Neutral Citation No: [2024] NICh 1 *Judgment: approved by the court for handing down (subject to editorial corrections)**	*Ref:* **HUD12424** *ICOS No:* **2017/87064** *Delivered:* **06/03/2024**

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

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CHANCERY DIVISION

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JOHN ROBERT IRVINE

Plaintiff

GERARD F DRAIN (AS EXECUTOR OF THE ESTATE OF ROBERT JOHN IRVINE (DECEASED)

First Defendant

and

GILLIAN NAPIER

Second Defendant

and

HEATHER VERNER

Third Defendant

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Mr John Coyle (instructed by Samuel Creighton Solicitors) for the Plaintiff
Mr David Dunlop KC and Ms Anna Rowan (instructed by A&L Goodbody Northern Ireland LLP Solicitors) for the Second and Third Defendants

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HUDDLESTON J

Introduction

[1] This is a case based on the principles of estoppel. The plaintiff, Mr John Robert Irvine, makes the case that he was encouraged by "verbal other behaviours and undertakings" to the view that his father's interest in jointly farmed lands would pass to him in their entirety on his father's death. Reliance is placed on the usual cases in which the legal principles are set out; namely *Gillet v Holt* [2001] 2 All ER 289, *Thorne v Major* [2009] 1 WLR 776; *Uglow v Uglow and Others* [2004] EWCA Civ 987 and the Supreme Court most recently in the case of *Guest v Guest* [2023] All ER 1 695.

[2] The pleadings assert that a farming partnership was established between the plaintiff and his father, Robert John Irvine (the deceased) "from 1970 onwards" and that the totality of "the holdings of the farm" form "an aggregated cohesive unit." The assertion is made that for the farming enterprise to continue to flourish, the plaintiff and his son, Matthew Irvine, must have ownership of all of the lands that devolves under the deceased's free estate, ie distinct from the lands that devolve on the plaintiff by survivorship. Para 11 of the Statement of Claim asserts that throughout the deceased's lifetime "the deceased represented to the plaintiff that the entirety of the land jointly acquired by the plaintiff and the deceased together with those that were owned solely by the deceased" would pass upon death to the plaintiff.

[3] The Statement of Claim itself does not particularise either the type of representations or promises that were made or, indeed, their regularity. This point was dealt with in the evidence and in written submissions, and I shall return to it later. The Replies to Particulars also rely upon the admission of Matthew Irvine to the partnership in or around 2012. His admission, however, appears to have arisen on the back of advice provided by Mr Ciaran McArdle, Accountant, who advocated the change and gave evidence during the case, but also, it was acknowledged, to allow the business to access some DEARA grant assistance which became available if the business could demonstrate that it was controlled/operated by a younger farmer. The Replies to Particulars also asserts "verbal continuing assurances" made by the deceased to the plaintiff that the entirety of the farm would pass to him. The plaintiff further relies on a specific assertion which was made in or around 1981 to him immediately prior to his marriage. At that time and following an argument about the arrangements to be made regarding the business during his honeymoon, he asserts that the deceased "begged [the plaintiff] to stay in the farming business, that the farm would be for the plaintiff to support his new family and would be expanded in order to pass on after him to future generations."

Background

[4] That neatly brings me to the background of the present case. There is no doubt that the deceased and his wife (Evelyn) throughout their joint marriage were both industrious and successful. The deceased and his late mother established a milk run whilst living with his mother's family, the Becketts, of which more will be said later. By 1955 he was able to buy the property at 70 Lurgan Road together with a couple of fields (comprised in Folio 15260, Co Down) (referred to in the remainder of this judgment as the "home farm"). By that stage the deceased had been married for approximately five years and the home farm became a base not just for the business but also operated as the family home. Indeed, the deceased lived there with his wife Evelyn up until his death on 27 March 2016. Thereafter, his wife Evelyn continued to live in the property until she was removed to a nursing home where she died on 29 November 2018. The family that was born and reared in the property consisted of Heather Verner (the third defendant) who was born on 27 September 1950 and did not take an active part in the proceedings; the plaintiff,

John Robert Irvine, who was born on 18 November 1951; and, finally, Gillian Napier (the second defendant) who was the youngest of the three.

[5] As I said the business flourished and there followed a series of land acquisitions of what is described as the "Step Road lands" in various tranches:

(a) 15 acres were acquired on or about 6 September 1968;

(b) A further five acres were acquired on or about 2 May 1968;

(c) Finally, the lands in Folio 30081 Co Down were acquired on or about 24 May 1968.

[6] Collectively, these are referred to as "the Step Road lands." At the point of acquisition, they were not contiguous with the home farm, although later acquisitions provided direct access to them. The Step Road lands and, indeed, the home farm were (and remain) registered in the sole name of the deceased.

[7] The plaintiff in his evidence indicated that he left school around late 1968 and started to work in the farm business in 1969. He would then have been approximately 17 or 18 years old. The business continued to flourish and there were acquisitions of land from 1971 onwards. These transactions (I have described them in this judgment as the Waringfield lands) are detailed in the very helpful chronology prepared on behalf of the second and third defendants. These lands, when they were acquired, were conveyed to the joint names of the father and the son and were farmed as an integral part of the farm business although, again, they were not contiguous to the home farm.

[8] Further, in or about November 1974, the Quarry House/McCullagh lands were bought by a series of transactions. The effect of this acquisition "bridged the gap" between the home farm and the Step Road lands. The lands so acquired are held in Folio 15261, Co Down and, again, were acquired in the joint names of the deceased and the plaintiff. The farm business continued to be successful and in/around the late 1970s the decision was taken to sell the milk round and focus solely on dairy farming. The evidence to the court was to the effect that this may have been precipitated by the plaintiff's pending marriage and his decision to focus on milk production.

[9] On his marriage, a site was transferred out of Folio 15260, Co Down (ie the home farm) to the plaintiff. In due course he and his wife moved into a mobile home on the lands and thereafter built a dwelling for himself and his family in which he lived whilst continuing the farming operation. He continues to live in that property to this day. It is situated adjacent to the home farm. He is, however, now divorced from his wife.

[10] In 1983, Mr William Beckett, the deceased's uncle, died and left him a farm at Lurgansemanus comprised in Folio 5908, Co Antrim. This was a gift specifically to the deceased and the lands are registered in his sole name. The evidence to the court was that it was farmed as an out farm to the main farming operation – being primarily used for young stock.

[11] In the 1990s various portions of the Waringfield lands were sold to third parties for development. The proceeds arising allowed the acquisition of further lands – the McCann and Cloverhill lands extending to just over 100 acres. There then followed a material liquidity event. In 2003 the plaintiff and the deceased managed to agree a very advantageous sale of a portion of Waringfield lands to Whitemountain Quarries for a sum of approximately £2.9m. The proceeds of sale were divided equally between the plaintiff and the deceased in line with their joint ownership. The contract for that sale is dated in or around February 2003.

[12] There is no dispute that during all of this time the deceased's wife, Evelyn Irvine, played an integral part not just to rearing the family but to the farming operation itself. The plaintiff accepted that when it was put to him.

[13] In terms of the Irvine's daughters, Heather Verner left school, spent a year at business school, and then returned to work in the milk round until it was sold. Thereafter, and even subsequent to her marriage, she continued to help in the farm administration until her father's death in 2016. Gillian Napier trained as a teacher and in due course became Headmistress of a local school. She was given a site by her father on the occasion of her marriage at the Lurgansemanus lands. During her working career Mrs Napier relied upon her mother Mrs Irvine to help with the rearing of her son, David Napier, who as a consequence, spent considerable periods of time at the home farm with his grandparents both after school and during vacations.

[14] The evidence which I heard also suggests that both daughters helped in the increasingly intensive care arrangements for their parents as they became elderly and more infirm until the father's death in 2016 and, thereafter, for Mrs Irvine until she could no longer live at the property, was hospitalised and moved to a nursing home. It is not germane to the determination of the issues before me, but the daughters were of the view that the plaintiff did not help out his parents and, indeed, was fractious.

Testamentary position

[15] As indicated, the deceased had built up a sizeable estate by the date of his death consisting of his interest in the farm business, a substantial acreage of agricultural land and considerable investments arising, principally, from his share in the net proceeds of sale of the development lands.

[16] It is suggested, and I agree with that assessment, that it was probably the trigger point of those sales that caused the deceased to initially attend his solicitor (in 2003) with a view to giving instructions for the preparation of a Will. There is no existing Will from that period, but the court has had the benefit of an attendance note in relation to the discussions which took place. Not a great deal turns on the attendance note itself, but there are a number of features which have a more than passing interest. The note records the development sale and recounts the possibility of "further development potential." Next, it recounts a proposal to give his wife, Evelyn, a life interest in the dwelling and yard at the home farm with a gift in remainder to his grandson, David Napier. The instructions also evince a desire to provide not just for the plaintiff but also for his two daughters.

[17] In 2007 there was a further (successful) attempt to make a Will – in this case it culminated in a Will which is dated 5 December 2007. In that Will the deceased appointed his son, the plaintiff, and Barry Campbell, Solicitor, to be his executors. There are three gifts which are contained under its terms which are the subject of the challenge brought by the plaintiff. The first relates to the gift of the deceased's "dwelling house at 70 Lurgan Road, Magheralin, together with the top yard and outbuildings" which were left to the deceased's wife, Evelyn Irvine with a gift over in default to Gillian Napier. The remainder of the lands, yard and outbuildings were left to Evelyn Irvine for her life with a gift in remainder to their son, the plaintiff. The second gift under challenge is a gift of "land comprising approximately 19 acres in the townland of Lurgansemanus comprised in Folio 5908, Co Antrim" which the deceased left to his daughter, Gillian Napier (the second defendant), absolutely. The third gift under challenge is the gift of the "land at Step Road Magheralin of approximately 32 acres" which the deceased left to his son, "John Robert Irvine and my daughters Gillian Napier and Heather Verner, absolutely as tenants in common in equal shares."

[18] In relation to his "cash assets and investments" these he left "to [his] wife and [his] daughters Gillian Napier and Heather Verner absolutely in equal shares subject (in the case of the gift to the daughters) to them discharging any inheritance tax."

[19] The residue of his estate the deceased left to the plaintiff absolutely. The Will was signed by the deceased and witnessed by two solicitors.

[20] It is convenient to mention at this point that Evelyn Irvine made a Will on the same date. Under the terms of that Will she appointed her son and Barry Campbell as executors. She left the sum of £10,000 to each of her grandchildren; her estate and interest in the property at 70 Lurgan Road, Magheralin, to Gillian Napier and the residue and remainder of her estate to her son, the plaintiff. This obviously included the balance of the liquid investments that she was due (and did) inherit from her husband.

[21] It is a matter of considerable regret that the court must note that very little, if anything, has been done in terms of advancing the administration of the various

estates which have largely sat in abeyance. That inaction is the subject of another claim brought by the second and third defendants, so I shall not say anything more in respect of it.

[22] It is the testamentary arrangements as regards the various pieces of land that, in fact, form the substance of the present case.

The law

[23] The case of *Uglow v Uglow* [2004] EWCA Civ 987 was cited by Lord Briggs in *Guest v Guest* as setting out the relevant principles (which Mummery LJ did) in a "characteristically useful and compressed six-point summary. Those principles I set out below:

> "(1) The overriding concern of equity to prevent unconscionable conduct permeates all the different elements of the doctrine of proprietary estoppel: assurance, reliance, detriment and satisfaction are all intertwined.
>
> (2) The broad inquiry in a case such as this is whether, in all the circumstances, it is unconscionable for a testator to make a will giving specific property to one person, if by his conduct he has previously created the expectation in a different person that he will inherit it.
>
> (3) The expectation may be created by (a) an assurance to the other person by the testator and intended by him to be relied upon that he will leave specific property to him; (b) consequent reliance on the assurance; and (c) real detriment (not necessarily financial) consequent on the reliance.
>
> (4) The nature and quality of the assurance must be established in order to see what expectation it creates and whether it is unconscionable for the testator to repudiate his assurance by leaving the property to someone else.
>
> (5) It is necessary to stand back and look at the claim in the round in order to decide whether the conduct of the testator had given rise to an estoppel and, if so, what is the minimum equity necessary to do justice to the claimant and to avoid an unconscionable or disproportionate result.

> (6) The testator's assurance that he will leave specific property to a person by will, may thus become irrevocable as a result of the other's detrimental reliance on the assurance, even though the testator's power of testamentary disposition to which the assurance is linked is inherently revocable."

Representations

[24] The onus, therefore, falls to the plaintiff to establish the representations which were made by the late Mr Irvine and which he says are now unconscionable such as would engage those principles and equitable relief. The issues of what constitutes a representation, what amounts to detriment and what constitutes reliance are well-trammelled in these courts.

[25] In looking at the representations I have considered those that are presented in the pleadings but also the plaintiff's own oral evidence on the point. At the outset I may say that the plaintiff has difficulties. The height of his oral evidence to the court was that it was the "furthest thought" from the plaintiff's own head that anything other than primogeniture would arise in respect of the land now in dispute. He put it thus, "that was [ie primogeniture] the position on so many farms and I saw no reason to the alternative."

[26] The plaintiff's supposition is not, however, by any stretch of the imagination, a representation made by the deceased upon which he can rely. Looking at the representations which form the basis of the case: the plaintiff did not describe in any detail, nor save as set out immediately below, suggest to the satisfaction of this court that any particular statement or representation was made and upon which he relied to his detriment. The majority of his case is based upon generalities which he then adopted to feed his supposition.

[27] The only material example of a representation was evidence about the lead up to his marriage in 1981. He described a degree of tension between the plaintiff and the deceased relating to the arrangements for his honeymoon when the plaintiff would not be available to do the milk run. The plaintiff said these heated words ended in a dispute in which his father said, "at the end of the day, it would more or less all be yours anyway."

[28] The plaintiff through examination-in-chief and in cross-examination evinced a possibility of him leaving the farm at that point to take work elsewhere as a driver. Whilst the assertion was made, I cannot say that it was made with a degree of conviction and was followed by an acceptance that it was always his intention to farm, and that, indeed, he had left school with that in mind. By the plaintiff's own evidence the deceased was not aware of this alternative possibility. Across all of the evidence this 1981 spat – and the deceased's reaction to it – appears to be the only specific representation upon which the plaintiff now seeks to rely. His evidence

about "other" representations simply confirmed to me that the plaintiff laboured in the main under his own supposition as to primogeniture rather than on any assertion or course of conduct on the part of his father, the deceased.

[29] Aside from the alleged generalised repeated comments, the fact was introduced that the admission of the plaintiff's son as a partner in 2012 was corroboration of the general direction of travel and support for the plaintiff's case. Having heard evidence from Mr Ciaran McArdle as to the circumstances it would seem that the admission of Mr Matthew Irvine was largely a matter of tax advice and/or undertaken to provide the opportunity of additional grant funding under the DEARA promoted "Young Farmer" Scheme at a point when dairying was being recommenced (it having been stopped in 2005). Even when these matters are taken together, I am not satisfied that there was an unequivocal assurance or representation made by the deceased sufficient to ground the estoppel claim which is now advanced. Rather, it seems to me, very clear both from the nature of the instructions from the 2003 Will and, the detail of the 2007 Will itself, that the deceased clearly had formed the view that those lands which were farmed in partnership (and jointly owned) should continue as part of the business and that it was the business that should pass to the plaintiff. I do not detect that he felt any compunction whatsoever in relation to the lands which remain vested in his sole name and in respect of which he asserted his right to freedom of testamentary disposition as was his entitlement.

[30] The evidence which appears in both the pleadings, and which was presented in court is simply not strong enough to justify a contrary conclusion such that would ground the claim for the unconscionable treatment that the plaintiff asserts. He did not give evidence (contrary as pleaded) that a representation was made that "the entirety of the land acquired by them and those which were owned solely by the testator, would pass upon his death in their entirety to the plaintiff." No such evidence exists. There is certainly nothing before me to suggest that any specific representation was made by the deceased in respect of the land he held in his sole name. I have concluded that no such representations were made because Mr Irvine intended to leave that land where he wished and in an effort to be fair to his wife and daughters.

[31] I take the view that it was the deceased's wish and intention that the business continued to pass to the plaintiff and through the plaintiff to his son and so on, but that is exactly what has happened and, indeed, Mr Matthew Irvine (with his wife) have gone on to acquire considerable additional lands and as far as the evidence confirms the business continues to flourish it having returned to a dairy operation in approximately 2011/2012.

[32] If I look specifically at each of the parcels of land which are in dispute, I conclude the position is as follows.

70 Lurgan Road

[33] By his last Will the deceased left this property to his wife of some 66 years. It was accepted by the plaintiff that she was an integral part of the family business. The plaintiff's case, if it were to be successful, would have to establish an entitlement that would have overreached his mother's interest in respect of the house and yard. At the time of his death the house and yard were together valued at approximately £97,500 as against the value of an estate valued at more than £3.25m. During his evidence the plaintiff accepted that his mother would have been "entitled" to enjoy the benefit of that ownership for the remainder of her life. In the face of that admission his contrary claim falls away.

[34] His other suggestion that the house and derelict yard was in some way integral to the dairy operation had no credibility. In fact, both the house and yard have been allowed by him to become derelict. The only evidence of its continued use was as incidental storage for certain items of machinery. In reviewing the photographs of the property, it could not credibly be said that it was an integral part of the remaining dairy operation or, indeed, form any part of the farm enterprise other than incidentally. Properly considered it looks like a site which is ripe for redevelopment.

The lands at Lurgansemanus

[35] As the history of these lands confirms they only came into the ownership of the deceased in December 1983 as a testamentary gift from the estate of the deceased's uncle, William Beckett. The plaintiff asserts in support of his argument for reliance that he took out loans to expand the farm business and carried out works on the lands. Firstly, the loans were partnership liabilities and clearly were applied and used to grow the business distinct from the (limited) farming that was undertaken on these lands and, secondly, the works which were conducted on these lands (largely the erection of the cattle crush) were not, I find, significant either in extent or cost.

[36] The suggestion that these lands were an integral part of the farming operation bears no substance. On the evidence provided by both the second defendant and the plaintiff the lands were essentially used as an out farm – they are some 5-6 miles from the home farm. The lands properly considered were a "windfall" and the plaintiff could not point to any positive promises or representations made by his father concerning them. The responses given in the Further and Better Particulars are on the whole, opaque. There is nothing to support the plaintiff's principal allegation that representations (which in his case began in the mid-1970s) could impact upon after acquired land which the deceased acquired by way of gift.

[37] It seems patently clear to me that the deceased, in devising these lands to Gillian Napier, was perfecting the gift which he had made earlier to his daughter by the transfer of a building site upon which she had constructed a dwelling. There is

some evidence to suggest that his ultimate intention was that the lands would pass to his grandson, David, who at the date of the hearing, was farming sheep on the subject lands.

The Step Road lands

[38] As the chronology confirms these lands were acquired by the deceased in the late 1960s at a point when the plaintiff would have been still at school and, probably, at most, 15 years old. The lands are adjacent to the settlement limit at Magheralin and clearly the "hope value" to which reference was made both in the proceedings and in the notes leading to the various Wills did play a part in the deceased's view. In his 2003 Will instructions he speaks of the desire to be "fair to his wife and daughters."

[39] By the time that the 2007 Will was made the deceased had already benefitted from the substantial sale of the development lands which were shared jointly between he and his son. Both had accrued a substantial windfall.

[40] At the date of the Will (and his subsequent death) the deceased continued to hold the Step Road lands in his sole name.

[41] The plaintiff was not able to point to any specific representations and/or promises made in respect of the Step Road lands other than the generic references to which I have referred above. The plaintiff had <u>assumed</u> (wrongly) that these lands would accrue to him, but in reality, it seems patently obvious to me that the deceased had other intentions in order, to be as "fair to his wife and daughters" as he could be in all the circumstances. Those circumstances envisaged that if there should ever be an advantageous sale of the lands for development that his daughters should benefit accordingly, in contrast to the circumstances which prevailed when the first tranche of development lands were sold to Whitemountain.

[42] The suggestion which the plaintiff makes that the lands were and are integral to the farming business, again, does not stand up to scrutiny. The reality is that when they were first acquired, they were not connected to the home farm. Secondly, the evidence which I heard about the creation of a cow walk etc was in the context of a farming enterprise (ie dairying) that had been discontinued (in 2005) and was not recommenced until 2010/2011, ie well after the date of the Will. Whilst I accept that the geographical location of the lands and the nature of them lend them to the dairying operation (insofar as they provide convenient grazing) there was nothing in the evidence before me to suggest that they were in any way critical to that operation. The fact that the business had since the deceased's death bought other and alternative lands for that self-same purpose, ie the grazing of dairy cows tends to support that view. In any event, Mrs Napier, in her evidence was clear that she was not averse to the possibility of the lands continuing to be grazed by the farming business until such an advantageous sale could be realised.

[43] Accordingly, when I stand back and look at the plaintiff's case in the round either in terms of the specific land holdings or, indeed, overall from the partnership perspective I can see no evidence which is sufficient to ground the plaintiff's claim in proprietary estoppel. The most that I can see are general observations which were made by the deceased, observations which either arose on the back of the increasing success of the business, but fundamentally are not inconsistent with the reality which is that the business and the majority of the land holdings which were farmed in connection with it, have ultimately accrued to the plaintiff. There is no element of unconscionability.

Detriment

[44] I also see no detriment on the facts of this case. I can see none suffered by the plaintiff – other than the deflation of his hope of expectation that the deceased was bound in some fashion, to adhere to the rules of primogeniture. He was not. The reality is that after the plaintiff's admission to the farming partnership all of the lands which were acquired from the profits of the business were bought in joint names. Whilst I pressed Mr McArdle on the point it does not seem to me to have been the case that the lands were or became partnership property, however, in any technical sense. Indeed, the partnership accounts confirmed that they did not. Equally, the fact that both individual registered owners benefitted independently from the sale proceeds of the development land (ie the £2.9m) would, again, corroborate the view that the lands were held independent of the partnership but used in connection with its business. If any representations were made by the deceased they were, I find, to the intent that the <u>business</u> should continue post his death as, indeed, it has done with the benefit of the jointly held lands and with the plaintiff being nominated as a residuary legatee under both Wills. The scheme of the mother and father's Wills mean that in addition to the lands that have passed by survivorship, the plaintiff will gain one third of the investments which his late father held. This is not a case where the plaintiff was ever denied a share of farm profits, a livelihood or, indeed, the benefit from capital sales during the time that he was in business with his father. Indeed, he benefitted from all of those in abundance.

[45] In the circumstances, I find there is no detriment suffered by the plaintiff and equally no question of unconscionable conduct on the part of the deceased who was, I find, simply trying to provide a degree of equality as between the continuation of the business, making provision for his wife and his daughters and grandchildren. The introduction of the evidence from Mr McArdle did nothing to persuade me to the contrary. In the first place, Mr McArdle was newly appointed to look after the partnership. His evidence was that he had a single meeting between himself and the deceased with neither the plaintiff nor Mr Matthew Irvine present. At that stage the deceased was 90 years of age and had not been actively involved in the business for a period of about five years. The deceased had never met Mr McArdle prior to the meeting which, on Mr McArdle's evidence, was itself comparatively short.

[46] The purpose of the meeting was the allocation of the partnership interest in the trading interests of the business which was largely "reorganised" to facilitate access to a government grant. I see nothing surprising in that the deceased consented to that course of action. It was clear from Mr McArdle's evidence that he had no idea of the specific landholdings involved nor that he actually had applied his mind to whether the lands in question were partnership assets or individually held by the respective partners. Any expression that the deceased made that he would wish the farm "to remain intact after his passing" was consistent with what has happened. The business has continued, and it has flourished. In the context of a meeting which resulted in Matthew Irvine being added as a partner to the business cannot be relied upon by the plaintiff to bolster his case.

Conclusion

[47] What this case boils down to is the fact that the plaintiff had formed his own view that it would be (to use his words) "odd" for anyone other than him to benefit from the land because he had farmed it during his lifetime and that neither his sisters nor their children were actively engaged in the farming enterprise. He assumed that he would benefit from primogeniture. No one represented to him that that would be the case.

[48] The plaintiff has failed to satisfy me on any one (much less all) of the crucial elements for a claim based on proprietary estoppel. I find that there were no representations made of the type for which one would look in cases such as this. He has not established any concrete representations, nor has he demonstrated his actual reliance upon any alleged representations much less any form of detriment on his part.

[49] The most that the plaintiff has suggested is that in his formative years (ie just after leaving school) he thought of a job as a driver. As he accepted, he did nothing about this, nor did he even communicate it to his father. In reality, as he accepted during cross-examination, the plaintiff wanted to be a farmer. He became a farmer and was very quickly admitted into the business – a business from which he made substantial gains £1.45m (before tax) on the sale of the development lands alone); a substantial income and a growth in his own capital value – as evidenced by the affidavits provided in his matrimonial case.

[50] The plaintiff may not like the outcome of the testamentary wishes of his father, but in no way, can they be regarded as unconscionable.

[51] For all of these reasons, the plaintiff's case is dismissed. If required I will hear the parties on the question of costs.