

from 2007 to 2012 the position with regard to expectation was changing and somewhat uncertain. But he said that “the essence of the expectation was that in reality Eirian was the only person who could fulfil her parents’ wishes of keeping the business in the family after their days.”

34. The case presented on Eirian’s behalf was that she should be awarded what was promised to her; namely the land and the business: J2 at [51]. The opposing case was that Eirian should be given a sufficient sum for accommodation and for a share in the farm and the business. The former could be achieved by paying of her mortgage on the Ludchurch property; and the latter by awarding her the share of the partnership profits that she would have had if she had been a partner as she had thought, and by a share in the profits of the company. The aggregate of these sums amounted to £350,000: J2 at [54].
35. The judge rejected both sides’ case. He held that the accommodation element did not sufficiently accommodate the expectation and detriment which he had found, and in particular those elements on which it was difficult to place a financial value. Nor did the accommodation element reflect what Eirian was promised in 2007, which was that she could live in the farmhouse for life. The calculations about profit etc. did not sufficiently recognise that for substantial periods up to 2001 and from 2009 to 2012 the expectation was that Eirian would succeed to the farming business and the herd that she loved. Nor did it take into account her parents’ significant role in bringing that expectation to an end in 2012.
36. The judge thus concluded that justice was likely to lie somewhere between the polarised positions that the parties had adopted. He acknowledged that it was not an easy exercise; and that his conclusion might mean that part of the farm would have to be sold. He continued at J2 [56]:

“In my judgment the proportionate remedy is to award Eirian a lump sum in the amount of £1.3 million. That is just over or under one third of the net value of the farm and farming business dependent on the impact of CGT which in turn depends [on] how much is sold. It is, in my judgment, a fair reflection of the expectation and detriment and other factors set out above.”
37. There was no further explanation of how he reached his ultimate conclusion. As Mr Gaunt pointed out in his skeleton argument the judge’s award of £1.3 million is equivalent to £65,000 after tax for every year Eirian worked on the farm. I will return to these paragraphs of the judge’s judgment in due course.
38. Inevitably any case based on proprietary estoppel is fact sensitive; but before I come to a discussion of the facts, let me set out a few legal propositions:
 - i) Deciding whether an equity has been raised and, if so, how to satisfy it is a retrospective exercise looking backwards from the moment when the promise falls due to be performed and asking whether, in the circumstances which have actually happened, it would be unconscionable for a promise not to be kept either wholly or in part: *Thorner v Major* [2009] UKHL 18, [2009] 1 WLR 776 at [57] and [101].

- ii) The ingredients necessary to raise an equity are (a) an assurance of sufficient clarity (b) reliance by the claimant on that assurance and (c) detriment to the claimant in consequence of his reasonable reliance: *Thorner v Major* at [29].
 - iii) However, no claim based on proprietary estoppel can be divided into watertight compartments. The quality of the relevant assurances may influence the issue of reliance; reliance and detriment are often intertwined, and whether there is a distinct need for a "mutual understanding" may depend on how the other elements are formulated and understood: *Gillett v Holt* [2001] Ch 210 at 225; *Henry v Henry* [2010] UKPC 3; [2010] 1 All ER 988 at [37].
 - iv) Detriment need not consist of the expenditure of money or other quantifiable financial detriment, so long as it is something substantial. The requirement must be approached as part of a broad inquiry as to whether repudiation of an assurance is or is not unconscionable in all the circumstances: *Gillett v Holt* at 232; *Henry v Henry* at [38].
 - v) There must be a sufficient causal link between the assurance relied on and the detriment asserted. The issue of detriment must be judged at the moment when the person who has given the assurance seeks to go back on it. The question is whether (and if so to what extent) it would be unjust or inequitable to allow the person who has given the assurance to go back on it. The essential test is that of unconscionability: *Gillett v Holt* at 232.
 - vi) Thus the essence of the doctrine of proprietary estoppel is to do what is necessary to avoid an unconscionable result: *Jennings v Rice* [2002] EWCA Civ 159; [2003] 1 P & CR 8 at [56].
 - vii) In deciding how to satisfy any equity the court must weigh the detriment suffered by the claimant in reliance on the defendant's assurances against any countervailing benefits he enjoyed in consequence of that reliance: *Henry v Henry* at [51] and [53].
 - viii) Proportionality lies at the heart of the doctrine of proprietary estoppel and permeates its every application: *Henry v Henry* at [65]. In particular there must be a proportionality between the remedy and the detriment which is its purpose to avoid: *Jennings v Rice* at [28] (citing from earlier cases) and [56]. This does not mean that the court should abandon expectations and seek only to compensate detrimental reliance, but if the expectation is disproportionate to the detriment, the court should satisfy the equity in a more limited way: *Jennings v Rice* at [50] and [51].
 - ix) In deciding how to satisfy the equity the court has to exercise a broad judgmental discretion: *Jennings v Rice* at [51]. However the discretion is not unfettered. It must be exercised on a principled basis, and does not entail what HH Judge Weekes QC memorably called a "portable palm tree": *Taylor v Dickens* [1998] 1 FLR 806 (a decision criticised for other reasons in *Gillett v Holt*).
39. There is a lively controversy about the essential aim of the exercise of this broad judgmental discretion. One line of authority takes the view that the essential aim of