Neutral Citation Number: [2022] EWHC 163 (Ch)

Case No: BL-2020-MAN-000005

**IN THE HIGH COURT OF JUSTICE**
**BUSINESS AND PROPERTY COURTS IN MANCHESTER**
**BUSINESS LIST (ChD)**

Date: 27 January 2022

**Before His Honour Judge Halliwell sitting as a Judge of the High Court**

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**Between :**

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| **JULIE ANNE MORTON (AS EXECUTRIX OF THE ESTATE OF JENNIFER RUTH MORTON)** | **Claimant** |
| **- and -** | |
| **(1) SIMON NIGEL MORTON**<br>**(2) ALISON MARY MORTON** | **Defendants** |

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**Giles Maynard - Connor QC** (instructed by **Aaron and Partners LLP**) for the **Claimant**
**Jonathan Edwards** (instructed by **Quinn Barrow Solicitors**) for the **Defendants**

Hearing dates: 8, 9, 10, 14, 15, 16, 17, 23 June 2021

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# APPROVED JUDGMENT

**HHJ Halliwell :**

***(1) Introduction***

1. This judgment follows the trial of proceedings between two siblings after the death of their mother, the late Jennifer Ruth Morton ("**Jennifer**"). The proceedings relate to the ownership of some properties and the dissolution of a family partnership.

2. The Claimant, Julie Anne Morton ("**Julie**"), sues as executrix of Jennifer's final will ("**the Final Will**") and as her sole residuary beneficiary subject to an option in favour of her brother, Simon Morton (**"Simon"**). She has joined, as Defendants, Simon and his wife, Alison Mary Morton ("**Alison**"). Simon and Alison have counterclaimed.

3. The properties include two farms, namely Reddish Hall Farm ("**Reddish Hall Farm**") at Lymm, Cheshire and Fairoak Grange, ("**Fairoak Grange**") at Eccleshall, Staffordshire, each of which were once farmed in partnership.

4. Most of the land at Reddish Hall Farm was originally acquired by the late Geoffrey Morton ("**Geoffrey**"), husband of Jennifer and father of Julie and Simon. He predeceased Jennifer after transferring to Jennifer and himself, jointly, his title to most of such land. However, he omitted to transfer to Jennifer his title to all of the land. Moreover, he initially acquired some parcels jointly and, in various combinations, with Jennifer, Simon and Julie. In any event, Fairoak Grange was acquired upwards of ten years after Geoffrey's death.

5. Jennifer obtained probate of Geoffrey's estate as his sole executrix. However, there are issues as to the trusts on which the constituent parts of Reddish Hall Farm were held and devolved. They include issues as to when such land was first introduced into partnership so as to furnish Simon with a beneficial interest. There is also an issue whether Simon is entitled to an order rectifying or rescinding the trusts of a registered transfer between Jennifer and Simon.

6. More generally, there are issues whether Geoffrey made assurances to Simon that he would ultimately inherit the farm business and the farm or farms from which it was conducted and, if so, whether Simon relied upon the assurances to his detriment so as to found a case based on proprietary estoppel. There are also issues whether, as Jennifer's executrix, Julie is entitled to specific performance of a contract for the sale of Jennifer's interest in partnership assets following the exercise of an option in the partnership agreement and, more generally, whether Simon is precluded from relying

on proprietary estoppel by the provisions of a partnership agreement and the service of an option notice under the agreement.

7. Before me, Mr Giles Maynard Connor QC appeared on behalf of Julie and Mr Jonathan Edwards, of counsel, appeared on behalf of Simon and Alison.

***(2) Background***

8. Geoffrey and Jennifer married on 24th April 1957. Simon and Julie were their only children, born respectively on 15th October 1958 and 11th February 1961.

9. Simon and Alison married in 1987. They have two children, Victoria ("**Victoria**") and Benjamin, born respectively on 29th October 1990 and 8th April 1994. Julie married David Simpson ("**David**") on 7th September 2018.

10. Geoffrey came from a farming family. When he married Jennifer, he was farming in partnership with his father, Sydney, from land at Home Farm, Dunham, Cheshire. The following year, he purchased Reddish Hall Farm in his sole name. This comprised an estate ("**the Main Estate**") of some 151 acres or thereabouts together with a farm house and outbuildings. It was conveyed to him on 24th September 1958 ("**the 1958 Conveyance**").

11. Between 1959 and 1972, Geoffrey acquired neighbouring land in a series of successive conveyances. These included (1) approximately 1.53 acres acquired, on 25th June 1959, from John Edward Adey ("**the 1959 Land**"); (2) 7.064 acres of glebe land acquired, on 31st March 1962 (**"the 1962 Land"**); (3) land known as Barley Croft and the Long Field acquired, on 18th March 1964, from Samuel Gould ("**the 1964 Land**"); and (4) some 1.34 acres acquired, on 6th April 1972 from Mary Elizabeth Winstanley ("**the 1972 Land**"). The title to all of this land was unregistered and Geoffrey acquired it in his sole name.

12. Geoffrey continued to purchase neighbouring land when it became available. However, he started to do so on a joint basis with other members of his family, particularly Jennifer. Once the land in this part of Cheshire had become compulsorily registrable, his acquisitions were entered on the records maintained at HM Land Registry. On 2nd May and 2nd September 1977, Geoffrey and Jennifer were jointly registered, under Title no. CH111728, as the freehold owners of some land near Thelwall ("**the Thelwall Land**") and, under Title no. CH113902, as freehold owners of land on the West side of Reddish Lane ("**the Reddish Lane Land**"). Then, on 12th August 1981, Geoffrey,

Jennifer, Simon and Julie were jointly registered, under Title no. CH176642, as freehold owners of land on the West side of Crouchley Lane, Lymm known as "Great Oak" ("**Great Oak**"). On 6th August 1982, Geoffrey and Jennifer were registered, under Title no. CH198637, as freehold owners of another piece of land on the West side of Crouchley Lane, Lymm ("**Crouchley West**"). Finally, on 1st April 1987, Geoffrey, Jennifer and Simon were registered, under Title no. CH273326, as freehold owners of land on the East side of Crouchley Lane, Lymm ("**Crouchley East**"). The land acquired under each successive transaction was farmed with the Main Estate.

13. By then Geoffrey had made arrangements for Jennifer and, subsequently, Simon to be treated as partners in the farming business. More likely than not, this was at least partly for tax management reasons. A draft partnership agreement was admitted in evidence although the circumstances in which it came to be prepared are obscure. It was unsigned or undated save for the year in which it was apparently prepared, 1975, but Geoffrey, Jennifer and Simon were each identified, in the draft, as partners. In 1975, Simon could have been no more than 17 years of age. He would then have been at secondary school although it is conceivable the parties already knew he was destined for agricultural college. By the draft agreement, it was provided that the capital of the partnership would include stock, machinery, vehicles, book debts and other assets excluding the freehold interest in the land and buildings comprised in the farm.

14. Simon was not admitted as a partner at that stage. However, there is a letter dated 23rd September 1975 from Geoffrey's accountant, Mr Pollard, referring to his accounts for the year ending on 11th February 1975 and explaining that Jennifer was now to be treated as a partner with the profits shared between them on a ratio, in his favour, of 2:1. The first partnership ("**the First Partnership**") was thus between Geoffrey and Jennifer only and commenced at this stage. Jennifer appears to have carried out some work for the First Partnership managing the accounting records and farm documentation.

15. Geoffrey's accounts for the year ending on 11th February 1975 are no longer available. However, copies of his accounts for the following year, ending on 11th February 1976, were admitted in evidence. By then, Jennifer was indeed treated as a partner with a share in the profits, in Geoffrey's favour, of 2:1. Contrary to the draft partnership agreement, "Reddish Hall Farm" and "the land" were entered, on the balance sheet, as assets of the partnership.

16. Between 1977 and 1980, Simon attended Harper Adams Agricultural College. Having completed his course, he commenced work at Reddish Hall Farm as a paid employee. In 1985, he was admitted as a partner with Geoffrey and Jennifer ("**the Second Partnership**"). There was no partnership deed but, with effect from 7th August 1985, he was treated as a partner in the partnership accounts for the year ending on 11th February 1986, albeit with no share of capital at that stage. These accounts showed that Geoffrey and Jennifer were entitled to 35% each and Simon 30% of the net profits with effect from 7th August 1985.

17. Having married in 1987, Simon and Alison moved into rented accommodation. Some six weeks later, they purchased a property at 14 Moore Grove, Lymm, not far from Reddish Hall Farm. However, mindful of their intentions to start a family, it was agreed Geoffrey and Jennifer would vacate the farm house at Reddish Hall Farm ("**the Farmhouse**") so Simon and Jennifer could move in. To accommodate Geoffrey and Jennifer, a house would be built for them on the Farm, a short distance from the Farmhouse. By 1990, this house ("**Pheasant Lodge**") had been fully constructed. Geoffrey and Jennifer then moved into Pheasant Lodge. Simon and Alison themselves moved into the Farmhouse shortly before the birth of their first child, Victoria.

18. Not long afterwards, by a deed of gift dated 31st Mary 1991 ("**the Deed of Gift**"), Geoffrey conveyed the Main Estate to himself and Jennifer to hold as beneficial joint tenants. However, title to the Main Estate remained un-registered. The *Land Registration Act 1925* was then in force and, under *Section 123(1)* of the *1925 Act*, transfers by gift were not compulsorily registrable.

19. Julie was not encouraged to pursue a career on the Farm. She set out on her own career path, purchasing properties in which to reside near her place of work at Poynton and then High Legh, Cheshire. Her house at High Legh, where she still resides, was purchased in February 1987.

20. On 25th February 1995, Geoffrey and Jennifer made mirror wills ("**the 1995 Wills**") appointing one another as sole personal representative and leaving their whole estate to the survivor. Subject to these provisions, there were gifts of the Farmhouse to Simon, Pheasant Lodge to Julie and the remaining farm land to both. However, the gift of the farm land was subject to a direction requiring Julie to permit Simon "to rent…the land…at a fair and reasonable rent…" and a right of pre-emption in favour of Simon in

the event Julie wished to sell her interest in the farm. On 4th February 2000, Geoffrey and Jennifer each made codicils to the 1995 Wills providing that the gift to Simon of the Farmhouse was conditional upon him making no financial claim in respect of Pheasant Lodge and the gift of Pheasant Lodge to Julie was free from any financial claim for money advanced towards the mortgage on this property.

21. An obscure document dated 30th March 1998 was admitted into evidence. This was a tenancy agreement between Geoffrey, Jennifer and Simon, as landlords, and "GJR and SN Morton" as "the Partnership" as tenants. In it, Geoffrey, Jennifer and Simon were recorded as owners of Reddish Hall Farm. Whilst the tenancy agreement appears to have been signed by Geoffrey, Jennifer and Simon, they did not sign it as a deed. Since *Sections 52* and *54* of the *Law of Property Act 1925* applied and it was purportedly for a term of ten years, this document would have been void as a conveyance of land. Although it provided for the payment of an annual rent of £18,000, there is no evidence such a sum was ever paid nor, indeed, that the parties otherwise acted on it. In the absence of evidence to the contrary, there is nothing to suggest that the parties ever acted on it and there could be no reason for it to have taken effect as a yearly tenancy or treated as such. Geoffrey, Jennifer and Simon continued to run the Farm in partnership.

22. Geoffrey died on 8th February 2001. Upon his death, the Second Partnership dissolved by operation of law. Jennifer and Simon then continued to run the Farm in partnership ("**the Third Partnership**"). The Third Partnership's first set of accounts were for the period from 12th February 2001 to 28th February 2002. Undefined "freehold property" was entered on the balance sheet as a fixed asset of the Third Partnership. No doubt, this was apt to include the land on which the farming activities were being carried out. However little thought appears to have gone into it.

23. Upon Geoffrey's death, the legal title to his jointly owned properties would have vested, by survivorship, in his co-owner or co-owners. The same is true of his equitable interest in properties held subject to a beneficial joint tenancy. Geoffrey's legal title to the properties held in his sole name would have vested in Jennifer as his sole executrix under his 1995 Will.

24. On 22nd March 2002, Jennifer obtained a grant of probate in respect of Geoffrey's 1995 Will and 2000 codicil as his sole personal representative.

25. Simon maintains that, in early 2002, he entered into an agreement with Jennifer under which he acquired the entirety of Geoffrey's share in the "capital" and property of the Second Partnership.

26. Simon subsequently submitted an application dated 7th June 2007 to the Land Registry for first registration of the title to the Main Estate ("**the FR1 Application**"). He did so in the name of Jennifer and himself. Notwithstanding that the legal title to the Main Estate would at that stage have vested solely in Jennifer by survivorship, Simon completed the FR1 by ticking the box which stated that the applicants held the land "on trust for themselves as tenants in common in equal shares". It is unclear what evidence, if any, Simon presented to the Land Registry in support of the application. However, it is common ground that, with effect from 27th June 2007, Jennifer was registered as sole proprietor of the whole of the Main Estate under Title CH562988.

27. Following discussions with Simon, Jennifer decided to transfer to him her title to the Farmhouse. Since the Farmhouse was comprised within her title to the Main Estate, her title would thus have to be severed. In June 2008, Jennifer instructed Mr David Young ("**Mr Young**") of Hibberts LLP ("**Hibberts**") to act on her behalf in connection with this transaction. Mr Young advised Jennifer that she could obtain agricultural property relief for CGT purposes if, as part of the transaction, she transferred to Simon an interest in not less than 10% of the agricultural land in addition to the Farmhouse. In reliance upon Mr Young's advice, on 29th October 2008, Jennifer entered into separate transactions under which she transferred to Simon her freehold title to the Farmhouse ("**the 2008 Farmhouse Transfer**") and to Simon and herself her freehold title to the residue of the Main Estate save Pheasant Lodge ("**the 2008 Land Transfer**") ("**the 2008 Land**"). The 2008 Land Transfer contained a declaration that Jennifer and Simon would hold the 2008 Land on trust for themselves as tenants in common as to nine-tenths for Jennifer and one tenth for Simon.

28. Following the 2008 Farmhouse Transfer and the 2008 Land Transfer, the freehold title to Pheasant Lodge remained vested in Jennifer under Title CH562988. However, the Farmhouse was separately registered under Title CH580756 with Simon as sole proprietor. The 2008 Land was separately registered under Title No CH580763 with Simon and Jennifer registered together as proprietors subject to a restriction on dispositions by a sole proprietor.

29. The legal title to Crouchley West was among the estates in property which would have vested in Jennifer by survivorship upon Geoffrey's death. During 2007, Lymm Rugby Union Club offered to purchase part of this land for £650,000. The transaction went ahead and was completed in April 2008. From the net proceeds of sale, £647,057.34, Jennifer gave £100,000 each to Julie and Simon. In anticipation it would ultimately be available to meet her tax liability on the chargeable gain rolled over in the purchase of additional land, the balance was paid into a bank account held in the names of Jennifer and Simon in connection with the management of the Farm.

30. Some years later, Simon became interested in purchasing a farm known as Fairoak Grange, Eccleshall, Staffordshire ("**Fairoak Grange"**). It is likely he was mindful this might be a vehicle to roll over the chargeable gain from Crouchley West. In July 2012, agreement was reached, in principle, for Simon and Jennifer to purchase Fairoak Grange for a price of £2,000,000. Simon and Jennifer instructed Mr Young, as their solicitor, in connection with the transaction. Since it was envisaged they would farm Fairoak Grange and Reddish Hall Farm in partnership, Mr Young advised Simon and Jennifer to enter into a written partnership agreement in respect of both farms.

31. On their instructions, Mr Young prepared a draft partnership deed and, on 19th December 2012, Jennifer, Simon and Alison all signed it as a deed ("**the 2012 Partnership Deed**"). The 2012 Partnership Deed provided that, with retrospective effect from 1st April 2012, they were each to be treated as partners of a new partnership ("**the Fourth Partnership**") in respect of the farming business at Reddish Hall Farm and such other land as the partners might agree on the basis that the net profits and losses of the business, of an income nature, would be divided between them as to 50% for Jennifer and 50% for Simon and Alison. A distinction was drawn between "net profits and losses" of an "income" and "capital nature"; the latter were to be divided in the proportions in which the partners owned the land. Elsewhere it was recorded that the "proposed purchase of Fairoak Grange [had] been agreed by the Partners on the basis that the major part of it [would] be acquired by [Simon and Alison] and be the subject of secured borrowing and the remainder [would] be acquired by [Jennifer]". In addition to the land farmed in partnership, the partnership assets were deemed to include the Farmhouse and Pheasant Lodge by virtue of an extended definition of "the Partnership Freeholds". However, this definition is not free from ambiguity. When construed in a narrow literal way, it applied only to "registered" freehold property

occupied by the Third Partnership for partnership purposes, not unregistered property, notwithstanding that the 1959, 1962, 1964 and 1972 Land, all unregistered, were also being farmed in partnership at the time.

32. The Fourth Partnership was determinable *inter alia* on the death of a partner or three months written notice. Upon termination, an option ("**the Option**") was conferred on the partners, in succession, to purchase the share of an outgoing partner in the "profits capital and assets of the [Fourth Partnership]". The Option comprehended the whole of "the Partnership Freeholds" and thus provided for the option holder to purchase Pheasant Lodge notwithstanding that there could have been no obvious reason, in the event of partnership dissolution, for Jennifer's house to be sold with the rest of the assets of the partnership. It also included the Farmhouse. The price payable was the amount standing to the credit of the "Outgoing Partner" on the date of "the Determining Event" – defined so as to included death or notice – "after…a revaluation at that date of the [Fourth] Partnership's then assets". Valuations were to be agreed or, in default of agreement, determined by a surveyor acting as an expert. It was expressly provided that "all necessary and proper instruments shall be executed for vesting the share of the Outgoing Partner in the purchasing partner".

33. On 1st February 2013, Jennifer, Simon and Alison exchanged contracts for the purchase of Fairoak Grange ("**Fairoak Grange**"). Completion took place immediately afterwards although Alison was not made party to the transfers. The purchase price was £1,985,000 apportioned as to £300,000 for some 33.918 acres ("**Jennifer's Land**"), to be transferred to Jennifer, and £1,633,200 for some 369.73 acres ("**Simon's Land**"), to be transferred to Simon, with the balance of £51,800 made up of amounts in respect of chattels, plant and equipment and the Single Payment Scheme. Simon's Land included the farmhouse and six cottages in addition to farm land and woodland. Although the legal title to Jennifer's Land and Simon's Land was separately transferred into the names of Jennifer and Simon respectively, it was introduced to the Fourth Partnership as an asset of the firm under the provisions of the 2012 Partnership Deed.

34. In addition to the purchase price of £1,985,000, some £77,320 had to be raised for SDLT, £4,560 for VAT on plant and equipment and £2,900 for VAT on chattels. Solicitors' fees and Land Registry fees in the sum of £1,180 were also payable. The transaction was funded from monies held in the bank account held by Jennifer and Simon with Barclays Bank in connection with the management of Reddish Hall Farm.

Prior to exchange of contracts, £198,000 was transferred to their conveyancing solicitors, Hibberts, with the intention that it would be utilised as a deposit in addition to two payments of £750 and £300. To enable Hibberts to complete the transaction, on 1st February 2013, another £1,872,460 was transferred to them from the bank account following a loan advance of some £1,700,000 from Barclays Bank and three separate payments from the National Loan Guarantee Scheme of £23,289, £26,262 and £26,391, amounting in aggregate to £75,942.

35. Jennifer's share of the purchase price, £300,000, was funded from the proceeds of part of Crouchley West or, at least, the parties treated it as such. No doubt in this way, it was intended Jennifer's chargeable gain on the disposal of such land would be rolled over against the amount paid for Jennifer's Land and the loan monies would be advanced for the purchase of Simon's Land. In any event, it was necessary for monies to be borrowed to fund the purchase of Simon's Land.

36. On 18th February and 7th March 2013, Simon was subsequently registered as proprietor of Simon's Land under Title Nos SF586842 and SF309523 although the filed plan for Title No SF586842 has not been admitted in evidence. In the absence of evidence to the contrary, I have inferred that Jennifer was also duly registered as proprietor of Jennifer's Land.

37. Jennifer did not advise Julie of their plans to purchase Fairoak Grange, nor indeed did Simon or Alison, until the evening of Monday 11th February 2013 when Jennifer telephoned Julie to disclose that she had bought a farm. Not surprisingly, Julie was disquieted. Their relationship came under strain and remained so for some time afterwards. However, they had historically enjoyed a close relationship and Jennifer herself appears to have become increasingly uncomfortable about the Fourth Partnership, the acquisition of Fairoak Grange and the decision to conceal the acquisition from Julie herself. Julie herself distrusted Simon and Alison. Once her relationship with Jennifer was resurrected and they discussed the transaction with one another, Jennifer began to see things in a similar way to Julie. In the belief that there were two separate partnership deeds in respect of Reddish Hall Farm and Fairoak Grange, Jennifer asked Hibberts for copies of the same. She did so by letter dated 28th May 2014. This letter was typed by Julie at a time she appears to have obtained increased influence over her mother. By letter dated 5th June 2014, Mr Young advised Jennifer that he was only aware of one partnership deed and enclosed, for her attention,

a copy of the 2012 Partnership Deed. Jennifer did not initially respond in writing. However, by then, she had decided to give powers of attorney to Julie. She instructed her solicitors to attend to the formalities and gave lasting powers of attorney to Julie in respect of her health and welfare and her property and financial affairs. These were duly registered in July 2014.

38. By this stage, Jennifer had decided to make a new will. Initially, she sought to instruct Mr Young to prepare the will on her behalf. However, Mr Young had become increasingly wary of the influence being exercised over her by Julie. Jennifer herself appears to have become disillusioned with Mr Young not least owing to the restrictions, in the 2012 Partnership Deed, as she saw them on her rights to the properties following introduction to the partnership and thus her powers of testamentary disposal. Since much of her property was now treated as an asset of the Fourth Partnership, she could not freely dispose of it as sole beneficial owner. She decided to instruct an alternative solicitor, Mr Keith Jones ("**Mr Jones**"), of Barrow and Cook ("**Barrow and Cook**"), St Helens to prepare her new will.

39. On Jennifer's instructions, Mr Jones prepared the new will. She executed it **("the 2014 Will")** on 26th September 2014. By the 2014 Will, she appointed Simon, Julie and Mr Jones himself as her executors and gave her residuary estate to Julie subject to a series of specific gifts and an option for Simon to rent or purchase the land farmed under the 2012 Partnership Deed. The specific gifts were for Simon and Julie herself. Pheasant Lodge was to be given to Julie together with Jennifer's undivided share of some land, at Reddish Hall Farm, known as the Paddock. Subject to these gifts, Jennifer gave her share, as she appears to have regarded it, of "the land referred to in the [2012 Partnership Deed]" to Julie and Simon. This was "to be divided" between them in the respective shares of 55:45. No doubt, this was intended to include Jennifer's Land since the latter was referred to in the 2012 Partnership Deed notwithstanding that, at the time of the 2012 Partnership Deed, Jennifer had not yet acquired an interest in it. In the 2014 Will, there was also a gift to Simon of the capital standing to Jennifer's credit in the Fourth Partnership under the 2012 Partnership Deed "less the sum of £300,000…loaned to the [Fourth Partnership], itself to be divided equally between Simon and Julie. This must have been a reference to the sum of £300,000 raised from the proceeds of Crouchley West and applied in the purchase of Fairoak Grange.

40. Of course, having entered into the 2012 Partnership Deed and introduced specific property to the Fourth Partnership, it was no longer open to Jennifer to make gifts of such property in the way she envisaged in the 2014 Will. Once the properties were introduced to partnership, she gave up her specific interests in such property in return for a share in the capital of the Fourth Partnership. It is unclear whether she considered it in this way but, during 2014, Jennifer became aware she could no longer freely dispose of her property as she could have done prior to the 2012 Partnership Deed. Partly for this reason, between September 2014 and February 2015, the relationship between Jennifer and Simon deteriorated.

41. Jennifer instructed Barrow and Cook to make arrangements for notice to be served on Simon and Alison terminating the Fourth Partnership. It appears Jennifer personally gave Simon and Alison written notice of termination at a meeting on 4th February 2015 at which Julie and David Simpson were also present. However, to avoid uncertainty, Barrow and Cook effected postal service by letter dated 6th February 2015. The letter enclosed a notice dated 27th January 2015 in which Simon and Alison were given three months' notice of termination ending on 8th May 2015. No point has been taken about the validity of the notice.

42. On 8th February 2015, Simon and Alison met Mr Young to discuss the notice in the context of "the deteriorating relationship" with Jennifer. At that stage, it was recorded that they had only been "presented with an unsigned and un-dated letter giving three months notice" of termination. Mr Young was instructed that "the relationship with [Jennifer had] deteriorated from November onwards". She was also suffering from ill health having been admitted to hospital on 19th December where she had remained in attendance until 5th January. According to the note, she was suffering from "heart problems and ulcers on her legs". Issues were canvassed about Jennifer's capacity and whether Julie was exercising undue influence.

43. By written notice dated 26th October 2015, Simon and Alison served notice on Jennifer exercising their option to purchase her interest in the Fourth Partnership under the provisions of the 2012 Partnership Deed at a price to be determined (**"the Option Notice"**). However, they have not sought to complete the transaction. There is, of course, a dispute about the extent of the assets comprised in Jennifer's estate and, at least until recently, the Partnership assets had not been valued as required by the 2012 Partnership Deed.

44. On Christmas Day, 2015, Julie collected Jennifer from Pheasant Lodge to stay with her at High Legh. Owing to her ill health, she was unable to return home. At the end of January 2016, Julie was herself due for treatment in hospital. Arrangements were thus made for Jennifer to be accommodated at Sunrise care home in Mobberley. After a few weeks, she was moved from there to another care home, the Old Rectory, in Grappenhall.

45. On 11th May 2016, Jennifer made the Final Will in which she appointed Julie and Mr Jones as her only personal representatives and gave the whole of her estate to Julie subject to an option, exercisable for six months, for Simon to purchase her share in any land farmed under the 2012 Partnership Deed at current market value and a proviso that, if Julie predeceased her, her residuary estate would be given to her grandchildren subject to the gift of a lifetime interest in the income of her estate to David.

46. At this stage, Jennifer was diagnosed with terminal bowel cancer. She also had secondary liver cancer. She died on 30th September 2016.

47. Upon Jennifer's death, her estate would have vested in Julie and Mr Jones as her only executors. Having already served notice exercising the Option, Simon did not purport to exercise his option in the Final Will.

48. On 25th July 2018, Julie obtained a grant of probate to Jennifer's estate under the Final Will with power reserved to Mr Jones as her co-executor. Having proved the Final Will, Julie is treated as executrix of Geoffrey's un-administered estate, if any, under the provisions of *Section 7(1)* of the *Administration of Estates Act 1925.*

49. On 13th January 2020, Julie commenced the current proceedings. She implicitly did so in her capacity as personal representative of Jennifer's estate and not in her personal capacity.

***(3) Witnesses***

50. Sixteen witnesses were called to give oral evidence. In addition to Julie herself, five witnesses gave evidence on her behalf, namely David Simpson, John Morton, Judith Inglis, Joyce Fisher and John Wright. Simon and Alison also gave evidence. In addition, they called, as witnesses, Lynn Blacklock, Zoe Mellor, Jayne Krawiecka, Victoria *Morton, David Young, Christopher Heaton, Patricia Walker and Ann Scales.*

51. *Julie was* born two years after Simon. Like Simon, she spent her childhood at Reddish Hall Farm but, after studying at Manchester Polytechnic for an HND in Hotel Catering and Institutions Management with Business Studies, she embarked on a career away from the Farm, initially purchasing a house near to her place of work at Poynton, Cheshire and later a house at High Legh, near Knutsford. In 1999, she built an extension to her house at High Legh utilising funds advanced by her parents. When called to give evidence, she gave a detailed account of the factual issues as they evolved, including her relationship with Simon and his family, the circumstances in which she discovered Simon and Jennifer had secretly purchased Fairoak Grange, the impact of this on her own relationship with Jennifer and, later, the deterioration in Jennifer's health and her disillusionment with Simon.

52. She was a confident witness. For the most part, her evidence was clear and concise. Although at times defensive and unwilling to make concessions where she perceived it contrary to her interests to do so, her testimony was generally reliable on most issues prior to the acquisition of Fairoak Grange. However, she was defensive when examined about her relationship with Jennifer and her role in Jennifer's decision-making following the resurrection of their relationship post acquisition. She stated that her parents had told Simon and herself from an early age that they wished to treat them equally. This is consistent with the contemporaneous documentation, not least the 1995 Wills and, in general terms, I am satisfied that it is correct. However, whilst she accepted – in cross examination – that her parents envisaged Simon and his family would ultimately continue the farm business themselves with no such career path open to her, she said nothing to suggest how this was to be achieved if they were to be equally entitled to the farm assets. On this, the position was rather more nuanced than Julie appeared willing to accept.

53. I have treated with caution Julie's evidence in relation to all issues from 2014. As Jennifer's health started to deteriorate and her suspicions of Simon grew, Jennifer became increasingly dependent on Julie for assistance and advice in relation to the management of her affairs.

54. It is apparent from manuscript documentation, in Julie's hand, that she sought to give Jennifer guidance in relation to the importance of her will. On one such document, there is a note stating that the Third Partnership had been superseded by "new agreement" and the Fourth Partnership dissolved. There are then links to "your will"

and a note stating that "your will and welfare costs must be protected Priority is Your Will". It is also plain Julie initiated the exchange of correspondence with Mr Young in May and June 2014 about the 2012 Partnership Deed (See Para 37 above). At this stage, Mr Young became uncomfortable taking instructions from Jennifer in Julie's presence and decided he was unable to obtain independent instructions for Jennifer's new will.

55. The 2014 Will was thus prepared, on Jennifer's behalf, by Mr Keith Jones of Barrow & Cook. Julie was not present when Jennifer executed the 2014 Will. However, by this stage, Jennifer's correspondence was being sent to her at Julie's address in High Legh, not Jennifer's own address at Pheasant Lodge and it was to Julie's address that Mr Jones sent the 2014 Will for Jennifer's attention. Consistently with this, Julie had also started to draw up business correspondence on Jennifer's behalf, including a letter 22nd January 2015 to Mr Young in which Jennifer asked Mr Young to terminate the Fourth Partnership with immediate effect.

56. When cross examined on this documentation, Julie stated that the manuscript documentation was merely prepared to "assist" Jennifer "in understanding the relationship between the will and the partnership because none of us could really understand it". She stated that she had written down the words "…must be protected, priority is your will" not as advice to her mother but to record a discussion with her solicitors. Although she accepted that she had written correspondence on Jennifer's behalf, she stated at one point that she did so at Jennifer's dictation. Later, she modified her evidence to state that it may have been "from notes perhaps she might have made or I can't recall whether she sat and dictated to me. Quite possibly she did. I can't remember but she read them and signed them afterwards and they were her words".

57. In my judgment, these parts of Julie's evidence are implausible and, at least to this extent, her testimony is unreliable. No doubt, she had many discussions with Jennifer about her wills and the provisions of the 2012 Partnership Deed. It may be that the correspondence was consistent with their discussions. No doubt, Julie was also concerned to ensure funds would be available for Jennifer's care if and when necessary and believed that, by introducing assets to partnership, Jennifer had restricted her access to such funds and her powers of testamentary disposition. Julie also had reason to be aggrieved about Simon's conduct, not least for the secretive way in which he had handled the acquisition of Fairoak Grange. In any event, I am satisfied, on the balance of probability, that Julie resolved to do what she could to persuade Jennifer to bring an

end to the Fourth Partnership and make a new will with more generous testamentary provision for herself at Simon's expense. She succeeded in achieving each of these objectives. In doing so, she undermined Jennifer's confidence in Simon.

58. However, Simon has never issued probate proceedings to challenge the 2014 Will or the Final Will for undue influence or fraud. Had he done so, there is no substantial evidence Julie crossed the line from advice and persuasion to coercion or misrepresentation. It is conceivable she did not fully understand the fiscal considerations which underpinned the Fourth Partnership Deed and the acquisition of Fairoak Grange; it also possible she made unwarranted allegations to Jennifer about Simon's role in connection with these matters on which Simon could have founded such a claim. However, in the absence of specific evidence this can be no more than speculation. In any event, Mr Jones of Barrow and Cook attended to the preparation and execution of both wills. By his *Larke v Nugus* letter dated 29th November 2016, Mr Jones confirmed that each meeting in connection with the wills was attended by Jennifer alone. Based on his letter, there is no reason to suggest Simon has grounds to challenge the Final Will owing to undue influence or fraud.

59. David Simpson was first introduced to Julie in 2005 or thereabouts. They soon formed a close relationship and have lived together for a significant time. Through Julie, he became closely acquainted with Jennifer. He gave evidence that, whilst Jennifer had originally wished to divide her estate equally between Simon and Julie, her decision to make the Final Will was made in the light of Simon's refusal to co-operate in the sale of land at Crouchley to fund her accommodation at a care home at Mobberley earlier that year and an incident in April 2016 in which Simon is alleged to have addressed her in a way that was insulting and provocative. This cannot fully explain Jennifer's decision to make the Final Will. However, I am satisfied his testimony was honest and generally reliable as a record of his own perceptions at the time.

60. John Morton was Geoffrey's nephew. He was close to Geoffrey and shared several interests with him. He gave evidence of an occasion in which Geoffrey had advised him that he had made arrangements for his family in his will and thus envisaged that, following his death, there would be no difficulties in connection with the succession to Reddish Hall Farm. However, in cross examination, John Morton stated he had no idea what Geoffrey was planning. His evidence was limited but there is no reason to doubt that he gave an honest and accurate account.

61. Judith Inglis was Jennifer's cousin; they maintained a close relationship for as long as she can remember. She gave evidence that Jennifer had misgivings about the purchase of Fairoak Grange and was reluctant to transfer Reddish Hall Farmhouse to Simon. She also stated that Simon and Alison had been unkind and disrespectful to Jennifer. However, Judith is now 83 years of age and her recollection of matters of detail, such as dates, was limited. Whilst, no doubt, her testimony was given to the best of her recollection, it was and is reliable only as a statement of her own general perceptions and impressions based, for the most part, on her conversations with Jennifer herself.

62. Joyce Fisher first became acquainted with Jennifer in 2008, through her late husband Ric who had previously been married to Jennifer's late sister in law, Barbara Bond. She gave evidence about an occasion, in 2013, when Jennifer confirmed she "had done something with the business without telling Julie", a matter which appeared to have caused her distress. Her initial recollection of the date of the meeting was incorrect – 2014 rather than 2013 – but, in my judgment, her testimony was honest and reliable.

63. John Wright first became acquainted with Geoffrey and Jennifer in 1958. Following Geoffrey's death, he frequently visited Jennifer, in the company of his wife, to ensure she was safe and well. Over that period, he described the relationship between Jennifer and Simon as fractious and observed that there were occasions on which Jennifer was in tears over something that Simon had said or done or omitted to do. Although elderly – 85 years of age – he was an impressive witness who was able to give clear, measured and confident answers to the questions put to him. I am satisfied that he gave a reliable account based on his regular visits to the Farm.

64. Simon's evidence comprehended each aspect of the case. He confirmed Geoffrey had repeatedly assured him that one day Reddish Hall Farm would be his. His particulars of detrimental reliance were set out in his Defence and Counterclaim, supported by his statement of truth. The factual elements of his case were then amplified in his witness statement dated 15th April 2021. In this way, he gave evidence about his role on the Farm as an employee and partner, the partnership accounts, the death of his father, the FR1 Application, the transactions in 2008, the 2012 Partnership Deed and the acquisition of Fairoak Grange. In cross examination, he declined to accept his parents had ever said or done anything to suggest to him they intended to provide for their children equally. He also stated that, during their lifetime, he did not see copies of the 1995 Wills or Jennifer's 2014 or Final Will. He contended that, once he was first

introduced as a partner, he acquired an interest in the land farmed in partnership on the basis that the land was treated as a partnership asset in some of the partnership accounts and partnership funds were applied to meet loans secured over the land. He also stated that, following the FR1 Application, the Main Estate was registered in Jennifer's sole name without his knowledge notwithstanding that it had been their intention to put the land into their joint names. He also stated that, when in 2008, he entered into the 2008 Land Transfer, he did so in error not appreciating that the trust declaration provided for Jennifer and himself to hold all the relevant land, not merely the land previously owned by Jennifer, on trust for themselves as tenants in common as to nine tenths for Jennifer and one tenth for Simon.

65. Whilst some aspects of his evidence were plausible, I have reached the conclusion that, on the more contentious issues, substantial parts of his testimony were disingenuous and, on some issues, his evidence was given in the knowledge that it was false or, at least, without properly reflecting on whether it could be true. It has thus been necessary for me to treat his evidence with considerable caution, assessing the plausibility of his account in the light of the evidence as a whole and looking for corroboration on the more contentious issues. Having done so, I am satisfied that, on the balance of probability, Geoffrey did assure him that he would ultimately be given an interest in the farm and that he acted to his detriment in reliance upon those assurances. Conversely, I am also minded to accept Julie's evidence that her parents made it clear to both siblings that, so far as possible, they wished to treat them equally. Contrary to Simon's evidence, I am also satisfied that he was aware of the main scheme for succession in the 1995 Wills during the lifetime of both parents.

66. It was at least implicit in Simon's evidence in cross examination that, once he was admitted to the Second Partnership, the partnership accounts led him to believe that he had an interest in all the land farmed in partnership and that this was his perception from the time the accounts were approved. I am not satisfied this is so. In all likelihood, he paid little attention to the accounts at the time and regarded them as a formality. In his witness statement dated 20th April 2021, he stated that Geoffrey was "obsessed with not paying more tax than we have to" and viewed the exercise in relation to the partnership accounts "purely to show the position to tax and how we could reduce it". He also stated that, whilst he saw each year's annual accounts, "I can't really say I really

took a lot of notice. I went along with my father's view that they were there to show the tax man what we were doing".

67. Nor am I satisfied, on the balance of probability, that Simon thought he had somehow acquired an interest in the land owing to the application of partnership monies in the repayment of debts secured over the land. In all likelihood, these matters have been raised by Simon as an *ex post facto* attempt to shore up his case on beneficial ownership.

68. To his discredit, when it was put to Simon, in cross examination, that he was now alleging the Main Estate was first registered in Jennifer's sole name as part of a "conspiracy" to "do [him] out of [his] share of the farm", he confirmed that this was so. There is no factual foundation for this allegation. Although Simon maintained that he had acquired, as a partner, a beneficial interest in the farm land at the time he was first admitted as a partner, he struggled, when giving evidence, to quantify his share or show how it might be assessed. His evidence about the erroneous basis on which he purportedly entered into the 2008 Land Transfer was unsupported by contemporaneous documentary evidence and, in my judgment, it was wholly unconvincing.

69. Alison's evidence also appeared to have been shaped by her perceptions about her interest in the litigation. She gave her oral evidence following the evidence of Simon himself. On each of the contentious issues, her evidence was consistent with Simon's narrative and she sought to add to his evidence about Geoffrey's testamentary assurances by contending that Jennifer had made similar assurances herself on occasions such as Christmas and birthdays. Although her evidence was consistent with Simon's evidence, in my judgment it added little to their case as a whole save in relation to Jennifer's assurances and their collective acts of detrimental reliance.

70. Consistently with Alison's evidence, I am satisfied that throughout his later years, Geoffrey intended to leave Reddish Hall Farm to Simon and, until shortly before her death, the same was true of Jennifer. I am also satisfied that Geoffrey made lifetime assurances to Simon about the farm, Jennifer was aware that he had done so on behalf of them both and she was content to give similar assurances to Alison herself. However, Jennifer was also anxious for Simon and Julie to be treated equally. Alison said nothing to persuade me otherwise. Geoffrey's solution was for Simon to be given the farm stock and machinery and for the land to be divided equally between the siblings on the basis that Simon would be able to buy Julie out. It can be seen from the 1995 Wills that

Jennifer was content with this arrangement and the assurances to Simon or Alison were on that basis. Jennifer would have had no good reason to mislead them. I am also satisfied that, like Simon, Alison acted to her detriment in reliance upon these assurances, by giving up her career at Barclays Bank to work in the farming business.

71. However, on other contentious issues, the difficulties inherent in Simon's evidence were replicated in Alison's evidence. Like Simon, she repeatedly sought to elevate the historic partnership accounts to the status of a declaration of trust. At one point, she asserted that "all the freeholds were partnership assets and they were in the capital accounts and this is the framework that is from 1958 and it's the capital accounts." In doing so, she overlooked the fact that the land was not farmed in partnership until 1975 and on one occasion Geoffrey purchased land in the name of four members of the family, including Julie, notwithstanding that Julie was not a member of the partnership nor, indeed, was Simon at the time. Alison also challenged the basis on which Jennifer was registered as first proprietor of the Main Estate under the FR1 Application maintaining that this was somehow inconsistent with the partnership accounts. She did so without appreciating that, regardless of the merits of Simon's claim to a beneficial interest, the legal title to the Main Estate had vested in Jennifer's sole name by survivorship upon Geoffrey's death. Whilst the devolution of the legal title was and is a technical legal concept, Alison had no hesitation making submissions about it.

72. Mr Young has now retired as a solicitor. However, he was instructed to act on behalf of Simon and Jennifer in connection with the 2008 transactions, the 2012 Partnership Deed and acquisition of Fairoak Grange. This included taking their instructions, giving advice, preparing the relevant documentation and attending to the conveyancing formalities. His evidence encompassed each of these matters. As reasonably expected, he was a careful and honest witness. I am satisfied that he gave an accurate account and I can rely on his evidence.

73. In the light of his evidence, I am satisfied that, in reliance upon his professional advice, Jennifer and Simon entered into the 2008 Land Transfer to obtain tax relief in connection with the disposal of the Farmhouse. On this basis, the 2008 Land Transfer included the trust declaration providing for Jennifer and Simon to hold the 2008 Land on trust for themselves as tenants in common as to nine-tenths for Jennifer and one-tenth for Simon. This was on the understanding that, immediately prior to the 2008 Land Transfer, Jennifer was the sole legal and beneficial owner of the 2008 Land.

Contrary to Simon's evidence, there is no room for any suggestion the parties understood him to have a beneficial interest in this land or that the 2008 Land Transfer was intended to take effect subject to such an interest. Had Simon or Jennifer advised Mr Young that this was the case, it is inconceivable Mr Young would have prepared a trust declaration in the terms that he did.

74. In cross examination, Mr Young confirmed that Jennifer was anxious for agricultural tax relief to be available in respect of Pheasant Lodge. On the basis that relief for IHT purposes was understood to be available only at a reduced rate of 50% in respect of land held outside the partnership, he provided an explanation for the treatment of Pheasant Lodge as a partnership asset in the 2012 Partnership Deed notwithstanding that, by then, it was not being used, in any meaningful sense, for partnership purposes.

75. Mr Young also gave evidence that, in 2014, there was a distinct change in the nature of Jennifer's instructions and the methods by which such instructions were given. He received a letter dated 28th May 2014 in which he was asked for copies of separate partnership deeds in relation to Reddish Hall Farm and Fairoak Grange notwithstanding that the 2012 Partnership Deed comprehended both farms. Whilst written in Jennifer's name, this letter was quite unlike any communication he had received before from Jennifer and he had reason to believe that, from that point, Julie was exercising control over Jennifer's affairs and doing so in a manner contrary to her best interests. Ultimately, he declined to take instructions from Jennifer to prepare a new will because he felt uncomfortable doing so in Julie's presence. I am satisfied that, as on all other issues, Mr Young's evidence on these matters accurately reflected his perceptions at the time and, based on the information available to him, there were reasonable grounds for his perceptions.

76. Victoria is the adult daughter of Simon and Alison. She gave evidence that, for many years, she had a good relationship with Jennifer but their relationship became more distant in later years when Julie appeared to be exercising increased control over Jennifer's affairs. She also gave evidence about the meeting at which Jennifer first gave Simon and Alison notice of dissolution and the circumstances of Jennifer's funeral. She could not reasonably be expected to give evidence that is contrary to the interests of her parents and she did not do so. Moreover, she can only have had a limited opportunity to obtain an insight into the relationship between Julie and Jennifer. However, I am satisfied that her account in relation to the evolution of her own relationship with

Jennifer was generally accurate. Since it is in issue, I am also satisfied she attended the meeting at which Jennifer sought to give Simon and Alison notice of dissolution.

77. Lynn Backlock was the manager of the care home in Grappenhall, Warrington to which Jennifer was moved shortly before her death. She gave evidence that Julie sought to prevent staff from giving Simon information about Jennifer's condition. Even at this stage, Jennifer advised her Simon "would be the beneficiary of the farm". I took this to be a reference to Reddish Hall Farm. Zoe Mellor was a general nurse at the same care home. Her evidence was consistent with the evidence of Lynn Blacklock. Although called on behalf of Simon and Alison, Lynn Blacklock and Zoe Mellor were independent witnesses and I am satisfied that their accounts were honest and reliable.

78. Jayne Krawiecka was once a local acquaintance of Geoffrey and Jennifer. She gave evidence about a conversation in which Geoffrey had disclosed that it was his intention to leave Reddish Hall Farm to Simon and Pheasant Lodge to Julie. Jayne Krawiecka was unable to say when this conversation took place; it can only have been between 1990 and 2001. I am satisfied the conversation took place and the gist of Jayne Krawiecka's evidence is correct. It is consistent with the impression formed by Christopher Heaton, a local farmer and acquaintance of Simon who was also called to give evidence. No doubt it was envisaged, for many years, that Simon would ultimately succeed to the Farm but the mechanism that evolved for achieving this was to provide for Simon and Julie to be given an equal share in the Farm coupled with a right of pre-emption for Simon's benefit in respect of Julie's interest.

79. Among the other witnesses, Ann Scales and Patricia Walker gave evidence consistent with Simon's case on the issue of detrimental reliance in support of his case based on proprietary estoppel. Without doubting their honesty or the accuracy of their evidence, it was of limited evidential value.

80. On behalf of Simon and Alison, witness statements were also provided by Candice Reeves, David Bayne, Canon Edwin Burgess, Richard Reeves and Robert Thomason. These witness statements were admitted in evidence without challenge from Julie. However, they are of only limited value in respect of the main issues.

***(4) Land Valuation***

81. Prior to trial, the parties obtained expert valuations from Mr John Seed and Mr Charles Roger Bedson who were able to reach agreement in relation to the acreage and the value

of each property in the current dispute as at May 2015. They were not called to give evidence at trial. They reached agreement as follows.

| Land Description | Title No. (if any) | Acreage | Agreed valuation (£) |
|---|---|---|---|
| The 1959, 1962, 1964 and 1972 Land | Unregistered | 32.58 | 266,000 |
| The Thelwall Land | CH 111728 | 13.43 | 120,000 |
| Great Oak | CH 176642 | 31.43 | 265,000 |
| Crouchley West | CH 198637 | 9.11 | 80,000 |
| Crouchley East | CH 273326 | 18.33 | 150,000 |
| The 2008 Land | CH 580763 | 173.50 | 1,644,000 |
| The Farmhouse | CH580756 | | 625,000 |
| Pheasant Lodge | CH562988 | | 480,000 |
| Fairoak Grange<br>Simon's Land<br>Jennifer's Land | <br>SF586842<br>SF586841 | <br>369.73<br>33.91 | 2,000,000 |

82. There has been no separate valuation in respect of the Reddish Lane Land. If this land has not been disposed of, I have thus inferred it was incorporated in the valuation of one or more of the other properties. There is no agreed valuation of Jennifer's Land. However, the valuers have observed that it was purchased at a higher price per acre than Simon's Land for which no satisfactory explanation has been provided.

83. The plant and machinery has been valued in the sum of £280,000.

84. Simon and Alison have filed their trading accounts for the year ending on 31st March 2020 from which it can be seen that, as at that date, showing their outstanding indebtedness to Barclays Bank on three loans amounts to £1,474,898. No doubt, these loans were made in order to fund the purchase of Simon's Land at Fairoak Grange. In

addition, their trading accounts showed them to be indebted to the Bank in the additional sum of £247,776. As at 31st March 2020, their total indebtedness to the Bank was thus £1,722,674.

***(5) The Claim***

85. Julie's claim is for declaratory relief in relation to the terms of the Fourth Partnership and the extent of the partnership assets together with an order for the affairs of the Partnership to be wound up and the taking of accounts and inquiries. She also seeks an order for specific performance of a contract, under the Option Notice, for the sale and purchase of Jennifer's interest in the partnership assets.

86. Simon and Alison counterclaim an order rectifying the 2008 Land Transfer so as to remove "all references to a trust under which Jennifer is entitled to a 90% beneficial interest and Simon a 10% beneficial interest" and "inserting instead a declaration that Reddish Hall Farm was held on trust for [Jennifer] and Simon as partners in a firm". Alternatively, they seek an order rescinding the declaration of trust on the basis that, when he entered into the 2008 Land Transfer, Simon was operating under a mistake. They also seek declaratory relief in relation to the beneficial ownership of each relevant property, partnership accounts and inquiries.

87. Further or in the alternative to their other claims, Simon and Alison seek an order providing for Julie to transfer to them on terms the entirety of the land farmed under the Fourth Partnership as the minimum relief necessary to satisfy an equity to which they are entitled by proprietary estoppel.

***(6) Ownership of the Properties***

88. There can be no issue about the transmission of the legal estate to the properties. The un-registered legal title to the 1959, 1964, 1969 and 1972 Land originally formed part of Geoffrey's estate. There is no evidence that it has ever been conveyed to a third party or otherwise disposed of. Since Jennifer was sole executrix of Geoffrey's estate and, in turn, Julie is executrix of Jennifer's estate, Julie is treated as Geoffrey's executrix under *Section 7(1)* of the *Administration of Estates Act 1925*. On that basis, the legal title to such properties is vested in Julie regardless of whether Jennifer executed an assent or vesting instrument during her lifetime**.** To the extent it has not been disposed of, the registered title of Geoffrey and Jennifer to the Thelwall Land, the Reddish Lane Land and Crouchley West would initially have vested, by survivorship,

in Jennifer and devolved to Julie as her executrix. The legal title to Great Oak has vested, by survivorship, in Simon and Julie. On the same basis, the legal title to Crouchley East has vested in Simon's sole name. Following severance, the legal title to Farmhouse is vested in Simon and Pheasant Lodge is vested in Julie as executrix of Jennifer's estate. The legal title to the 2008 Land has vested, by survivorship, in Simon. Simon is also sole legal owner of Simon's Land at Fairoak Grange. The legal title to Jennifer's Land is vested in Julie as Jennifer's executrix.

89. The main issue between the parties is as to the trusts on which the properties are or, at least, were held prior to the 2012 Partnership Deed. Subject to the 2012 Partnership Deed, it is implicit in Julie's case that beneficial ownership was a function of the original acquisition dictated by the trusts of each operative conveyance or transfer subject, of course, to the principle of survivorship in respect of land subject to a beneficial joint tenancy. Simon and Alison contend otherwise. They maintain that, when Simon was first admitted as a partner, the properties were introduced as a partnership asset and, over time, his interests in such properties were enlarged.

90. Simon's case – as pleaded – is that when, on 7th August 1985 or thereabouts, he entered into the Second Partnership, Geoffrey and Jennifer introduced, as a partnership asset, each of the properties already acquired on the basis that, by then, they were already an asset of the First Partnership. It is implicit in his case that this included Great Oak notwithstanding that Julie, a non-partner, also had an interest in Great Oak and, of course, continues to do so. Simon also maintains that, in 2002, he entered into an oral agreement with Jennifer under which she agreed he would be entitled to Geoffrey's "capital" in the Second Partnership and the entirety of his interests in the partnership property. If and to the extent that land was severed or disposed of between 1985 and October 2008, such land ceased to be a partnership asset. However, Simon contends that the 2008 Land Transfer was made in error since it was the common intention of the parties to provide for the transfer of 10% of Jennifer's share only; it was not to declare that Jennifer and Simon would be entitled to a beneficial tenancy in common in shares of 90:10. He thus seeks alternative orders rectifying or rescinding the 2008 Land Transfer. He appears to accept that the 2012 Partnership Deed did not, in itself, effect any material variation of the shares in which the relevant properties were held.

91. In support of his case, Simon initially relies on *Section 20(1)* of the *Partnership Act 1890* which provides that, "…property and rights and interests in property originally

brought into the partnership stock or acquired…on account of the firm, or for the purposes and in the course of the partnership business…must be held and applied by the partners exclusively for the purposes of the partnership and in accordance with the partnership agreement". However, this sets out the duties of partners following the acquisition or introduction of a partnership asset, not the formalities for the creation or transmission of an interest in such an asset.

92. The statutory provisions governing the creation or transmission of equitable interests in land are contained in *Section 53* and *54* of the *Law of Property Act 1925*. There is nothing to exclude these provisions in relation to the assets of a partnership. Indeed *Section 20(2)* of the *1890 Act* provides that the legal estate in partnership land devolves according to the nature and tenure of the same and the general law but, in trust, for the persons beneficially entitled. *Section 20(1)* does not itself prescribe or qualify the formalities for determining beneficial entitlement. The statutory regime in the *1925 Act* is applicable for that purpose.

93. *Section 53* and *54* of the *1925 Act* provide as follows.

> "53 (1) Subject to the provisions hereinafter contained with respect to the creation of interests by parol -
>
> (a) no interest in land can be created or disposed of except by writing signed by the person creating or conveying the same, or by his agent thereunto lawfully authorised in writing, or by will, or by operation of law;
>
> (b) a declaration of trust respecting any land or any interest therein must be manifested and proved by some writing signed by some person who is able to declare such trust or by his will;
>
> (c) a disposition of an equitable interest or trust subsisting at the time of the disposition must be in writing signed by the person disposing of the same, or by his agent thereunto lawfully authorised in writing or by will.
>
> 53 (2) This section does not affect the creation or operation of resulting, implied or constructive trusts.
>
> 54 (1) All interests in land created by parol and not put in writing and signed by the persons so creating the same, or by their agents thereunto lawfully

> authorised in writing, have, notwithstanding any consideration having been given for the same, the force and effect of interests at will only.
>
> 54(2) Nothing in the foregoing provisions of this Part of this Act shall affect the creation by parol of leases taking effect in possession for a term not exceeding three years (whether or not the lessee is given power to extend the term) at the best rent which can reasonably be obtained without taking a fine."

94. To succeed, Simon must thus establish the factual foundations for his case and do so consistently with the statutory formalities in *Section 53(1)* of the *Law of Property Act 1925*. In respect of each material disposition or declaration of trust, he must thus identify a signed or written instrument or instruments sufficient to satisfy the formalities of *Section 53(1)*. If not, he must show that he has acquired an additional interest or interests in one or more of the Properties under a resulting, implied or constructive trust or trusts.

95. In my judgment, Simon's case fails in each of these respects prior to 19th December 2012 when the 2012 Partnership Deed was executed with retrospective effect. To show why, it is necessary to trace the devolution or transmission of the title to each Property through four specific periods.

***(a) 24 September 1958 to 7 August 1985***

96. This period commences with the conveyance of the Main Estate to Geoffrey and ends with the deemed date of commencement of the Second Partnership.

97. Geoffrey entered into each conveyance between 1958 and 1972 in his sole name without making a declaration of trust. However, in 1977, the registered title to the Thelwall Land and the unregistered title to the Reddish Lane Land were respectively transferred and conveyed into the joint names of Geoffrey and Jennifer. Geoffrey and Jennifer were then registered as proprietors of the Thelwall Land and, when title to the Reddish Lane Land was registered, they were the first registered proprietors. Copies of the 1977 transfer and conveyance were not admitted in evidence so it is not possible to construe them for words of severance in the original grant. By this time, Geoffrey and Jennifer had entered into the First Partnership and, had it been intended that they would acquire the land as a partnership asset, they would be presumed to hold as beneficial tenants in common (see, for example, *Lake v Craddock (1732) 3 P Wms 158*). However, no restriction against dispositions by a sole surviving proprietor was entered

on the register in respect of either property. Since this suggests that, as husband and wife, Geoffrey and Jennifer were content for the principle of survivorship to apply, I am satisfied, in the absence of evidence to the contrary, that the Thelwall Land and the Reddish Lane Land were thus transferred and conveyed to them as beneficial joint tenants.

98. By contrast, when, on 6th August 1982, Geoffrey, Jennifer, Simon and Julie were registered as proprietors of Great Oak, a restriction on dispositions by a sole proprietor was entered against the registered title. It is unlikely, of course, that they intended it to it take effect as the conveyance of a partnership asset since Simon and Julie were not partners at the time. In the absence of a copy of the registered transfer, it can be inferred, on the balance of probability, that it was transferred to all four owners to hold as beneficial tenants in common in equal undivided shares. Since the operative conveyance was made prior to 1997, it would have given rise to a trust for sale. Notwithstanding the doctrine of conversion, the rights of Geoffrey and Jennifer could no doubt have been treated as an interest in land over which it would have been open to them to declare a sub-trust for the benefit of the First Partnership. However, it is inherently unlikely they ever did so or, indeed, contemplated doing so.

99. Throughout this period, Geoffrey was the sole legal owner of the unregistered freehold title to the Main Estate. From acquisition, he was also the sole legal owner of the unregistered freehold title to the 1959 Land, the 1962 Land, the 1964 Land and the 1972 Land. Whilst he was registered as joint proprietor of the Thelwall Land, the Reddish Lane Land and Great Oak, there were no restrictions on dispositions by a sole surviving proprietor in respect of the Thelwall and Reddish Lane Land. Moreover, for the reasons to which I have referred, it is unlikely Great Oak was held as a partnership asset. It is thus surprising that these properties were each listed on the schedule of the First Partnership's assets in its accounts for the year ending on 11th February 1983, 1984 and 1985 with a value – no doubt at historic cost - of £21,368 for "Reddish Hall Farm" and £149,777 for the rest of the land, of which £73,960 was attributable to Great Oak. Although it was noted, in the accounts, that Great Oak was in the ownership of Geoffrey, Jennifer, Simon and Julie, it appears the full value of the property was entered, each year, on the balance sheet and credited to the aggregate amount of the partners' capital, current and loan accounts. This is so notwithstanding that there is

nothing to suggest Julie was intended to hold as a bare trustee nor, indeed, that there was any reason to convey the property to her on that basis.

100. There is no evidence that Geoffrey or, indeed, Jennifer, Simon or Julie, did anything to assign or transfer their rights in property to the First Partnership or make any declaration of trust in respect of their interests in respect of the relevant properties. Indeed, it is inherently unlikely they did so or contemplated doing so. Mr Edwards did not submit that any of the partnership accounts – whether the accounts of the First Partnership or subsequent accounts – could *per se* have satisfied the statutory formalities. Whilst it is likely the accounts were signed by the partnership accountants, there is no suggestion they were signed by the partners themselves so as to satisfy the requirements of *Section 53(1)(b)* for a written declaration of trust and, on their face, they cannot be treated as a contemporaneous instrument creating, assigning or disposing of property or an equitable interest in the property so as to satisfy the requirements of Section *53(1)(a)* or *(c).*

101. Nor, indeed, is there any substantial evidence that it was ever the intention of Geoffrey or Jennifer or, indeed, Simon or Julie to introduce or transfer their interest in the relevant assets to the First Partnership or do anything which might have given rise to a resulting or constructive trust. There is certainly no evidence that they agreed to do so. It might be suggested that the yearly accounts are consistent with such an agreement or, at least, an intention to introduce the relevant assets to the First Partnership. However, in the absence of additional evidence, this is not enough.

102. Consistently with this, Mr Maynard Connor referred me to the judgment of HHJ McCahill QC in *Ham v Bell [2016] EWHC 1791 (Ch),* with the following observations at *[51]* and [*52].*

> "51. The accounts of a partnership may provide evidence as to whether there was an express agreement to make land a partnership asset. If one partner says there was such an express agreement and the other denies it, the accounts may help the court to decide whose recollection is more reliable. That was the submission of Mr Jourdan who went on to contend that farmers and other business people do not always look carefully at accounts or appreciate what the entries in them mean and mistakes can be made. He then drew my attention to the observations of the editors of *The Encyclopaedia of Forms and Precedents Volume 2(1) (Partnership)* who

stated at 126:

> 'Practitioners should be wary of relying on the accounts as evidence of the intention of the parties, however, as often such an inclusion is made at the behest of the partnership accountants who include the item solely in order to get tax relief and without addressing the consequent ownership issues, let alone advising the partners to seek legal advice on them. Experience indicates that this is a particular problem with agricultural partnerships.'

52. Accounts, therefore, are no more than evidence and if they do not reflect what was agreed they fall to be disregarded. There are a number of cases where the court has held that the accounting treatment of an asset did not reflect what had been agreed between the partners: see *Miles v Clarke [1953] 1 WLR 537, Barton v Morris [1985] 1 WLR 1257* and *Powell v Powell* (unreported decision of Daniel Gatty sitting as a Deputy Adjudicator to HM Land Registry *Ref/2009/1485*)."

103. In the present case, the accounts are consistent, on their face, with an intention or agreement to introduce Geoffrey and Jennifer's interests in at least some of the properties to the First Partnership but it forms no part of Simon's case that the accounts furnish him with a case based on estoppel and none of such accounts establishes *per se* such an intention or agreement. Apart from the accounts, there is no convincing evidence of any such intention or agreement. Indeed, any suggestion of such an intention or agreement is inconsistent with the contemporaneous conveyancing documentation and the conveyancing and testamentary documentation drawn up subsequently on Geoffrey and Jennifer's specific instructions, for example the Deed of Gift and the 1995 Wills. In my judgment, to the extent the accounts suggest otherwise, they do not reflect the intentions or understanding of Geoffrey and Jennifer at the time and they were made in error. As Simon himself suggested in evidence, Geoffrey's objective when instructing his accountants was to minimise his tax liability and present his accounts in a way consistent with that objective. It was not to record dispositions in relation to the ownership of the properties.

104. I am satisfied that, during this period, no properties were introduced to the First Partnership as a partnership asset.

*(b)* ***7 August 1985 to 8 February 2001***

105. The partnership accounts were consistently prepared to the year ending on 11th August. Simon was not treated as a partner in accounts for the year ending on 11th August 1985. However, he was subsequently deemed to have commenced as a partner on 7th August 1985 and, in the accounts for the year ending on 11th August 1986, his share of the partnership profit was calculated so as to commence from that date (7th August 1985).

106. It forms no part of Simon's pleaded case that, when Simon became a partner, Geoffrey and Jennifer *expressly* agreed to introduce to the Second Partnership the relevant properties as a partnership asset. His pleaded case is based on the following propositions.

(i) Prior to the Second Partnership, each successive purchase of property following the purchase of the Main Estate itself was funded from the profits of "the Farming Business", defined so as to include the business carried on in succession by Geoffrey alone and then by Geoffrey and Jennifer in partnership (Defence, Para 22);

(ii) each property, including the Main Estate itself, was used "for the purposes of the Farming Business" (Para 23(a));

(iii) Geoffrey, Jennifer and Simon agreed that Simon would be entitled to share in the assets of the Second Partnership if he invested £5,000 (Para 24) which he duly did (Para 25);

(iv) when the Second Partnership commenced, all the properties of the First Partnership (including the Main Estate), "belonged to the [Second] Partnership" (Para 26); and

(v) "in any event, the common intention of Geoffrey, Jennifer and Simon…was that each of the three of them had a beneficial interest in this land" (Para 29(b).

107. Based on these propositions, Simon contends that, from the commencement of the Second Partnership on 7th August 1985 or thereabouts, he was entitled to a 30% share of each property to reflect his share in the profits and assets of the Second Partnership. This includes the Main Estate, the 1959 Land, the 1962 Land, the 1964 Land, the 1972 Land, the Thelwall Land, the Reddish Lane Land, Crouchley West and Great Oak.

108. In my judgment, the essential factual elements of these propositions have not been collectively established and, to the extent that one or more of factual elements could be established in isolation, they do not suffice.

109. Firstly, whilst each property, including the Main Estate, was used for the purpose of the Farming Business it does not follow that each such property was or is held as a partnership asset, see for example *Singh v Nihar [1965] 1 WLR 412*, in which Lord Pearce, at *415G-H,* endorsed a passage from *Lindley on Partnership (12th edn) (1962)* at p365 stating that "…it by no means follows that property used by all the partners for partnership purposes is partnership property. For example, the house and land in and upon which the partnership business is carried on often belongs to one of the partners only, either subject to a lease to the firm, or without any lease at all". Consistently with these principles, Geoffrey, Jennifer, Simon and Julie were content to permit the First Partnership to use Great Oak for the farming business notwithstanding that their estate in the property as a whole was never regarded as partnership property. This continued when Geoffrey, Jennifer and Simon entered into the Second Partnership. There is no evidence to suggest the possibility was contemplated that Geoffrey, Simon and Jennifer might declare a separate trust or sub-trust in respect of their own undivided shares of Great Oak. It is also inherently unlikely they did so.

110. Secondly, Simon's general case in relation to the common intentions of Geoffrey, Jennifer and Simon is inconsistent with the evidence. Crouchley East was acquired by Geoffrey, Simon and Jennifer together after the commencement of the Second Partnership and for the use of the Second Partnership. On that basis, it could easily be inferred it was acquired with the intention it would be a partnership asset. However, no such inference can be drawn in respect of any of the other properties and there is no evidence the partners ever formed an intention to transfer or appropriate such properties to the Second Partnership. By August 1985, Geoffrey can be taken to have been well versed in the conveyancing formalities. Had Geoffrey and Jennifer intended to convey or assign to Simon an interest in any such land, they could have been expected to take legal advice and instruct solicitors to attend to the formalities for doing so as, indeed, they appear to have done when, in February 1987 or thereabouts, they entered into the conveyance or transfer for the acquisition of Crouchley East and, on 31st May 1991, Geoffrey and Jennifer entered into the Deed of Gift to which Simon was not joined as a party. No doubt, Geoffrey and Jennifer envisaged that, upon Geoffrey's death, Simon

would take over the management of the Farm and, indeed, ultimately inherit the same provided that this could be achieved providing equally for Julie. However, they would not have wished to pre-empt their children's succession rights by making an immediate gift to Simon in this way. Whilst Julie was, indeed, excluded from the conveyance of Crouchley East, this was a discrete area of land and it was purchased at a time that Simon had been admitted to partnership and was already making a substantial contribution to the Farm.

111. In support of his case that he personally formed an understanding he was acquiring an interest in the other properties at this stage, Simon sought to rely on the partnership accounts. However, in his witness statement (see Para 66 above), Simon himself stated that he did not take a lot of notice of the accounts. They were prepared with a view to reducing the overall tax liability of the Second Partnership. In my judgment, it is unlikely he believed, at the time, that the accounts recorded his interest in the properties or, indeed, furnished him with one. More likely than not, he was unaware that they contained any reference to the properties. I am satisfied the same was true of Geoffrey and Jennifer. Whilst, in some of the earlier accounts, properties were entered in the partnership accounts regardless of whether they were a partnership asset (for example Great Oak), the opportunity was taken to remove them from the accounts when Crouchley East was acquired by the partners and entered in the accounts for the year ending on 11th February 1988. The obvious explanation was that, unlike the other properties, there was a sound basis for treating Crouchley East as partnership property and, when these accounts were prepared, the partners or their accountants were alive to the distinction between Crouchley East and the other properties. If Simon was aware the other properties were being removed from the schedule of the Second Partnership's properties at this stage, he did not complain or otherwise raise any objection to this at the time.

112. Thirdly, it is facile for Simon to suggest, as he does, that each purchase was funded from the profits of the farming business and infer that the properties were thus to be treated as a partnership asset. In *Curley v Parkes [2004] EWCA Civ 1515*, Peter Gibson LJ observed that "…the resulting trust of a property purchased in the name of another, in the absence of contrary intention, arises once and for all at the date on which the property is acquired. Because of the liability assumed by the mortgagor in a case where monies are borrowed by the mortgagor to be used on the purchase, the mortgagor is

treated as having provided the proportion of the purchase price attributable to the monies so borrowed. Subsequent payment of the mortgage instalments are not part of the purchase price already paid to the vendor but are sums paid for discharging the mortgagor's obligations under the mortgage". Where, as in the present case, the property is being used by the mortgagor and his partners, it can easily be inferred that the payments are to be treated as rent. In any event if, as Simon suggests in the present case, such a property is introduced to a partnership and the partners assume liability for the payment of a loan, ownership is dictated by the partnership agreement not the loan repayments. Beneficial ownership only passes to the firm when the property is introduced to the partnership. If the accounts are prepared properly, the partner can then be credited with the capital value of the property that he or she has introduced. However, there is no evidence in the present case that the relevant properties were purchased by the partners in their capacity as such or that the loans were advanced at the outset on that basis. Proposition (i) does not add anything to Simon's case if the parties did not agree to introduce the relevant property to partnership and the accounts do not reflect beneficial ownership.

113. Fourthly, whilst Simon was credited with the sum of £6,425 in the current accounts for the Second Partnership for the year ending on 11th February 1986 after debiting the sum of £5000, this amount did not meaningfully reflect the value of the assets of the First Partnership if, contrary to my earlier conclusions, the same included the relevant properties. Even at historic cost value, Reddish Hall Farm was valued in the accounts at £21,368 and the rest of the land at £149,777. As at 11th February 1986, the net current liabilities of the Third Partnership amounted to £67,683 but this was substantially less than the value, following depreciation, of the farm machinery, equipment and vehicles of £122,008.

114. In any event, Simon has not identified a material agreement or declaration of trust nor, indeed, a signed written instrument that was or is capable of satisfying the formalities in *Section 53(1)* of the *Law of Property Act 1925* under which Geoffrey or Jennifer might have purported to assign or confer rights on him in respect of the relevant land at this stage. No written declaration of trust has been admitted in evidence - whether or not signed by Geoffrey or Jennifer - nor indeed has any signed transfer or disposition, whether contemporaneous or otherwise.

115. If Simon is to succeed on this part of his case, he must thus show that he can rely on a resulting, implied or constructive trust within the meaning of *Section 53(2).* Caution is exercisable when applying to partnerships judicial guidance developed in the context of cohabiting couples. This is particularly so in the case of commercial agreements. However, to establish that he became entitled, in the absence of express agreement, to an interest in the relevant properties under a constructive trust, Simon must not only show that the partners together formed a common intention to this effect. He must also show that he acted to his detriment in the reasonable expectation of such an interest, see *Megarry and Wade on "the Law of Real Property" (9th edn) Paras 10-026 to 10-027,* or that, on similar or analogous grounds, Geoffrey and Jennifer should not be entitled to resile from their original position. I am not satisfied that Simon is able to establish any of these requirements. Geoffrey and Jennifer did not purport to give him an immediate interest in any property other than Great Oak and Crouchley East. Geoffrey assured Simon that he would ultimately be given an interest in the other properties at Reddish Hall Farm and the Farmhouse was earmarked for him alone. However, no immediate interest in the other properties was transferred to him and he was not advised that he could already regard himself as an owner. Nor did he act to his detriment in reliance upon the belief that he had already acquired such an interest. Of course, Simon's case to the contrary is inconsistent with his alternative claim, again based on putative assurances from Geoffrey, that he would ultimately be given such an interest in the future.

116. In Paras 38-39 of Simon's witness statement, there were bare assertions that, when he entered into the Second Partnership, he "was aware that [he] was given a 30% share" and this extended to "the land, machinery, capital of the farm…". It is at least implicit that this encompassed each of the relevant properties. However, it ultimately emerged that this part of Simon's case was based simply on the partnership accounts for the year ending on 11th February 1986 and 1987. When it was put to him that he didn't consider he had an interest in the main farm in 1991, he stated "yes, I did, because the accounts told me that". For the avoidance of doubt, I am satisfied that Geoffrey or Jennifer did not make any promise or assurance to Simon at this stage in relation to his immediate rights in the relevant properties as distinct from the grant of future rights, whether by will or otherwise.

117. Having entered into the Second Partnership, Geoffrey, Jennifer and Simon acquired Crouchley East. It was conveyed to them under a conveyance in February 1987. On 1st April 1987, the title to Crouchley East was registered under Title No. CH273326 in the names of Geoffrey, Jennifer and Simon and a restriction was entered on dispositions by a sole proprietor. In my judgment, it can be inferred this was acquired by Geoffrey, Jennifer and Simon as partners and beneficial tenants in common in undivided shares. Consistently with this conclusion, the property was entered on the schedule to the balance sheet of the partnership accounts for the year ending on 11th February 1988 as a partnership asset. At the same time, the partnership accountants took the opportunity to remove, from the balance sheet, the land that had previously been entered other than "Reddish Hall Farm House" and "Reddish Hall Farm Cottage". On Simon's behalf, Mr Edwards submitted that it was not open to the partnership accountants or, indeed, Geoffrey, Jennifer and Simon themselves to divest the partners of their beneficial interest in the partnership assets without complying with *Section 53* of the *1925 Act*. I accept this submission. However, the casual way in which the partnership accountants appear to have dealt with the entries on the balance sheet in respect of partnership assets is inconsistent with the suggestion that the entries were intended to definitively record the partners' rights of ownership in respect of the properties.

118. A copy of the Deed of Gift was admitted in evidence. This contained an express declaration of trust providing for Geoffrey and Jennifer to hold the Main Estate on trust for themselves as beneficial joint tenants. Together, they covenanted to contribute towards the costs incurred by Geoffrey, as owner of neighbouring land, in maintaining a road and indemnify Geoffrey in relation to the covenants of the 1958 Conveyance. Had Geoffrey and Jennifer believed, by then, that Simon himself had an interest in the Main Estate, they would almost certainly have sought to make him a party to the Deed of Gift. It is not suggested that they ever did so.

119. The next significant event in the chronological sequence was on 25th February 1995 when Geoffrey and Jennifer made their mirror wills. It is plain from their gifts of the land comprising the Farm that they did not generally regard such land as a partnership asset. Their gift specifically excluded "the land already owned by [their] children Simon Nigel Morton and Julie Morton". It can thus be taken to have excluded Great Oak and Crouchley East but otherwise encompassed all of the relevant land. Julie was

enjoined to permit Simon to rent "…the land passing to her at a fair and reasonable rent" with a right of pre-emption in favour of Simon in the event she wished to sell.

120. I am satisfied that, with the exception of Crouchley East, no beneficial interest in any of the relevant Properties was given or transferred to Simon and held as a partnership asset between 7th August 1985 and Geoffrey's death on 8th February 2001. Simon continued to enjoy a beneficial interest in Great Oak but not in his capacity as a partner.

***(c) 8 February 2001 to 29 October 2008***

121. Upon Geoffrey's death, his estate vested in Jennifer as sole executrix of his 1995 Will, *Chetty v Chetty [1916] AC 603, 608.* This would have included Geoffrey's estate in the 1959, 1962, 1964 and 1972 Land. However, in all likelihood, Jennifer was unaware Geoffrey's unregistered title to these areas of land was separate from the Main Estate. At this stage, she failed to execute an assent or other vesting instrument in respect of this land and thus continued to hold it in her capacity as executrix of Geoffrey's estate, *Attenborough v Solomon [1913] AC 76, 82-3.* To satisfy the statutory formalities in *Section 36(4)* of the *Administration of Estates Act 1925*, it would have been necessary for Jennifer to sign a document naming herself or any other persons in whose favour it was to given, *Re King's Will Trusts [1964] Ch 542*.

122. Nevertheless, by the time of his death, most of the land in Geoffrey's ownership was held jointly with Jennifer. This included the Main Estate, the Thelwall Land, the Reddish Lane Land and Crouchley West. Until his death, they held the unregistered title to the Main Estate on trust for themselves as beneficial joint tenants. Whilst the conveyances under which they acquired such other properties were not admitted in evidence, no restrictions were entered on the register in respect of dispositions by a sole surviving proprietor. On the balance of probability, Geoffrey and Jennifer thus held their title to these properties as beneficial joint tenants. In the absence of severance, I am satisfied Geoffrey's beneficial interest automatically passed to Jennifer on his death.

123. By contrast, the Great Oak Land was held jointly by Geoffrey, Jennifer, Simon and Julie, and Crouchley East was held jointly by Geoffrey, Jennifer and Simon, subject to restrictions on dispositions by a sole proprietor. More likely than not, these properties were held on trust for the proprietors themselves as beneficial tenants in common in equal undivided shares. Upon Geoffrey's death, his beneficial interest in such land

would not have passed by survivorship. It would have vested in Jennifer as Geoffrey's executrix.

124. On Geoffrey's death, the Second Partnership dissolved by operation of law under the provisions of *Section 33(1)* of the *Partnership Act 1890*. However, Jennifer and Simon continued to operate the farming business in partnership. It can be seen from the partnership accounts that, by then, substantially more was credited to Simon's capital account, £145,808, than the capital accounts allocated to Geoffrey and Jennifer, £41,560 and £65,399. Following Geoffrey's death, it appears Simon and Jennifer instructed BKR Haines Watts accountants to prepare partnership accounts for the extended period ending on 28th February 2002. For that period, the Third Partnership incurred a loss of £33,571. However, at the end of the period, £75,702 was credited to Jennifer's capital account and £192,065 to Simon's capital account. At the end of the year ending on 28th February 2003, £80,334 was credited to Jennifer's capital account and £196,209 to Simon's capital account. For that year, the Third Partnership made a net profit of £24,893 to which Jennifer and Simon were entitled to share equally.

125. Consistently with these accounts, Simon contends that, in early 2002, Jennifer and Simon together attended a meeting at BKR Haines Watts' offices at which they agreed Geoffrey's share in the capital of the Second Partnership together with £6,000 of Jennifer's capital and Geoffrey's rights in the property of the Second Partnership. Subject to the more general issue about the treatment of the relevant properties in the partnership accounts, Simon was not specifically challenged in cross examination about this part of his case and it is apparent from the accounts for the year ending on 28th February 2002 that most of the amounts credited to Geoffrey's capital account immediately prior to his death were subsequently credited to Simon. Unlike real property, the statutory formalities in *Section 53(1)(a)* and *(b)* of the *1925 Act* did not and do not apply to the treatment of partnership capital. Jennifer can be taken to have approved the accounts for the Third Partnership including the treatment, in the accounts, of Geoffrey's share of capital. I am satisfied that Simon thus became entitled to the capital that was credited to his capital account or can be treated as such. However, at this stage, only one property, Crouchley East, could be treated as a partnership asset. There was no agreement to introduce other properties to the Third Partnership.

126. Simon was referred, in cross examination, to the application dated 7th June 2007 to the Land Registry for first registration of the Main Estate. This apparently arose out of

a Government initiative, supported by the NFU, to register the title to farm land in England and Wales. A meeting was arranged at which Jennifer authorised Simon to sign the relevant FR1 Form on her behalf. Contrary to Simon's witness statement in which he suggested that the Form was signed by both of them, it is clear that he was the only signatory. The Form was completed by recording that "the application [had] been lodged by JR + SM Morton, Reddish Hall Farm" and a box on the form was ticked to indicate that "the applicants are holding the property on trust for themselves as tenants in common in equal shares". No doubt, Simon and Jennifer chose to put both of their names on the form. However, it can reasonably be assumed the Land Registry were provided with the relevant title documents, including the Deed of Gift. On this basis, it would have been obvious to them that, following Geoffrey's death, the Main Estate was held in Jennifer's sole name, not in the names of Simon and Jennifer. It is thus not in the least surprising that, with effect from 27th June 2006, Jennifer was registered as sole proprietor of the Main Estate under Title CH562988.

127. In his witness statement, Simon stated that, when submitting the application, he thought they both owned the land and was not aware Jennifer had been registered as sole owner until much later, probably after Jennifer's death. This aspect of his evidence is a little surprising. It is possible the title documents were only obtained later and Simon did not properly understand how the legal title was vested at the time. However, he would have been aware that he had not signed any title documents in relation to the Main Estate and, in my judgment, cannot reasonably have believed he was an owner of the Main Estate without first having obtained legal advice on the point. More likely than not, whilst aware the land was vested in Jennifer's sole name, he saw this as an opportunity to procure that he was registered as a joint proprietor and thus achieve a measure of control mindful that he would ultimately inherit an interest in the properties. However, he failed to do so. The registered title remained vested in Jennifer's sole name.

128. Part of Crouchley West was disposed of in April 2007. When disposed of, Jennifer was the sole legal and beneficial owner and she was entitled to the whole of the net proceeds of sale of £647,057.34.

***(d) From 29 October 2008***

129. On 11 November 2008, Jennifer and Simon were registered as proprietors of the 2008 Land under Title No. CH580763 subject to a restriction on dispositions by a sole proprietor. They held such land subject to the trusts of the 2008 Land Transfer and thus on trust for themselves as tenants in common as to nine tenths for Jennifer and one tenth for Simon ("**the 2008 Land Transfer Trust**"). This is, of course, subject to Simon's claims for rectification and rescission. On the same day, Simon was registered as sole proprietor of the Farmhouse under Title No CH580756. However, the registered title to Pheasant Lodge remained vested in Jennifer under Title No. CH562988. (See Para 27 above).

130. The 2012 Partnership Deed was made in anticipation that Jennifer would acquire part of Fairoak Grange and, together, Simon and Alison would acquire the main part of such land. Their intention to do so was recorded in the recitals. Elsewhere, the expression "Partnership Freeholds" was defined and deployed so as to encompass the Main Estate, the Farmhouse, the Thelwall Land, Crouchley East, the remaining part of Crouchley West, Pheasant Lodge, Fairoak Grange "and all other freehold property *registered* in the names of [Jennifer and Simon] or either of them in which they have a beneficial interest and which is presently occupied for the purposes of [the Third Partnership]" (My italics).

131. In the definition of "Partnership Freeholds", there was no specific reference to the 1959, 1962, 1964 or 1972 Land nor, indeed, was there apparent reference to any unregistered land that might then have been vested in Jennifer, whether in her personal capacity or as executrix of Geoffrey's estate. However, the 2012 Partnership Deed is to be construed by ascertaining the meaning it would convey to a reasonable person having all the background knowledge reasonably available to the parties in the situation in which they were at the time of the contract, *Investors Compensation Scheme Ltd v West Bromwich Building Society [1998] 1 WLR 896* at *912* (Lord Hoffmann). Once construed in this way, the parties can be taken to have intended that the 2012 Partnership Deed would comprehend the entirety of the land being farmed by Simon and Jennifer at Reddish Hall Farm so as to include the 1959, 1962, 1964 and 1972 Land. There could have been no logical reason to provide otherwise. On this basis, the "Partnership Freeholds" was apt to include all of the unregistered land and the unregistered land is thus governed by the 2012 Partnership Deed.

132. Since Jennifer herself signed the 2012 Partnership Deed and, together with Simon and Alison, Jennifer herself was named as a party, it satisfied the statutory requirements of an assent in *Section 36(4)* of the *Administration of Estates Act 1925*. However, an assent is now compulsorily registrable under the provisions of *Section 4(1)(a)(ii)* of the *Land Registration Act 2002*. Since the title to the 1959, 1962, 1964 or 1972 Land has not yet been registered and the 2012 Partnership Deed has not been delivered to the Land Registry, it cannot have operated to vest in Jennifer as a partner the legal title to such land. Following Jennifer's death, the legal title to the 1959, 1962, 1964 and 1972 Land will have vested in Julie in her capacity as Jennifer's executrix or, by representation, Geoffrey's executrix.

133. By Clause 8.1 of the 2012 Partnership Deed, it was provided that "the net profits and losses of an income nature of the Partnership shall be divided as…to [Jennifer] 50% [and] as to [Simon and Alison] or the survivor of them 50%". However, by Clause 8.2, it was provided that "the net profits and losses of a capital nature arising in respect of the Partnership Freeholds shall be divided between the Partners in the proportions that they own the Partnership Freeholds in question beneficially".

134. On dissolution, it was provided by Clause 13.2 that, after a "revaluation of assets", an account would be taken "of the Partnership's then assets and liabilities and a balance sheet and profit and loss account…prepared and a copy supplied to each of the Partners and to the Personal Representatives of a deceased Partner all of whom shall be bound by them except that any error discovered within three months shall be rectified".

135. By Clause 15.1.1 of the 2012 Partnership Deed, it was provided that "the Partnership Freeholds in so far as they are reflected in their respective partnership shares will be credited or appropriated to them in the proportions in which they own such Partnership Freeholds beneficially and on any dissolution such beneficial interests shall be appropriated to their respective partnership shares".

136. By Clause 15.1.2, it was provided that "the Partnership Freeholds in so far as they are reflected in their respective partnership shares will be credited or appropriated to [the Partners] in the proportions in which they own such Partnership Freeholds beneficially and on any dissolution such beneficial interests shall be appropriated to their respective partnership shares".

137. By Clause 15.1.3, it was provided that "Secured Borrowing by any of the Partners in respect of which they (and not the Partnership) are personally liable and secured on the Partnership Freeholds shall be deducted from his or her share and when any dissolution account is required shall not be treated as a partnership liability for the purposes of determining any Partners partnership share on dissolution".

138. In *IRC v Gray [1994] STC 360*, Hoffman LJ observed that "as between themselves, partners are not entitled individually to exercise proprietary rights over any of the partnership assets. This is because they have subjected their proprietary interests to the terms of the partnership deed which provides that the assets shall be employed in the partnership business, and on the dissolution realised for the purposes of paying debts and distributing any surplus. As regards the outside world, however, the partnership deed is irrelevant. The partners are collectively entitled to each and every asset of the partnership, in which each of them therefore has an undivided share".

139. In *Bieber v Teathers [2012] 2 BCLC 585 at [76]*, Norris J thus endorsed the proposition, in *Para 17-02* of *Lindley and Banks* on the *Law of Partnership* (19th edition), that "…once a partner has brought in the asset and been credited with its agreed "capital" value in the firm's books, the asset as such will cease to be his property and will thereafter belong to the firm…". On appeal (*Bieber v Teathers [2013] 1 BCLC 248*), Patten LJ took the same view concluding, at [59] that, in the absence of provision to the contrary, partnership monies belong to the firm and vest in the partners as joint legal owners with effect from the commencement of the partnership.

140. The 2012 Partnership Deed more than satisfied the statutory formalities of *Section 53* of the *Law of Property Act 1925*. It was signed by each of the partners as a deed. In doing so, Jennifer and Simon did not dispose of the legal title to the properties denoted as Partnership Freeholds. However, they introduced the properties to the Fourth Partnership as partnership assets. Crouchley East was already an asset of the Third Partnership. Jennifer and Simon thus transferred Crouchley East to the Fourth Partnership. Conversely, Great Oak was part owned by Julie. It follows that Jennifer and Simon could only have introduced their own beneficial interests to the Fourth Partnership in this property under a sub trust. However, Jennifer and Simon freely introduced their other assets as the only legal and beneficial owners save that, in the case of the 1959, 1962, 1964 and 1972 Land, Jennifer was thus deemed, subject to registration of title, to have assented to such land vesting in herself as a partner. In

transferring the Partnership Freeholds to the Fourth Partnership, the Partners' existing beneficial interests in such properties were appropriated to their share of the partnership assets in accordance with Clause 15.1.2. From that time, they were held on trust for the Fourth Partnership subject to the provisions of the 2012 Partnership Deed itself.

141. As envisaged in the recitals to the 2012 Partnership Deed, Fairoak Grange was duly acquired on behalf of the Fourth Partnership. Jennifer's Land was transferred into Jennifer's name. However, the registered title to Simon's Land was transferred to him alone. It remains vested in his name only. However, in accordance with Clause 15.1.2 of the 2012 Partnership Deed, they were appropriated, on completion, to the shares of Jennifer and Simon in the partnership assets.

142. An issue potentially arises about the effect of the Option Notice. Julie's case – as presented in Paragraph 15 of the Particulars of Claim – is that "the Estate's interest in the [Fourth] Partnership has not been purchased" owing to the failure of Simon and Alison to provide "all necessary and other information in order to have the [Fourth] Partnership's assets valued…" Simon and Alison deny that they have failed to provide the required information but do not specifically plead to the allegation that "the Estate's interest" has not been purchased. This allegation is thus subject to the general traversal in Paragraph 4 of the Defence. However, I am satisfied that the underlying explanation is that Simon and Alison are well aware they will be unable to raise sufficient funds to purchase Jennifer's share of the profits, capital and assets of the partnership to complete the transaction under clause 17.3 of the 2012 Partnership Deed. Pending the trial of these proceedings, the parties have taken no steps to progress the transaction further.

143. Historically, it was considered that, upon the exercise of an option, the parties were to be treated as buyer and seller under a binding contract of sale, *Cockwell v Romford Sanitary Steam Laundry [1939] 4 AER 370* at *375*. In a well known passage from his judgment in *Spiro v Glencrown [1991] Ch 537*, Hoffman J concluded that an option agreement is *sui generis* bearing some of the characteristics of an irrevocable offer and a conditional contract. On either basis, the parties would be deemed subject to a binding contract for sale at the latest upon exercise of the option. This is not a simple contract for the sale of land. It amounts to a contract to purchase Jennifer's interest in the profits, capital and assets of the Fourth Partnership at a price equal to the amount standing to her credit in the partnership accounts subject to a mechanism for valuation of the Fourth Partnership's assets (see para 32 above). However, I am satisfied that, through the

service of the Option Notice, Simon and Alison entered into a binding contract of purchase.

144. To the extent that the contract encompasses Jennifer's interest in the relevant properties, an issue potentially arises as to whether the doctrine of conversion applies under which, pending completion, purchasers of land were regarded, in equity, as the owners and the vendor as owner of the purchase monies, *Lysaght v Edwards (1876) 2 ChD 499* per Jessel MR. In my judgment, the room for this doctrine is limited in a case such as the present where the relevant assets are held subject to the provisions of a partnership deed. In any event, until the value of Jennifer's interest in the profits, capital and assets has been ascertained and at least some payment made in respect of her interest, I can see no good reason to infer that a separate beneficial interest in the assets of the Fourth Partnership might have passed to Simon or Alison transcending their post dissolution partnership rights. When referring to the doctrine of conversion in its classic form, Lord Walker observed, in *Jerome v Kelly [2004] 1 WLR 1409* at [32] that "it would…be wrong to treat an uncompleted contract for the sale of land as equivalent to an immediate, irrevocable declaration of trust (or assignment of beneficial interest) in the land. Neither the seller nor the buyer has unqualified beneficial ownership. Beneficial ownership of the land is in a sense split between the seller and buyer on the provisional assumptions that specific performance is available and that the contract will in due course be completed, if necessary by the court ordering specific performance. In the meantime, the seller is entitled to enjoyment of the land or its rental income. The provisional assumptions may be falsified by events, such as rescission of the contract (either under a contractual term or on breach). If the contract proceeds to completion the equitable interest can be viewed as passing to the buyer in stages, as title is made and accepted and as the purchaser price is paid". In any event, the purchasers under an uncompleted contract for the sale of land do not acquire an equitable interest which is capable of assignment, *Southern Pacific Mortgages v Scott [2015] AC 385*.

145. If and to the extent there remains, in existence, a contract for the sale of land for which it would remain open to the Court to grant a decree of specific performance, Simon and Alison have only limited contractual rights prior to determination of the purchase price or, indeed, any payment towards the purchase price.

146. Although the Fourth Partnership has been dissolved, the 2012 Partnership Deed and the provisions of the Partnership Act 1890 continue to govern the post dissolution

rights of Simon, Alison and Julie, in her capacity as personal representative, and their interests in the Partnership Freeholds. Subject to the Option, if enforceable, and any rights to which Simon might be entitled by proprietary estoppel, Clause 23.1 and the provisions of the 1890 Act govern the dissolution of the Fourth Partnership. Clause 23.2 of the 2012 Partnership Deed provides that, "if on the winding up of the Partnership any Partnership Asset is to be offered for sale any Partner shall be entitled to bid therefor". "Partnership Asset" has been left undefined but would plainly include the Partnership Freeholds.

***(7) Simon's counterclaim for orders rectifying or rescinding the 2008 Land Transfer Trust***

147. The 2008 Land Transfer was embodied in a TP1 in which, as sole proprietor, Jennifer was designated as "Transferor" with Jennifer and Simon together designated as "Transferee" (sic). The 2008 Land Transfer Trust was incorporated in panel 12. It provided for "the Transferees…to hold the Property on trust for themselves as tenants in common as to nine tenths for the Transferor (the said Jennifer Ruth Morton) and as to one tenth for the said Simon Nigel Morton".

148. Simon counterclaims for an order rectifying the 2008 Land Transfer "by removing all references to a trust by which Jennifer would have a 90% beneficial interest and Simon…a 10% beneficial interest; and…inserting a declaration that [the 2008 Land] was held on trust for Jennifer and Simon as partners in a firm". Although Simon's formula does not contain words of severance to confirm Jennifer and Simon would hold as beneficial tenants in common in undivided shares, no doubt this would be achieved by the declaration. However, there are no words of apportionment. The undivided shares in which Jennifer and Simon are deemed to have intended to hold the 2008 Land are left undefined.

149. Simon's case is founded on common mistake. In *Chartbrook Ltd v Persimmon Homes Ltd [2009] 1 AC 1101 at [48],* Lord Hoffmann endorsed the following test from the judgment of Peter Gibson LJ in *Swainland Builders Ltd v Freehold Properties Ltd [2002] 2 EGLR 71, 74 [33].*

> "The party seeking rectification must show that: (1) the parties had a common continuing intention, whether or not amounting to an agreement, in respect of a particular matter in the instrument to be rectified; (2) there was an outward

expression of accord; (3) the intention continued at the time of the execution of the instrument sought to be rectified; (4) by mistake, the instrument did not reflect that common intention".

150. For Simon's rectification claim to succeed, Mr Edwards thus accepts he must show that, by the time the parties entered into the 2008 Land Transfer, they had entered into an agreement or formed a continuing common intention inconsistent with the 2008 Land Transfer Trust at least according to its current formulation.

151. In my judgment, Simon's case fails at the outset on two grounds. Firstly, it is made on the footing that, when parties entered into the 2008 Land Transfer, Jennifer and Simon were already joint beneficial owners of the 2008 Land. In my judgment, there is no room for this proposition; Jennifer was sole legal and beneficial owner at the time. Secondly, Simon has not identified an agreement or common intention with sufficient specificity to found a claim for rectification. This is betrayed by the difference between the relief set out in Simon's counterclaim for relief and the facts pleaded in his statement of case in relation to the putative common intention.

152. The essential elements of Simon's factual case – as deployed in Paragraph 90 of the Defence and Counterclaim - are as follows.

"90. At all material times in connection with this transaction, the continuing common intention of Jennifer and Simon as regards Reddish Hall Farm in particular was as follows.

Particulars of Continuing Common Intention

(a) Reddish Hall Farm was to continue being used for the Farming Business after the transaction in the same way as before.

(b) Simon's interest in Reddish Hall Farm was to be increased and not reduced, with the increase representing a gift by Jennifer.

(c) The gift from Jennifer to Simon was specifically intended for the purpose of avoiding a Capital Gains Tax liability arising which would, or which they believed would, otherwise arise".

153. Although there is thus a suggestion in Simon's pleaded case there was a continuing common intention to make a gift to Simon so as to enlarge his interest in the 2008 Land, the parameters of the common intention are obscure. In Paragraph 14 of his witness

statement, Simon stated that "I understood that [the TP1] was transferring 10% of my mother's share of the land to me. I thought I had a partnership share in the capital account. I also thought mother had a partnership share in the capital account. I didn't have a figure in mind – I hadn't determined the values of the land, but they're not what they were at purchase…" However, the relief sought in Simon's counterclaim does not define his share or provide for it to be increased nor does it provide for a gift to him from Jennifer's estate. It simply provides for the deletion of any reference to the apportionment of their respective beneficial interests.

154. In any event, Simon's rectification claim is based on the proposition that Simon and Jennifer shared a common intention that was not reflected in the 2008 Land Transfer; it is not based on unilateral mistake.

155. After hearing Simon's evidence, I am not satisfied he entered into the 2008 Land Transfer with a specific intention that was not reflected in the document itself nor, indeed, that he did so in the belief that he had somehow already acquired an interest in the land based on his interpretation of some of the historic partnership accounts. It is unlikely that he could have independently reached such a conclusion without additional inquiry. It is true the parties entered into the 2008 Land Transfer to avoid liability for CGT upon transfer of the Farmhouse and Simon would have been mindful the Farmhouse was being transferred at his own personal request. However, had he thought that he already had an interest in the 2008 Land, Simon could have been expected to raise this with Jennifer and, indeed, Mr Young before entering into the 2008 Land Transfer so that his share could be ascertained and reflected in the declaration of trust. This plainly did not happen.

156. Whatever Simon's intention might have been, however, there is certainly no evidence to suggest that the 2008 Land Transfer failed to reflect Jennifer's intention in any material respect. When, in cross examination, it was put to Simon that "it was known by both you and your mother [the relevant property was] her property and the proceeds were hers to do as she saw fit" he accepted that "she might have had that view". In my judgment, she did have that view; there is no substantial evidence to indicate otherwise.

157. Simon makes an alternative claim for rescission of the 2008 Land Transfer Trust. This is founded on his case that Jennifer and Simon both believed Simon was already a

co-owner of the 2008 Land and "did not appreciate that the premise of the declaration of trust was that immediately beforehand Jennifer had been the sole beneficial owner of Reddish Hall Farm". It is then pleaded that they "believed that the effect of the declaration of trust was to effect a transfer of 10% of Jennifer's interest…to Simon" and "did not appreciate that the declaration of trust would or could have the effect of reducing Simon's existing interest…"

158. The conceptual basis for this part of Simon's case was not developed in argument. However, if it is founded on the equitable jurisdiction of the Court to set aside a transaction for mistake under the principle identified by the Supreme Court in *Pitt v Holt [2013] 2 AC 108,* it would be necessary for him to show that there was a causative mistake which was so grave that it would be unconscionable to refuse relief.

159. I am not satisfied that there was any mistake or, more specifically, that Jennifer or Simon entered into the 2008 Land Transfer or, indeed, any of the relevant 2008 transactions, by mistake. They entered into the transactions in the belief that Jennifer was the sole legal and beneficial owner of the 2008 Land, as indeed she was, and they fully understood that the transaction was intended to effect a transfer of 10% of Jennifer's interest to Simon with a view to avoiding any liability for CGT that might otherwise be incurred by reason of the transfer of the Farmhouse to Simon himself. Since Simon did not already have an interest in the 2008 Land, the 2008 Land Transfer did not operate to reduce his existing interest.

160. In view of the fact that there was no operative mistake, it is idle to consider whether such a mistake would have been capable of giving rise to a claim for relief in Equity.

161. It is also un-necessary for me to consider whether, on the hypothesis that Simon ever had a substantial case for rectification or setting aside the 2008 Land Transfer for mistake, his case would be defeated owing to laches or on the basis that it has been superseded by subsequent events, including the 2012 Partnership Deed and the Option Notice. In any event, this was not the subject of argument.

162. Simon's claims for an order rectifying or rescinding the 2008 Land Transfer Trust are dismissed.

***(8) Proprietary estoppel***

163. In their statement of case, Simon and Alison contend that between 1977 and early 2014, "Geoffrey and/or Jennifer made representations or assurances to Simon and/or

Alison" that Simon and, through him, his family would ultimately inherit "the Farming Business". "The Farming Business" was defined so as to mean "the business carried on from time to time by Geoffrey, Jennifer, Simon and Alison (in whatever combination and without distinguishing between the different partnerships subsisting at different times)". Elsewhere in their statement of case, Simon and Alison confirmed that the "representations and assurances" related to "all the assets used in or belonging to the Farming Business" together with the Farmhouse and all the land at Reddish Hall Farm save Pheasant Lodge. They also contended that Simon and Alison relied on the "representations and assurances…to their detriment". In the case of Simon, this included embarking on a three year HND course at agricultural college and later devoting upwards of 100 hours a week on the farm for modest remuneration and investing in the Farming Business. In the case of Alison, it is alleged she gave up her career at Barclays Bank plc to work in the Farming Business as farm secretary. Later, it is alleged that Simon and Alison incurred significant commitments in the purchase of Fairoak Grange on the understanding they would be able to carry on the Farming Business as a viable business.

164. Although their pleaded case is expressly founded, in part, on representations, it is in substance based on promises or assurances rather than statements of current intention. The parties can be taken to have known that a will is ambulatory in nature; revocable at any time and that a testator's testamentary intentions can change at any time.

165. Whilst it is alleged Simon and Alison each acted to their detriment in reliance upon the relevant representations or assurances, Alison does not have a separate free standing case. It is not suggested anyone ever envisaged rights would devolve on her otherwise than through Simon. Moreover, Simon cannot rely exclusively on Alison's detrimental reliance to found a case based on proprietary estoppel if he has not personally acted to his own detriment, see for example *Lloyd v Dugdale [2002] 2 P&CR 13* at *[35]* (Sir Christopher Slade).

166. In cross examination, Simon confirmed that, on numerous occasions, Geoffrey had promised him Reddish Hall Farm. I took this to mean that Geoffrey and Jennifer would ultimately leave the whole of the Farm to Simon. Since the extent of the land farmed by them had repeatedly been enlarged as Geoffrey and other members of the family acquired more and more land, it is implicit Geoffrey's putative assurances related to the

full extent of the land being farmed by the family at Reddish Hall Farm. Simon also stated that Jennifer had not personally given him any such promises. However, it was implicit Geoffrey's promises were made on behalf of Geoffrey and Jennifer jointly and, when giving her evidence, Alison was adamant that Jennifer had personally provided her with essentially the same assurances on occasions such as Christmas and birthdays.

167. Julie denies that Geoffrey or Jennifer ever made such promises or assurances or, indeed, did anything to encourage an expectation that the Farm would be given to Simon or his family. However, the promises or assurances were generally made on occasions on which Julie would not have been present.

168. Julie accepted, in cross examination, that Geoffrey and Jennifer had historically envisaged that, following their deaths, the Farm business would continue for the next generation of their family and, by implication, this meant Simon and his family. However, Julie also confirmed it was her parents' intention to treat their children, Simon and Julie, equally. Whilst reluctant to concede that her father would not have wanted the Farm to be broken up, at one point she accepted that "in the early years", her father considered she would receive an income from the Farm, no doubt on the basis that it would be farmed by Simon and he would account to her for the rental value of her undivided share.

169. It was authoritatively confirmed in *Thorner v Major [2009] UKHL 18, [2009] 1 WLR 776* that an assurance of identified property, such as a farm, including land, livestock and other business assets, is capable of furnishing a party with rights by proprietary estoppel and this can apply regardless of changes in the composition of such assets over time provided they remain identifiable as property owned or farmed by a specific person or persons.

170. In *Davies v Davies [2016] 2 P&CR 10 at [3*8], Lewison LJ provided the following guidance.

> "Inevitably any case based on proprietary estoppel is fact sensitive; but before I come to a discussion of the facts, let me set out a few legal propositions:
>
> i) Deciding whether an equity has been raised and, if so, how to satisfy it is a retrospective exercise 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 a promise not to be kept either wholly or in part: *Thorner v Major [2009] UKHL 18; [2009] 1 W.L.R. 776* at [57] and [101].

ii) The ingredients necessary to raise an equity are (a) an assurance of sufficient clarity (b) reliance by the claimant on that assurance and (c) detriment to the claimant in consequence of his reasonable reliance: *Thorner v Major* at [29].

iii) However, no claim based on proprietary estoppel can be divided into watertight compartments. The quality of the relevant assurances may influence the issue of reliance; reliance and detriment are often intertwined, and whether there is a distinct need for a "mutual understanding" may depend on how the other elements are formulated and understood: *Gillett v Holt [2001] Ch. 210* at 225; *Henry v Henry [2010] UKPC 3; [2010] 1 All E.R. 988* at [37].

iv) Detriment need not consist of the expenditure of money or other quantifiable financial detriment, so long as it is something substantial. The requirement must be approached as part of a broad inquiry as to whether repudiation of an assurance is or is not unconscionable in all the circumstances: *Gillett v Holt* at 232; *Henry v Henry* at [38].

v) There must be a sufficient causal link between the assurance relied on and the detriment asserted. The issue of detriment must be judged at the moment when the person who has given the assurance seeks to go back on it. The question is whether (and if so to what extent) it would be unjust or inequitable to allow the person who has given the assurance to go back on it. The essential test is that of unconscionability: *Gillett v Holt* at 232.

vi) Thus the essence of the doctrine of proprietary estoppel is to do what is necessary to avoid an unconscionable result: *Jennings v Rice [2002] EWCA Civ 159; [2003] 1 P. & C.R. 8* at [56].

vii) In deciding how to satisfy any equity the court must weigh the detriment suffered by the claimant in reliance on the defendant's assurances

against any countervailing benefits he enjoyed in consequence of that reliance: *Henry v Henry* at [51] and [53].

viii) Proportionality lies at the heart of the doctrine of proprietary estoppel and permeates its every application: *Henry v Henry* at [65]. In particular there must be a proportionality between the remedy and the detriment which is its purpose to avoid: *Jennings v Rice* at [28] (citing from earlier cases) and [56]. This does not mean that the court should abandon expectations and seek only to compensate detrimental reliance, but if the expectation is disproportionate to the detriment, the court should satisfy the equity in a more limited way: *Jennings v Rice* at [50] and [51].

ix) In deciding how to satisfy the equity the court has to exercise a broad judgmental discretion: *Jennings v Rice* at [51]. However the discretion is not unfettered. It must be exercised on a principled basis, and does not entail what HH Judge Weekes QC memorably called a "portable palm tree": *Taylor v Dickens [1998] 1 F.L.R. 806* (a decision criticised for other reasons in *Gillett v Holt*)."

171. Since the exercise is to be conducted retrospectively from the time for performance, the promissee will generally be precluded from making a successful claim if, by then, he has given up his rights or allowed the relevant property to be disposed of. Consistently with these principles, Mr Maynard-Connor submitted that the promissee will be precluded, by contractual estoppel, from making such a claim if, by then, he has entered into a contract which binds him to assume the truth of a particular state of affairs which contradicts the factual basis of the claim. Relying on the judgment of Mr Murray Rosen QC in *Horsford v Horsford [2020] EWHC 584*, Mr Maynard-Connor submitted that, following the 2012 Partnership Deed or, at the latest, the delivery of the Option Notice, Simon and Alison thus ceased to be entitled to rely on Geoffrey's putative assurances so as to furnish them with a case based on proprietary estoppel.

172. The 2012 Partnership Deed and the Option Notice are plainly important in assessing whether it was and is unconscionable for Jennifer to diverge from the relevant assurances and, if so, how to satisfy Simon's equity. However, contrary to Mr Maynard-Connor's submissions, in my judgment they do not, in themselves, contradict

the factual basis of the claim or otherwise preclude Simon from advancing a case based on proprietary estoppel. I have reached this conclusion for the following reasons.

173. Firstly, neither the 2012 Partnership Deed nor, indeed, the Option Notice fully divested Jennifer of her rights in respect of the Partnership Freeholds, as defined. She remained the sole or joint legal owner of most of the properties and retained rights to the Partnership Freeholds as a partner under the 2012 Partnership Deed itself.

174. The 2012 Partnership Deed provided the partners with an option exercisable following a "Determining Event". In contrast to a right of pre-emption, an option comprehending rights in land can itself give rise to an equitable interest, *First National Securities v Chiltern DC [1975] 1 WLR 1075 at 1080* (per Goulding LJ). However, the grantor is not divested of her rights in the land until the transaction has been completed. In the present case, the land remained in Jennifer's registered ownership until her death and she continued to be entitled, upon dissolution, to a share in the assets of the partnership. The assets of the partnership obviously included the land. Upon service of the Option Notice, an executory contract for the sale of such assets came into being. However, it was never completed. There was no agreed valuation, no payment and, contrary to clause 22.5 of the 2012 Partnership Deed, no vesting instruments were ever executed.

175. Upon Jennifer's death, the legal title to her jointly held property vested in her survivors. However, the title to the unregistered property held in her sole name and her rights in respect of the jointly held property vested in Julie as executrix. The present case is thus different from *Horsford v Horsford [2020] EWHC 584*, in which the Deputy Judge concluded, at [155][159]-[160], that by the time this case was tried, the putative promissee had already acquired the promissor's interest and it was "impossible for [him] to ask the court to make a discretionary order requiring [the promissor] to transfer her interest to him given that it [was] already vested in him…"

176. Secondly, in the present case, I can see no reason in principle why, by entering into a new partnership incorporating new rights in the assets assured to him, Simon should be deemed to have given up his right to rely on the assurances. Having entered into partnership, it remained open to the promissor to honour the relevant promises or assurances by making a gift of her share of the partnership assets. As it happens,

Jennifer's interest in the partnership assets has still not been disposed of. The Option Notice only gave rise to an executory agreement which has never been completed.

177. Thirdly, although Julie herself relies on the principle of contractual estoppel as an answer to Simon's case founded on proprietary estoppel, she has not identified a specific contractual provision to which the principle would be applicable. The principle is of recent origin and does not require detrimental reliance. However, it is founded on a contractual statement or acknowledgment about a particular statement of affairs, for example an acknowledgment that one party has made no representations or another party has not relied on such a representation, see for example *First Tower Trustees Ltd v CDS [2018] EWCA Civ 1396.*

178. In *Horsford v Horsford (supra),* it was expressly provided that the partnership agreement "supersede[d] any earlier agreement (written or oral)" and "constitute[d] the whole of the agreement between the Partners as to the Business". In *Inntrepreneur Pub Co v East Crown Ltd [2000] 3 E.G.L.R. 31 at [7]*, Lightman J stated that "…such a clause constitutes a binding agreement between the parties that the full contractual terms are to be found in the document containing the clause and not elsewhere, and that accordingly any promises or assurances made in the course of the negotiations (which in the absence of such a clause might have effect as a collateral warranty) shall have no contractual force, save in so far as they are reflected and given effect in that document."

179. The application of such a provision to an assurance made separately and independently from the relevant negotiations is a moot point. However, there were no such provisions in the 2012 Partnership Deed. Geoffrey's assurances were only intended to apply to their remaining assets by the time of death. Had it been contemplated that, by entering into the 2012 Partnership Deed, Simon would release Jennifer or her estate from the assurances with immediate effect, the parties could have been expected to provide for this expressly. They did not do so. Moreover, by exercising the Option, Simon merely entered into an executory agreement which would merge on completion in the event that the transaction was ever completed. The service of an option notice would not have operated, in any meaningful sense, to extinguish the assurances.

180. At [64] of his judgment in *Horsford v Horsford (supra),* the Deputy Judge considered that "when a person has rights in respect of property, and then enters into a

contract which is inconsistent with the continued existence of those rights, the person is estopped from asserting those rights. Those rights are extinguished by the contract: see *Foster v Robinson [1951] 1KB 149*." Regardless of the principles of estoppel, it is well established at common law that a contract is deemed to have come to an end if superseded, in its entirety, by a new contract. For this purpose, "the question is whether the common intention of the parties [in entering into the new contract] was to 'abrogate', 'rescind', 'supercede' or 'extinguish' the old contracts by a 'substitution' of a 'completely new' and 'self contained' or 'self-subsisting' agreement, 'containing as an entirety the old terms, together with and as modified by the new terms incorporated'", *British & Beningtons v NW Cachar Tea Co [1923] AC 48, 62 (Lord Sumner).*

181. In *Foster v Robinson (supra),* there was an analogous issue before the court as to whether a tenancy had been surrendered by operation of law when the tenant accepted a rent-free licence in substitution for a tenancy agreement. The courts concluded that the answer was yes. The issue was thus determined in favour of the landlord and the tenant's daughter was adjudged not to be entitled, by succession, to the protection of the *Rent Restriction Acts*.

182. These principles are distinct from the comparatively recent doctrine of contractual estoppel but they are of no application in the present case since the putative assurances were not embodied in a contract and, when objectively construed, the 2012 Partnership Deed did not, in any meaningful sense, supersede the assurances. The assurances related to the destination of the properties by the time of Jennifer's death. Immediately following the 2012 Partnership Deed, Jennifer remained entitled to a share in the assets of the partnership and it was open to her to give effect to the assurances when she made her final will. Firstly, she could leave her share of the partnership assets (including the relevant properties) to Simon and Julie. If the partnership was not dissolved in her lifetime, Simon and Julie would thus become entitled to her share of the partnership assets in accordance with *Section 31(2)* of the *Partnership Act 1890* and, for the purpose of ascertaining that share, they would be entitled to an account from the date of dissolution. Secondly, in the event that the partnership was dissolved in her lifetime, she could exercise her option to purchase the shares of Simon and Alison in the partnership and dispose of the relevant properties by will. Whilst ultimately, she did not elect to do so, this has no bearing on the operation of the principle identified in

*British & Beningtons v NW Cachar Tea Co [1923] AC 48,* which arises for consideration at the point in time when the second contract is made.

183. Fourthly, in a case such as this, the Court can generally grant suitable and appropriate relief to satisfy the promissee's equity if the promissor retains funds or property from which such relief can be granted. It includes an order determining that property is held on trust for the promissee, *Thorner v Major [2009] UKHL 18*, the payment of compensation, *Guest v Guest [2020] EWCA Civ 387; [2020] 1 WLR 3480* and an order providing for a company under the promissor's control to transfer property to the promissee, *Gillett v Holt [2001] Ch 210*. In my judgment, it is sufficiently wide to include an order varying the rights of a promissor and promissee under a partnership agreement or, more specifically, their share of the partnership assets and capital and setting aside or varying an executory agreement for the disposition of an interest in land so as to satisfy the promissee's equity in a way that is consistent with the promissor's assurances. I am not satisfied that, by entering into the 2012 Partnership Deed or serving the Option Notice, Simon has somehow given up his right to rely on the relevant assurances or, more specifically, his rights to relief under the doctrine of proprietary estoppel.

184. Applying these principles, I am satisfied that the relevant assurances in the present case were not brought to an end by the 2012 Partnership Deed and the Option Notice. Regardless of whether they are to be construed as a contract or analogously with a contact, they were only intended to take effect on the death of Geoffrey and Jennifer. By entering into the 2012 Partnership Deed, Jennifer did not entirely dispose of her rights in the Partnership Freeholds or the assets of the Third Partnership. She ceded her beneficial interests in the relevant properties for a share in the partnership assets. The value of her share in the partnership assets was then reflected in the value of the property that she had introduced to the partnership. In view of the fact that Simon was also a party to the 2012 Partnership Deed, there was nothing to preclude Jennifer entering into arrangements with him to give effect to the relevant assurances by making an adjustment to their share in the capital and assets of the Fourth Partnership. Indeed, Jennifer appears to have given some thought to achieving such an outcome when making a gift to Simon, in the 2014 Will, of the capital standing to her credit in the Fourth Partnership less £300,000. In any event, it was also open to the parties to bring

an end to the Fourth Partnership and, having discharged the Partnership liabilities, to make distributions *in specie* from the residue of the partnership assets.

185. It is true that Simon subsequently took steps to exercise the Option but, to the extent this encompasses a contract for the sale of the partnership assets, it has not been completed. At the time of her death, Jennifer remained entitled to a share in the profits, capital and assets of the Fourth Partnership once the debts and liabilities of the firm have been discharged. Neither the 2012 Partnership Deed nor the Option Notice precluded Jennifer from making a distribution to Simon from her share of the partnership capital and assets consistently with the relevant assurances.

186. A case based on proprietary estoppel thus remains open to Simon if he can establish the essential elements of his case.

187. In examining whether Geoffrey or Jennifer made any material assurances, it is first necessary to explore their testamentary intentions. In January 1995, their intentions are apparent from the provisions of the 1995 Wills. In cross examination, Simon stated that he thought a draft will was prepared, on Geoffrey's instructions, in 1976. However, he did not produce a copy of the draft will and, if such a draft was ever prepared, its provisions are unknown. Subject to the gift of the entirety of their respective estates to their surviving spouse, Geoffrey and Jennifer both made specific gifts of the Farmhouse and Pheasant Lodge to Simon and Julie respectively. On that basis, Simon and Julie would also be entitled to their residuary estates. However, the most illuminating provisions were the gift, in Clause 9, to Simon of "…the Farm Stock both live and dead and the farm Machinery in and on the farm" and the gift, in clause 11, to Simon and Julie of "the land comprising the Farm". This was to be held by them as tenants in common in equal shares on the basis that Julie would permit Simon to rent the land "at a fair and reasonable rent". However, Julie's undivided share of the land was to be subject to a right of pre-emption providing that "in the event of her wishing to sell her interest in the farm [she] shall first offer the same to …Simon at price to be agreed by them and in the event of their failing to agree a price then the sale shall be at a market value stipulated by a Chartered Surveyor appointed jointly by them…whose decision shall be binding…"

188. This is the best available evidence of Geoffrey's testamentary intentions from February 1995 until his death in February 2001. It is also the best available evidence

of Jennifer's testamentary intentions from February 1995 until September 2014 or thereabouts when she made the 2014 Will. Moreover, whilst the detail will have evolved over time, their general intentions are likely to have been consistent with the scheme of succession in the 1995 Wills for several years before.

189. In cross examination, Simon stated that Geoffrey and Jennifer made the 1995 wills in a rush on the eve of a trip to China. Again, there is nothing to suggest this is incorrect. However, the 1995 Wills were professionally prepared following detailed instructions. On their face, they involved a careful attempt to accommodate the reasonable expectations of both siblings. I am satisfied that the general scheme, in the 1995 Wills, for succession to the farm land was consistent with the historic intentions of Geoffrey and Jennifer. This included, in particular, the provisions for the land to be treated separately from the other farm assets and given to Simon and Julie in equal shares with Simon farming the land subject to the payment of rent and a mechanism for him to buy Julie out. No doubt, they had long envisaged Simon would take over the farm business. On that understanding, he would be given the farm stock and machinery. However, Geoffrey and Jennifer apparently saw no reason to leave Simon the rest of their assets. This would form part of their residuary estate to which Simon and Julie would be jointly entitled.

190. In all likelihood, Geoffrey and Jennifer contemplated Simon would ultimately take over the Farm from the time he first attended agricultural college. This was as long ago as 1977. Julie never showed any interest in running the Farm. When Simon returned to work on the Farm, their views would have been reinforced. No doubt by 1985, when Simon was admitted to the Second Partnership, Geoffrey and Jennifer had reached a clear understanding that, following their deaths, Simon would succeed to the business as sole proprietor. However, the land and buildings were always treated separately. Notwithstanding the sporadic treatment of such land as a partnership asset in the partnership accounts, Geoffrey and Jennifer never regarded it as such. So far as possible, they also wished to treat their children equally. It was on this basis and understanding that Geoffrey and Jennifer made the 1995 Wills and, ultimately, Jennifer made the 2014 Will. In this respect, her Final Will was an aberration.

191. The general scheme of succession in the 1995 Wills, at least in relation to the land at Reddish Hall Farm, can still be discerned in the 2014 Will. Although Simon was no longer a residuary beneficiary, the farm land was divided between Simon and Julie in

the shares of 45:55, no doubt to reflect the fact that Simon had already received an undivided share of 10% of such land under the 2008 Land Transfer. Simon was also given the capital standing to the credit of Jennifer in the Fourth Partnership and an option to purchase her interest.

192. It was not until May 2016, four months before her death, that Jennifer made the Final Will providing for the whole of her estate to be given to Julie subject to an option for Simon to purchase the land farmed under the 2012 Partnership Deed.

193. It forms no part of the case of Simon and Alison that Jennifer lacked testamentary capacity when she made the 2014 Will or the Final Will or, indeed, that she was procured to make such wills by undue influence or fraudulent calumny. In my judgment, it is likely Julie set out to persuade Jennifer to make the Final Will and succeeded in doing so. However, Simon has chosen not to bring a probate action and evidence has not been admitted, in these proceedings, on which I could safely have concluded the will did not properly reflect Jennifer's testamentary intentions and instructions.

194. Since Geoffrey and Jennifer were *prima facie* entitled to revoke or change their wills at any time, it is necessary to ask what disclosures they made to Simon about their wills and whether they made any material promises or assurances to him. If any such promises or assurances were made, it is necessary to ask whether, as Walker LJ put it in *Gillett v Holt [2001] Ch 210*, they amounted to "more than a mere statement of present (revocable) intention".

195. Simon maintains he was not made aware of the provisions of the 1995 Wills, whether in general or more specific terms, during the lifetime of Geoffrey or, indeed, Jennifer. It is conceivable – as Simon himself maintains – that he was not shown the 1995 Wills or, indeed, the codicil to such wills during their respective lifetimes. In my judgment, however, whilst he may not have known the contents of the 1995 Wills in full, it is likely Geoffrey advised him of the general scheme of the 1995 Wills, in particular the gifts to himself alone of the farm stock and machinery and the gifts of the farm land to Simon and Julie jointly subject to Simon's right to continue the farm business paying rent in respect of Julie's share together with a right to buy her out at market value if Julie wished to sell her interest.

196. In my judgment, it was implausible for Simon to suggest that he was never given even a general impression about the contents of such wills. Firstly, it is apparent from the evidence of Simon himself, in cross examination, that his parents were open with him about their intention to make the 1995 Wills. He was aware that the 1995 Wills had to be "rushed" because Geoffrey and Jennifer were about to go away on a "big trip" to China mindful Geoffrey had been ill. Moreover, it is not suggested that there were ever any difficulties in the relationship between Geoffrey and Simon or that they had difficulties of communication. Simon himself emphasised in cross examination that they spoke to one another regularly on the Farm, particularly when working together on the potato grader. Indeed, it was on these occasions that Geoffrey is alleged to have made at least some of his putative assurances. Having been made aware, at the time, of his parents' intention to make wills, Simon could reasonably have been expected to seek at least some clarification about the content of their wills, not least because he was their partner and the Farmhouse was by then the family home of Simon and his family. Secondly, there is nothing in the evidence as a whole to suggest Geoffrey was other than straight-talking and direct in his dealings with other people. In her evidence, Julie stated he wasn't very demonstrative or good with words and wasn't very good at listening to her teenage problems or the "tittle tattles of a youngster" but she did not suggest this extended to the management of the farm. From Simon's evidence, there is nothing to suggest Geoffrey would have been difficult to approach in relation to issues about the future of the farm and his rights of inheritance. If Simon had sought clarification, Geoffrey is likely to have provided it and done so honestly and openly. Moreover, it does not form part of Simon's case that Geoffrey sought to mislead him about the contents of his 1995 Will. When, in February 2000, Geoffrey and Jennifer made their codicils, they did so in order to pre-empt a financial claim from Simon in respect of Pheasant Lodge. They might have been astute to withhold this from Simon at the time. However, there could have been no good reason for them to conceal from Simon the general scheme of the 1995 Wills. I am satisfied that, from an early stage, Simon knew significantly more about the general scheme of succession in the 1995 Wills than he has been willing to concede in these proceedings, perceiving that any such concession would be contrary to his interests.

197. Julie confirmed, in her witness statement that, following Geoffrey's death, Jennifer advised Simon and herself about the contents of Geoffrey's 1995 Will. I have no reason

to doubt this is correct nor, indeed, that Jennifer's advice was honest and accurate. However, I am satisfied that, by then, Simon was already aware Geoffrey and Jennifer had made mirror wills in 1995 providing that, subject to their gifts to one another, there would be gifts of the Farmhouse and Pheasant Lodge to Simon and Julie respectively. He would also have been aware, in general terms, that he would ultimately become entitled to the farm stock and machinery and, whilst the remaining farmland was subject to a joint gift, he would be entitled to farm the land subject to the payment of rent in respect of Julies' undivided share and a mechanism for him to "buy out" Julie if and once she decided to sell her share. On this basis, Jennifer confirmed and clarified the scheme of succession.

198. Consistently with this, I am satisfied Geoffrey repeatedly assured Simon that the farm business would ultimately be his and his assurances were tantamount to an irrevocable promise rather than a mere statement of intention. It was important to Geoffrey for the farm business to be passed on to the next generation of the family. To achieve this, he sought to encourage in Simon an expectation that it would be left to him. He made his assurances to Simon from the time Simon finished at agricultural college, if not before, although it was at least implicit that the farm business would not devolve to Simon until after the deaths of Geoffrey himself and Jennifer.

199. However, Geoffrey never regarded the land as a partnership asset and it is inherently unlikely he ever said anything to Simon to suggest otherwise. Moreover, Geoffrey and Jennifer were assiduous to advise both siblings that, so far as possible, they intended to treat them equally. In all likelihood, Geoffrey's assurances in relation to the land amounted to a promise the land would be left to Simon and Julie equally on the basis Simon would be entitled to buy Julie's interest at market value. On the balance of probability, he started to make such promises soon after the commencement of the Second Partnership if not before and, once Geoffrey and Jennifer made the 1995 Wills, he advised Simon in more specific terms about the testamentary mechanism for doing so.

200. For the most part, Geoffrey's assurances were made to Simon when they were alone together, working on the Farm. Simon does not allege that Jennifer ever made such assurances herself. However, it is likely Jennifer was aware of them and was content for Geoffrey to make the assurances on her behalf. If she was not present on the occasion of such assurances, Geoffrey can be taken to have let her know at least

about the gist of his relevant conversations with Simon. She would also have known Simon would take Geoffrey at his word and rely on them in his commitments to the Farm. Following Geoffrey's death, she took it upon herself to advise Simon and Julie, in general terms, about the contents of Geoffrey's Will. No doubt, she was content to leave them both with the impression that, having succeeded to his estate, she would leave her own estate to them both on essentially the same basis. In the case of Simon, this would involve honouring the assurances that had already been given to him by Geoffrey. In any event, based on Geoffrey's assurances, this remained Simon's expectation from the time of Geoffrey's death until after the 2008 Land Transfer when Jennifer transferred to Simon and herself the 2008 land with the intention that it would be held on trust for themselves as tenants in common as to nine-tenths for herself and one-tenth for Simon. Having done so, Jennifer was fully aware it remained Simon's expectation that he would ultimately succeed to the assets of the Farm business and an undivided one half share of the farm land. Since this was consistent with the assurances Simon had already been given, he continued to manage the Farm as before and did not take any steps to challenge Jennifer in her own perceptions. In all likelihood, this was also the understanding on which Simon, Alison and Jennifer together exchanged contracts for the purchase of Fairoak Grange and Simon and Jennifer completed the transaction.

201. In reliance upon Geoffrey's assurances and Simon's own expectations, based on such assurances, that he would ultimately inherit the farming business and, together, Simon and Julie would ultimately become equally entitled to the farm land, Simon acted to his detriment by working long hours, for only modest remuneration without any return for overtime, introducing new management techniques and farming the land more intensively than before. He did so from 1980 when he first returned to the farm from agricultural college and continued to do so at least until February 2015 when Jennifer served notice terminating the Fourth Partnership. Although he became entitled to share in the profits of the business once admitted as a partner on 7th August 1985, his profit share did not fully reflect the extent of his working contribution and, at least initially, his drawings from the business were limited. Although she assisted with the paper work, Jennifer's contribution to the business of the Second Partnership was significantly less substantial than Simon's contribution and the disparity continued to grow after Geoffrey's death. Had it not been for Geoffrey's assurances, it is unlikely

he would have committed himself to the Farm as he did. When, in February 2013, Simon co-purchased Fairoak Oak Grange, he did so again in reliance upon the assurances he had been given that, following Jennifer's death, he would inherit the farming business or at least the stock and machinery of the Fourth Partnership and an interest in the land farmed by him in partnership, including Jennifer's Land.

202. Given the length of the period over which Simon acted to his detriment in reliance upon the relevant assurances, the scale of the detriment and its bearing on every aspect of his life and, indeed, the life of the rest of his family on the farms, it was unconscionable for Jennifer to repudiate the assurances as she did when she made the Final Will. Although she had, by then, introduced to the Fourth Partnership the farming business and the relevant properties, it was always open to her to make a gift to Simon from her share of the partnership capital and assets as indeed she appears to have envisaged when she made the 2014 Will. It was also open to the parties, at any time, to bring an end to the Fourth Partnership and, having discharged the Partnership liabilities, to make distributions *in specie* from the residue of the partnership assets. No doubt, Simon and his family have substantially benefitted from their life and work on the farms in reliance upon the assurances. They have been provided with a home on the farm and the livelihood. The Farmhouse, transferred to Simon in October 2008, has recently been valued at £625,000. It is not a straightforward exercise to assess and compare the positive aspects or benefits that have accrued to Simon and his family with the negative aspects of their overall experience since these matters cannot simply be quantified in pecuniary terms. However, if it is appropriate to embark on such an exercise, I am satisfied that, in overall terms, Simon and his family have incurred a substantial detriment in reliance upon the assurances which is not outweighed by the benefits that have accrued to them based on Simon's work and commitments on the farms for many years supported by Alison who herself gave up a career with Barclays Bank to work on the administration of the Farm. They have also incurred significant liabilities in connection with the acquisition of Fairoak Grange. The following considerations are also relevant as part of the factual context.

203. Firstly, Simon and Alison were not advised of the 2014 Will or the Final Will during Jennifer's lifetime. It is likely Julie's role was critical in persuading Jennifer to make them. In doing so, she persuaded Jennifer to act contrary to the settled

understanding on which Geoffrey and Jennifer had previously made their wills without alerting Simon and Alison.

204. Secondly, the decision of Simon and Alison to serve the Option Notice was made in a state of panic as the deadline for service approached without properly appreciating the potential consequences. They did so in the hope they could thus ensure survival of their farming business consistently with Geoffrey's assurances. However, they now appreciate that they do not have sufficient funds to complete the purchase of Jennifer's share of the assets of the Fourth Partnership under the Option if calculated in the way the 2012 Partnership Deed requires. If the Option Notice and the Final Will dictate Simon's rights of succession to the farms, they have no realistic prospect of saving the business. The farms will thus have to be sold and the family connection with the farms will be lost. Whilst contrary to Geoffrey's assurances and the expectations on which Simon and his family farmed the land for upwards of thirty years, it is more than conceivable this cannot be avoided within the parameters of Simon's equity. However, that is not good reason to deny him the opportunity to avoid such an outcome.

205. I am satisfied that, by virtue of Geoffrey's assurances, Simon is entitled to an equity binding on Julie in her capacity as executrix of Jennifer's estate under the doctrine of proprietary estoppel. To the extent that Geoffrey's estate is un-administered, it also binds her as executrix of his estate under the provisions of *Section 7(1)* of the *Administration of Estates Act 1925*. It is binding on Jennifer's estate on the basis Geoffrey made the relevant assurances on behalf of himself and Jennifer, Jennifer was fully aware of at least some of the assurances and was content for Geoffrey to make them on her behalf. Indeed, she made similar assurances herself to Alison on occasions such as Christmas and birthdays. To the extent it is relevant, Jennifer can be taken to have known, at least until September 2014, that Simon and his family were continuing to act in reliance upon these assurances.

206. It is thus for the Court to determine how Simon's equity can best be satisfied guided by "the minimum equity to do [him] justice", *Crabb v Arun [1976] Ch 179, 198* per Scarman LJ. In *Davies v Davies (supra)*, Lewison LJ identified, at [39], two alternative methods of achieving this outcome, namely giving effect to Simon's expectation or ensuring he is compensated for the detriment. However, Lewison LJ also stated that effect should not be given to a claimant's expectation if disproportionate to do so. He

observed that, if the detriment can be fairly quantified so as to compensate the claimant fully for the detriment, such compensation ought to remove the foundation of the claim.

207. In *Guest v Guest [2020] 1 WLR 3480*, a son successfully sued his father on promises to leave him his farm. The claim was brought during the lifetime of the father following the breakdown of their relationship. However, for that reason, the judge considered it necessary to grant relief with a view to achieving a clean break. He awarded the claimant a lump sum payment composed of 50% after tax of the market value of a farming business and 40% after tax of the market value of the farm subject to a life interest in respect of the farm house. The Court of Appeal dismissed the son's appeal concluding that the judge's approach was not wrong in principle. In doing so, they stated, at [75], that the judge was required only to apply a two-stage test asking first whether an equity has arisen then how to satisfy it. It was un-necessary to define or quantify the scope of the equity before determining the appropriate relief. *Guest v Guest (supra)* is now under appeal to the Supreme Court. However, I am not satisfied it would be appropriate to delay the delivery of this judgment now to await the outcome of that case.

208. In the present case, the farm business and the relevant land are assets of the dissolved partnership. The parties are not entitled individually to proprietary rights over the assets (See Para 138 above); their rights are governed by the provisions of the 2012 Partnership Deed. Subject to the Deed itself, the assets of the Fourth Partnership must be applied following dissolution in the order prescribed by *Section 44(b) of the Partnership Act 1890*, paying the debts and liabilities of the partnership, paying rateably what is due to the partners for advances and capital and dividing the residue between the parties in the proportions in which the profits are divisible. In these circumstances, it would be inappropriate to give effect to Simon's expectations by varying the trusts on which the partnership assets are held *simpliciter*. However, it is possible to achieve a compensation-based solution which reflects Geoffrey's assurances by adjusting the amounts credited to Simon and Jennifer owing to the introduction of the partnership assets and extending the period for Simon and Alison to exercise the Option so as to accommodate the adjustment.

209. On this basis, Simon's equity is best satisfied by setting aside the contract which came into being when Simon and Alison served the Option Notice, extending the period for Simon and Alison to serve a new option notice under Clause 17.3 of the 2012

Partnership Deed and providing for the 2012 Partnership Deed to be construed subject to the following proviso ("**the Proviso**") at the end of Clause 15.1.2 of the 2012 Partnership Deed in respect of the amounts to be credited or appropriated to Simon, Alison and Jennifer in respect of the Partnership Freeholds when each relevant property was introduced to the Fourth Partnership. Simon will thus be credited or deemed to have been credited with amounts consistent with Geoffrey's assurances.

210. The Proviso is as follows.

> "PROVIDED THAT (1) when entering into this Deed (a) the First and Second Partners shall be deemed to beneficially own the following Partnership Freeholds in equal undivided shares and their respective partnership shares must thus be credited with the capital value of the same namely all registered and unregistered land situated in and around Lymm and Thelwall, Cheshire save Reddish Hall Farmhouse (Title No. CH580756) Pheasant Lodge (CH562988) and Great Oak (CH176642) (b) the First Partner shall be deemed to beneficially own an undivided quarter share and the Second Partner an undivided half share of Great Oak (CH176642) and their respective partnership shares must thus be credited with the capital value of the same (2) the First Partner shall be credited with not less than £300,000 in respect of Fairoak Grange."

211. However, this is on the basis that, if and to the extent that any part of the amount credited to Simon under the Proviso is treated as part of Jennifer's estate and attracts a liability for IHT, this liability shall be borne by Simon. Such liability will obviously be abated if and to the extent it is comprehended by agricultural property relief and/or business property relief. Similarly, Simon shall be rateably liable for CGT, if payable, in respect of any disposal by Julie of the properties encompassed by the Proviso. I have reached this conclusion on the basis that it is consistent with the scheme for Simon and Julie to be equally entitled to such assets and the principle that Simon is entitled only to the minimum equity to do him justice. It also achieves an outcome that is reasonable and proportionate.

212. For the avoidance of doubt, the Proviso should be deemed to operate with retrospective effect from "the Commencement Date", as defined, in the 2012 Partnership Deed, namely 1st April 2012. The Farmhouse, and Pheasant Lodge are excluded for the following reasons.

213. Firstly, Jennifer gave the Farmhouse to Simon on 29th October 2008. It ought thus to be credited to Simon in the Fourth Partnership's books for its full value at the time. For many years, the Farmhouse was earmarked for Simon and reflected as such in the 1995 Wills; he has also resided there with his family since 1990. Whilst it was introduced to the Fourth Partnership when the partners entered into the 2012 Partnership Deed, there can be no good reason for Simon to be credited for less than its full value with effect from Commencement Date.

214. Secondly, Jennifer introduced Pheasant Lodge to the Fourth Partnership as sole owner. It was her home until 25th December 2015, little more than nine months before her death and, once it was built, Geoffrey and Jennifer always envisaged it would be left to Julie. Again, this is reflected in the 1995 Wills. For the avoidance of doubt, Geoffrey's assurances to Simon did not apply to Pheasant Lodge and, on this, there was never any ambiguity.

215. Great Oak and Crouchley East are anomalous since Julie and Simon were each independently entitled to a quarter share of Great Oak and Simon was independently entitled to a one third share of Crouchley East. However, if Simon is credited with one half of the value of Great Oak on the Commencement Date this will mirror Simon's reasonable expectation based on Geoffrey's assurances. A case could be made for Simon to be entitled to a larger share of Crouchley East than Julie on the basis that, unlike Julie, he already had an interest in the property prior to Jennifer's death. However, in my judgment this would involve an unduly narrow and mechanistic way of giving effect to Geoffrey's assurances. It would also achieve a disproportionate outcome. Crouchley East was introduced as an asset of the Third Partnership and would thus have been introduced according to the shares in which Simon and Jennifer held the assets of the Third Partnership when it was introduced to the Fourth Partnership. I can see no reason to make any adjustment in relation to the amount credited to Simon and Jennifer for this property in the books of the Fourth Partnership.

216. I have incorporated the final part of the Proviso to ensure that full credit is given for Jennifer's contribution of £300,000 towards the purchase of Fairoak Grange mindful that there is at least potentially an issue as to whether the amount of her contribution was not properly reflected in the market value of Jennifer's Land at the time of purchase.

217. Subject to the final part of the Proviso, I have made no adjustment in respect of the parties' capital contributions to the purchase of Jennifer's Land and Simon's Land at Fairoak Grange. As Jennifer's executrix, Julie is thus entitled to be credited in full for the value of Jennifer's Land or the sum of £300,000, whatever be the greater. Conversely, Simon is entitled to be credited with the value of Simon's Land. However, by virtue of Clause 15.3 of the 2012 Partnership Deed, Simon is personally liable for the amount advanced to him to fund the purchase of such land which shall be deducted from his share when any dissolution account is taken. I have decided to make no other adjustment in respect of the parties' capital contribution in respect of these properties for the following reasons. Firstly, Geoffrey's assurances related to land at Reddish Hall Farm only. No doubt, they encompassed neighbouring land that might be acquired in the future. However, it cannot have been in the reasonable contemplation of Geoffrey or Simon at the time that land would be acquired subject to these assurances for or in connection with an entirely different farm, a substantial distance away. Secondly, whilst it is true that Jennifer's Land was funded from the proceeds of Crouchley West, which was itself subject to Geoffrey's assurances, it was implicit in Geoffrey's assurances that such assurances would cease to apply to land disposed of to third parties prior the death of Geoffrey and Jennifer, as distinct from land that was simply introduced to partnership, particularly land disposed of with Simon's willing co-operation. As it happens, the sale proceeds of Crouchley West represented something of a windfall from which Simon and Julie independently received £100,000 each. This is to be taken into consideration when evaluating the detriment and assessing the benefits that have accrued to Simon.

218. If Simon's share of the partnership capital is credited with half the capital value of the 1959, 1962, 1964 and 1972 Land together with the Thelwall Land, the Reddish Hall Lane Land, Crouchley West, Great Oak and the 2008 Land, this will substantially increase his share of the partnership assets and the amounts to which he will ultimately be entitled if and when the partnership dissolution accounts are taken. If the additional amounts credited to Simon, under the 2012 Partnership Deed, were to equate with the agreed valuations for such land, he would achieve an additional £133,000 in respect of the 1959, 1962, 1964 and 1972 Land, £60,000 for the Thelwall Land, £66,250 for Great Oak, £40,000 for Crouchley West, £25,000 for Crouchley East and £657,600 for the 2008 Land amounting, in aggregate, to £956,850.

219. Although Geoffrey's assurances encompassed the farm business (including the farm stock and machinery) in addition to the land, they were again limited to the farm business at Reddish Hall Farm. Geoffrey never contemplated the acquisition of an additional farm business elsewhere. Moreover, Simon is only entitled to the minimum equity to do justice to him after taking into consideration the substantial benefits he has already received and the provision which I have already made for him in this judgment. I must also apply the principle of proportionality. Having done so, Simon's equity will be fully satisfied on the basis for which I have provided without additional provision in relation to the remaining partnership assets.

220. Since Simon's share of the partnership assets shall thus be adjusted and enlarged, I am satisfied that Simon and Alison should be given another opportunity to exercise their option under Clause 17.3 to purchase Jennifer's share of the profits, capital and assets of the partnership. Under Geoffrey's assurances, Simon was entitled to buy out Julie's interest at market value. This was on the basis that they would each be equally entitled to the land. Under the 2012 Partnership Deed, an analogous outcome could now be achieved by providing for Simon to buy Jennifer's share of the profits, capital and assets of the Fourth Partnership under the provisions of Clause 17.3 at a purchase price reflecting the Proviso. In the exercise of my equitable discretion, I shall thus set aside the executory agreement to which the Option Notice has given rise and extend the period for Simon and Alison to serve a new option notice so as to expire after a period of three months. I shall fix the date for commencement of the three month period after hearing further submissions from counsel.

221. If, notwithstanding the Proviso, Simon and Alison conclude they are unable to raise sufficient funds to pay the purchase price under the Option under Clause 17.3 and 19 of the 2012 Partnership Deed, they will of course be at liberty to submit a bid at public auction under the provisions of Clause 23.2. In any event the process of marketing and selling the partnership assets will be subject to the directions of the court with a view to maximising the amounts realised. If appropriate, the parties will themselves be able to submit offers as part of the process.

222. Subject to the above, the provisions of the Will are undisturbed and Julie is entitled to Jennifer's residuary estate.

***(9) Disposal***

***(i) Ownership***

223. When Jennifer and Simon entered into the 2012 Partnership Deed and, as partners, acquired Fairoak Grange, they introduced the relevant properties to the Fourth Partnership as a partnership asset. They then became entitled to credit for a share in the capital of the partnership based on the value of their beneficial interest in each such property at the time of introduction. The legal title to each property and their beneficial interests at the time of introduction was as follows.

| ***Property*** | ***Legal Title*** | ***Original Beneficial ownership*** |
|---|---|---|
| The 1959, 1962, 1964 and 1972 Land | Jennifer in her personal capacity (subject to registration of vesting instrument under *LRA 2002 s4(1)(a))* or as Geoffrey's executrix. (Now Julie as their executrix). | Jennifer in her personal capacity or as executrix of Geoffrey's estate. Subject to *LRA 2002 s4(1)(a),* she changed capacity on entering into the 2012 Partnership Deed. |
| The Thelwall Land (CH111728) | Jennifer (now Julie as executrix) | Jennifer as sole owner |
| Reddish Hall Lane (CH113902) | Jennifer (now Julie as executrix) | Jennifer as sole owner |
| Crouchley West (CH198637) | Jennifer (now Julie as executrix) | Jennifer as sole owner |
| Great Oak (CH176642) | Jennifer and Simon (now Simon) | Simon (¼), Julie (¼) and Jennifer (½) |
| Crouchley East (CH273326) | Jennifer and Simon (now Simon) | Simon and Jennifer based on shares credited to Simon and Jennifer in |

| | | |
|---|---|---|
| | | final accounts of Third Partnership. |
| The 2008 Land (CH580763) | Jennifer and Simon (now Simon) | Simon ($^{1}/_{10}$) and Jennifer ($^{9}/_{10}$) |
| The Farmhouse (CH580756) | Simon | Simon as sole owner |
| Pheasant Lodge (CH562988_ | Jennifer (now Julie as executrix) | Jennifer as sole owner |
| Simon's Land | Simon | Simon |
| Jennifer's Land | Jennifer (now Julie as executrix) | Jennifer |

224. The properties have not yet been valued as at the date of introduction but there is an agreed valuation as at May 2015. This is set out in Para 81 above.

225. Subject to the 2012 Partnership Deed, the assets of the Fourth Partnership were and are applicable on dissolution in accordance with the provisions of the *Section 44* of the *Partnership Act 1890*. In calculating rateably what is due to her, as executrix, from Jennifer's share of the partnership capital, Julie is entitled to credit for the value of Jennifer's beneficial interests in the relevant properties upon introduction. Conversely, Simon is entitled to credit for the value of the interests introduced by him. However, in each case, this is subject to Simon's claim based on proprietary estoppel.

226. To the extent required, I shall make declarations embodying the above determinations.

***(ii) Simon's counterclaim for an order rectifying or rescinding the 2008 Land Transfer***

227. This is dismissed.

***(iii) Simon's counterclaim based on proprietary estoppel***

228. This is allowed to the extent set out in Paras 209-12 and 220 above.

229. Clause 15.1.2 of the 2012 Partnership Deed shall be construed as if subject to the Proviso in respect of the amounts credited or appropriated to Simon and Jennifer from the Partnership Freeholds. When introduced to the Fourth Partnership, each of the following properties is thus deemed to have been held beneficially for Simon and Jennifer as tenants in common in equal shares, namely the 1959, 1962, 1964 and 1972 Land, the Thelwall Land, the Reddish Hall Lane Land, Crouchley West, Crouchley East and the 2008 Land. Simon is also deemed to have held a half share of Great Oak rather than the quarter share to which he would otherwise have been entitled. More generally, the overall effect is that Simon is credited with monies in respect of each of these properties which would otherwise have been credited to Jennifer.

230. I shall make an order setting aside the executory agreement to which the Option Notice has given rise and extending the time for service of another option notice.

***(iv) Jennifer's claim for specific performance of the above executory agreement***

231. This is dismissed.

***(v) Further directions, inquiries and accounts***

232. Simon and Alison have continued to carry on the farm business since the dissolution of the Fourth Partnership utilising its capital and assets without any final settlement of accounts. As Jennifer's executrix, Julie is entitled to post dissolution accounts under the provisions of *Section 42* of the *Partnership Act 1890* subject to the statutory proviso in *Section 42(2)* including a share of profits and, in the present case, an account of the use Simon and Alison have made of the partnership assets. Julie is also entitled to require the partnership property to be applied in the payment of partnership debts and liabilities under *Section 39* of the *1890 Act* and she is entitled to seek directions for the usual inquiries in relation to matters such as what has become of the partnership property, the extent to which partnership debts and liabilities have been paid and satisfied and, if so, out of what assets.

233. I shall hear further from counsel in relation to the directions now sought in the light of my conclusions on the main issues, including specific directions for inquiries and the taking of accounts.