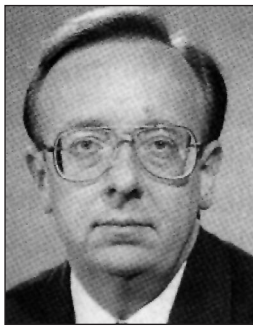


CHATELS

'I have bought it all for you'

Mark Pawlowski considers the law on gifts, trusts and estoppel equities in relation to disputes over ownership of chattels following a relationship breakdown, death or bankruptcy



Mark Pawlowski is a barrister and professor of property law at the University of Greenwich

'It is apparent that a claimant may successfully acquire an interest in personal property by way of gift or declaration of trust. The decision in *Rowe* recognises the significance of the constructive trust, but there is little or no direct authority on the application of proprietary estoppel to property other than land.'

Most of the case law on the entitlement to family assets is concerned with disputes regarding beneficial ownership of matrimonial (or quasi-matrimonial) homes. This, of course, is not surprising given that the family home is likely to be the most substantial asset acquired by the parties during the period of their marriage or cohabitation.

Disputes about property ownership, however, may not always be confined to the home and may include entitlement to other assets, such as chattels, owned by one of the parties. In this context, the concepts of the constructive trust and proprietary estoppel (which readily apply to land) have been far less developed by the courts, although, in principle, there seems little reason why they should not form the basis of entitlement in appropriate cases.

Before considering this question, however, it will be convenient to consider other methods of acquiring title to personal property – notably, by means of a gift and a declaration of trust.

Gift of chattels

For an effective gift of chattels, there must be a delivery to the donee of the subject matter of the gift. Such delivery is usually achieved by handing physical possession of the property to the intended recipient: see *Miller v Miller* [1735]. But this is not necessary in all cases.

In *Pascoe v Turner* [1979] the parties lived together as man and wife until the claimant (the legal owner) left the house for another woman. Before leaving, he assured the defendant that the house was hers and everything in it. In relation to the contents, the Court of Appeal held that the claimant had made a gift of the

property to her. The gift was complete because the defendant was already in possession of them as a bailee when he declared the gift.

It is also sufficient if the donor hands the donee dominion over the property by granting them the means to control it. So, for example, if the property is kept in a locked box, dominion would be given if the donor handed the key to the box to the donee: see *Re Wasserberg* [1915].

Apart from handing physical possession or dominion, it is, of course, possible to effect a valid gift of chattels by means of a deed of gift.

Re Cole [1963]

The case of *Re Cole* is illustrative of the position. Here, a husband had acquired the lease of a large mansion, which he furnished mainly with articles purchased by himself. Some months later, he took his wife to the new home and into one room, put his hands over her eyes and then uncovered them, saying: 'Look'. He then accompanied her into other rooms (where she handled certain of the articles) and said: 'It is all yours'.

The husband and wife lived in the house together and always considered the furniture to be the property of the wife. Later, the husband became bankrupt and the wife claimed most of the furniture as her property. The Court of Appeal held that, where a husband and wife were living together in the same house, possession of the furniture followed the legal title to the furniture, although the wife might have used and enjoyed it during the parties' period of occupation. The rationale is that, in these circumstances, it is not possible to say who has possession (since possession is mixed), so the matter is decided simply by title.

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In the absence, therefore, of a delivery or change of possession of the furniture to the wife, there was no gift transferring the property to her. In the words of Pearson LJ:

Counsel for the [wife's] main proposition was that there is a perfect gift where the intending donor shows the chattel to the donee and utters words of present gift in the presence of the donee and the chattel. He also relied on several special features

there had to be such a change of possession (actual or constructive) so as to effectively vest possession in the intended donee.

Conclusions to be drawn from case law

It is apparent from the foregoing that a claimant may have considerable difficulty in establishing an immediate gift of chattels belonging to one of the parties. Quite apart from the question of whether any words of present gift were

such a trust in the claimant giving up her tenancy and putting her furniture into storage (as well as some domestic work and purchase of food).

Interestingly, the deputy judge felt unable to assess the appropriate size of the claimant's share applying constructive trust principles – despite the argument, on her behalf, that the agreement or understanding reached between the parties quantified her interest as a half share. Instead, he preferred to base his decision on a finding of an express declaration of trust.

In the light of more recent authority, however (see *Oxley v Hiscock* [2004]), the appropriate extent of the claimant's share falls to be determined by a detailed assessment of the whole course of dealing between the parties in relation to the property. This, of course, gives the court considerable flexibility in its search for a just result: see, most recently, *Ledger-Beadell v Peach* [2006]. Thus, in *Rowe*, although nothing express was said about the size of the parties' respective shares in the yacht, the regular use of the word 'our' indicated an intention that there was no distinction to be drawn between the claimant and the defendant so far as concerned ownership of the chattel.

The discussion about security also suggested that the claimant was intended to have a substantial interest. It is submitted, therefore, that even if this did not indicate that the shares were to be equal, it was open to the court to apply the maxim that equality is equity.

Constructive trust doctrine has again been applied in the context of the beneficial ownership of a motor yacht in the recent case of *Parrott v Parkin* [2007]. In this case, however, Aikens J was unable to find any evidence of express discussions between the couple regarding equitable entitlement and, consequently, he concluded that there was nothing to displace the presumption of a resulting trust in favour of the claimant who had provided most of the purchase price.

Proprietary estoppel

A spouse or cohabitee may also be able to rely on proprietary estoppel as a means of claiming title to a family chattel. This, it is submitted, is implicit from the decision in *Rowe*, which recognises the appropriateness of applying constructive trust principles in the context of personal property, and the general acceptance in

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of this case as adding strength to his main proposition. The special features mentioned were (a) that the bankrupt brought the applicant to the chattels, (b) that some of the chattels were bulky, so that handing over would not be a natural mode of transfer, (c) that the chattels were in a place where they would be under the applicant's physical control, and she could touch and move them, and (d) that the applicant handled some of the chattels in the bankrupt's presence. The argument was clearly and cogently presented, but, in the end, the answer to it is simply that it fails to show any delivery of the chattels. Delivery was needed to perfect the gift of the chattels...

Re Kirkland (1964)

The decision in *Re Cole* was applied and followed in *Re Kirkland*, where the deceased's mistress claimed that certain furniture had been given to her by him during his lifetime.

As in *Re Cole*, the deceased had taken the claimant on a tour of inspection of the house and said: 'I have bought it all for you'. On subsequent occasions, he told visitors that the furniture belonged to the claimant. The fact, therefore, that he had intended to make a gift of the furniture was undisputed.

The Court of Appeal, however, held that, in the absence of a change of possession, the intended gift had not been perfected. Delivery, in the case of personal chattels, meant either manual delivery of the items or of some token part of the subject-matter. Alternatively,

actually spoken by the legal owner, the mere act of showing or bringing the claimant to the items (or allowing the claimant to handle the items) would not by itself constitute delivery or a change in possession of them. It is doubtful also whether a party can invoke trust law in order to perfect the gift in equity. In *Milroy v Lord* [1862] Turner LJ said:

... if the settlement is intended to be effectuated by one of the modes to which I have referred, the court will not give effect to it by applying another of those modes. If it is intended to take effect by transfer, the court will not hold the intended transfer to operate as a declaration of trust, for then every imperfect instrument would be made effectual by being converted into a perfect trust.

The basic principle, therefore, is that the courts will not treat an incomplete gift as a valid declaration of trust.

Constructive trust

In the family context, constructive trust cases have almost exclusively concerned claims to the home. However, the decision in *Rowe v Prance* [1999] (discussed in the box 'Declaration of trust', opposite) provides a notable exception.

Here the deputy judge concluded, applying *Lloyds Bank plc v Rosset* [1991], that the facts also established a common intention constructive trust based on the express discussions of the parties regarding ownership of the yacht. There was also sufficient detriment to support

modern case law that there is really no difference in analysis between constructive trust and proprietary estoppel in cases of this kind.

The latter view has been endorsed by the Court of Appeal in *Oxley* (see above), where Chadwick LJ concluded that, in each case, the court is simply supplying (or imputing) a common intention as to the parties' respective shares on the basis of a notion of fairness (or doing justice to the parties) in the light of all the relevant circumstances. In the landmark ruling in *Yaxley v Gott* [2000] Walker LJ also opined that, in this context:

... the species of constructive trust based on 'common intention'... is so closely akin to, if not indistinguishable from proprietary estoppel.

Under English law, proprietary (like promissory) estoppel is a species of equitable estoppel. While the requirements of inducement and detrimental

reliance are broadly the same for both, one important distinction (which has been reiterated in recent case law) is that promissory estoppel cannot generate an independent cause of action, since it is concerned primarily with preventing a contracting party from resiling from their representations or promises if the

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other party has acted in reliance on them: see *Combe v Combe* [1951]; *Baird Textile Holdings Ltd v Marks & Spencer plc* [2001] and *White v Riverside Housing Association Ltd* [2005].

By contrast, proprietary estoppel may be used not only as a shield in defence

of an action by the legal owner, but also as a sword – capable of grounding a distinct and separate cause of action in equity. In this sense, the estoppel is capable of creating rights in property on behalf of the claimant who has successfully asserted an equity based on assurance and detrimental reliance.

There is no direct English authority, however, on the question of whether the doctrine of proprietary estoppel is applicable exclusively to chattels, as well as realty. Historically, all the cases concern the application of the doctrine to rights and interests in and over land. There are, however, several dicta which suggest that the estoppel may not be limited to land.

In *Moorgate Mercantile Co Ltd v Twitchings* [1976] Lord Denning MR drew no distinction between goods or land when discussing the application of the doctrine. He said:

There are many cases where the true owner of goods or of land has led another to believe that he is not the owner, or, at any rate, is not claiming an interest therein, or that there is no objection to what the other is doing. In such cases it has been held repeatedly that the owner is not allowed to go back on what he has led the other to believe. So much so that his own title to the property, be it land or goods, has been held to be limited or extinguished, and new rights and interests have been created therein. And this operates by reason of his conduct – what he has led the other to believe – even though he never intended it.

This view was cited with apparent approval in *Western Fish Products Ltd v Penwith DC* [1981], where Megaw LJ, delivering the judgment of the Court of Appeal, opined that the principle of proprietary estoppel 'may extend to other forms of property'. More recently, in *Baird Textile*, referred to above, Mance LJ defined the scope of proprietary estoppel as 'probably' extending to other property. Similarly, Sir Andrew

Declaration of trust

The mechanism of the declaration of trust may allow a claimant to acquire a beneficial share in property without proof of any detrimental reliance, which is an essential requirement to found a successful claim based on constructive trust and proprietary estoppel doctrine.

Rowe v Prance [1999]

In *Rowe* the claimant was a widow who, for a period of 14 years, had an intimate relationship with the defendant, a married man of considerable private means. During their relationship, he purchased a yacht for £172,000 that was registered in his sole name, the defendant giving the excuse that a joint registration was not possible because the claimant did not possess an ocean master's certificate. The yacht, however, was renamed so as to incorporate the parties' respective names. The claimant gave up her rented house and put her furniture in storage to base herself on the yacht, although she was there predominantly at weekends only, spending the remainder of her time in bed and breakfast accommodation. In a letter to the claimant, the defendant promised her that his absences would shortly cease and that the yacht would be theirs to share so that they could live together. Significantly, in numerous conversations, both before and after the purchase of the yacht, the defendant referred to it as 'ours' or 'our boat'.

Mr Nicholas Warren QC (sitting as a deputy judge of the Chancery Division), applying the earlier case in *Paul v Constance* [1977], held that the defendant's repeated use of the word 'our' when referring to the yacht and his assurances that the claimant's 'security' was her interest in it (coupled with his explanation as to why he alone could be registered as owner) evidenced a clear understanding that she had a beneficial interest in the property. On the facts, therefore, the defendant had constituted himself a trustee of the yacht for himself and the claimant in equal shares. Moreover, such declaration, being a trust of personalty, did not have to be evidenced in writing, under s53(1)(b) of the Law of Property Act 1925, and could be declared without using technical words such as 'trust': see *Re Kayford Ltd (In liquidation)* [1975]. Similarly, in the earlier case of *Paul*, the repetition of the words 'the money is as much yours as mine' was also held sufficient to create a valid express trust in favour of the claimant.

It is evident from these cases that, although an isolated, loose conversation will not give rise to a valid declaration of trust (see, for example, *Jones v Lock* [1865]), the repetition of words by the legal owner, especially in the context of an intimate relationship, indicating that the property is to be as much the claimant's as their own, will be sufficient. Significantly also, as mentioned earlier, in both *Rowe* and *Paul* the claimant acquired a beneficial share in the property without proof of reliance or detriment.

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Morritt VC, referring to the *Western* case, characterised the estoppel as creating: 'a cause of action... limited to cases involving property rights, whether or not confined to land'.

The doctrine appears to have been applied to an insurance policy in *Re Foster, Hudson v Foster (No 2)* [1938] and, more significantly, in several modern cases to the deceased's residuary personalty, as well as land.

There is no reason why a spouse (or cohabitee) should not be able to mount a successful claim in equity to a family chattel, provided they can establish the requisite elements of an assurance and detrimental reliance.

Extending estoppel

In *Re Basham (dec'd)* [1986] the deceased's net estate comprised a cottage, furniture and other chattels and some cash in a current and deposit account.

The deceased had assured the claimant that she would inherit all her property on her death. The court drew no distinction between the various items of

the deceased's property, referring simply to the claimant's equity as extending to the whole of the net estate.

Similarly, in *Jennings v Rice* [2002] the deceased's estate comprised not only a house (valued at £420,000) but also furniture (worth about £15,000) and £583,615 on deposit. Here again, neither Weeks J (at first instance) nor the Court of Appeal made any distinction in respect of these assets when considering the applicability

of the doctrine. In both courts it was tacitly assumed that the estoppel would extend to the whole of the deceased's property. See also *Ottey v Grundy* [2002], where the successful estoppel claim related to an apartment in Jamaica (valued at £36,000) and a life interest in a houseboat moored in Chelsea, London (estimated at £280,000).

Baird Textile Holdings Ltd v Marks & Spencer plc

[2001] EWCA Civ 274

Re Basham (dec'd)

[1986] 1 WLR 1498

Re Cole

[1963] 3 All ER 433

Combe v Combe

[1951] 2 KB 215

Re Foster, Hudson v Foster (No 2)

[1938] 3 All ER 610

Jennings v Rice

[2002] EWCA Civ 159

Jones v Lock

(1865) LR 1 Ch App 25

Re Kayford Ltd

(In liquidation)

[1975] 1 WLR 279

Re Kirkland

(1964) 108 Sol J 197

Ledger-Beadell v Peach

[2006] EWHC 2940 (Ch)

Lloyds Bank plc v Rosset

[1991] 1 AC 107

Miller v Miller

(1735) 3 P Wms 356

Milroy v Lord

(1862) 4 De GF&J 264

Moorgate Mercantile Co Ltd v Twitchings

[1976] QB 225

Ottey v Grundy

[2002] EWHC 2858 (Ch);

[2003] EWCA Civ 1176

Oxley v Hiscock

[2004] EWCA Civ 546

Parrott v Parkin

[2007] EWHC 210 (Admlty)

Pascoe v Turner

[1979] 2 All ER 945

Paul v Constance

[1977] 1 WLR 527

White v Riverside Housing Association Ltd

[2005] EWCA Civ 1385

Rowe v Prance

[1999] 2 FLR 787

Shaida v Kindlane Ltd

(Unreported, 22 June 1982)

Re Wasserberg

[1915] 1 Ch 195

Western Fish Products Ltd v Penwith DC

[1981] 2 All ER 204

Yaxley v Gott

[2000] Ch 162

Establishing detriment

Assuming, therefore, that the doctrine of proprietary estoppel is of general application to property, there is no reason why a spouse (or cohabitee) should not be able to mount a successful claim in equity to a family chattel, provided they can establish the requisite elements of an assurance and detrimental reliance.

Let us suppose, for example, that in *Rowe* the claimant had relied on the defendant's promises by spending her own money on restoring or repairing the yacht. Let us assume also that this had been done with the defendant's knowledge. The expenditure of money on improvements to the property in reliance on the legal owner's assurance is, of course, a 'classic way' in which a detriment can be established: see *Shaida v Kindlane Ltd* [1982] per HHJ Paul Baker QC.

In these circumstances, it is submitted, a claim based on proprietary estoppel would have also succeeded, giving the claimant an estoppel equity that the court would have satisfied by means of an appropriate award that did justice to all the parties. In *Rowe* this would have meant giving the claimant an equal beneficial share in the proceeds of sale of the yacht – an outcome which would not differ from the actual decision based on an express or constructive trust.

Conclusion

It is apparent that a claimant may successfully acquire an interest in personal property by way of gift or declaration of trust. The decision in *Rowe* also openly recognises the significance of the constructive trust in this context, but there is little or no direct authority on the application of proprietary estoppel to property other than land.

Although several of the English cases have tacitly assumed that the doctrine does apply to chattels where the claim also relates to land, it remains to be seen how far the courts will be prepared to go in acknowledging the estoppel equity where the subject-matter of the claim is exclusively personalty.

With the continuing assimilation of the constructive trust and proprietary estoppel doctrines under one unifying concept of unconscionability, there seems little justification for drawing artificial boundaries between different species of property. ■