



Neutral Citation Number: [2026] EWHC 922 (Ch)

Case No: PT-2024-LDS-000120

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

Business and Property Courts in Leeds
6 Westgate, Grace St,
Leeds LS1 2RPL

Date: 23/04/2026

**IN THE MATTER OF THE INHERITANCE (PROVISION FOR FAMILY AND
DEPENDANTS)
ACT 1975**

Before :

HH JUDGE DAVIS-WHITE KC
(SITTING AS A JUDGE OF THE CHANCERY DIVISION)

Between :

JANE ALEXANDRA HODGSON

Claimant

- and -

(1) JOYCE HODGSON

**(as Personal Representative of Anthony Stephen
Hodgson and in her own right)**

Defendants

(2) JAMES HODGSON

Mr James Fryer-Spedding (instructed by Green Solicitors Limited) for the Claimant

Mrs Anna Metcalfe (instructed by Harrowells Limited) for the Defendants

Hearing dates: 18-21 August, 28 November 2025

Approved Judgment

This judgment was handed down remotely at 10.00am on 23 April 2026 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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HH JUDGE DAVIS-WHITE KC

HH Judge Davis-White KC :

Introduction

1. This is a family dispute. For ease of reference, and as the advocates did at the trial before me, I have used first names for family members. No disrespect is intended by such use.
2. The dispute follows the death of the father to the Claimant and the Second Defendant. Their father was Mr Anthony Stephen Hodgson (“Tony” or “Father”) who was married to their mother, Joyce Hodgson (“Joyce” or “Mother”). Father died on 12 October 2020. Probate to his last will and testament dated 23 March 2016 (“Father’s Last Will”) was granted to Mother by grant dated 26 April 2024 (the other two executors having renounced probate). Father was born on 12 December 1945 and so was some 74 years old when he died.
3. Mother was born on 28 March 1938. At the time that she gave evidence before me, in August 2025, Mother was therefore some 87 years old.
4. Mother and Father were married in April 1973. At the time of their marriage, neither had any children nor had either been married before. The Second Defendant, James Hodgson (“James”) was born on 05 December 1973. At the time that he gave oral evidence before me, in August 2025, he was therefore aged 51. The Claimant, Jane Alexandra Hodgson (“Jane”) was born on 23 May 1975. At the time that she gave oral evidence before me, in August 2025, she was therefore aged 50.
5. James currently works in maintenance for a golf club and hotel/restaurant/venue for hire which also has some holiday lodges. He also works in part of the family property in what is referred to as the Stackyard.
6. Jane has two children, Charlotte born in about 2005 and Emily born in about 2007. Both are now adults. Both daughters used to live with Jane but have for some years been living in a separate cottage in the same yard around which the farmhouse in which Jane has been living is also situated.
7. The dispute relates to freehold land owned by Father and Mother at Slingsby, North Yorkshire, a village some 10 miles or so to the west of the well-known market town of Malton (the “Property”).
8. In essence, Jane claims:
 - (1) She is entitled to Father’s half interest in part of the Property under his Last Will;
 - (2) If not, she is entitled to Father’s half interest in part of the Property, under the principles of proprietary estoppel;
 - (3) If not, she is entitled to or should be granted part of the Property under the Inheritance (Provision for Family and Dependents) Act 1975 (the “IHA 1975”).
9. Before me, Jane was represented by Mr James Fryer-Spedding instructed by Green Solicitors Limited and Joyce and James were represented by Mrs Anna Metcalfe

instructed by Harrowells Limited. I am grateful to both counsel for their helpful written and oral advocacy and to the solicitors for their work on the case, including of course the trial bundles. I would however note that the (or many of the) key documents are the contemporaneous documents and that it is unhelpful to the advocates and the court when these are not arranged chronologically but instead are arranged in categories such as documents exhibited to statements of case or exhibits to specific witness statements.

10. I should also apologise for the length of time it has taken to produce this judgment.
11. Sadly this case has turned into a case of allegation and counter allegation about almost the entirety of family life since 1993. The proliferation of factual issues that seemed to me to have little legal relevance was unfortunate and should, in my judgment, have been controlled more closely by the lawyers. In particular, and as I explain below, Jane raised factual issue after factual issue in her witness evidence. These included matters such as the relationship between her Mother and Father (asserting, for example, that Mother made Father sleep on the concrete floor of the farm shop for many years, whilst Mother lived in a farm building referred to as the Cottage and more latterly at an annex to a building referred to as Wyville Hall). Jane also raised a myriad of more recent factual issues about the manner in which she says she has been persecuted by Mother, James and even her children. It is difficult to see how much, if any, of this material was of any legal relevance to the legal issues that I have to resolve or as of being any great assistance in resolving issues of credibility. Understandably, James and Mother felt they had to respond to such evidence in their witness statements. Only in closing submissions was it made clear that Jane did not really rely on many of the factual issues that she had raised and which took up a great deal of cross-examination at trial.

The evidence

12. For Jane, the following witness statements were adduced in evidence:

Jane's 1 st WS	17.08.24
Jane's 2 nd WS	05.12.24
Jane's 3 rd WS	15.07.25
Jane's 4 th WS	30.07.25
Stephen Newlove	12.10.24
13. Both Jane and Mr Newlove gave oral evidence, being cross-examined on their relevant witness statements.
14. For the Defendants, the following witness statements were adduced into evidence:

Joyce's 1 st WS	14.11.24
Joyce's 2 nd WS	12.11.24
Joyce's 3 rd WS	16.07.25
Joyce's 4 th WS	16.07.25

James' 1 st WS	14.11.24
James' 2 nd WS	16.07.25
Philip Place WS	13.11.24

15. Each of Joyce, James and Mr Place were called to be cross-examined on their witness statements.
16. In assessing the evidence I have to bear in mind the well-known statements of the court in the cases from *Gestmin* onwards. In particular, the effects of the repetition of evidence in, for example, reinforcing beliefs and in changing recollections and the passage of time are all highly relevant matters applicable to this case.
17. I turn first to the non-family witnesses.
18. As regards Mr Newlove, giving evidence for Jane, I consider that he was a wholly honest witness doing the best that he could to remember things. His evidence covered the period 2013 to 2018. Apparently Jane contacted him and, one surmises, talked to him about the evidence in the case because he refers in his witness statement to such contact and that she (Jane) “obviously remembers the conversations too” that he discusses. This raises issues about the amount of contact between him and Jane and whether, knowingly or not, this has affected his recollection of events.
19. Most of his relevant evidence did not seem to me to take matters much further: in large part he covers matters that were common ground. Thus in his witness statement and in oral evidence he confirmed the proposed Jane Land/James Land split on inheritance (which is common ground) but not when the inheritance was supposed to kick in. One of the key matters he mentions is what he says was Mother’s preoccupation about inheritance tax and whether there would be agricultural property relief, on which subject, he said, she became a “bit of a bore”. This takes matters little further forward.
20. In oral evidence, he went further than suggesting that it was purely about inheritance on death and suggested that there had been a plan to transfer everything by Father and Mother in their lifetimes (to take advantage of what is referred to as the “7 year rule”, that is if a gift is made more than 7 years before death of the donor it will not fall to be taxed by way of inheritance tax on the deceased donor). If discussed this was clearly never carried forward and is not part of Jane’s case in any event.
21. Mr Fryer-Spedding relies upon Mr Newlove’s evidence as supporting a case that Mother was pre-occupied with Inheritance Tax and therefore would have decided to take the tax efficient step of passing some property to Jane and James (the half share of the spouse dying first) on the death of the first spouse to die. I discount this as a factor or a factor of any weight. The attendance notes regarding the wills do not show that inheritance tax was the be all and end all. Jane herself does not suggest that in evidence (relying more on what was said to be a concern by Mother as to how Father would deal with the Property if Mother died first). In short, I consider that Mr Newlove’s evidence took matters little further forward.

22. Mr Place FRICS FAAV, giving evidence for the Defendants, was not of course put forward as an expert witness. He is the land agent for Joyce. He has been involved with Mother and Father and the Property since about 2012, when he was instructed to give valuations for the purposes of tax planning. He has also been advising Joyce with regard to her current position and how parts of the Property may best be realised.
23. His evidence was limited by me to factual evidence. Although he clearly had strong views I considered that his factual evidence was reliable. He was criticised by Mr Fryer-Spedding for not refreshing his memory from contemporaneous notes prior to giving evidence but I did not find that this affected what was obviously a very clear recollection. Although he has clearly been advising Mother for some time and is closely involved in the current plans Mother has and, I infer, has some awareness of the difficult relations between Mother and Jane, I did not find that this affected the accuracy of the limited factual evidence that he was able to give regarding the physical state of the Property. I note that in many respects his factual observations reflect those of Mr Dodgson the joint expert, whom I turn to next.
24. There is also in evidence the expert report of a jointly appointed expert dealing with valuation issues: that of Ashley Dodgson MSc MRICS. By subsequent email dated 01 August 2025, the Defendants' solicitors asked why there were not photographs of the inside of the Farmhouse in that report when there were photographs of the interiors of all the other properties. By email dated 03 August 2025. Mr Dodgson replied as follows:

“No internal photographs of Wyville Farmhouse were permitted by Jane Hodgson as a condition of being granted access to the property. Even measuring up the farmhouse was problematic due to limited natural light (all the curtains were closed) and a number of the internal lights did not work. Generally, all the rooms were full of possessions and access was significantly restricted in a number of instances.”
25. Mr Dodgson was not called to be cross-examined on his report. I therefore accept it in its entirety.
26. As regards Jane, I found her oral evidence to be unsatisfactory. Where there is a conflict between it and the evidence of James or Mother, I would, subject to the overall likelihoods in the circumstances in question, prefer the evidence of James and/or his Mother. In some cases (such as precise dates), I would be less confident that Mother or James were necessarily correct but the key would usually be whether the event occurred rather than the precise date.
27. In giving her evidence, Jane's initial reaction to a question was very often one of defensive denial or in effect refusal to answer, whether directly, by answering a different question, or by sarcastic response such as “does it matter?”. Large parts of her evidence (such as in her cross-examination as to whether she had lived at the farmhouse) was simply evasive. After some further questioning on some topics she would often move position and accepted that the factual proposition put to her that she had initially denied was in fact true. She was also prone to blame others for matters that she was clearly responsible for (e.g. her daughters for the physical state of areas of the Property occupied by her). She also claimed to remember details of certain

meetings with an amount of detail that was quite surprising and yet have no recollection at all of other meetings which were key and yet apparently less favourable to her case.

28. Also of great concern, was the number of occasions on which she gave what was in effect new (and very significant and substantial) evidence on a number of topics, where that evidence had not been contained in any of her witness statements (e.g. regarding the promises made to her, as to which see later in this judgment). I treat such evidence with particular caution and largely reject it. In this respect I consider that this in part exemplifies the well-known syndrome of witnesses persuading themselves of the truth of what is in fact incorrect evidence but in part I regret that I consider that at least some of this evidence (especially regarding the alleged promises made to her about her inheritance) was simply made up to strengthen her case.
29. I also note that her evidence was painted to show her in a sympathetic light but on cross-examination was often shown simply to be untrue. For example, she asserted that she had had no serious relationships after one with a farmer in Somerset that came to an end in the later 1990's, but clearly she had had a number of serious relations after that date, not least with the father of Charlotte and Emily which seems to have lasted for about 3.5 years. She confirmed a number of other relationships too.
30. She also made assertions that there was other evidence available, or relied on evidence from others, or put forward assertions that could be supported but provided no supporting evidence either by way of witness evidence or otherwise. Thus, to take some examples, she referred to police reports but did not produce evidence of the same. She referred to her decision to keep working on the farm as having, so she said, resulted in advice from her lawyers that it had or would have the effect of massively reducing the compensation for whiplash and hip injury from a car accident that she would otherwise have received but did not produce anything to support this assertion. She was unable to give even a ballpark figure of the quantum of the compensation that she had received. She asserted continued disability from the car accident that I have referred to but produced only a report from a person who was not a doctor in the period before she had had a hip operation. She produced no medical evidence and no medical evidence of her position either post the hip operation or of her current position. She asserted that she had paid for 14 new windows at the farmhouse at a cost of £500 each but out of the files of invoices that she produced was only able to point to an invoice for £100 or so which she accepted was the subject of a credit note and had probably been returned and otherwise for one window for £160 or so. She referred to evidence of photographs showing her living at the farmhouse at a time when Mother and James said she had in effect moved out but she did not produce them. Of an incident concerning sheep and a family row about an auction at Holmfirth she referred to a photograph from the auctioneers confirming her version of events but again it was not produced
31. Finally, there were occasions where her evidence was contradicted by other far more reliable evidence (e.g. Mr Dodgson's unchallenged evidence about the state of the Farmhouse which Jane persisted in saying needed only a lick of paint).
32. I found that James' evidence was straightforward and, so far as relevant to the case, truthful and fairly accurate (subject to some uncertainty on dates which I have not found it necessary to resolve). There are a number of allegations and counter-

allegations about the relationship between Jane and her daughters and interactions between her and the Defendants and James' wife that I do not consider that I need to resolve. I accept that James does not get on with Jane but I found his evidence to be calm, collected and open and consistent with the documents and inherent probabilities.

33. Similarly, I found Mother's evidence to be truthful and accurate. Her memory is clearly failing as regards matters in the distant past and she is not a Chancery lawyer and clearly did not understand the nuances of legal points that were raised with her but she was open as to these matters and her basic recitation of the position as she recalled appeared to me largely to match the chronological documents and the likelihoods. Again, as regards the allegations and counter allegations that I have referred to, I did not find it necessary to resolve them.

The Property

34. The Property is registered under two titles at HM Land Registry. The various plots are all adjacent to each other and are to the north of a road running, in broad terms, west to east through the village and called "Green Dyke Lane".
35. In evidence is an (apparently undated) valuation report from Mr Ashley Dodgson MSc MRICS of the firm GSC Grays of Boroughbridge, York (the "Dodgson Report"). Mr Dodgson was appointed a single joint valuation expert on behalf of the parties. I take the following descriptions of the relevant parcels of land from the Dodgson Report and from the various plans in evidence. The Dodgson Report refers to Valuation Dates of 20 October 2020 and 12 June 2025. The Dodgson Report values the Property as a whole as £1,075,000 (20 October 2020) and £1,250,000 (12 June 2025).

(a) Wyville Hall

36. Starting to the west, the first plot of land, having originally formed one title with the remainder of the Property, is now separately registered under title NYK156915. This comprises Wyville Hall and its garden and surrounding area. It is unclear what prompted this separate registration of title.
37. The summary descriptions of Wyville Hall in the Dodgson Report include the following:

"2.2.3. A semi-detached Grade II Listed, 17th Century, 3-4 bed stone and tile property extending to approximately 1620 sqft Gross Internal Area (GIA) with an attached 1 bed single storey stone faced Annex with an asbestos fibre cement roof with a Gross Internal Floor Area of approximately 600 sqft. The main accommodation has undergone some improvement and modernisation including the installation of a new fitted kitchen and associated refurbishment although the adjoining Annex is dated and requires updating and modernisation. The property benefits from private parking and lawn gardens to the front and rear"

"4.2.2 Whilst Wyville Hall has a "grand" title it is actually a rather modest but attractive 3-4 bed semi-detached Grade II Listed stone built property with an adjoining 1 bed annex requiring some modernisation and improvement. The property has a private drive and a good sized plot with front and rear gardens."

There is a discrepancy between the physical boundaries of the rear garden of the Hall and the registered Title Plan (NYK158915) which requires addressing with HM Land Registry.”

38. The Dodgson Report places a values on Wyville Hall and its annex as follows:
- (1) 20.10.20 £315,000
 - (2) 12.06.25 £380,000
39. Wyville Hall is currently occupied by James and his family. Mother lives with them too, in the annex.
40. The official copy of the register of title which is in evidence and shows the position on the Land Register as at 23 January 2024, reveals the following. Title was first registered on 29 April 1993 (this was when the entire Property was registered and prior to title to Wyville Hall being separately registered). The registered proprietors are Mother and Father who were registered on 16 September 1994.
41. There is a restriction entered on the proprietorship register on 12 December 2003 as follows:
- “No disposition by a sole proprietor of the registered estate (except a trust corporation) under which capital money arises is to be registered unless authorised by an order of the court.”*
42. The official copy of the register of title for the remainder of the Property (NYK131698) shows that Wyville Hall was removed from that title and allocated to title NYK156915 on 16 September 1994.
43. The remainder of the Property lies to the east of Wyville Hall and is registered under title NYK131698. This is commonly referred to as “Wyville Farm”. Mother and Father are shown as the registered proprietors and as having been registered as such on 29 April 1993. No restriction is entered on the proprietorship register to the registered title.
44. However, there is in evidence a copy of the transfer on first registration to Father and Mother (described as being of Wyville Farm, Slingsby) dated 08 April 1993 which is of the entirety of the Property, including Wyville Hall. The consideration is stated to be £16,000 and the transferor was Robert Smith. Robert Smith was married to Mary Smith who was Mother’s aunt. Father originally worked for Robert (known as “Bob”) Smith (“Bob Smith”) on the farm. In 1993, Bob Smith effectively retired and the Property was purchased from Bob Smith by Father and Mother as shown by the transfer on first registration.
45. The Property is described as containing 32.825 acres or thereabout. The Transfer incorporates clauses 1(c) and 7 and 8 set out on the reverse of the form of Transfer.
46. Clauses 1 and 2 of the transfer on first registration, of which only clause 1(c) is incorporated, are as follows:

“1. **THE PERSONS** herein collectively known as the Transferee hereby declare as follows:-

- (a) they are **joint tenants** in equity
- (b) they shall have powers to deal with the land equal to those of a sole beneficial owner
- (c) the survivor of them can give a valid receipt for capital money arising on a disposition of the land”

47. Clause 2 (which is not incorporated) is in the following terms:

“**THE PERSONS** herein collectively known as the Transferee hereby declare as follows:-

- (a) they are tenants in common in equity
- (b) they shall have powers to deal with the land equal to those of a sole beneficial owner
- (c) the survivor of them cannot give a valid receipt for capital money arising on a disposition of the land”

48. Wyville Farm comprises three main areas: (a) a number of buildings around a courtyard; (b) to the immediate east of that, a yard with surrounding buildings referred to as the “Stackyard”; and then (c) to the east of that and extending northwards a rectangle of four fields: the Home Pasture Field to the west and to its immediate east, the Cemetery field (the southern sides of which fields run along Green Dyke Lane). Then, to the north of the Home Pasture Field, the Summer Paddocks and, to the immediate east of the Summer Paddocks and to the immediate north of the Cemetery Field, the “Below the Cemetery Field”. Then in width terms, being as wide as the Summer Paddocks and the Below the Cemetery Field, there is to the north a further fifth field called the “Over the railway field”. That field is separated from the Summer Paddocks and the Below the Cemetery field by a narrow strip of land which is, as I understand it, the site of a former railway line. That narrow strip is now in part, part of a campsite and, in part, the site of a sewage works.

(b) The Courtyard buildings: Wyville Farmhouse, the Potato Store, Wyville Cottage, former Shop/Café.

49. Dealing first with the courtyard buildings, they form roughly an incomplete square. To the north and east of the plot (and running east/west) is Wyville Farm. For many years Jane has lived there. James and Mother say she does not live there now but this is disputed.

50. Running north/south on the east side of the courtyard and continuing down from Wyville Farm is a building referred to as the Potato Store.

51. On the west side of the courtyard is a building which very roughly has an “L” shape, The bottom of the “L” runs alongside Green Dyke Lane. The upright part of the “L” runs north/south and meets Wyville farmhouse on its eastern boundary. This whole building has been referred to as Wyville Cottage but technically the upright part of the “L” or some of it was for many years run as a farm shop/café/post office by Mother and Father. I shall refer to it as the “Shop/Café”. That business has now ceased.

52. The brief descriptions of the buildings around the courtyard contained in the Dodgson Report include the following:

(1) Wyville Farmhouse:

“2.2.4 A traditional attached stone and tile 2-3 bed property with a floor area of approximately 1173 sqft Gross Internal Area (excluding the conservatory and adjoining Potato Shed conversion which do not have planning [permission]). The accommodation is arranged over one/two storeys with a shared courtyard to the front and overgrown garden and orchard to the rear with private parking. The farmhouse is in a poor and neglected state of repair and requires extensive renovation.”

“3.2.13 The farmhouse is in a poor and neglected state and requires extensive renovation with extensive damp evident. The kitchen and the bathroom both require replacement, the property rewiring, damp proofing, new heating system installing, the supply and fitting of new windows and doors.”

“4.2.2 Wyville Farmhouse is an attractive attached 2-3 bed stone property also requiring extensive renovation. The property has a shared front courtyard and a generous plot to the rear/north which includes an overgrown/neglected garden/orchard and private parking.”

(2) The Potato Store:

“2.2.5 The adjoining [to Wyville Farmhouse] rendered concrete block and asbestos 3 bay barn (Potato Shed) has been partly converted to residential accommodation associated with Wyville Farmhouse but with no planning permission or Building Regulation approval.”

“4.2.6 The Potato Store offers further development opportunities subject to planning and statutory approvals albeit the construction and structural integrity of the building may compromise its conversion potential. Again, the building has a limited plot size with associated parking/amenity space.”

(3) Wyville Cottage:

“2.2.6 A traditional terraced traditional stone and tile 2 bed cottage) providing single storey accommodation and adjoins both Wyville Farmhouse and the former Shop/Café. The accommodation extends to approximately 994 sqft (GIA) and requires refurbishment. The property adjoins both Wyville Farmhouse and the former Shop/Café and has a shared courtyard and private parking”

“4.2.3 Wyville Cottage is a traditional 2 bed terraced stone built cottage requiring renovation. It has a shared courtyard and private parking but generally lacks gardens and amenity space.”

(4) Former Shop/Café:

“2.2.7 The former Shop/Café adjoins Wyville Cottage and is a traditional stone and tile building which has full planning permission for residential conversion. The building is in moderate repair and condition and has no parking or garden/external space other than the shared courtyard with Wyville Cottage and Wyville Farmhouse. The existing accommodation extends to approximately 477 sqft Gross Internal Area but on conversion will provide approximately 954 sqft of floor space.”

“4.2.5 The former Wyville Shop/Café has planning permission for residential conversion as documented above and would provide a logical extension to Wyville Cottage”

53. The Dodgson Report ascribed values to the Courtyard Buildings as follows:

<u>Property</u>	<u>Value at 20.10.20</u>	<u>Value at 12.06.25</u>
Wyville Farmhouse	£160,000	£190,000
Potato Store	£ 35,000	£ 35,000
Wyville Cottage	£150,000	£180,000
Former Shop/Cafe	£ 60,000	£ 75,000

54. There is a dispute as to whether Jane currently lives at Wyville Farmhouse but it is not disputed that she did live there for many years with her two daughters.

(c) The Stackyard

55. The brief descriptions of the Stackyard given in the Dodgson Report include the following:

“2.2.9 The former Stackyard includes range of buildings of buildings used for storage and workshop purposes. The yard has the benefit of an independent electric supply and access. I am informed that the buildings have been improved by James Hodgson at his own expense. In all the buildings extend to approximately 5293 sqft (GIA).”

“4.2.7 The former Stackyard buildings are in reasonable repair and condition having been improved by James Hodgson in part. The site falls within the development limits of the village and is outside the Conservation Area and offers scope for re-development subject to planning and statutory approval.”

56. The Stackyard is valued at £55,000 (20 October 2020) and £70,000 (12 June 2025).

(d) The Fields and farm buildings on that land

57. The descriptions of the remaining fields and farm buildings on that land as set out in the Dodgson Report include the following:

“2.2.10. A range of farm and equestrian buildings in moderate/dilapidated repair and condition. In all the buildings extend to approximately 6721 sqft (GIA).

2.2.11. Approximately 32 acres of pasture/meadow and arable land. The pasture/meadow land has been divided into a number of small turnout paddocks although they are generally neglected with dilapidated fencing and heavily infested with weeds (docks, thistles and nettles).

2.2.12. The arable land is classified as Grade II/III and extends to approximately 13.69 acres and is currently let out under licence to a local farmer Andrew Wilson for £1369 per annum (£100 per acre). The current cropping is winter barley and winter wheat.

2.2.13. The boundaries to the land are delineated by a combination of timber post and wire fencing and hedges. Whilst the external boundary fences are generally stock-proof the internal fences are in poor repair.”

“4.2.8 The farm and equestrian buildings are in a moderate and dilapidated state of repair and are outside development limits but adjacent to the village development boundary. There may be some potential for a Class Q application for residential conversion in part.”

58. The valuation placed by the Dodgson Report on the fields and associated farm buildings are as follows:

<u>Part of Property</u>	<u>Valuation at 20.10.20</u>	<u>Valuation at 12.06.25</u>
Farm Buildings	£ 50,000	£ 50,000
Fields	£250,000	£270,000

59. As a general matter, the Dodgson Report passes the following comment:

“4.2.9. The composition, layout and configuration of the properties and the limited acreage of land does not offer a viable farming or equestrian business without substantial investment. Overall given the slightly dis-jointed nature of the property it lends itself to being lotted for sale albeit there are shared services/cross rights which would need to be accounted for in dividing the property. In my opinion prudent lotting would enhance the marketability and maximize the value of the property as opposed to selling it as a whole.”

Jane's Land and James' Land and the dispute

60. As I shall come on to explain, at the time that Father made his Last Will, Mother also made a will. These wills were mirror wills. Under each of those wills, what has been described as “James' Land” was on any view, ultimately to pass to James and the remainder of the Property was to pass to Jane. James' Land in effect comprised Wyville Hall and the Stackyard. Jane's Land comprised the remainder of Wyville Farm, other than the Stackyard, being the buildings (and area that they surround

and/or are situated upon) described by me as making up the Courtyard and also the Fields and the buildings upon the fields.

61. As a result of the dispute that has arisen, Mother has, I am told altered her will so that Jane will not take as she would have done under Mother's 2016 will.
62. One dispute between the parties is whether the gifts of Father's interest in the land provided for under Father's Last Will took effect on Father's death or whether they only operated in this way only in the event that Mother died first, before Father. This turns on the construction to be given to Father's Last Will. In essence, Jane asserts that there is a specific gift to her under Father's Last Will of Father's interest in Jane's Land. Mother and James assert that Father's Last Will operates so as to gift all his property to Mother (if she survives him) by way of residue and that it is only if she does not survive him that any gift to Jane of Father's interest in Jane's Land comes into effect under Father's Last Will.
63. Jane asserts that:
 - (1) From acquisition, Mother and Father held the Property (or at least all of it other than Wyville Hall) as tenants in common, in equal shares, in equity;
 - (2) Even if (1) is incorrect, the relevant beneficial joint interest was severed by the communications and joint intention between Mother and Father as to the contents of their wills made at about the same time in 2016 and in the case of Father being his Last Will;
 - (3) That under Father's Last Will, as a matter of construction of it, Jane is entitled on Father's death and in the events which have happened, to receive his half equitable share in that part of the Property referred to as Jane's Land.
 - (4) That, if (3) is wrong, she is entitled to Father's half share in equity in Jane's Land under the doctrine/principles of proprietary estoppel;
 - (5) That if (3) and (4) are incorrect, she is entitled to (or should be granted) Father's half share in equity in Jane's Land pursuant to the Inheritance (Provision for Family and Dependents) Act 1975 (the "1975 Act").
64. Mother and James assert:
 - (1) That part of the Property falling within the description of Jane's Land was held, on and from acquisition by them as legal owners, as joint tenants in equity.
 - (2) If, on its true construction, Father's Last Will provides for a gift of his equitable interest in Jane's Land to Jane, then it is submitted that that would not have acted as severance of any joint tenancy in equity because of the lack of joint subjective intention of Father and Mother because of their lack of understanding as to the effect of the 2016 wills.
 - (3) However, and in any event, on its true construction, Father's Last Will does not provide for an immediate gift of his equitable interest in Jane's Land to Jane, but rather it provides for a gift of such land to her by way of substitution for the gift of residue to Mother, in the event of the death of Mother prior to Father. In effect,

the operation of both wills resulted in a situation where, to the relevant extent that the same was owned by the last of Father and Mother to die, Jane's Land would then pass to Jane and James' land would pass to James.

Joint tenancy or tenancy in common of the Property?

65. It is common ground between the parties that, as at Father's death, Wyville Hall was held by him and Mother as tenants in common in equity. I do not know the basis on which that common ground rests. Jane apparently regards the entirety of the Property as having been acquired by Father and Mother as tenants in common in equity. Although not expressly articulated by Mother and James by way of witness statement evidence or by production of contemporaneous documents, I understand Mother and James' case to be that the Property as a whole was acquired by Father and Mother as joint tenants in equity but that at some time following the transfer of title to Wyville Hall to a separate registered title, the joint tenancy in equity regarding Wyville Hall was severed. There is some evidence for this in the fact that the title to Wyville Hall contains a restriction on the survivor to the legal title being able to give a good receipt. I do not have any evidence as to the basis upon which the restriction was entered onto the title to Wyville Hall in 2003 (some years after title had been separated from the remainder of the Property).
66. However, one of the issues that I am asked to decide is whether the remainder of the Property (i.e. all of it other than Wyville Hall) was held by Father and Mother at the date of Father's death in equity as joint tenants or as tenants in common. It is common ground that the remainder of the Property was held as equal co-owners, whether as joint tenants in equity or as tenants in common.
67. As I have said, Jane asserts that the Property was acquired on the basis that it was held in equity as tenants in common. If she is wrong about that, she asserts that any joint tenancy in equity was severed as a result of the circumstances in which Father's Last Will and Mother's mirror will were each made, clearly by way of common agreement, on 23 March 2016.
68. Mother and James' position is that the Property was acquired by Mother and Father as joint tenants in equity. As regards subsequent severance of such joint tenancy, they say first, that Father's Last Will did not, in all circumstances, gift his half-interest in equity in Jane's Land to Jane on his death. Under his Last Will, they say, the gift to Jane only took effect if Mother predeceased Father (in which event, on James' and Mother's case he would then have owned the entirety of the Property by survivorship or, on Jane's initial case, he would have acquired Mother's equitable interest under her will and the gift of residue to him). Secondly, whilst accepting that the circumstances in which mirror wills were made by agreement between Mother and Father, and even if they are incorrect on the issue of construction of Father's Last Will, James and Mother say that the making of the wills in 2016 was not enough to support the inference of severance either by agreement or by a course of conduct because of the uncertainty of construction of the Wills, such that Mother and Father cannot be assumed to have understood the effect of the 2016 wills in the relevant respect.

69. I should note that it does not matter for the purposes of the IHA 1975 whether the Property other than Wyville Hall was owned by Father in equity as one of two joint tenants or as tenants in common. This is because of section 9 IHA 1975, which permits a joint equitable interest in property of a deceased to be treated as a part of his estate for the purposes of application under the IHA 1975. Section 9 IHA provides as follows:
- “ (1) Where a deceased person was immediately before his death beneficially entitled to a joint tenancy of any property, then, if [...] an application is made for an order under section 2 of this Act, the court for the purpose of facilitating the making of financial provision for the applicant under this Act may order that the deceased's severable share of that property [...] shall, to such extent as appears to the court to be just in all the circumstances of the case, be treated for the purposes of this Act as part of the net estate of the deceased.”
70. I should also note that the issue of tenancy in common or joint tenancy only arises if Father's Last Will, on its proper construction as is Jane's case, gives rise to a specific gift to Jane which takes effect prior to any gift of residue to Mother. If, as James and Mother submit, Father's Last Will gives rise to a gift of residue to Mother (provided, as has happened, she survives him), then no part of the Property passes under Father's Last Will to Jane and Mother takes either under Father's Last Will (if the Property other than Wyville Hall was held by Father and Mother beneficially as tenants in common in equity) or by survivorship (if the relevant part of the Property was held beneficially as joint tenants in equity).
71. Having been asked to consider the issue of the beneficial interests of Father and Mother on acquisition of the Property (other than Wyville Hall) and as at Father's death and as the points were fully argued, I turn to those issues.
72. The starting point is the basis on which the Property (other than Wyville Hall) was acquired and whether it was acquired by Mother and Father in equity as joint tenants or as tenants in common.
73. According to Mother, Bob Smith (her uncle by marriage) gave Wyville Hall to her and Father as a wedding present when they got married in 1973 and they bought the remainder of the Property for the price of £16,000 in 1993, which she “imagines” was at less than market value probably because Father had worked for Bob for so long.
74. Joyce's memory on these points in cross-examination was less than clear. It is clear that title to Wyville Hall was not transferred until 1993 and, if there was any “gift” before that, no declaration of trust (necessary for creation of an equitable interest in land) has been located. So far as it is necessary to decide the point I consider that while Bob may have referred to making a gift to Father and Mother of Wyville Hall that was not given effect to as a matter of law until 1993 and that this intended gift may be the, or a reason, why (as seems likely) the Property (including Wyville Hall) was transferred to Mother and Father in 1993 at only £16,000.
75. In any event, for present purposes the focus is on Jane's Land (and James' Land other than Wyville Hall). As regards that land, Joyce was, not surprisingly, not really able to help about any intention at the time of the acquisition of the land in 1993. She

understandably had no real understanding of the difference between or the consequences of land being held so that the equitable interests are either jointly or held as tenants in common. Although she was asked what she understood would be the legal position on the death of her or Father first, she was not able to throw any light upon whether she had understood the result would be that the survivor would inherit without more (which would be the position if there was a joint tenancy in equity) or that the survivor would only inherit from the share of the deceased from his estate, on intestacy (to the relevant extent) or by will (which would be the position if there was a tenancy in common in equity).

76. The transfer, it seems to me, is clear in not positively and expressly choosing between a joint tenancy in equity and a tenancy in common in equity. Each of those options were presented by the form of transfer and no choice made. There is therefore no express declaration of trust regarding the nature of the beneficial interests.
77. In that situation I have to fall back on *Stack v Dowden* [2007] UKHL 17; [2007] 2 AC 432 and the cases thereafter. I need not spend a lot of time analysing or citing from *Stack v Dowden* itself. In summary the key points for current purposes are:
- (1) Declaring that a survivor can give a valid receipt for capital money arising on a disposition of land does not itself amount to an express declaration of a beneficial joint tenancy. Whether it is some indication of what the parties intended is another matter. A capital receipt clause authorising the survivor to give a receipt for capital monies is one of the factors which may be relevant in ascertaining what the common intention of the parties was (which is the key question). However, what is important in this question is the reasons why such clause was adopted (paragraphs [51], [69]).
 - (2) The starting point is that it should be assumed that equity follows the law and that the beneficial interests reflect the legal interests in the property, so that the onus is on the person seeking to show that the beneficial ownership is different from the legal ownership. In joint ownership cases, at least in the domestic consumer context, the starting point is that a conveyance into joint names indicates both legal and beneficial joint tenancy, unless and until the contrary is proved (paragraphs [54], [56], [58], [68]).
 - (3) However, there are circumstances in the commercial context where it will be highly unlikely that the parties intend survivorship with its tontine “winner takes all” effect. Thus, it is improbable that a joint tenancy in equity was intended where joint tenants in law hold commercial properties for their separate business purposes (e.g. where the property is occupied in separate parts for separate businesses of the legal owners and they contribute the purchase price in shares proportionate to the actual square footage each of them occupied: showing an intention not just of a tenancy in common in equity but one in unequal shares (see paragraph [57] and the reference to *Malayan Credit Ltd v Jack Chia MPH Ltd* [1986] AC 549).
 - (4) The search is to ascertain the parties’ shared intentions, actual, inferred or imputed with respect to the property in the light of their whole course of conduct in relation to it (see paragraph [60], [69], [70]).

- (5) The question is not simply “what is the extent of the beneficial interests?” but “did the parties intend their beneficial interests to be different from their legal interests?” and “if they did, in what way and to what extent?” [66]).
78. The need to look at all the circumstances but also the distinction between property acquired for commercial purposes and property acquired in the domestic context has been considered further in *Jones v Kernott* [2012] 1 AC 776 and *Williams v Williams* [2024] EWCA Civ 42; [2024] 4 WLR 10. The former case was fully discussed in the latter case so I turn to the *Williams* case. In *Williams*, a farm had been conveyed into the names of the two parents and one of their sons. The son claimed that the farm was held by the three of them as beneficial joint tenants. The Judge found that they had held the farm as tenants in common in equity. The farm had been purchased for commercial purposes and the parents had treated their shares as separate and this all suggested a tenancy in common. The Court of Appeal upheld the trial Judge. The main judgment was given by Nugee LJ, with whom the other two Judges agreed.
79. Nugee LJ, in his judgment:
- (1) Agreed that the starting principle was that the beneficial interest will follow the legal interest if there are no circumstances to displace this (paragraph [45]).
 - (2) But drew attention to the fact that there will always be a background to the purchase and other surrounding circumstances that will shed light on the context in which the purchase took place and that “context is everything” (paragraph [46]).
 - (3) *Stack v Dowden*, though ultimately a decision on the facts that the case was a very unusual one in which the parties had kept their affairs entirely separate and that Ms Dowden had made good her claim to a 65% share, was talking about the context of the acquisition of a home for the legal owners to co-habit but the context was also heavily dependent on the nature of the relationship between the parties. In *Jones v Kernott*, there were two reasons given why a challenge to the presumption of joint tenancy was not lightly to be embarked upon. The first was that the buying of a property to cohabit between a couple in an intimate relationship is, on the face of things “a strong indication of emotional and economic commitment to a joint enterprise”. The second was that the notion that in a trusting personal relationship the parties do not hold each other to account financially is underpinned by the practical difficulty in many cases of taking any account, perhaps after 20 years or more of the ups and downs of living together as an unmarried couple (see paragraphs [51] to [54]).
80. On the facts of the case in *Williams*, had the farm been purchased by the parents alone, the situation would have been one where there was both an “emotional and commercial partnership” and where domestic partners were also business partners. This was so literally: they were also in partnership together though the court determined that the farm was not a partnership asset. That context *might* have been a reason to depart from joint ownership in equity and adopting a “classic resulting trust” analysis. However there would have been strong arguments the other way: “*marriage is par excellence the model of a relationship based on mutual affection and sharing of both financial and other resources rather than commercial considerations*” (paragraph [54]).

81. However, in *Williams*, the farm was purchased in a commercial context by father, mother and son. The relationship between Dorian (the son) and his parents could not be equated to that between a married or an unmarried couple. The purchase was a commercial one, urged on by the son and paid for from partnership assets, in relation to which partnership all parties were under strict duties to account to one another (see paragraph [55]).
82. In my judgment, this case is one where the presumption or starting point of a joint ownership in equity is not rebutted by the circumstances. The Property was acquired to provide a home and a livelihood for the family as a whole. True, as I shall go onto explain, Mother had little to do with the farming operation and concentrated on the baking whilst father concentrated on the shop and post office. Both Father and Mother contributed financially to the acquisition of the Property and the conversion of buildings for the new family business (as explained in more detail later in this judgment). In short, the acquisition was in the context of there being a strong “emotional and economic commitment to a joint enterprise” (see *Jones v Kernott* [2012] 1 AC 776 paragraph [19]).
83. I do not at this point consider the circumstances in which Father and Mother made various plans at various times for inheritance on their deaths. I do not consider that the matters relied upon by Mr Fryer- Spedding point sufficiently in favour of a tenancy in common. It is undoubtedly the case that, for a period, Father and Mother contemplated making wills under which Jane would acquire an interest in the Property which gift would have taken priority to any gift of residue to the surviving spouse. However, there is no evidence wills in that form were ever executed. Furthermore, I also reject Mr Fryer-Spedding’s submission that the absence of recorded advice in that context of a need to sever any beneficial joint tenancy is evidence, or is evidence of weight, that at that point it was known and accepted that the beneficial interests in the Property were owned by Father and Mother as tenants in common rather than joint tenants. The relevant available attendance notes are cursory and in any event the issue of severance would only have become an issue if a final decision was reached to make the wills in the form in question, and even then severance may have been effected by the agreement to make such wills in that form without the need for a further express act of severance,
84. Mr Fryer-Spedding also submits that the failure to explain how it is that Wyville Hall was held by Father and Mother in equity as tenants in common and yet not the remainder of the Property is a factor that I should take into account against the case of Joyce and James and as pointing to the remainder of the Property also being held as tenants in common in equity. He submits that the only explanation was that it was held as such from inception and that as it was acquired as part of the Property then the whole Property must have been acquired by Father and Mother as tenants in common. The basis of Wyville Hall being treated as a tenancy in common in equity as regards Father by Joyce as executor was not explored by way of disclosure in terms of documents being produced nor was it pursued to any effect in cross-examination or in correspondence and the specific link I have identified as being made by Mr Fryer-Spedding was not pleaded. Furthermore, although there was no explanation before me as to why the restriction was entered on the register of title in 2003, the reasons for doing so may point to there having been some form of agreement at the time. I consider this point about non-explanation of the Wyville Hall beneficial ownership to

be a neutral one. Further, given the lack of evidence as to why a restriction was entered on the registered title of Wyville Hall (and none on the title of the remaining part of the Property) in 2003, the position regarding Wyville Hall does not assist me. Mrs Metcalfe invited me to draw the inference that it was connected with the making of wills in 2003 and the disposition of (some) property to a nil rate band discretionary trust. She may be right but I do not consider that I have sufficient evidence to draw that inference.

85. In terms of intention, I do not regard the receipt clause in clause 1(c) of the standard terms (which was adopted) of itself as particularly telling in favour of a joint tenancy rather than a tenancy in common in equity. The circumstances of the decision to include that clause are not known to me.
86. In conclusion, taking such limited evidence as there is into account I consider on the balance of probabilities that at the time of acquisition of the Property, it was held by Father and Mother as joint tenants.
87. I turn now to the question of whether the circumstances of the execution of Father's Last Will show that any joint tenancy was then severed. This depends first upon the issue of construction of Father's Last Will that arises; that is whether or not Father's Last Will is to be construed as making a specific gift to Jane of any beneficial interest of Father in Jane's Land and, secondly, upon whether or not an unequivocal joint intention to treat the beneficial ownership interests as severed can be made out.
88. I can refer to the authorities quite briefly and regard them as establishing the following principles (I have also considered the relevant passages in *Megarry & Wade, the Law of Real Property*):
 - (1) If no notice of severance is given under s36(2) of the Law of Property Act 1925, a joint tenancy in equity can be severed under general equitable principles in three ways. They are: first, by an act of one of the persons interested operating upon his own share; secondly, by mutual agreement and thirdly by a course of dealing sufficient to intimate that the interests of all were mutually treated as constituting a tenancy in common. When a severance depends upon an inference of this latter kind without any express act of severance, it is insufficient to rely upon an intention with respect to the particular share declared only behind the backs of the other persons interested (*Williams v Hensman* (1861) 1 J & Hem 546 at 557).
 - (2) The operation of a will cannot effect a severance, there has to be some inter vivos act, agreement or implied intention (*Carr v Isard* [2006] EWHC 2095 (Ch)).
89. Mrs Metcalfe accepts that the making of mirror wills which dispose of a beneficial interest in part of the Property may constitute evidence of an intention to sever (see *Carr v Isard* at [18]). She submits that the 2016 wills do not do this (as required see *Carr v Isard* at paragraph [22]). Further, she submits that even if they do, there is no, or no sufficient, evidence of a common intention to sever, that is that each had the necessary intention and knew of each other's intention.

90. As I explain later in this judgment, I am with Mrs Metcalfe on the first point (the will construction point) but, as a matter of principle, not on the second point. As regards the second point, if Father's Last Will did, as a matter of construction, dispose of his half share interest in Jane's Land in a manner inconsistent with him retaining a joint beneficial interest, then I consider that there would have been the necessary common intention which would be ascertained on an objective basis. Both Father and Mother would have in effect agreed or understood (by their knowledge of each other's wills) the terms of each other's will being made and if the legal effect of each such will was to dispose of their respective beneficial interests in Jane's Land as a matter of construction, such that a joint tenancy could not survive, then I consider that there would have been the necessary common intention to bring about a severance.

Construction of Father's Last Will

91. The key provisions of Father's Last Will for present purposes are as follows:

"5. Administration of My Estate

*My Trustees shall hold the residue of my Estate upon trust to retain postpone or sell it and **will:-***

Pay any debts funeral and testamentary expenses

Satisfy all gifts of specified property referred to in my Will

Deal with the residue of my Estate as I now direct

6. Gift of Residue

*I give the residue of my Estate to my wife the said **JOYCE HODGSON** absolutely and if my said wife fails to survive me the following provisions for the distribution of my Residuary Estate shall apply*

7. Specific Bequests

I make the following specific gifts subject to the named beneficiaries each paying their share of such Inheritance Tax or death duties as may become payable on these gifts:-

*(a) I give my share and interest in the land and property (including Wyville Hall) which is shown edged red on the Plan attached to this Will to my son **JAMES HODGSON** and if my said son shall fail to survive me leaving issue who survive me at the date of my death then such issue shall take by substitution their deceased parent's share and if there shall be more than one of such issue they shall take in equal shares per stirpes but so that no one takes a share if their parent is alive and takes a share **AND I DIRECT THAT:-***

(i) the ownership of the eastern boundary of Wyville Hall shall be included in the ownership of Wyville Hall; and

(ii) that a right of way shall be reserved over such part of Wyville Hall as is necessary to enable the filling maintenance repair or replacement of the oil tank serving Wyville Cottage

(b) I direct that the land shown hatched green on the Plan attached to this Will shall be retained by my Executors and that such rights of way over the said land as are required by my said son and said daughter shall be granted to them and thereafter my Executors in their absolute discretion shall decide in whose name the said land shall be held and until the transfer of the said land takes place I

further direct that my said son and my said daughter shall each be responsible for payment of 50% of the cost of maintenance of the said land (including the surface of the said land} and shall also each be responsible for payment of 50% of any insurance that may be required on the said land together with 50% of any Inheritance Tax that may become payable

[This land shown hatched green was in effect an area of land encompassing a part of the access roadway from Green Dyke Lane to the entrance to the Stackyard, which is on the latter's east side. The continuation of this roadway serviced the Fields].

*c) I give my share and interest in all of my remaining real property and land to my daughter the said **JANE HODGSON** and if my said daughter shall fail to survive me leaving issue who survive me at the date of my death. then such issue shall take by substitution their deceased parent's share and if there shall be more than one of such issue they shall take in equal shares per stirpes but so that no one takes a share if their parent is alive and takes a share.*

8. Substitutional Gift of Residue

*I give the residue of my Estate to my daughter the said **JANE HODGSON** and to my son the said **JAMES HODGSON** in equal shares or to the survivor absolutely and if either of them shall fail to survive me leaving issue who survive me at the date of my death then such issue shall take by substitution their deceased parent's share and if there shall be more than one of such issue they shall take in equal shares per stirpes but so that no one takes a share if their parent is alive and takes a share and takes a share."*

92. In identifying Father as the maker of his Last Will his address is given as Wyville Farm.
93. Put shortly, the question of construction is whether the specific gift to Jane of Jane's Land is one that only takes effect "*if my said wife fails to survive me*" on the basis that the gift in question is a "following provision" (as James and Mother assert) or whether, as Jane asserts, it is a Specific Gift that takes effect outside and prior any gift of residue to Mother.

(a) Legal principles applicable to construction of wills

94. I turn first of all the principles of construction adopted by the Court in the context of wills.
95. I summarised the position as I then saw it (and still do) in *Dryden v Young* [2024] EWHC 1095 (Ch) as follows.

"[52] Essentially, the process of construction of a will involves the determination of the testator's intention in using the words that are set out in the will. As it is put in *Theobald on Wills* (19th edn) at 28-001

"In construing a will the object of the court is to ascertain the intention of the testator as expressed in their will when it is read as a whole in the light of any extrinsic evidence available for the purposes of construction".

[53] Just as in the case of contractual and other documents, the question of what is admissible evidence and how the court is to go about its job is slightly more complicated than the above statement would suggest.

[54] The starting point is that the general principles of construction which apply to the construction of commercial contracts and other documents apply in the area of wills, as they do to other documents. That was said, obiter, by Lord Neuberger in *Marley v Rawlings* [2014] UKSC 2. Although obiter the principles that he spoke to have been applied in many cases since and across a wide range of types of documents. This is subject to one caveat that I mention below.

[55] In the *Marley* case, wills had been drafted for adopted parents under which each parent left their property to the other but in the event that other failed to survive, the whole was left to the claimant. By mistake each signed the other's will. The Supreme Court ultimately rejected an argument that the will of the husband (who died after his wife) could be severed to remove parts of it that were not known to him or approved by him (being parts of his wife's will that made no sense in the light of the obvious intentions and which would have defeated the gift over to the claimant on the death of the last of the two parents). Although interpretation/construction was a third ground raised on appeal, Lord Neuberger proceeded on the basis that the case failed on construction/interpretation on the bases (a) that it was unnecessary to decide the difficult point that arose regarding the boundaries in law between construction and rectification; (b) construction was not a basis on which the courts below had decided the case and it was not a ground on which the claimant/appellant had primarily relied (d) there had been limited argument on the point (see paragraph [41]). However, the court did order rectification of the will.

[56] A short-hand summary of the principles applicable to commercial contracts as revisited in recent years by a number of House of Lords and Supreme Court cases has helpfully been set out by Carr LJ (as she then was) in *Network Rail Infrastructure Ltd v ABC Electrification Ltd* [2020] EWCA Civ 1645 ("*Network Rail*") at [18] and [19], which I gratefully adopt:

"[18] A simple distillation, so far as material for present purposes, can be set out uncontroversially as follows:

- (1) When interpreting a written contract, the court is concerned to identify the intention of the parties by reference to what a reasonable person having all the background knowledge which would have been available to the parties would have understood them to be using the language in the contract to mean. It does so by focussing on the meaning of the relevant words in their documentary, factual and commercial context. That meaning has to be assessed in the light of (i) the natural and ordinary meaning of the clause, (ii) any other relevant provisions of the contract, (iii) the overall purpose of the clause and the contract, (iv) the facts and circumstances known or assumed by the parties at the time that the document was executed, and (v) commercial common sense, but (vi) disregarding subjective evidence of any party's intentions;

(2) The reliance placed in some cases on commercial common sense and surrounding circumstances should not be invoked to undervalue the importance of the language of the provision which is to be construed. The exercise of interpreting a provision involves identifying what the parties meant through the eyes of a reasonable reader, and, save perhaps in a very unusual case, that meaning is most obviously to be gleaned from the language of the provision. Unlike commercial common sense and the surrounding circumstances, the parties have control over the language they use in a contract. And, again save perhaps in a very unusual case, the parties must have been specifically focussing on the issue covered by the provision when agreeing the wording of that provision;

(3) When it comes to considering the centrally relevant words to be interpreted, the clearer the natural meaning, the more difficult it is to justify departing from it. The less clear they are, or, to put it another way, the worse their drafting, the more ready the court can properly be to depart from their natural meaning. However, that does not justify the court embarking on an exercise of searching for, let alone constructing, drafting infelicities in order to facilitate a departure from the natural meaning;

(4) Commercial common sense is not to be invoked retrospectively. The mere fact that a contractual arrangement, if interpreted according to its natural language, has worked out badly, or even disastrously, for one of the parties is not a reason for departing from the natural language. Commercial common sense is only relevant to the extent of how matters would or could have been perceived by the parties, or by reasonable people in the position of the parties, as at the date that the contract was made;

(5) While commercial common sense is a very important factor to take into account when interpreting a contract, a court should be very slow to reject the natural meaning of a provision as correct simply because it appears to be a very imprudent term for one of the parties to have agreed, even ignoring the benefit of wisdom of hindsight. The purpose of interpretation is to identify what the parties have agreed, not what the court thinks that they should have agreed. Accordingly, when interpreting a contract a judge should avoid re-writing it in an attempt to assist an unwise party or to penalise an astute party;

(6) When interpreting a contractual provision, one can only take into account facts or circumstances which existed at the time the contract was made, and which were known or reasonably available to both parties.

[19] Thus the court is concerned to identify the intention of the parties by reference to what a reasonable person having all the background knowledge which would have been available to the parties would have understood them to be using the language in the contract to mean. The court's task is to ascertain the objective meaning of the language which the parties have chosen to express their agreement. This is not a literalist exercise; the court must consider the contract as a whole and, depending on the nature, formality, and quality of drafting of the contract, give more or less weight to elements of the wider context in reaching its

view as to that objective meaning. The interpretative exercise is a unitary one involving an iterative process by which each suggested interpretation is checked against the provisions of the contract and its commercial consequences investigated."

[57] The above principles of course have to be adapted to reflect the fact that in the case of a Will (or most wills, mutual wills may be different) one is not looking at a transaction effected by two or more parties but at a transaction or document effected by one person. Further, the general consequences of a Will or a particular construction and commonsense have to be taken into account, rather than there being, as there is in a contractual context, emphasis or focus upon the "commercial" consequences of the same or "commercial" commonsense.

[58] In *Marley*, Lord Neuberger summarised the principles and process of construction as follows, being a passage replicated in paragraph [18(1)] in the *Network Rail* case:

"[19] ...identifying the meaning of the relevant words, (a) in the light of (i) the natural and ordinary meaning of those words, (ii) the overall purpose of the document, (iii) any other provisions of the document, (iv) the facts known or assumed by the parties at the time that the document was executed, and (v) common sense, but (b) ignoring subjective evidence of any party's intentions"

[59] The summary of Carr LJ is obviously a fuller description and summary. I would note that the background referred to by Lord Neuberger at sub-paragraph 19(iv) is stated slightly more widely by Carr LJ who refers not just to what the parties knew or assumed but also refers to information "reasonably available" to the parties.

[60] I mentioned that the general principles of construction are subject to a caveat. That arises from the change effected by s21 of the Administration of Justice Act 1982, which was dealt with by Lord Neuberger in the *Marley* case as follows:

"[24] However, there is now a highly relevant statutory provision relating to the interpretation of wills, namely section 21 of the [Administration of Justice Act] 1982 (section 21). Section 21 is headed "Interpretation of wills-general rules as to evidence", and is in the following terms:

"(1) This section applies to a will

(a) in so far as any part of it is meaningless;

(b) in so far as the language used in any part of it is ambiguous on the face of it;

(c) in so far as evidence, other than evidence of the testator's intention, shows that the language used in any part of it is ambiguous in the light of surrounding circumstances.

(2) In so far as this section applies to a will extrinsic evidence, including evidence of the testator's intention, may be admitted to assist in its interpretation."

[25] In my view, section 21(1) confirms that a will should be interpreted in the same way as a contract, a notice or a patent, namely as summarised in para [19] above. In particular, section 21(1)(c) shows that "evidence" is admissible when construing a will, and that that includes the "surrounding circumstances". However, section 21(2) goes rather further. It indicates that, if one or more of the three requirements set out in section 21(1) is satisfied, then direct evidence of the testator's intention is admissible, in order to interpret the will in question.

[26] Accordingly, as I see it, save where section 21(1) applies, a will is to be interpreted in the same way as any other document, but, in addition, in relation to a will, or a provision in a will, to which section 21(1) applies, it is possible to assist its interpretation by reference to evidence of the testator's actual intention (e.g. by reference to what he told the drafter of the will, or another person, or by what was in any notes he made or earlier drafts of the will which he may have approved or caused to be prepared)."

96. My attention was also drawn to various passages in the judgment of HH Judge Halliwell in *Jeffreys v Scruton* [2020] EWHC 536 (Ch). These included paragraph [40] of that judgment with which I completely agree:

"[40] Section 21 [of the Administration of Justice Act 1982] is no more than an aid to construction. It enlarges the range of admissible evidence for the purpose of ascertaining the meaning of the words used. However, it cannot be used to contradict the meaning of the words or assign a meaning to them which they are incapable of bearing. Unlike Section 20, it does not provide for the Will to be rectified in consequence of a clerical error or other failure so as to reflect a testatrix's real intentions"

97. Other passages in the judgment were also drawn to my attention regarding what in that case were "words with a legal connotation" with "an established meaning". I do not regard the issue of construction in this case as turning on words of that description so refer no further to such passages.
98. In this particular case I consider first the relevant words in the will in question and their natural and ordinary meaning. I then turn to the surrounding circumstances (leaving aside s21 Administration of Justice Act 1982 ("AJA 1982") and then consider whether s21 AJA 1982 applies and, if so, what effect that has on my conclusion as to construction. Before I do so, however, I set out the relevant history (but will have to return to the question of whether some of that evidence can only be admissible under s21 AJA 1985).

(b) Evidence leading up to execution of Last Will of Father

99. I agree with Mr Fryer-Spedding's submission that it was clear from Mother's oral evidence that she had no meaningful recollection at all of the contents of her historic wills, and the drafts that were produced to her. I should add that she also, for the main part, did not understand the legal effect of the drafts had they been executed and taken effect and that she was unable to remember why such drafts might have been put forward. None of this is surprising.

100. Mr Fryer-Spedding points out that James and Mother did not call any solicitors involved in the drafting of any of Father's wills to give evidence. That evidence might have been relevant if a case for rectification was being mounted. I do not consider that the failure to call evidence from such persons is such that any inference should be drawn against Mother and James on the questions either of construction or of severance.
101. In any event, there is in evidence a statement said to be "in *Larke v Nugus* format" from Mrs Kathleen Lesley Temple, then senior partner at Kitching Walker, solicitors of Kirbymoorside, dated 09 February 2021. That statement apparently followed a request from Jane's solicitors. The statement deals with Mrs Temple's dealings with Mother and Father regarding their wills from, at the least, 2003 the year that Father did make an earlier will to his Last Will. She apparently knew Father and Mother professionally since at least about 1986 or so. There is in evidence some letters from 1996 on Kitching Walker notepaper bearing Mrs Temple's initials as a reference dealing with transfers of various farming matters (livestock and the holding and quotas) from Father to Jane. The evidence is admissible hearsay evidence and the claimant made no application to cross examine the maker.
102. I turn to the contemporaneous documents.
103. There is in evidence a copy of Father's will dated 05 November 2003. It was drafted by Kitching Walker. A copy was provided by Ms Temple with her statement of February 2021. She did not provide any further documents, such as any accompanying letter of wishes nor did she refer to the same. In material terms, the 2003 will provides for:
- (1) Specific bequests of personal chattels to Mother (subject to her surviving him by 28 days), and in default to James and Jane (I need not deal with the further default clause).
 - (2) The setting up of a discretionary "Nil Rate" band trust (provided Mother survived him by 28 days) of such sum as equals the largest amount which he could give after the specific bequests in (1) without any inheritance tax being payable. The executors are trustees with various powers and holding income and capital for the "Beneficiaries". The Beneficiaries are essentially Mother, James and Jane plus relevant spouses/widows and remoter issue of James and Jane (including those divorced) and to any charitable body as decided upon by the trustees.
 - (3) The residue is to be used in paying debts, funeral and testamentary expenses, satisfying the gifts of specified property referred to in the will, adhering to the terms of the Discretionary Nil Rate Band Trust and after that the residue is to be dealt with by gift to Mother (provided she survives him for 28 days) and if that gift fails then by substitution, James is to get his interest in Wyville Hall and Jane his interest in the Farm Cottage and Shop, with the residue to James and Jane equally (with further provision for their respective issue to take in place of a parent deceased at the time of his death and further gifts over).
104. In identifying Father as the maker of the will, the address given for him is Wyville Hall.

105. Mr Fryer-Spedding submits that there was probably a letter of wishes accompanying the 2003 will though none has been located. He also submitted that the will, read in conjunction with his expression of wishes to his trustees, is capable of supporting the division of the farm after the first of Tony and Joyce to die by way of suitable appointments out of the nil rate band discretionary trust. I leave aside the position of Joyce as testator and consider the submission on the basis that it is to the effect Tony's 2003 will and the (assumed) letter of wishes support the placing of the Property (or part(s) of it) into the discretionary nil rate band trust and the distribution of parts to Jane and James under the discretionary test pursuant to a letter of wishes. That submission however depends upon assumptions of a letter of wishes and as to its contents. I am not prepared to assume on the balance of probabilities either that there was a letter of wishes, nor that if there was one, it set out wishes along the lines suggested by Mr Fryer-Spedding. Mr Fryer-Spedding's submission is really little more than a submission that his submission as to what was intended justifies the inference that documents exist to bring about that conclusion. In any event, the 2003 Will points the other way. For example, under clause 6, in place of the relevant sum being met by the payment of cash or appropriation of property, the trustees could accept in whole or part a binding promise to pay by Mother and could lend any money held in the Trust to Mother. It seems to be more likely that if there were a letter of wishes (which I am not prepared to assume) it may have been directed at benefitting Mother rather than in distributing any parts of the Property within the trust to Jane/James during her lifetime. In conclusion, I do not draw any inferences about how the Nil Rate Band Trust was intended to operate.
106. Mrs Temple, in her statement of February 2021, refers to her being consulted by Mother and Father in April 2008 regarding the making of new wills and says that drafts were sent out but does not provide copies of the same.
107. She goes on to say that despite chasing, nothing further happened with regard to the draft wills until she received a request to finalise them in January 2013. She confirms that she visited Mother and Father at Wyville Hall on 23 January 2013. Present at the meeting, she says, were Father, Mother, Jane and a Mr Philip Place from Boulton and Cooper whom she understood to be advising Mother and Father about Inheritance Tax planning. At the end of the meeting, she says, she was instructed that the family would await Mr Place's report before Mother and Father proceeded with their wills.
108. The attendance note refers to Father as being "in and out" but effectively taking no part in the discussion. For present purposes, other salient points are that a right of way for Jane over what became the green land in Father's Last Will was needed because, "It seems that James will park vehicles deliberately to prevent her [Jane] getting to her land." It is also recorded that:
- "It seems that in the first instance, Tony and Joyce will leave all to each other and then they would leave Wyville Hall and the yard to James and the rest to Jane."
109. Mrs Temple says that she next saw Mother and Jane at her, Mrs Temple's office, on 17 April 2013. She says it was clear from her previous meeting that Jane was included in their discussions. At this point, says Mrs Temple, they were still awaiting to hear from Mr Place and their architect Margaret Mackinder whom, Mrs Temple

was instructed, was looking at the buildings with a view to converting part into a holiday let and creating a right of way.

110. Mrs Temple says that she then saw Mother and Father on 21 October 2015 and she exhibits the attendance note. In material part it records as follows:

“They are not leaving their share in the house to Jane as they think this will complicate matters as I do. They will leave all their Estate to each other in the first instance. They will then leave the land shown edged red to their son, James Hodgson and if he has died before them, then equally to any children subject to him paying a proportion of tax.

Give the land shown hatched green on the plan - shall be retained by my Executors and such rights of way granted over the land as are required by my said son and my said daughter and thereafter my Executors shall decide in whose name the land shall be held at their total discretion until the transfer of the land I DIRECT that my son and my daughter shall each be responsible for 50% of the cost of the maintenance of the piece of land including the surface of the piece of land and any insurance required.

The rest of land and property owned to daughter Jane, again subject to her paying a proportion of tax.

Then anything else equally between the two children or to their issue.”

111. On 25 November 2015, Mrs Temple said that she received some further instructions by telephone as to a gift to James on the second death and reserving rights for access to an oil tank. The note is as follows:

“KLT attended Joyce and Tony Hodgson - will we ever get this right. I have omitted the gift to their son James of Wyville Hall and so that needs including. Also James needs to be made responsible for the boundary to the east of the property. We need to reserve a right for Wyville Cottage for the oil tank to be refilled which is on Wyville Cottage property, but the hose needs to go up on Wyville Hall.

Also, we need to make general reservations regarding rights to enter neighbouring properties to maintain boundaries and to maintain any walls which arch or abut another one's property.”

112. These changes seem to be reflected in the Last Will of Father.
113. In evidence, exhibited to the Defence, is a will precedent form of Kitching Walker. The attestation clause is blank save that the year “Two thousand and Fifteen” is typed in capitals (and long form). The precedent is relied upon in paragraph 15(c) of the Defence in respect of construction of Father’s Last Will. In particular, it is pointed out that the precedent provides that pecuniary and specific bequests are dealt with before gifts of residue. The Reply joins issue with the Defence generally, there being only one substantive paragraph dealing with the nature of the relationship between Father and Mother and the wish of Mother (it is said) for James not to inherit her interest. Although the precedent is not otherwise verified by witness statement, it seems to me that it is in evidence as a document forming part of the Defence with its

statement of truth. Further, given the date and the draft wills that I refer to below, I infer that it was taken from the will file maintained by Kitching Walker.

114. In connection with construction of Father's Last Will, by paragraph 15 the Defence also relies upon various undated drafts of wills of both Father and Mother, obtained from the will file of Mother and Father. It is difficult to place these drafts (and manuscript markings on some of them) into the limited timeline revealed by the attendance notes and Mrs Temple's statement.
115. A draft will of Mother seems likely to be the earliest in time of the drafts (Draft Will D). In effect it provides for Jane and James to be executors and trustees (with 2 partners of Kitching Waker); a specific gift of Wyville Hall to Jane (possibly an error for Farmhouse), a separate gift to Jane (and in default her issue) of land said to be edged blue on an attached plan and a gift of land edged green on the same plan to James (or in default his issue).
116. The manuscript amendments to Draft Will D are significant. The executor clause shows the names of Jane and James as struck out in manuscript and "Husband" plus father's name is written above in manuscript. Suggested changes to be made to make clear that the specific gift to Jane of the Hall remains as a specific legacy but that the other specific legacies only arise in the event of Father predeceasing mother so that a gift of residue to him fails. . The gift of residue is shown by manuscript amendment as now going to Father (with the manuscript comment above it "Everything to husband but if they predecease") and then under the clause dealing with gift of residue, a new clause in manuscript headed "Substitute residuary Gift" talking about the "remaining share" in property at Wyville Farm going to Jane (or her issue if she predeceases the will maker) and then referring to the clauses which had previously amounted to gifts of blue land to Jane (corrected in manuscript to red land) and the green land to James, adding also in that in his case it was subject to payment of IHT (as already set out in the clause regarding the red land). The wording "remaining share" of Wyville Farm in the gift of land to Jane in the event the gift of residue to Father fails by reason of his predeceasing Mother, makes sense because the house, Wyville Farm (house) was to pass by specific legacy to Jane with the remaining area of land comprising Wyville Farm being gifted to her in the event that the gift of residue to Father failed due to his predeceasing Mother
117. As regards draft wills of Father, one ("Draft Will A") seems to be the next in time. It largely reflects the manuscript changes on Draft Will D with one major exception. The exception is that the specific gift of Wyville Hall to Jane provided for in manuscript on Draft Will D is not expressed in draft Will A. Instead it is one of the gifts which arises if the gift of residue to Mother fails by reason of her predeceasing Father. Draft Will A contains the following, among other, provisions:
 - (1) Clause 2 appoints Mother and two partners at Kitching Walker as executors and trustees with a provision that if Mother predecease him or be unable to or unwell to act, then by substitution Jane and James were to be co-executors and trustees.
 - (2) Clause 5, headed "Administration of Estate" is in the same terms as clause 5 of Father's Last Will;

- (3) Clause 6 headed “Gift of Residue” is in the same terms as clause 6 of Father’s Last Will;
- (4) Clause 7 is headed “Substitute Residary [sic] Gift” and contains 4 sub-clauses. In substance, sub-clause (a) provides for Jane (or in default her children) to take Wyville Hall. Sub-clause (b) provides for Jane (or in default, her children) to take the land marked red on a plan. Sub-clause (c) provides for James (and in default his children) to take the land marked blue on a plan and clause (d) deals with land marked green on a plan which is to be retained by the executors who are to grant rights of way over it to Father’s children and then decide in whose name the land should be held. The draft has the “TWO THOUSAND AND FIFTEEN” date typed in.
118. A further draft will for Mother (Draft Will C) seems to have been in the same terms (mutatis mutandis) as Draft Will A. However, it contains manuscript amendments. These make clear that the gift to Jane of Wyville Hall is to become a specific gift and not one only arising in the event that the gift of residue to father fails. It is moved up in the document under the heading “Specific Bequest” and prior to the “Definition of my Estate”. The word “Hall” is crossed out in manuscript so that the gift will be of (Wyville) Farm (as substituted in manuscript). The wording “at the date of my death” is indicated in manuscript after the words: of gift of “such share as I [Mother] may own”.
119. The manuscript changes to Draft Will C seem to be typed up into a further draft versions of Father’s will (“Draft Will B”) and Mother’s will (“Draft Will E”).
120. Draft Will B shows a general manuscript line through the first page but also a series of manuscript lines through the provision that Jane and James should act as executors and Trustees if Mother could not or would not.
121. Draft Will B also shows (in typing) a clause setting out the specific legacy to Jane of such share as was owned at the testator’s death in Wyville Farm. The wording “at the date of my death” is included in the typed up version of the specific legacy of Wyville Farm. That clause too is struck through in manuscript. There is also a manuscript note by way of question: “Hall or Farm”. The gift of residue is again to Mother (clause 7) and that is followed by clause 8 under the heading “Substitute Residuary Gift” dealing with the red land (to Jane), the blue land to James and the green land as in Draft Will A. Under the clause dealing with the green land there is a reference in manuscript to “50% maintenance /insurance” which clearly refers to the relevant wording to be found in the Last Will of Father.
122. It seems likely that Draft Will B was prepared prior to the meeting on 21 October 2015, referred to above, and that the manuscript strike throughs were made following that meeting. The attendance note of the meeting records the decision to have James and Jane as (substitute) executors and not to make a specific bequest to Jane of Wyville Farm with the residue to Mother but instead to leave Wyville Farm within the residue taken by mother and only if she predeceases father should there be a specific bequest of Wyville Farm to Jane.
123. Draft Will E is a draft of Mother’s will. In the specific Bequest clause of Wyville Farm to Jane, it is picked up, by way of manuscript amendment to the description that

Jane lives in that property not Mother (when the wording of the gift was changed from Hall to Farm this point was not corrected).

124. Father's Last Will seems to pick up the amendments made to Draft Will B.
125. In short the manner in which the changing gifts under the will seems to have developed (though the precise order is not entirely clear, it seems to me likely it is as below, taking into account all provisions) is as follows. I assume, as seems to be the case, mirror drafts were prepared each time:

Will		Bundle page
Draft Will D	<u>3 specific gifts:</u> -Jane: Wyville Hall (free of duty/tax) -Jane (or issue); blue land (subject to duty/tax) -James: green land <u>Residue:</u> Jane and James (or issue)	382-386
Draft Will D manuscript amendments	<u>Specific gift:</u> Jane (or issue): Wyville Hall (free of tax) <u>Residue:</u> spouse but if predecease then: -Jane (or issue): remaining share in Wyville farm red land (subject to IHA/death duties) -James (or issue): blue land (subject payment IHA)	382-386
Draft Will A	<u>Residue:</u> spouse but if predeceases -Jane (or issue): Wyville Hall (free of duty/tax) -Jane: red land (subject to IHA/death duties)	367-371

	-James: blue land (subject payment IHA)	
Draft Will C	As Draft Will A	377-381
Draft Will C manuscript amendments	<u>Specific bequest:</u> Jane (or issue): Wyville Farm Residue: spouse but if predeceases: -Jane (or issue) subject to tax: red land -James (or issue): subject to tax blue land -Trustees green land	377-381
Draft Will B	<u>Specific gift:</u> Jane: (or issue) Wyville Farm (free of tax and death duties) <u>Residue:</u> spouse but if predecease then Jane (or issue): red land (subject IHT/death duties) James (or issue): blue land (subject IHA/death duties) Trustees: green land	372-376
Draft Will E	As per Draft Will B	387-391
Draft Will E manuscript amendments	Minor corrections: picks up Jane lives in Wyville Farm(house) rather than Mother (in description)_	387-391
Draft Will B manuscript amendments	Removal Jane and James as replacement executors for Mother <u>Residue</u> to spouse but if predecease Jane (+ children): red land (subject	372-376

	IHA/death duties) James (+ children): blue land (subject IHA/death duties). Manuscript note re “Boundary to be James” Trustees: green land. Manuscript Note re “50% maintenance/insurance”	
Last Will of Father	Changes: Wyville Hall referred to in gift to James which now part of red land and reference to E boundary and right of way for benefit of Wyville Cottage is mentioned. Green land: wording extended to cover responsibility of Jane and James (50% each) for costs of maintenance and insurance Remaining real property to go to Jane Then a new substitutional gift of residue (after the specific gifts in the gift of residue to the spouse fails).	343-348

The wording of the will and surrounding circumstances

126. In my judgment the wording of the Last Will of Father is perfectly clear, read on in its own. Under clause 5 the order of payments/distributions from the estate is set out in the order of paying debts, funeral and testamentary expenses, then satisfying all gifts of specified property referred to in the will, then dealing with the residue as the will goes on to provide.
127. Clause 6 sets out the gift of residue to Mother absolutely but if she fails to survive Father the following provisions apply. That is, instead of the gift of residue to Mother, there are specific bequests under clause 7 of (1) the red land to James (or his issue in certain circumstances) with the provisions regarding the ownership of the eastern boundary and the reservation of a right of way for the cottage in connection with the filling, maintenance, repair or replacement of the oil tank; (b) the green land with rights of way to be granted and the executors will then decide who should hold legal title to that land; (c) the remainder of the Property is left to Jane (or in certain circumstances her issue). Any residue likely (to be chattels or money) is then left to Jane and James (and in certain circumstances their respective issue) under clause 8.
128. Mr Fryer-Spedding submits that clause 5 makes it necessary to identify any specific gifts, which are to be met before distributing residue, and that clause 7 identified

specific bequests which are to be met before distributing the residue which under clause 6 is absolutely given to Mother. The simple fallacy of this approach is that it fails to give any effect to the words in clause 6 that the following provisions (including the specific bequests under clause 7) only take effect *if* Mother fails to survive Father. She has survived him. Subject to administration of the estate and any need to resort to the Property to meet relevant debts, funeral and testamentary gift, any interest Father has in the Property passes to Mother.

129. There is nothing in terms of commonsense that militates against the very clear wording of Father's Last Will. Indeed, such considerations as there are rather point in favour of the construction that I consider to be correct. I agree with Mrs Metcalfe's submission that on the face of things it would be odd to leave Mother without any life interest or right of occupation and to leave her subject to the risk of orders being made against her under s14 of the Trusts of Land and appointment of Trustees Act 1996, which would be the effect of the construction argued for by Mr Fryer-Spedding. I also note in this context the limited resources of Mother and her dependence on the state pension (as at July 2025, just over £204 per week).
130. So far as the surrounding circumstances are concerned, the fact that the will precedent used by the firm of solicitors suggests that specific gifts are dealt with before residue points in favour of the construction that I consider clearly applies on the wording alone. The gift to Jane is not a specific gift taking priority over the gift to Mother of residue. It is a specific gift that is made only if Mother predeceases Father in which event the gift of residue to Mother fails and there are then specific gifts and a substituted gift of residue.
131. I do not consider that there is room for operation of s21 AJA 1982, however, if I am wrong about this, then the evidence of the attendance notes and the draft wills in evidence support the conclusion that I have reached. I should add that I do not consider that these matters can be taken into account other than as evidence of intention. I do not consider, and therefore reject the submission of Mrs Metcalfe, that these matters can be taken into account as part of the surrounding circumstances in which Father's Last Will was made.
132. James and Mother also rely upon the taking out of a Second Death whole of Life policy in July 1994. This was recorded in the Attendance Note of Mrs Temple dated 23 January 2013 as being something that would be available and was hoped to paying any inheritance tax however this was against (a) a context where Father and Mother were then intending to leave all to each other and Wyville Hall and the yard to James and the remainder to Jane but also (b) in circumstances where Father thought that there was a "good chance" that Wyville Farmhouse would get 100% relief being of the character "necessary to farm the land" (which Mrs Temple was dubious about). In my judgment, the existence of the policy is only admissible in this respect pursuant to s21 AJA 1982. In any event, it does not seem to me a very weighty consideration in construing Father's Last Will.
133. In conclusion, it seems to me that the language of Father's Last Will admits of only one construction on the issue between the parties and that is that, as James and Mother submit, under that Will Jane only receives the specific gift there set out if Mother predeceases Father so that the gift of residue to Mother does not take effect, at which point the substituted specific bequests and gift of residue take effect. There are

surrounding factors in favour of that construction but most are evidence of Father's intention which would only be admissible under 21 AJA 1982 if the Last Will was ambiguous, which I have found it is not.

Proprietary Estoppel

(a) The Law

134. There was no significant difference between the parties as to the applicable principles of proprietary estoppel. I was referred to the usual cases in the House of Lords and Supreme Court and many of the cases reviewed by Lord Briggs in *Guest v Guest* [2022] UKSC 27; [2024] AC 833. I set out below some of the main points stressed by one or other, or both, Claimant and Defendants.
135. A useful summary is provided by *Megarry and Wade: the Law of Real Property* (10th Edn) (footnotes removed):
- “(i) An equity by estoppel arises where:
 - (a) the owner of land (O) induces, encourages or allows the claimant (C) to believe that C has or will enjoy some right or benefit over O's property, provided that inducement etc is not specifically limited to a mere personal use of the land;
 - (b) in reliance upon this belief, C acts to his or her detriment to the reasonably determined knowledge of O; and
 - (c) O then seeks to take unconscionable advantage of C by denying C the right or benefit which C expected to receive.
 - (ii) This equity gives C the right to go to court to seek relief. C's claim is an equitable one and subject to the normal principles governing equitable remedies.
 - (iii) The court has a wide discretion as to the manner in which it will satisfy the equity in order to avoid an unconscionable result, having regard to all the circumstances of the case, including, but not limited to, the expectations and conduct of the parties.
 - (iv) The relief which the court may give may be either negative, in the form of an order restraining O from asserting his or her legal rights, or positive, by ordering O either to grant or convey to C some estate, right or interest in or over the land, to pay C an appropriate amount in money, or to act in some other way.
 - (v) The issue in any given case is whether it would be unconscionable for O to deny that which O has allowed or encouraged C to assume to C's detriment. The courts no longer inquire (as once they did) whether the circumstances can be “fitted within the confines of some preconceived formula”.
136. The three elements outlined in sub-paragraphs (i)(a) to (c) above, of (a) a representation or assurance by the owner of land (“O”), (b) reasonable reliance on the assurance by the Claimant (“C”) and (c) detriment to C in consequence of his reasonable reliance (see *Thorner v Major* [2009] 1 WLR 776 at [29]) (and indeed the

other elements the court must consider) are not watertight compartments, and the court must look at the matter in the round (see *Gillett v Holt* [2001] 1 Ch 210 at 225B-E).

137. The harm which proprietary estoppel is aimed at remedying is not the detriment incurred in reliance on the assurances but the unconscionable repudiation of the assurances (see *Guest v Guest* at paragraph [70]). Nevertheless, there must be detriment. As Lord Briggs said in *Guest v Guest* at [10]: “[w]ithout reliant detriment there is simply no equity at all”.
138. The assurances must be clear and must be reasonably understood by C to be unambiguous and intended to be taken seriously. What matters is how the assurances were reasonably understood. (*Thorner v Major* at [3]-[5]; [17], [18], [26], and [52]-[60]).
139. The assurance must be that C will acquire a proprietary interest in a specific property owned by O (*Thorner v Major* at [2] and [61]).
140. As regards detrimental reliance, the focus is whether or not at the moment of repudiation of the assurance, the detrimental reliance has been such that the repudiation would be unconscionable. It must be pleaded and proved.
141. Many of the cases are similar to this one in that the claim has been based upon assurances that a child would inherit a farm and the child has then worked on the farm for a considerable portion of their life. In *Winter v Winter* [2024] EWCA Civ 669; [2025] 2 P&CR 2, the Court of Appeal had to consider such circumstances again. The context was one where brothers (born in 1967, 1967 and 1968) had worked on a family farm on a full time basis once they left school (broadly in the mid to late 1980’s) for long periods but receiving relatively little by way of payment for their work until 2009. After mother’s death, father had wanted each son to have their own farm so two more farms had been acquired. All three farms were held by a family partnership and the main farming business, market gardening, was transferred from the family partnership to a company. The brothers had shares in the partnership and in the company. Father left the residue of his estate, including his interests in the partnership and company to one of the sons to the exclusion of the other two. On appeal, it was said that the trial Judge had not properly evaluated the question of detriment. Among key points of principle re-iterated by the Court of Appeal were the following:
 - (1) Detriment is “not a narrow or technical concept” and “need not consist of the expenditure of money or other quantifiable detriment” (see paragraph [29])
 - (2) some detriment may be difficult or impossible to quantify in financial terms (see paragraph [28];
 - (3) where a claimant’s reliance on an assurance has resulted in both disadvantages and benefits, the court must have regard to both (paragraph [29]).
 - (4) The fact that a disadvantage may not be susceptible to quantification does not make it a trump card. In a case where reliance has produced both a

disadvantage and a financial benefit, the judge must balance the two regardless of whether it is possible to put a figure on the disadvantage (paragraph [30]).

(b) The pleaded case

142. The pleaded case in the Particulars of Claim is as follows (where relevant the Defendants' responses that I record are those set out in the Defence).
143. In 1991, Jane, at 16 years of age attended agricultural college and a youth training scheme which involved her working for Father at the farm. This is admitted. The course that she studied was horticulture.
144. In or about 1993, Father told Jane that "the Farm" (defined in effect as being what I have described as the Property) would one day be hers and that she should make her life there. This is not admitted on the basis the Defendants have no personal knowledge. However the Defendants aver that during the lifetime of Father it was Mother and Father's intention that one day Jane and James would inherit the Farm between them. (Farm seems in the pleadings generally to be referring to Jane's Land rather than the entirety of the Property comprising also James' Land, even though that is not how the term is defined in the pleadings).
145. In or around October 2010, Mr Rob Hicks of the National Farmers Union, visited Jane and her parents at the Property. At that meeting and subsequent meetings he was keen to see pension arrangements made for Jane and said so on several occasions, Mother repeated (in Jane's presence) that one day the Property and the buildings occupied by Jane would one day be Jane's. She told Jane and Mr Hicks that Jane would be better investing money in the upkeep of the Property and its buildings rather than paying a pension. Specifically, Mother said that Jane would be able in due course to rent out the cottage and shop and in that way have an income during her (Jane's) retirement. The Defence position is that Mother cannot recall these details (though she accepts there were meetings with Mr Hicks) and James has no personal knowledge, so that the facts asserted by Jane are not admitted.
146. On other occasions (including when giving instructions to Mrs Temple about her will), Mother told Jane that she and Father had agreed that:
 - (1) James would inherit James' Land.
 - (2) Jane would inherit Jane's Land, telling Jane on many occasions "it's yours to do as you want, it is coming to you anyway."
 - (3) On the death of the first of Mother and Father to die, Jane would inherit the deceased parent's share in Jane's Land and on the death of the last parent, the remaining half share,
147. The Defence is that at about the time of the making of Father's Last Will (and Mother's mirror will made at the same time), Jane was told that the intention was that James would inherit James' land and Jane would inherit Jane's Land on the last of Mother and Father to die.

148. The Defence accepts and pleads that between January 2013 and October 2015, Father and Mother considered leaving Jane an interest in the Farm on the death of the first to die but that Father and Mother changed their minds and no wills having such effect were ever executed (this ties in with the evidence regarding the draft wills which I have referred to earlier in this judgment).
149. The Particulars of Claim assert that like assurances about inheriting on the first to die of Mother and Father were also relayed in the context of Jane being shown plans showing Jane's Land (as attached to the 2016 wills) and when telling Jane that Mrs McKinder had advised it might be possible to put a log cabin on one of the Fields, (the Home Pasture field) that had been promised to her.
150. The Defence admits that the plan to the wills was shown to Jane and the relaying of information regarding the log cabin but say that was not in the context of confirming, or any assurance, that on the first of Mother or Father to die, Jane would acquire any interest in the Property.
151. In the Particulars of Claim, it is said that Jane reasonably relied upon the assurances received and that she thereby acted substantially to her detriment in living at the Farm, making her life there, after 1993 and running and improving the same when she:
- (1) Increased the number of animals she kept there. (The Defence admits that Jane did this);
 - (2) Opened the Farm to visits by paying members of the public. (The Defence admits that Jane did this);
 - (3) Claimed and received farming subsidies. (The Defence admits that Jane did this);
 - (4) Let certain parts of the farm to third parties and received and retained the rent that they paid. (The Defence admits that Jane did this);
 - (5) Converted buildings at the Farm into the Farmhouse. (The Defence admits that Jane contributed nominally to the conversion of the Farmhouse, but asserts that the majority of the renovations were undertaken and financed by Mother and Father);
 - (6) Maintained and improved the buildings at the Farm. (The Defence denies this and asserts the pleading is embarrassing for want of particularity. The parts of the Farm under Jane's control are said not to have been maintained and to be in bad condition);
 - (7) Did not make payments towards a pension (The Defence makes no admission, having no relevant knowledge);
 - (8) Laid out a treelined driveway at her expense to provide access to the site of the intended log cabin (It is not admitted a tree lined driveway was set out though accepted that Jane may have planted some trees);
 - (9) Gave up the possibility of pursuing alternative employment options and/or making a personal life for herself elsewhere than at the Farm. (This is denied by the

Defence, it being said that there were no other available employment opportunities and Jane was only interested in pursuing a life at the Farm);

(10) Positioned her whole working life based on the truth of the assurances received (The Defence denies this, see (9) above);

(11) Following a serious car accident in 2018, Mother (a) encouraged Jane to continue working at the Farm so as to keep the business going for her (Jane's) benefit; (b) told Jane she had to keep farming the land and running the shop so as to maintain an entitlement to agricultural property relief against inheritance tax and (c) as a consequence Jane's compensation was far lower than it would have been had she stopped work due to her injuries.

152. The Defence as regards these matters globally is that Jane would have lived and worked on the Farm anyway, irrespective of any assurances and that therefore there is no reliance. Further, if there is any detrimental reliance it is insufficient to give rise to an equity in Jane's favour, even if she did rely upon assurances as she asserts.

153. The Particulars of Claim appear to proceed on the basis of assurances that she would receive (and detrimental reliance giving rise to an equity that should be satisfied by granting to her) a half share in Jane's Land on the death of Father and a half share in that land on the death of Mother (the latter to be given effect to by some form of trust of Mother's half share interest). Nevertheless, it was accepted by the Defendants, as I understand it, that they were also prepared to meet an alternative case that the relevant assurances/representations were to the effect that Jane would inherit the entire interest in Jane's Land on the death of the last of Father and Mother to die.

(c) Constructive Trust

154. There is also a pleading of a common intention that Jane's Land would be held on trust for Jane and the matters relied upon by way of detriment in the context of the proprietary estoppel claim are said to be "in support" of the common intention. I did not understand such claim to be maintained and deal with it no further.

(d) Further findings of fact and outline of disputed factual evidence

155. It is helpful at this point to set out in a little more detail the evidence regarding the family taken from the contemporaneous documents and the written witness statements as well as the oral evidence. The following represents my findings of fact. In places, I refer to the factual evidence and where I do so I make no finding of fact at this stage as to the truth and accuracy of such evidence. I address in more detail later in this judgment the elements of proprietary estoppel and my findings in relation thereto, including any factual findings.

156. Jane really loved the farm and the outdoors life from a very early age. She was closer to Father than Mother and helped him continuously when not at school. She was given a donkey when she was three, a pony in 1983, aged eight and she was also given some sheep of her own in 1983.

157. When Jane left school aged 16, she went to agricultural college on day release (studying horticulture not agriculture) and enrolled on a youth training scheme, with her father as

employee. He was then still working on the farmland, but for Bob Smith rather than himself.

158. The Property was acquired in 1993. Bob Smith retired. As I have said, Father converted part of the farm buildings into a shop and post office (there was also a bakery and café/coffee shop) not long after. (Mother thinks the post office may have opened a few years later but nothing turns on the precise chronology). However, Father retired from running the farming operation at this time (though he would still help out on it). Instead he became involved in the shop and post office. Mother's responsibility was the bakery and the baking and she was not involved in running the shop. In August of that year Jane became 18. At about this time James was away either working on a farm or at agricultural college.
159. In about 1993, Jane was promised by Father that she would receive the farm business which she started to manage then. In about 1995 the farm business was handed over to her. At that point, as she confirmed in oral evidence, nothing was said about any land (as opposed to the farm business itself).
160. James left home in about 2004. For about 5 years or so, from the mid-2000s until about 2012, he didn't speak very much with his parents. This was because in effect he resented the fact that Jane was not paying any rent, was receiving the rent from the fields that were let out and that he felt Mother was acting as unpaid nanny for Jane, Dad was working in the shop and that Jane was, in his view, "milking the life living well and paying no bills". Mother and Father seemed unconcerned and although he told them his view they did not seem amenable to it.
161. Mother says that Father paid the £16,000 purchase price and she thinks that he took out a mortgage for this. Mother sold two fields for about £22,000. That and the proceeds from a mortgage of £22,000 taken out by Father were used to pay for conversion works to create the farm shop. In addition, a grant for farm diversification was obtained and also used in paying for the conversion.
162. Jane says that at this time Father told her that "the farm would one day be mine" and that she should make her life there (Jane 1st WS).
163. Whilst Jane was interested in the Farm, James was not really interested and less involved, though he enjoyed working with the farm machinery in terms of tractors etc.. However, he did have an agricultural element to his education. He attended Askham Bryan Agricultural College and did a three year HND Sandwich course in agriculture (the middle year of which involved working on a farm). Following that he obtained a BSc in land management.
164. The Farmhouse was converted for occupation by Jane (and later her children lived there too). Jane says in her 1st WS that she paid for this conversion and that her parents gave assistance. I find that her parents (chiefly her father) did most of the work and that her parents bore most of the costs. This was some time after acquisition of the Property and in the course of the 1990s.
165. Later on, Jane says after 2001, Joyce says later (2014 or so), a door was put into the western end of the Farmhouse to give access to part of what is now referred to as the Cottage (part of it now including part of what had been the Shop/Café) so as to get

extra space. There is a dispute as to whether this was agreed or not but nothing turns upon the point. Father and Mother clearly knew about the development at or about the time.

166. There is also a dispute as to the precise circumstances in which Father died (Joyce says he died unexpectedly and suddenly one day some 12 hours or so after he had been up some ladders doing repairs to the shop. Jane says he died in his sleep when he was sleeping on the concrete floor of the shop).
167. The farming business was in effect given to Jane from in about 1995, after the Property had been acquired by Mother and Father, though the formalities took a little longer. A letter dated 30 January 1996 from the NFU to the then Ministry of Agriculture, Fisheries and Food (“MAFF”) refers to Father’s holding and a sheep quota of 47 units then held in his name. The letter records that Father then wished to transfer the farming business in its entirety to his daughter, Jane. It goes on to record advice given by MAFF that if a solicitor’s letter to this effect was submitted with another form then the sheep quota could be transferred to Jane to whom future payments would be made. A letter with Mrs Temple’s reference on from Kitching Walker dated 31 January 1996 confirms that all livestock formally owned by Father had been transferred to Jane as from 1 June 1995. A covering letter from Mrs Temple to Father refers to her hope that the letter would “keep the Ministry quiet”.
168. A MAFF Form refers to an application by Jane in respect of suckler cow premium for 3 animals in 1996 and records an inspection on or about 28 February 1997.
169. Jane says that she already had horses, ponies, sheep and goats but that she increased the number of animals and the varieties of them and opened the farm as an “open farm” to visitors. This is confirmed by an article in the Yorkshire Post from July 1998 which features “Farmers”, one of whom is Jane. The article refers to the farm having 55 breeding ewes, six suckler cattle, eight sows, plus horses, goats, poultry, tortoises, rabbits and guinea pigs. The article concludes with a quotation from Jane:

“My idea of hell is working in an office in the middle of a town. I love working outdoors and I couldn’t imagine a future without livestock”.
170. As Jane explains in her witness statement, the concept behind the “open farm” was that people would come to visit the farm and pay an entrance fee which formed part of the income of the farming business.
171. Of the 32 acres or so, Jane did not need all of the land and so let out about 13.5 acres (the Field known as “Over the Railway” and the bottom cemetery field), under cropping licences which, in the period 2017-19 bought in about £1,000 a year. The licence was from April each year until the removal of the relevant crop (which could be of any arable crop). Licences for 2017-19 are in evidence. As confirmed by the Dodgson Report, the arable land extends to approximately 13.69 acres and was at the time of the Report let out under licence at £1,360 per annum. The licences were originally granted to Chris Wilson from about 1993 to his death in about 2017, and thereafter to his son, Andrew Wilson. There is a 2017 licence to Andrew at a £1,000 price in the evidence.

172. The evidence shows that income per year from the farm has varied from just under £3,000 to £10,250 per year. Of this subsidies formed a significant part varying from just over £2,000 a year to £3,278. The gross profit varied between £1,151 to £5,681.24. After expenditure, the profit/(loss) per year varied between a loss of £4,844.96 to a profit of £40.15. The figures given also show wages taken in some years of between £4,000 and £5,332.
173. More accurate financial information is given by some unaudited accounts (or extracts from them) for the year ended 5 April 2023 which shows turnover for the years 2022 and 2023 of £5,076 (livestock sales £2,347 and single farm payment of £2,729) and £3,846 (livestock sales £1,563 and single farm payment £2,283) with a gross loss of £92 and £2,572 respectively and a net loss (after applying administrative expenses and finance costs) of £7,917 and £8,079 respectively.
174. Net profits (losses) for the years ended 5 April 2003 to 5 April 2023, in pounds as rounded, are shown by unaudited financial statements prepared by accountants for each of the years in question. The figures below are as per the accounts for the year in question and are not adjusted as shown in a few cases in the following year's accounts. None of the account show expenditure by way of any wages.

2003	2004	2005	2006	2007	2008	2009
(1,558)	(1,823)	(2)	859	(1,741)	1,144	(1,931)

2010	2011	2012	2013	2014	2015	2016
40.15	(1,187)	(1,673)	(1,788)	(1,899)	(4,845)	(2,646)

2017	2018	2019	2020	2021	2022	2023
(3,914)	(178)	(9,319)	(10,852)	(12,338)	(7,917)	(8,079)

175. In evidence is a one page summary of accounting information for the farming business run by Jane covering the period 2003 to 2015.
176. In her 2nd WS Jane asserted that she had a good living from the farm business until about 2001, saying that she was “self-sufficient” but that after that the demands of

motherhood changed things and she also worked in the shop and bakery to keep it going.

177. Each year in about October, a Mr Rob Hicks from the National Farmers Union insurance company would come to see the family. He was keen to set up Jane with a pension. According to Jane's 1st WS, Mother would explain to him that "one day the farm and buildings that I occupy would be mine"
178. James ran a haulage business from the Stackyard. This with Wyville Hall became "James' Land" which it was intended James would inherit.
179. Jane says (Jane 1st WS) that Mother explained to her that under their wills Father and Mother would leave Jane's Land to her and James' Land to James. On the death of either, the deceased would leave by will their half shares in the relevant land to Jane and James. Jane says that this was because Mother thought that she would die first, being older than Father, and she was concerned that, if everything came to be owned by Father he would "fritter it away somehow during his lifetime". Jane says she was present at the solicitors when this was all explained. Mrs Temple, she says, advised Mother that her worries that Father might sell his share to someone else would not happen because at that point (assuming Mother died first) the other half interest in the parcels of land would be owned by Jane and James and "he would not be able to sell".
180. I find that Mother's evidence as regards her concern with regard to Father is to be preferred. As a general matter, I prefer Mother's evidence over Jane's where it is in line with the probabilities, as is the relevant evidence of Mother in this respect.
181. Jane says that the solicitor's file note of a meeting recording her presence bears no resemblance to any recollection that she has of any meeting. I find however that the solicitors' note is more likely to be accurate than Jane's recollection and therefore prefer what the attendance notes show over any evidence of Jane that something inconsistent was said at any relevant meeting which is, or the outcome of which is, recorded.
182. Mother accepts that she had concerns about what Father might do with the Property assuming she, Mother, died first but says that her concerns were that he might favour Jane over James.
183. Jane says (Jane's 1st WS) that she did not see the 2016 wills at or about the time that they were made but that she and James were consulted about the plans (or possibly drafts of the plans) showing Jane's Land and James' Land and which were annexed to the wills.
184. In 2001, as a result of the Foot and Mouth crisis Jane had to close the farm to the public. Father gave her paid hours to work in the shop. The "open farm" had, in any event, always been closed to the public in the winter. It never re-opened to the public after the foot and mouth incident. Toilets would have needed to be installed.
185. In 2012, Jane says that there was a meeting between Margaret McKinder and her Mother in which Mother explained that the potato shed was one of the properties that was going to be left to Jane and that Mother hoped that after the death of Father and Mother she would be able to develop it into residential properties. Mrs McKinder informed Mother that the potato shed was too close to another building and planning

permission for three properties would not be possible. She said it might be possible to get planning permission to convert the potato shed into two properties and to put a log cabin in one of the fields. Jane says that as a result of this advice, she and Mother planted a tree lined driveway at Jane's expense so as to provide a private access through the cemetery filed to the area where the log cabin would ultimately be built.

186. All the cows were sold in 2012.
187. Also in about 2012, Father and Mother moved out of Wyville Hall and the bakery and coffee shop were converted into the or part of the Cottage. Wyville Hall was rented out at that point. James and his family moved into Wyville Hall just before the lockdown caused by the Covid pandemic (I infer in early 2020). At about the same time Mother moved into the annex to Wyville Hall. She did not invite Tony to join her. The Cottage remained available to him. Mother says that the move was because Jane and Father had made life unpleasant for her. They were controlling but at the same time were constantly "shouting and carrying on" and "rowing and fighting" between themselves. Jane denies this account of her relations with her Father.
188. In 2018, Jane was involved in the car accident that I have referred to. She suffered soft tissue injuries and orthopaedic injuries to her right hip and leg. She asserts that the compensation she ultimately obtained was less than it would otherwise have been because she was persuaded to continue to work on the farm by Mother to keep the farming business going for her (Jane's) benefit and to maintain agricultural property relief. There is in evidence a "case management update" dated 6 April 2021 prepared by Bridge Case Management signed by Ms Sue Ford outlining Jane's then position and looking to better the future in terms of e.g. physiotherapy, psychology support, medication and the like. There are no recent medical reports and Ms Ford's report is dated before the date of the operation that Jane had for her hip later in April 2021. I find that the accident was not as serious as Jane makes out and that even if she is on continuing medication it does not prevent her doing the jobs that she has confirmed that she does nor, as it happens, has it prevented her from doing some pretty heavy farm work with, or associated with her livestock, and indeed on the farm (lifting heavy barn doors off their hinges, whether or not using a lever).
189. In about 2019, Mother and Jane obtained an appraisal of what Jane might get in rental income from the shop and cottage and were told about £500 and £800 per calendar month.
190. From about 2020, Jane says that relations with Mother (and James) have deteriorated. She refers to (a) the cutting off of hot water supply to her property from a common boiler which she was said was turned off in 2020 and never since turned back on with the result that there is no hot water in the farmhouse; (b) incidents that occurred when she had a boyfriend to stay in November 2022 when, she says, her family "went crazy" and vandalised his car (with graffiti) and James banged on the windows and doors of the farmhouse and eventually climbed onto the farmhouse roof and she was told that he was going to break into the farmhouse through the roof and eventually the electricity to the farmhouse was turned off in order, she says, that she could not call the police and/or that her call to the police was interrupted, (d) a series of letters/written communications from her Mother in this respect which she says reflects how she was viewed by Mother.

191. One is dated 08 July 2022 and asks Jane to

“remove all your belongings from the courtyard (sheds included) by Friday 30 September. After this time I will arrange the remainder to be cleared and disposed of as this is the next step of the clearing up process.

Thank you

Mum”

192. Another is dated 02 October 2022 and is in the following terms:

“To Jane

Please can you remove all your belongings from the potato shed and the shared alleyway by Sunday 30th October. After this time I will arrange the remainder to be taken to the village bonfire as this is the next step of the clearing up process.

Thank you

Mum”

193. Jane says that she had always used the potato shed to store her things and that she had always had possession of it. She makes various allegations about James and other family members taking the doors of their hinges (as the doors were locked from inside) and throwing all her things into the yard and loaded on trailers and taken to the village bonfire.

194. The last communication is dated 14 August 2023 and is in the following terms:

“To Jane

Please make arrangements to empty/vacate the following rooms/areas you are currently using. These need to be empty and available for me to access by Mon 11th September 2023. Emily's old bedroom and the small bedroom next to it. The sitting/dining room. Charlottes old bedroom and the room outside the door Leave the keys to the door into the courtyard in the door. Leave anything that I gave you when you moved in for the girls

Thankyou

Mum”

195. She also relies upon:

- (1) Her mother and Brother allegedly knocking down her dog kennel building in September 2022;
- (2) The fence and locked door securing her back door area being knocked down in October 2022, thereby (she says) opening the area and removing her security.

- (3) The hedging in from of the courtyard being cut down and so exposing the farmhouse to the road and removing her privacy.
 - (4) Moving sheep onto Jane's Land so as to eat off all her grass.
 - (5) Mother encouraging her daughters to "interfere" with her livestock by taking over the feeding of the horses, moving and rugging them without permission and continuing to do so against her will.
 - (6) Interfering with the movement of her sheep to market at Holmfirth and her sister in law Helen and her Daughter Charlotte attending at Holmfirth and moving her sheep around in the pens to make them less valuable and disturbing potential buyers to put the price down.
 - (7) In November 2022, her sister in law sending Jane a text and letter received from Mother saying she was living in the farm house against Mother's wishes and should leave.
 - (8) During October to December 2022 whilst trying to sell a horse on Facebook, her family posted false information to dissuade potential buyers.
 - (9) In the spring of 2023, the tampering with her tractor and draining of engine oil from it.
 - (10) Being locked out of the shop so she could not give electricity readings from the common meters housed there.
 - (11) Electricity supply to the Farmhouse "frequently" being switched off for at up to at least 16 hours (that being one example).
 - (12) May 2023, Mother instructing a nearby farmer to plough up one of the fields.
 - (13) Towards the end of 2023, James and others moving Jane's livestock and topped it. She moved it back. They moved it again.
 - (14) 11 September 2024, the erection of "For Sale" signs on the Potato Shed and some of Jane's Land.
 - (15) Interference with the locks from the driveway to the Farm.
 - (16) James seeking to drive a wedge between Mother and Jane.
 - (17) Mother allowing Charlotte and Emily to move into the Cottage and encouraging them to damage Jane's property and move her horses, telling them that they can do whatever they like on the Farm and that it is all theirs, which they repeat to Jane.
196. Many if not all of these allegations were denied and countered in written evidence from the Defendants.
197. There were also counter allegations such as animal cruelty by Jane and involvement of the RSPCA, removal of Jane's children from her by social services and that Jane

and her children now have no relationship: Jane having “thrown her children out” so that Mother is trying to create a home for them. Again, although Jane seems to accept the relationship with her children is very poor, most of these allegations are denied. Although I need not resolve the more serious disputes that have arisen, Jane accepts that in 2021 the RSPCA did attend to remove 3 dogs and a cat that were not being properly looked after and that one dog had to be put down (this also appears to confirm the Defendants’ evidence that when the dog kennel was knocked down Jane no longer was keeping dogs at the farm). She also accepts that social services have been involved regarding her children’s welfare but denies that they removed her children from her care. Her children had, she says, already moved out, by then to live with Mother. One incident that I do make a finding about and which is indicative of Jane’s attitude to her children is that Emily had to walk home some 6 or so miles in the dark from her then job when 15 or 16. This was because Jane had said that as her girls had not dealt with the ponies, she would not give the girls lifts. She also seemed unbothered to check as to when they had got home:” if they were not back by 10pm there was always on a key on a horse carriage or somewhere” for them to get in or the door would be left open.

198. Jane has taken a job in a hotel since, she says, she has been “thrown out of her properties and her land”. However she also worked at Melgate Country House in 2002 helping to clean it up after it had been renovated.

Jane’s place of residence

199. In her 1st WS Mother said that Jane had stopped living at the Farmhouse about a year and a half earlier than the date of the witness statement made in November 2024 (that is, Jane stopped living there in about June 2023). Mother said that she did not know where Jane was staying but that she, Jane, visited the farmland (rather than the Farmhouse) every day for about 15 to 45 minutes at around 4pm.
200. In 2nd WS Jane denied this and said that leaves work at 6:20am and her Mother comes and checks for her at about 7am as she sees her Mother on CCTV. She said that she got home after 6pm and often Mother’s house is then in darkness. She tends to her livestock before returning to the Farmhouse.
201. Her oral evidence was more evasive. She accepted that she did stay away some nights from the farmhouse (and that these nights were spent at the home of the man, Mr Smith, who has apparently lent her the not insubstantial sum of £10,000 to fund the current litigation, or at another man’s home, that of a man nearer Doncaster where some of her horses were then kept). She also accepted that the farmhouse had had no hot water or heating since 2020 and that from August 2024 the water supply was lowered so that, for example, it was necessary to carry water to flush the toilets (Mother and James suggest the supply was turned off because of a leak and that as Jane wasn’t living at the farmhouse it wasn’t thought this would cause her a major problem). Jane accepted that she had not made any complaint at the time (saying, “what was the point?”).
202. In short, I am satisfied that Jane was living away from the farmhouse for at least about a year and a half before November 2024. She had alternative accommodation. Although she may stay there now for a number of nights a week that is driven by the need to make good her case that she still has the benefit of free accommodation there

which she needs. I am satisfied that she is even now regularly sleeping somewhere else. Indeed, this is consistent with her witness statements where she refers to having been “forced off” the property which I take to mean the entire property and certainly the farmhouse.

General Intention of Parents

203. In her 1st WS Jane says that ever since 1993, her parents made it clear that they intended to leave the farmyard and most of the buildings to her. She was told, she says, as regards Jane’s Land “It is yours, to do as you want, it is coming to you anyway.” And she had exclusive use of it.

Jane’s assets and outgoings

204. As at the date of her 1st witness statement (17 August 2024), Jane said that her assets were a Volvo (the value £5,000), a quad bike with muck picker and spreader attachment (value then £5,000), livestock (3 horses and 11 Shetland ponies worth £7,000) and no other assets. As her physical condition deteriorated she had sold her sheep, the tractor and had taken a job as a housekeeper at a nearby hotel (earning about £1,700 and £2,100 per month).
205. In her 3rd WS (15 July 2025), Jane confirmed that she had effectively been forced off the Property in about 2022 and since then had taken paid jobs to support herself, initially at Langton Hall as gardener/housekeeper where she earned about £1,900 a month and from July 2023, at The Pheasant Hotel as maintenance/housekeeper where she earns about the same sum per month.

Joyce’s future plans

206. Mr Place has given evidence about the current position regarding planning for realisation of the Property. He identified significant debts owed to him and his firm which Joyce is unable to pay. He confirmed that the following plans were in place as at November 2024:
- (1) Cottage: to be sold (Offer subject to contract of £285,000)
 - (2) Farmland: to be sold (Offer subject to contract of £160,000)
 - (3) Creation of apartment for Jane’s daughters if part of buildings encroached on by farmhouse recovered (in the North West corner of the courtyard area).
207. However, by July 2025 (see Mother’s 3rd WS) the sales had gone off.

(e) The alleged assurances/representations

208. The assurances said to be given to Jane, which are in her written evidence, are few and far between and amount at most to assurances that one day she would have an inheritance of part of the Property. Only in oral evidence did Jane suddenly assert, and strongly, that despite it not being found in her written evidence Father told her on numerous occasions that she would receive half the inheritance, that inheritance being his half share in Jane’s Land and that she would do so on his death (or receive something by inheritance on the first of Mother and Father to die). I regret that I

cannot accept Jane's oral evidence on these points. It seems to me most unlikely and was inconsistent with the wills that were entered into and the notes leading up to the 2016 wills and which set out Mother and Father's intentions.

209. Further, it is quite frankly little short of astounding that such strong evidence as she gave orally would not have been put in her witness statements made over some considerable period. There was no real explanation as to why her oral evidence departed so much from her witness statements.
210. I also consider that James' and Joyce's relevant evidence is in accord with the other evidence and the likelihoods and prefer it.
211. It is accepted on behalf of the Defendants that Joyce did make promises to Jane that Jane would inherit on the death of both Parents. In my judgment, given the family background the promises were made in a family context and can be treated as being made on behalf of Father and Mother as regards the entirety of any beneficial interest in the land in question and not being limited to Mother's beneficial share in any of the Property. Further, in my judgment, given the context in which Jane had farmed the arable land and occupied the Farmhouse, the promise in any event covered that part of the Property. In reality, although the precise boundaries of Jane's Land (and rights to be attached thereto regarding certain easements) were only worked out in 2016, the determination really followed what had been long intended. I consider that the promises were sufficiently clear and that they can be treated as relating to "Jane's Land".
212. It is also accepted by the Defendants that the promises made were of the requisite quality to satisfy the first element of a claim in proprietary estoppel. I should note however that the promises made were not of the more usual informal and reciprocal agreement type of "if you work on the farm, you will eventually receive the farm" (or part of it). I should add that I also do not regard any promise as being unconditional: it would have been understood, for example, that it was on the basis that if Mother or Father needed to resort to the Property to meet their needs they would be able to do so.

(f) Causal/detrimental reliance

213. I reject Mr Fryer-Spedding's submission that, if detriment is established, then there is any presumption of reliance. The position is, in my judgment, accurately set out in *Snell's Equity* at paragraph 12-045. In particular:
- "It is submitted therefore that the so-called presumption of reliance consists of no more than the simple fact that if, following a promise by A, B acts in way which is objectively contrary to B's immediate interests, it may be possible to infer, on the facts, that B would not have acted in that way but for A's promise: there is no formal shift in the burden of proof."
214. However, few cases turn on the burden of proof (which is the effect of such a presumption as is referred to). In this case even if the burden of proof lies on the Defendants I am satisfied that they have established on a balance of probabilities that Jane would have taken the same course that she did whether or not the relevant promise that I have found to have been made was in fact made or not. In part this ties

in with the absence of detriment. As I shall go on to explain, Jane was in a very happy position. The actual farm business had been gifted to her and she was doing exactly as she wanted in running that business rent free on the fields and occupying rent free (for over 30 years) the farmhouse and in addition obtaining income from the farming subsidies and from the Property in terms of rent received for letting out the arable land. As I find, Jane stayed working the farm business (and living rent free in the Farmhouse) and then being employed in the shop and earning more money not because she was promised that she would inherit eventually but because she was fulfilling her life's dream.

215. Turning to detrimental reliance, it is necessary to balance up all the disadvantages against benefits in coming to a decision whether detriment has been suffered as a result of reliance on any assurance see generally *Winter v Winter* [2024] EWCA Civ 699; [2025] 2 P & CR 2 esp. at [29]). In this respect, three matters in particular are relied upon by Jane as disadvantages:

- (1) Her commitment to the farm business and the way of life involved;
- (2) Expenditure on the Farm and Farmhouse;
- (3) Not providing for a pension.

216. As regards the commitment it is highly relevant in this case that the commitment was not to working “the family business” but to working the business that Jane had been given by Father. In other words, the work that Jane carried out on the Farming business benefitted her as the owner of that business and as the person who loved and wanted to carry on such a business. It is highly significant that the promise was not that she would inherit land if she worked the farm business.

217. I appreciate that the farming business seems in fact to have made losses rather than profits (despite what Jane says about it providing a comfortable living the accounts show otherwise) and I also appreciate that it was in a sense integral to the farming business that Jane was not having to pay rent for the land, was receiving free accommodation and the benefit of rents from some of the fields, broadly, the arable land. As such it is probably not enough to say that the farming business and her continued running of it was not dependent upon the overall package she was benefitting from, including that referable to the land. However, in large part what she received in respect of the land was a direct financial benefit to her. Nevertheless, I consider that the lifestyle adopted by Jane in taking on the business gifted to her by father does not amount to detrimental reliance. In this respect detriment and reliance are perhaps not watertight compartments. Even if, contrary to my finding, Jane did rely upon the promises made to her about inheritance in continuing with the farm business this case is a long way away from the typical case considered by Lord Briggs in *Guest v Guest* at [9] and outlined in the judgment of Newey LJ in *Winter* when considering the other farming type cases, where the child works on a family farm for low wages and giving up other career opportunities in reliance on the promise that the farm will one day be his or hers. In fact Jane positively wanted the career that she wanted and that career was not dependent on any promise as to her future inheritance. I accept that, in effect, the smallholding was a “hobby Farm” and indeed that was all that the farm was capable of sustaining.

218. As regards expenditure on the farm, I do not consider that any real capital expenditure was incurred by Jane, rather she carried out works or installed things which benefited her business and which would have been incurred as day to day items. Even if I am wrong about that and there was some expenditure in a capital expenditure sense, it seems to me that the evidence is that this was of a fairly low nature. The main matter relied upon is the installation of a tree-lined drive for a possible cabin. I accept Mother's evidence that some trees may have been planted but that was all. Mother helped in the enterprise. The costs were comparatively low.
219. As regards expenditure on the farmhouse, the evidence was wholly unsatisfactory. The state of the farmhouse is clearly set out in the Expert Report (though Jane sought to challenge that the Farmhouse was in a bad state at all and just needed a lick of paint). Having heard the evidence and seen some photographs, I accept Mother's characterisation/description of the farm house and farm land as being "an absolute disgrace".
220. As regards expenditure evidence, I accept the criticisms made by Mrs Metcalfe in her written closing submissions, broadly that what was said to be disclosure (5 lever arch files, some 1700 pages or so) was simply dumped on the Defendants and the court as part of the trial bundle with no proper analysis or summary and a schedule of expenditure only being produced in response to Mrs Metcalfe's trial skeleton argument and after she had prepared her cross examination. The schedule showed expenditure of just under £69,500. The documents in question appear to show day to day expenditure rather than long standing or capital works. Some of the invoices are for things such as nuts and bolts. Some are addressed to Father.
221. It was also unsatisfactory that Jane sought to give evidence for the first time in cross examination about capital expenditure on flooring, windows and a water supply. It was also unsatisfactory that she put values on expenditure which seemed little more than stabs in the dark. I found none of this evidence convincing. In the end I find that work was done with Father and at least in part paid for by Father (or Father and Mother). Most of the work was maintenance/decorative rather than serious capital expenditure.
222. On her best case, Jane seems to have spent just under £70,000 on Farm and Farmhouse in a period of just under 30 years and in circumstances where the Farmhouse, which she was occupying rent free, is in a dreadful condition.
223. So far as the pension is concerned, it is notable that all that Jane really says about this is that she was advised to take one out but that Mother said she did not need to. It is wholly unclear what money she had to pay for a pension, not least given the farming accounting information to hand.
224. Weighing up as best I can, the disadvantages and the advantages that accrued to Jane, assuming I am incorrect about reliance on the promises as found by me, I consider that the balance comes firmly down, on the balance of probabilities, to a finding that there was no overall detriment. This is, in my view, certainly the case if the "career/lifestyle" choice is assumed not to amount to detriment. Given the best that I can, I consider that even if I am wrong about that and it weighs in the balance as a detriment the weight of such detriment does not outweigh the advantages.

(g) Unconscionability

225. Unconscionability does not therefore arise nor does the issue of how any equity in favour of Jane falls to be satisfied by the court.
226. I note that it is submitted by Mrs Metcalfe that (a) the appalling condition of Jane's Land; (b) her treatment of her children and animals and (c) Joyce's urgent needs for funds as outlined in her witness statements, not just for living but to deal with the Property and to pay off debts, actual and prospective (including legal costs) is such that it would not be unconscionable to sell off some of Jane's Land.
227. I do not understand it to be suggested that the alleged factors relied upon by the Defendants in the context of the "unconscionability" issue are such that necessarily no relief should be granted to Jane for that reason at all. If I am incorrect on deciding that no equity requiring to be satisfied has been raised then I consider that Jane cannot be taken to have expected and/or that it would be unjust were Jane to be given an absolute interest in Jane's Land without some provision for Mother to be able to resort to the same to meet her own needs prior to her death. How that might be fashioned might require James to have to contribute too. That would not however be a carte blanche for Mother just to dispose of Jane's Land and dispose of the proceeds how she felt fit outside any needs that she might have financially including to pay debts.
228. Jane's treatment of her children, though largely disputed, undoubtedly shows a situation where Mother has had to help them out and provide for them even if many of the incidents relied upon are disputed. Again, if an equity in favour of Jane had to be satisfied I think that it would have to take account of this moral obligation of Mother's (e.g. in trying to provide accommodation for them).
229. I do not see how the treatment of animals fits into the picture.
230. As regards the appalling condition of Jane's Land, that is something that could no doubt be taken into account in fashioning the satisfaction of any equity in favour of Jane if that was relevant (e.g. If Mother was found to be entitled to sell some of that Land and its value was reduced because of Jane's conduct).
231. I should add that if, as I think is likely, any equity would be satisfied not by giving Jane an interest in land but an interest in the proceeds of sale of land, then if such right is given now there would have to be an adjustment to reflect acceleration of her interest.
232. In addition, I do not consider that the justice would require Jane to be given an interest in the Land which would prevent her Mother from realising property such as to meet Mother's needs (such as, for example, future care needs but including her costs of these proceedings so far as not recoverable from Jane).

(h) Conclusion

233. The claim in proprietary estoppel fails for lack of causal detrimental reliance.

The Inheritance Act Claim

(a) The Law

234. The law was agreed.
235. Under s1 IHA 1975 Jane, as a child of Tony, is given the right to apply to the court:
- “for an order under section 2 of this Act on the ground that the disposition of the deceased's estate effected by his will or the law relating to intestacy, or the combination of his will and that law, is not such as to make reasonable financial provision for the applicant.”
236. Reasonable financial provision is defined as meaning, as regards an application by a child, by section 1(2)(b):
- “such financial provision as it would be reasonable in all the circumstances of the case for the applicant to receive for his maintenance.”
237. If satisfied that the disposition of the deceased's estate made by will is not such as to make “reasonable financial provision”, then section 2 IHA 1975 gives wide powers to the court to make financial provision by, for example, orders for periodic payments or lump sums from the estate or the transfer of property from the estate or settlement of property on trust for the applicant and so on.
238. In considering whether a will makes reasonable financial provision, and if it does not, whether and in what manner it shall exercise its powers under section 2, the court is to have regard to the matters set out in section 3 which are as follows:
- “(1) (a) the financial resources and financial needs which the applicant has or is likely to have in the foreseeable future;
- (b) the financial resources and financial needs which any other applicant for an order under section 2 of this Act has or is likely to have in the foreseeable future;
- (c) the financial resources and financial needs which any beneficiary of the estate of the deceased has or is likely to have in the foreseeable future;
- (d) any obligations and responsibilities which the deceased had towards any applicant for an order under the said section 2 or towards any beneficiary of the estate of the deceased;
- (e) the size and nature of the net estate of the deceased;
- (f) any physical or mental disability of any applicant for an order under the said section 2 or any beneficiary of the estate of the deceased;
- (g) any other matter, including the conduct of the applicant or any other person, which in the circumstances of the case the court may consider relevant.
239. As I have already referred to, section 9 IHA 1975 permits the court to bring back into the deceased's estate the severable share of any joint tenancy. If the court does that (and the Defendants accept that in principle that should be done) then under s9(2)

IHA 1975 the value of the severable share of the property is valued at the date of the hearing of the application unless the court otherwise orders. According to Mr Dodgson's report the severable share (together with the severed share of Wyville Hall) should, in my view, be taken as being one half of £1.25 million, that is £625,000. On a rough and ready basis, and subject to a further point, that can be taken as the size of Father's net estate: the debts were a little over £1,000 but there were other assets of just under £1,000. The Property is of course illiquid.

240. This however is subject to the further point which is the question of a Zurich Policy, originally held on trust for Mother and Father by them both as to 50% each. Whether severed or not, 50% of the value of that Policy should also on the face of it be attributed, either under s9 IHA 1975 or because the benefit of the policy was held by Mother and Father for themselves as tenants in common, to Father's net estate. The policy seems to have had a surrender value of £90,431 as at 03 July 2025 and half that sum should be taken as included in Father's estate (i.e. £45,215 or so).
241. Mother has since purported to exercise a power of appointment as legal owner in relation to the trust of the benefit of the Zurich policy as to James (50%) and Emily and Charlotte.
242. As Mr Fryer-Spedding accepts (and it is borne out by the authorities cited to me):
- “A claim under the 1975 Act by an adult child who is healthy, financially independent and to whom the deceased owed no particular legal or moral obligations, may well fall on stony ground.”
243. There is in this case no legal or moral obligation arising from the circumstances relied upon in connection with the claim to proprietary estoppel. The only obligation, if any, is a moral one and that was to provide property for Jane on the death of the last of Mother or Father to survive, in the sense that that was the promise that was made. There was no (legitimate or reasonable) expectation of Jane as regards receiving anything from Father's estate.
244. Although I accept that Jane still suffers from the consequences of the car injury it is telling that there is no up to date medical evidence. There is no evidence that Jane claims PIP. There is no evidence that she cannot continue to work in the job (or a similar job) that she had given evidence about until retirement and she has clearly been able to do some heavy lifting in the context of the farmwork that she carried on after her accident.
245. At present Jane earns about £2,041.42 a month (as shown by wage slips) but in addition she earns tips which she accepted could be as high as £300 a month. She claims to have outgoings of £2,625.99 per month. However, in cross-examination, having been taken through the individual items and the figures in detail, she agreed that she was better off financially than when Father was alive; her outgoings were in reality nearer £2,173 a month and they were covered by her income of about £2,300. She also now has pension payments made on her behalf. She has no significant debts. She accepted in terms that her outgoings were covered by her income. Her witness statement evidence that she was “financially unable to cope” was not made out.

246. Jane's case was that the reasonable maintenance that she should receive under IHA 1975 was in effect the Farmhouse. Belatedly it was suggested that she should receive maintenance in the form of some payment to enable her to rent or buy elsewhere but no evidence was produced in terms of either the rental market or the sale market.
247. Standing back, and having considered the s3 IHA 1975 circumstances and all the circumstances I do not consider that Father's Last Will failed to make reasonable financial provision for Jane. Accordingly her claim under IHA 1975 fails.

Overall conclusion

248. By way of brief summary, my conclusions are:
- (1) The Property (leaving aside Wyville Hall) was held by Father and Mother as joint tenants in law and equity immediately before Father's death
 - (2) Father's Last Will made in 2016 gives the residue of his estate to Mother and only if she predeceases him does the will provide for specific gifts of Jane's Land to Jane and James' Land to James
 - (3) Jane's claim to a proprietary estoppel fails, she has failed to prove causal detrimental reliance flowing from reliance on the promises that she says were made to her (and those promises were that she would inherit on the death of the last of Mother and Father to die, not that she would inherit any interest on the death of the first to die).
 - (4) Jane's claim under IHA 1975 also fails.
249. The parties should seek to agree a Minute of Order to give effect to my judgment, or as much of it as they can agree. If they are unable to agree a form of minute by 4pm the business day which is not less than 7 days after the hand down, then the Claimant should lodge a draft minute setting out the different proposals of the parties identifying clearly which wording is agreed and which wording is not agreed and, in the latter case, which party propounds what wording. I will then consider whether a further short remote hearing is necessary to determine any outstanding matters.