart information but also his ability to understand what was said to him. Ms Eccleston's conclusions, carefully evidenced by reference to contemporaneous attendance notes, carry real weight.
- ii) I also ascribe weight to Mrs Sutherland's conclusions. She is not a qualified solicitor and so I do not give her evidence the degree of weight expressed in *Hughes v Pritchard* (see paragraph 295 above). However, Mrs Sutherland also knew what she was looking for, and her views too should be accorded weight.
- iii) I acknowledge that there is evidence touching on capacity that Professor Burns, Dr Series, Mrs Sutherland and Ms Eccleston may not have seen. For example, Rachael described Richard as "high as a kite" on the day of his wedding in April 2016 and recalls a general concern as to whether he knew what he was doing. There was evidence that Richard drove his car into the Bungalow in 2016 and was confused in the aftermath of that accident. On 29 April 2016, Richard was admitted to hospital with medical notes describing him as having "acute confusion". Simon Clodd-Broom described an incident in 2014 in which Richard mistook him for Richard Harry. I have reflected carefully on evidence such as this which paints a very different picture of Richard's mental capacity. I can quite understand why Richard's confusion on particular occasions caused observers to doubt his mental capacity. However, ultimately I conclude that episodes of apparent confusion do not compel the conclusion that Richard lacked capacity. Rather, I conclude that the understandable concerns raised by instances such as this are outweighed by the opinion of Professor Burns who met Richard during his lifetime for the express purpose of assessing his capacity.

312. Richard's estate was complex as he had a number of real estate interests. He also had a large number of children. The Disputed Wills dealt with those interests in a number of ways. They were not straightforward wills consisting of a few specific legacies and residue divided simply between a small number of beneficiaries. However, in my judgment the evidence as a whole demonstrates that Richard satisfied the requirements of limbs (i) to (iii) of the *Banks v Goodfellow* test:

Approved Judgment

- i) Richard appreciated the nature of the transactions being effected by the Disputed Wills. He had been an avid will-writer throughout his life and, even in December 2016 retained an understanding of the effect of the Disputed Wills.
- ii) Richard understood the extent of the property of which he was disposing by those wills. Richard probably did not hold all of that information in his head and would have needed reminders as to specifics by reference to plans, maps and other documents. However, he had good general idea of those assets and the cognitive ability to flesh out that general idea by reference to other materials that were provided to him.
- iii) Richard also understood the claims to which he ought to give effect. The Disputed Wills reveal careful consideration of how his estate should be divided not least given his large number of children. Richard had sufficient cognitive ability to make a decision on how to deal with their competing claims. He may not have been kind or fair in doing so. The absence of any real provision for Adam might strike many as unfair since, whatever their differences later in Richard's life, Adam had been a dutiful and supportive son for much of it. However, fairness is not the test.

Limb (iv)

313. In *Leonard v Leonard*, Joanna Smith J held, at [155] that limb (iv) truly is a separate limb of the *Banks v Goodfellow* test and not merely an amplification of the other three limbs. Whereas, as I have explained, limbs (i) to (iii) are concerned largely with questions of cognition, limb (iv) is concerned with the question whether a testator's human instincts and affections, or moral sense, had been perverted by mental disease (see paragraph 69 of the judgment of the Court of Appeal in *Sharp v Adams* [2006] EWCA Civ 449). As the Court of Appeal observed at [93], limb (iv) is concerned as much with mood as with cognition.
314. Given that it was decided a long time ago, *Banks v Goodfellow* refers to "insane delusions". However, a testator does not need to be delusional in order for limb (iv) of the test to be failed. Indeed, in *Sharp v Adams*, the testator suffered from multiple sclerosis and the conclusion of the judge at first instance, that the testator did not satisfy limb (iv) was upheld. Accordingly, the question with which I am concerned is whether Richard's undoubted disorder of mind prevented him from making just and rational testamentary dispositions.
315. An important consideration in this regard is the rationality or otherwise of the Disputed Wills. Adam argues that those wills are far from rational as they make no provision for him despite his lifetime of devotion to the Farm. Adam also points out that, even after their relationship deteriorated following 2013, Adam was still accompanying Richard to most of his medical appointments.
316. The function of this judgment is not to adjudicate on Adam's arguments with Richard over his lifetime. I do not, however, consider that it was "irrational" for Richard to decide to make no provision for Adam. Adam had done a lot of things that Richard disliked and which hurt him: for example, he sought to prevent his marriage to Jennifer, he sought to have him sectioned, challenged his capacity in the proceedings before the Court of Protection, and reported him to social services. Of course, Adam had justifiable reasons

Approved Judgment

for taking these steps but even otherwise rational people would not have considered those reasons and would have focused on their own sense of hurt. Even before his cognitive decline, Richard reacted violently when thwarted. While it may well have been unfair, and may well have overlooked all the good and kind things that Adam did for Richard over his life, I do not consider that Richard's decision to make no provision for Adam was unusual or "irrational" for such a controlling and manipulative individual as Richard before his cognitive decline.

317. I have considered carefully the implications of my findings that Richard's FTD increased his pre-existing tendency towards poor impulse control. I have, therefore, considered whether Richard's decisions in the Disputed Wills were the testamentary equivalent of his fight with William: an absurd action occasioned by his FTD. However, I do not consider that his decisions were the product of his FTD. Rather, they were the product of a personality type that disliked being thwarted and engaged in careful measurement of how much his family members "deserved" by reference to whether they had sought to thwart him or not. That personality type was not always conducive to kind decisions as I have concluded throughout this judgment. However, it was not an aspect of Richard's FTD or any other disorder of mind.
318. I am reinforced in that conclusion by the fact that Richard necessarily had to give instructions for the Disputed Wills to Mrs Sutherland in person with someone on hand to help with the process of communication. As I have concluded, when he was in the presence of medical and legal professionals, Richard was able to adjust his behaviour which had the effect of tempering his poor impulse control (see paragraph 262). It would have taken time for Richard to give his instructions. He had the opportunity, therefore, to reflect on his instructions and, in my judgment, his decision not to make any significant provision for Adam cannot be explained as one that involved his normal human instincts and affections being perverted by his mental disease.
319. Richard satisfied limb (iv) of *Banks v Goodfellow* as well and the Probate Claim fails.

Knowledge and approval – the law

320. There was less debate about the law applicable to "knowledge and approval" than there was in relation to testamentary capacity. The parties are agreed on the following principles which I have derived from Joanna Smith J's survey of applicable principles at [166] to [171] of *Leonard v Leonard*. I bear in mind the whole of that survey and simply summarise particular aspects of it:
- i) Whereas limbs (i) to (iii) of the test in *Banks v Goodfellow* are concerned with ability to comprehend, the concept of "knowledge and approval" requires a consideration of whether the particular will actually represents a testator's testamentary intentions. Put another way, testamentary capacity is concerned with an ability to make choices. Knowledge and approval requires no more than the ability to understand and approve choices that have already been made.
 - ii) For there to be knowledge and approval, it is not enough that the testator knows what the words say, he must know and approve the contents of the will in the sense that he understands both "what he is doing and its effect".

Approved Judgment

- iii) The burden of proving that the requisite knowledge and approval is present falls on the person propounding the will in question.
- iv) In the past, the issue would have been considered in two stages: first considering whether there are circumstances that excite suspicion as to whether the necessary knowledge and approval is present and second, if so, considering whether the propounding of the will has discharged the burden. However, more recent authorities stressed the importance of performing a “holistic exercise” of evaluation. On that approach, the court considers the totality of the evidence available and draws appropriate inferences from that material in order to ascertain whether the burden of proof is discharged.

Knowledge and approval – analysis

- 321. In her oral closing submissions, Ms McDonnell KC rightly acknowledged that the facts relating to knowledge and approval overlap significantly with the facts relating to testamentary capacity that I have found above. I can therefore deal with the knowledge and approval aspect of the Probate Claim quite shortly by reference to those facts.
- 322. Richard gave instructions to Mrs Sutherland about the terms of the Disputed Wills in the manner that I have described in paragraphs 277 and 279 above. Mrs Sutherland drew up the wills in accordance with those instructions, as she understood them, and, as noted in paragraphs 278 and 284, went through the provisions of both the Disputed Wills clause by clause with Richard. As I have concluded, the terms of the Disputed Wills are not obviously irrational.
- 323. The conclusions that I have expressed on Richard’s ability to understand what was said to him despite his difficulties in communication lead me to the conclusion that Richard would have understood Mrs Sutherland’s explanation of the terms of both Disputed Wills. He was equipped to compare that communication with the instructions that he had given and he did so, concluding that the Disputed Wills reflected his instructions.
- 324. Adam emphasises the “complexity” of the Disputed Wills. There certainly was an element of complexity. However, that complexity arose because (i) Richard owned a number of different parcels of land, (ii) he had a lot of children and other beneficiaries under the will and (iii) he did not want all of his beneficiaries to take on the same terms. That meant that the Disputed Wills contained in places long lists of names and quite wordy descriptions of how the entitlement of individuals on the list was to be determined. In that sense, the Disputed Wills were “complex”: they did not contain a few legacies and a straightforward gift of residue. However, the operative part of each Disputed Will consisted of just a few pages of drafting. I consider that Richard was equipped to give knowledge and approval to wills with this level of “complexity” as much of it had emanated from him. He had told Mrs Sutherland how his many parcels of land were to be divided among his many beneficiaries.
- 325. Adam relies on various infelicities in the Disputed Wills as negating Richard’s knowledge and approval of them. He notes, for example that the September 2016 Will purported to leave Jennifer 49 Hough Lane which Richard had not owned since 1987. That, he submits, means that Richard cannot have understood Mrs Sutherland’s read-through of that will as otherwise he would have spotted the mistake. I do not accept that

Approved Judgment

for essentially the same reasons as I have explained in paragraph 306. Richard believed that he did own 49 Hough Lane.

326. I also reject Adam's reliance on the incident involving Rebecca's continued presence in the December 2016 Will as discussed in paragraph 283 above.
327. Adam also made some criticisms of the drafting of the Disputed Wills. There is something in those criticisms. For example, Clause 6.2 of the September 2016 Will provide for income from certain parcels of land to be "retained by my Trustees for a period not exceeding 15 years to pay the income to [Jennifer] for her lifetime". There is some lack of clarity as to whether, under this provision, Jennifer is to have income for 15 years or for life. However, in my judgment it goes too far to say that this is indicative of a lack of knowledge and approval by Richard. Richard was quite entitled to leave the precise legal drafting to his professional advisers. In my judgment, he would have picked up the general gist of these and other clauses whose drafting was criticised and would have considered that this gist aligned with his wishes even though he would not have been alive to the drafting issues that Adam's legal team identified.
328. I reject Adam's challenge to the Disputed Wills based on a lack of knowledge and approval.

PART H – THE SHAM LEASES CLAIM

The law

329. The parties are agreed on the following principles of law which I derive from Fordham J's survey of authorities at [7] to [9] in *Isle Investments Limited v Leeds City Council* [2021] EWHC 345 (Admin):
- i) A sham is an arrangement involving an intentional mismatch between the apparent nature of a relationship and the true nature of that relationship so as to give a false impression to third parties or to the court.
 - ii) Thus, for an arrangement to be a sham, in plain terms, the parties to the arrangement must have been doing one thing and saying another.
 - iii) It is not sufficient that there simply be a disconnect between the true nature of the relationship and its apparent nature. That disconnect must arise from a common intention between all parties to the arrangement that the acts or documents are not to create the legal rights and obligations which they give the appearance of creating. A party to the arrangement can be said to have the relevant intention if that party is recklessly indifferent as to whether there has been any mis-description of the true nature of the relationship.
 - iv) Because a sham transaction involves an element of pretence and disguise, such a transaction necessarily involves some degree of dishonesty with that dishonesty consisting of a dishonest common intention that the transaction is not going to create the legal rights and obligations which it gives the appearance of creating.
330. The burden is on Jennifer, as the person asserting a sham, to prove her case (see [15] of *Isle Investments*).

Approved Judgment

331. In closing submissions, there was some discussion as to whether a “presumption” operates to the effect that a particular arrangement is not a sham. I respectfully agree with the observation of Mostyn J at [24] of *Broxfield Ltd v. Sheffield City Council* [2019] EWHC 1946. The court must examine the evidence to ascertain whether a particular arrangement is a sham or not. That examination, being conducted in the real world, takes account of inherent probabilities and therefore takes into account the fact that, in general, parties do not intentionally misdescribe the true nature of their arrangements. That, however, is not a “presumption” in the legal sense; it is simply an approach to the factual enquiry. The evidence may well establish that the particular parties to the relationship had a real motivation to misdescribe it or a propensity to do so, in which case consideration of how parties generally might be expected to act will carry less weight.

Discussion

332. Annex C to the RRAPOC contained a list of those tenancies that have been in dispute. However, by the time of closing submissions, the issues had narrowed. Jennifer no longer seeks to establish that tenancies of Giantswood are shams recognising that there is little point in doing so in circumstances where Adam has since become the freehold proprietor of Giantswood. For his part, Adam no longer asserts that he has a tenancy over Stocking Moss Field and nor does he rely on the tenancy of parts of Moat Farm dated 29 November 1988, relying instead on the tenancy he says was granted on 30 November 1988. It follows that the Sham Tenancies Claim is focused on the 1988 Tenancy referred to in paragraph 30 and the 1993 Tenancy referred to in paragraph 34. It is common ground that, if these tenancies are not shams, they take effect as secure agricultural tenancies pursuant to the Agricultural Holdings Act 1986.
333. Jennifer’s case is that the 1988 Tenancy and 1993 Tenancy were intended to create the impression that tenancies had been created even though the true nature of the relationship between Richard and Adam was that there were no tenancies at all. In closing submissions she pointed to the following three reasons why Richard and Adam would wish to pretend that there were tenancies in place:
- i) The tenancies were intended to enable more car boot sales to be held given the limit of 14 sales per field described in paragraph 146.
 - ii) The tenancies enabled Adam to obtain insurance in circumstances where Richard would not have been able to obtain such insurance because of his conviction for arson.
 - iii) The 1988 Tenancy was created, just a few days before the public enquiry as to whether planning permission should be granted to enable Adam to build a house at Marthall Mill, to help Adam to secure that planning permission.
334. I do not regard it as inherently improbable that Richard and Adam would work together to create sham documents. In my judgment both have shown a willingness to engage in underhand business dealings and both would have been willing to create sham documents if it suited them.
335. I do not accept that the reason outlined in paragraph 333.i) could have been operative. The car boot business did not start until 1994. I am not satisfied that Richard or Adam

Approved Judgment

were far-sighted enough to consider, either in 1988, or in 1993, that the creation of tenancies would enable more car boot sales to be held from 1994 onwards.

336. Jennifer's case is that the 1988 Tenancy, in particular, was arranged so as dishonestly to persuade an insurance company that Adam had an insurable interest even though in reality he held no such interest. I am prepared to accept that, conceptually, Adam and Richard could have had an incentive to create sham tenancies to secure insurance. Richard's convictions, including for arson perpetrated as part of an attempted insurance fraud, would have made it difficult, if not impossible, to obtain insurance in his own name. It would make sense for Richard and Adam to explore ways in which the insurance could be in Adam's name instead. Indeed, it appeared to be common ground, following the evidence of Mr Barnett, an insurance broker who arranged insurance at the Farm, that Adam was the beneficiary of an insurance policy from the mid-1990s onwards.
337. The difficulty with Jennifer's case, however, is that Mr Barnett could not confirm when Adam first became the beneficiary of an insurance policy relating to the Farm or what, if any, questions were asked about the extent of Adam's insurable interest when he first acquired that policy. Adam's recollection in cross-examination was that he may have been the beneficiary of insurance at the Farm from when he was 21, or around the time of Richard's second conviction in 1983. That strikes me as plausible given the extent to which Adam had to be involved in the Farm given that Richard was in prison. If Adam truly did acquire an insurance policy at around this time, I can quite accept that it was simply renewed each year without anyone asking difficult questions about the nature of Adam's insurable interest. That would point against the 1988 Lease operating as any inducement to an insurance company to issue a policy to Adam.
338. Moreover, if the 1988 Lease was a sham, designed to create the illusion of an insurable interest, it might be expected to extend to the whole farm (as it stood at that time) rather than just a part of it.
339. Overall, Jennifer has not satisfied me that the 1988 Lease was even relied upon to secure an insurance policy. Still less has she satisfied me that a sham tenancy was necessary to secure that insurance. Given the promises that had been made to "set Adam up in farming", even if the 1988 Tenancy did help to secure insurance, that is just as consistent with Adam taking benefits that arose from creation of a genuine tenancy. Nor do I consider that insurance considerations support a conclusion that the 1993 Tenancy was a sham. It was simply of too small an area for insurance to be a motivating factor.
340. Planning permission cannot have been a reason for the grant of the 1993 Tenancy since that was granted after Adam secured planning permission at Marthall Mill. I am not persuaded that a wish to secure planning permission at Marthall Mill provided an incentive to create a sham 1988 Tenancy. Richard had genuinely promised Adam that he would "set him up in farming". Certainly Richard and Adam hoped that this would help Adam to obtain planning permission (see paragraph 107) above. However, that planning permission was hoped to be the consequence of Adam genuinely carrying on a farming business. No doubt Richard and Adam thought that the planning appeal would fare better if they could present the inspector with an executed 1988 Tenancy and that may well explain why the tenancy was executed just a few days before the planning appeal was heard. However, that is just as consistent with a wish to put forward a good case at the planning appeal as it is with a sham.

Approved Judgment

341. I derive some support for this conclusion from the fact that the planning authority was at least suspicious about whether Adam was conducting a genuine farming business (see paragraph 107 above) but ultimately decided to grant planning permission for a dwelling at Marthall Mill. The planning authority must, therefore, have been satisfied in 1988 that the 1988 Tenancy was not a sham.
342. Jennifer suggests that the 1988 Tenancy was a sham because rent was not paid as stipulated in that tenancy and nor did Adam insist on the full rights of a person holding exclusive possession by making his father ask for permission every time he set foot on the land. I am unpersuaded by those arguments. Richard and Adam were father and son. I am quite prepared to accept that over time they developed a certain looseness in the way in which they dealt with the 1988 Tenancy. There is nothing surprising in the conclusion that, over time, a practice developed under which the rent that Adam owed under the 1988 Tenancy was not paid in cash, but was rather added to an ongoing account between them given that their business relationships were intertwined. Nor would it be surprising if, over time, Richard did not insist on the payment of rent at all. It is quite realistic to envisage that Richard simply assumed that he had a licence to enter on his son's land and in my judgment it is unrealistic to expect that he would have asked for permission each time he did so.
343. In support of her case, Jennifer argues that the 1988 Tenancy contains an oddity in that it purports to grant a tenancy over land that included the farmhouse at which Richard was living at the time (Moat Hall Farm as Richard did not move to the Bungalow until March 1989). I regard that point as having little force. First, the 1988 Lease and 1993 Lease were "home made" documents that Richard prepared using a specimen agricultural tenancy that he had obtained from somewhere. He did not approach his task with the rigours of a conveyancing solicitor. In any event, the plan attached to the 1988 Tenancy includes a "triangle" that can quite reasonably be interpreted as excluding the farmhouse at Moat Hall Farm from the scope of the tenancy.
344. Jennifer also points out that, in an affidavit that Adam swore in 1996, in connection with a dispute with the Council about the car boot, Adam stated that Pear Tree Farm (which is within the scope of the 1988 Tenancy) was farmed by Richard. That inconsistent statement certainly gives me pause for thought. However, the matter was not explored with Adam in cross-examination. That means that I have little on which to base an evaluation of the reasons for the inconsistency. For example, Adam may have been careless when he prepared his affidavit in 1996. He may have forgotten about the 1988 Tenancy. Adam and Richard may, in the 8 years since it was granted have agreed to vary the 1988 Tenancy. Certainly, the fact that Adam made an inconsistent statement in 1996 does not compel the conclusion that the 1988 tendency was a sham. In these circumstances I treat the 1996 affidavit as raising a question but not being sufficient to displace the weight of the evidence set out above which points against the 1988 Tenancy being a sham.
345. Finally, Jennifer notes that the 1993 Tenancy is dated 31 January 1993. However, Richard did not acquire Beech Farm, Marthall pursuant to the transactions described in paragraph 135 until 23 April 1993. This too raises a question, but I consider that Adam has answered it satisfactorily. I accept his evidence that, having agreed to transfer Beech Farm, Marthall to Richard to enable him to make a claim for rollover relief, Adam wanted to ensure that he could continue to work that farm from the date of the agreement.

Approved Judgment

Accordingly, recognising that Adam and Richard were not conveyancers by training, I can understand why they chose to date the 1993 Tenancy as of the date of their agreement.

346. Jennifer's task in the Sham Tenancies Claim was to satisfy me that both Richard and Adam intended to say one thing but do another when they executed documents over 30 years ago. The matter is further complicated by the fact that I cannot hear oral evidence from Richard as to his state of mind when he executed those documents. On balance I conclude that Jennifer has not discharged that burden. I conclude that neither the 1988 Tenancy nor the 1993 Tenancy were shams.

DISPOSITION

347. The Proprietary Estoppel Claim fails. The Probate Claim fails. The Sham Tenancies Claim fails.
348. I would ask the parties to agree the terms of an order that gives effect to this judgment. If they cannot do so, there will need to be a further hearing to deal with consequential matters. That hearing must take place no later than 28 days following the date of hand down of this judgment.