



Entitlement

Summer - Autumn 2018

2018: The Year of Proprietary Estoppel

Plus:

- Changing family dynamics: The importance of **family tree verification**
- Company spotlight with **Stone Rowe Brewer**
- Title Research's most **interesting case studies**
- Service spotlight on **FamilyChecker™** and **UK Share Sales**



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Welcome to Title Research's quarterly news digest – **Entitlement.**

The summer and the UK heatwave is coming to an end but don't let it get you down. The next edition of Entitlement has arrived and can help you through the end of the summer blues.

In this issue, we have a guest contribution from Nicola Laver on how 2018 is the year of proprietary estoppel and an article which discusses how changing family dynamics increase the need for family tree verification.

We also share our most interesting genealogical research and asset repatriation case studies, as well as shining the spotlight on our newest services - FamilyChecker™ and fast track UK Share Sales.

This season, we have travelled all across the country for conferences and we are ready to get on the road again in autumn for October's Professional Conferences. We are pleased to be sponsoring the Professional Conferences series of 'Wills,

Probate and Advising the Elderly' conferences this year. Speakers such as Professor Lesley King, Gill Steel and Helen Clarke are all renowned for their informative and practical style of presentation.

As always, we continue to support our solicitor clients in overcoming the complexities that arise from estate administration. One interesting case involved Title Research locating four missing legatees in France. Whilst three were found living conventionally, the final legatee was only tracked down by local research in Paris. He was finally found living in a tented village on the outskirts of the city. Our client was able to distribute his legacy in full. We worked on this file on an hourly rate basis, and despite this challenge, we came in significantly under the agreed budget, which we reflected in our invoice. France is a particularly tricky jurisdiction to work in and in this instance, a time and expenses charging method offered the best value for our client.

Title Research offer fast, fixed fee access to specialist genealogical research and asset repatriation services. The services available to you include dealing with North American and UK shareholdings, locating missing beneficiaries, reconstructing family trees and more.

Our Client Services Team are the first point of contact to discuss how we can help accelerate the estate administration process. Call 0345 87 27 600 or email info@titleresearch for more information.

We hope you enjoy this edition of Entitlement!

Anthony Allsopp
Head of Business
Development



2018: The Year of Proprietary Estoppel

By Nicola Laver

Nicola is a former solicitor with more than 18 years of experience in law writing and editing. She is a legal and business writer and editor. Nicola has written for leading legal publishers such as LexisNexis, Legalease, Incisive Media and Thomson Reuters.

In the contentious probate arena, 2018 is fast making its mark for court rulings on the equitable doctrine of proprietary estoppel, with five or so cases by June alone. Ten years ago such claims were comparatively rare.

This increasing trend for aggrieved claimants to rely on the doctrine of proprietary estoppel to stake a claim in property reflects a greater confidence in taking proceedings, and the court's increasing willingness to take a wider, common sense approach to claims against estates.

By relying on proprietary estoppel, an individual - who may not otherwise be entitled to an asset under a Will or intestacy, or under the Inheritance (Provision for Family and Dependents) Act 1975, could nevertheless be legally entitled to an estate asset.

What is Proprietary Estoppel?

Proprietary estoppel operates to give an individual a proprietary interest in property. The four-part test for a successful proprietary

estoppel claim was set out by the House of Lords in 2009¹. Each part must be satisfied. There must have been:

- a representation or assurance made to the claimant
- reliance on it by the claimant
- detriment to the claimant resulting from their reasonable reliance on the representation or assurance, and
- it would be unconscionable for the defendant to renege on the assurance

So how have the courts been approaching recent claims? While January's judgment in *James v James*² is particularly noteworthy for its clarification of what testamentary capacity means in light of the definition of 'mental capacity' under the Mental Capacity Act (see our article in the Spring edition of *Entitlement*) - the claimant had also relied on proprietary estoppel in his claim to the family farm.

Unfortunately for him, his claim failed: it was not enough simply for him to believe he would inherit the farm. The court found nothing in his evidence of a promise or assurance by his late

father, either in word or conduct, concerning the farm. Nor could he show reliance on a promise to his detriment. Though he was a hard worker, he had been properly paid for his work on the farm - with some substantial bonuses to boot - and had enjoyed working there and did not want to leave. Nevertheless, this did not amount to a proprietary interest in the farm.



In February 2018 came the ruling in *Habberfield v Habberfield*³ in which the claimant was successful in her proprietary estoppel claim. She had worked on her parents' farm since she was 16 but had, some years earlier, rejected a partnership proposal. On her father's death, her mother inherited the farm by right of survivorship.

The High Court accepted the claimant's evidence that her

father had given her assurances she would take over the farm on his death, and that she would later receive the freehold to the farm. Furthermore, she had relied on this to her “significantly long-lasting” detriment - working at very little pay and foregoing any other career and lifestyle.



Though she was successful, her rejection of the reasonable partnership proposal was taken into account in calculating the quantifiable reliance loss.

Fast forward to June, and two further High Court rulings were handed down – both in the claimant’s favour. In *Thompson v Thompson*⁴, the deceased’s son successfully relied on proprietary estoppel. The only son of five children, he had relied on his parents’ representations, assurances and promises that he would inherit the farm. He thus worked on the farm at a low wage, with no life outside of the farm. His sisters had all left the farm over the years.

The claimant’s mother denied any such assurances and representations had been made to him. However, the written evidence contradicted her. This included contemporaneous attendance notes of meetings with solicitors which clearly stated that she and the deceased always wanted the farm to go to the claimant – partly as he had worked hard on the farm with very little return, no promises had been made to any other family, and it was vital that he have a completely free hand to manage and run the farm. The judges also preferred the claimant’s honest

and reliable oral evidence, which was consistent with the written evidence.

Just a week after *Thompson* came the ruling in *Gee v Gee*⁵. The farm, in this case, had been in the family since 1924. The claimant son had worked on the farm throughout his adult life - from the 1970s until 2016. Brother Robert had studied agriculture for a year on leaving school, but he was a builder and property developer until 2012. Two years later, their father (who has not yet died) transferred the farm to Robert who continued to manage the farm.

The claimant relied on proprietary estoppel citing his father’s repeated assurances (specifying at least six occasions) that he would inherit the lion’s share of the farm, and he relied on those representations to his detriment - devoting his working life to the farm and working long hours for low wages. The judge preferred his evidence to that of the defendants – including his elderly father whose evidence denying making any such representations began to

unravel to the point of becoming contradictory.

The judge ruled that it was reasonable for the claimant to have relied on two of the specific representations made, and this was sufficient for his claim to succeed. He also noted that other family members knew for many years that he would succeed his father – though this on its own is insufficient to establish proprietary estoppel.

The common feature to these cases is, of course, that they all involve farms, reflecting the continued inter-generational management and transfer of many farms, and the succession risks involved.

Further proprietary estoppel cases will undoubtedly arise, but what’s noteworthy is that none has yet reached the Court of Appeal. Whether the appeal judges may one day take a different approach remains to be seen (and clarity on the appropriate remedies would certainly be welcomed).

What does this mean for practitioners?

Firstly, strong and clear evidence is necessary to establish a proprietary estoppel claim. Wherever there is a potential claim in proprietary estoppel, unequivocal evidence must be gathered to satisfy each strand of the test – otherwise, the claim will fail.

Secondly, the court will look at all the evidence, i.e. the whole picture, before reaching its conclusion. A person’s belief, however genuinely held, will not be anywhere near enough.

Thirdly, the importance of documenting promises, assurances, representations and agreements concerning property in writing cannot be underestimated. Relying on familial bonds of trust, particularly in family businesses, can prove costly. Relying on faded recollections of conversations dating back many years ago can be difficult without supporting written evidence.

References

- [1 *Thorner v Major* \[2009\] UKHL 18](#)
- [2 *James v James* \[2018\] EWHC 43](#)

- [3 *Habberfield v Habberfield* \[2018\] EWHC 317](#)
- [4 *Thompson v Thompson* \[2018\] EWHC 1338](#)
- [5 *Gee v Gee* \[2018\] EWHC 1393](#)

Changing family dynamics: The importance of family tree verification

By Title Research

At Title Research, we always recommend that Personal Representatives get family trees professionally verified when dealing with an intestate estate.

On numerous occasions, we have seen our clients come very close to a misdistribution, where the Personal Representative would have subsequently been liable if there were any claims against the estate.

By professionally verifying the family tree, Personal Representatives can ensure that everyone who is entitled to the estate is included and those unentitled are excluded. A good example of avoiding

misdistribution is a recent intestacy case we worked on where we were instructed to verify the Deceased's paternal family. The estate was expected to be passed to the class of whole blood Aunts and Uncles or passed on to their issue if predeceased. During our research of the paternal family, we found 14 potential heirs. On the maternal side of the family, the Personal Representative was believed to be the only heir.

However, during the estate administration process, the only believed maternal heir sadly died before distribution. As a result, we were asked to verify the maternal side of the family tree so our client could acquire missing beneficiary insurance. The work was predicted to be straightforward but we quickly realised that this was not the case. We located 62 maternal heirs in total, resulting in 76 entitled heirs overall.

This is certainly not the first time we've discovered additional unknown heirs and prevented a client from misdistribution. As family relationships become increasingly complex, it makes family tree verification more important than ever. Today, we're frequently asked for advice and guidance in verifying or reconstructing family trees due to complex family dynamics.

In the past, a couple would get married, have children and then

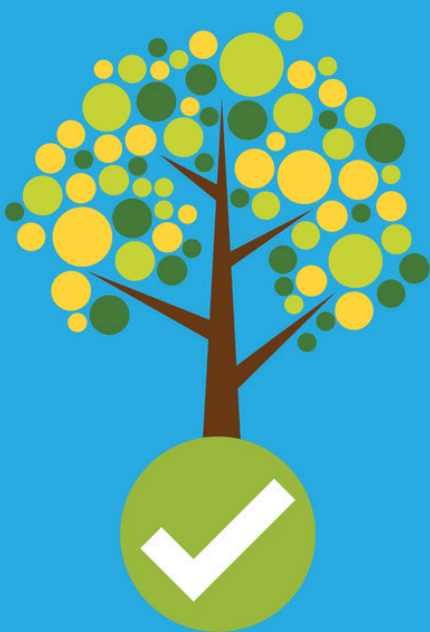
die but this is no longer the case. We now more frequently come across children who are born with a different mother or father to their siblings, and children where their parents never married. If you're not an experienced genealogical researcher, it can be difficult to unravel families of this kind.

“

As family relationships become increasingly complex, it makes family tree verification more important than ever.

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Another change in family dynamics which makes family tree verification more complicated is the rise in adoption. When adoption became legal in 1927, adopting in or out of the family was a rare occurrence. Between 1927 and 1946, only four volumes of indexes were required to document adoptions. However, by 1963, one volume was needed for every year and now, a volume is needed for every quarter. This highlights the growing frequency of adoption and how it is much



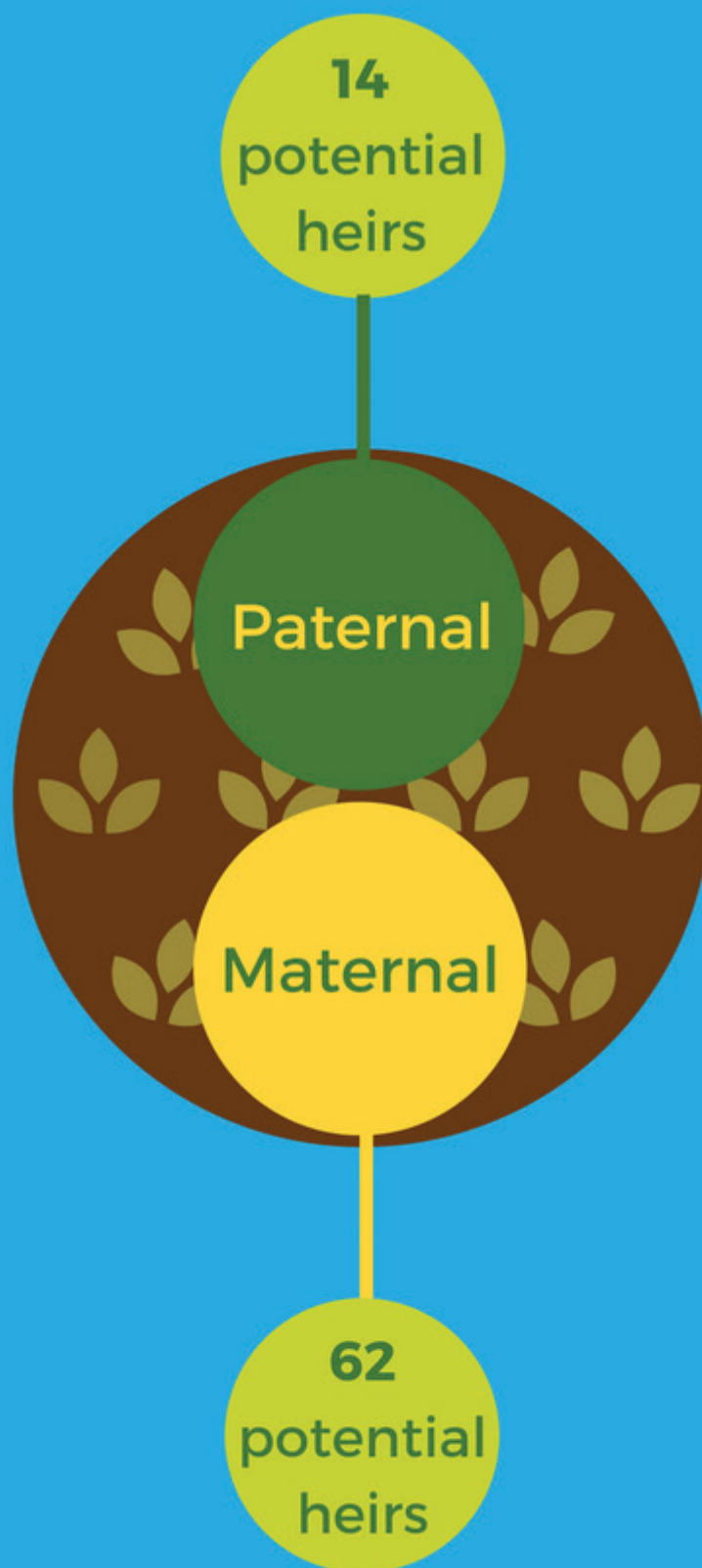
more socially acceptable and openly discussed today.

The number of people getting married has been gradually decreasing since World War II which creates new challenges for genealogists. As mentioned above, children born outside of marriage can make genealogical research more complicated, as well as smaller families where there are not as many relatives to verbally verify the family tree.

Same-sex couples were given the right to obtain the rights and responsibilities of civil marriage under the Civil Partnership Act of 2004. Then, same-sex marriage became fully legalised in England and Wales from March 2014 as the Marriage (Same Sex Couples) Act 2013 was created. These changes in legislation are beginning to impact genealogical work as a same-sex couple could marry each other and adopt a child. Therefore, we can no longer solely rely on marriage and birth records so all eventualities must be covered off to ensure accuracy.

Our genealogy experience spans over 50 years and in that time we've learnt that family trees are not always as they seem. If you've been presented with an intestate estate, we highly recommend that you get a complete family tree professionally verified or appoint an experienced genealogist to reconstruct the family tree if you're presented with an incomplete tree. This will ensure that the estate is correctly distributed so there's no risk to the Personal Representative.

Title Research offers both family tree reconstruction and verification services so if you need any advice on mitigating risk on intestacy, call our client services team on 0345 87 27 600 or email info@titleresearch.com.



76 entitled heirs in total

COMPANY SPOTLIGHT WITH

Stone Rowe Brewer LLP

About Stone Rowe Brewer

Stone Rowe Brewer LLP is a firm with offices in Twickenham and Teddington. They have nine partners supported by 70 staff. They were formed in 1976 and offer a specialist service through seven different areas of the law -

- i) Clinical Negligence
- ii) Company and Commercial Law
- iii) Employment Law
- iv) Family Law
- v) Personal Injury
- vi) Private Client
- vii) Property - Commercial and Residential

They have a strong team of Partners, Solicitors, Licensed Conveyancers and Legal Clerks.

They have a broad and varied client base and have gained an excellent national reputation through the continued loyalty of their clients and local associations.

About Pauline Lawson

How long have you been practising law?

I qualified in May 1983 but I have worked in a solicitor's office since 1977.

How long have you been working with Title Research?

Since 2012.

How did you come across Title Research and their services?

We read their literature and had an estate on which we needed their help. It was an intestacy and the deceased had a very popular surname. We realised that we needed some expert advice to construct a family tree from limited information provided by neighbours and friends.



About Stone Rowe Brewer LLP

Can you please describe a situation where Title Research's services have helped with the administration of an estate?

We had to deal with an estate of a "client" who had made a conscious decision to remove himself from society. He was a man whose parents had died. He had no issue or siblings. We were contacted by a cousin but the family were fractured with missing members, all of whom were only in their 50s and 60s so potentially alive and they needed to be traced.

By instructing Title Research, roughly how much time have you saved?

It would have taken us a great deal of time to find birth and marriage certificates and family members. This is not our skill. We are lawyers not genealogists.

Are Title Research a preferred provider for your firm when it comes to complex estate administration cases?

Yes - because of their excellent customer service. We know there are other competitors in this market

place and we often receive their literature, but we appreciate the friendly manner and attention to detail provided by Title Research.

Has working with Title Research resulted in financial gain for the firm? If so, could you please briefly highlight?

We were asked to take over several files from a solicitor who was retiring. The clients had been in nursing homes and had lacked capacity. In some cases there were no Wills and no contact with family or friends. The estates were not large but Title Research provided us with details of the beneficiaries under the intestacy laws. They document all their findings and provide all the relevant birth, marriage and death certificates. They also provide detailed family trees supporting their conclusions. We were able to complete the administration of the estate and the distribution of funds.

Do you have anything else to add?

In conclusion, we appreciate the professionalism and skills of Title Research and their approachability.

Interesting case studies

Genealogical research & Repatriating assets

For a fixed price, we located 14 maternal heirs to an intestate estate.



Fixed price

Our genealogy team reconstructed the family tree, identifying 5 uncles and aunts before descending their lines to locate the first cousins, and first cousins once removed – including one in Australia.

On behalf of a UK estate, we successfully sold a Kraft Heinz Shareholding, listed on the US Stock Exchange.



Our specialist asset team sold the shares & returned US\$7,000 for the benefit of the beneficiaries.

All within three months and for a single fixed fee.



Fixed price



We successfully traced a missing beneficiary to an intestate estate, after our client instructed us to find the deceased's missing nephew.

With just his name and date of birth, we found the beneficiary and our client was able to pay him his share of the estate.



We carried out this work for a fixed price and had we not located the beneficiary we would have made no charge at all.



Fixed price



We successfully resealed a Grant of Probate in Hong Kong on behalf of our solicitor client.

Our fixed price covered all the legal work required and our client can now administer the estate, which has shareholdings registered on the Hong Kong Stock Exchange.

Service spotlights:

FamilyChecker™ & UK Share Sales

Title Research recently announced the launch of two brand new services; FamilyChecker™ and UK Share Sales. FamilyChecker™ is our new family tree verification service which eliminates the risk of misdistribution and protects against future claims on the estate. UK Share Sales is our new fast track service which allows solicitors to instruct Title Research to sell UK shareholdings within 48 hours and be in receipt of funds within 7 working days thereafter.

Read on to find out more about how our new services can help you overcome complex estate administration challenges.

FamilyChecker™

At Title Research, we believe that it is vital to get family trees professionally verified before distribution. We have seen so many clients come close to misdistribution because of a missing certificate or a previously unknown relationship which changes the makeup of the family entirely.

If you're presented with a family tree, it's important to question every possible eventuality and answer the following questions:

- **Are you certain that the child was legally adopted in?**
- **Did the cousin who predeceased have children with his first wife?**
- **Was the deceased's mother definitely an only child?**
- **Has anyone in the family tree remarried?**

Our new family tree verification service, FamilyChecker™ provides complete peace of mind before distribution. Our genealogy team will check the believed complete family tree for accuracy by:

- Documenting any events of birth, marriage, death or adoption
- Carrying out confirmatory searches of the birth and marriage indices
- Interviewing all potential heirs to make sure that all information is correct

On completion of the work, we will provide you with an insurance policy (in partnership with **Zurich Insurance**), certificates proving entitlement (if not already provided), a distribution schedule specifying fractional entitlement and a diagrammatic family tree. All of which is at no extra cost and included in the price.

UK Share Sales fast track service

Our new fast track UK Share Sale service allows you to dispose of certificated UK shareholdings quickly and efficiently, accelerating the estate administration process for you and your client.

At Title Research, we frequently encounter UK (and overseas) shareholdings that are slowing down the estate administration process.

Our new service is designed to help solicitors liquidate assets as quickly as possible, in order to maximise the estate for the beneficiaries and speed up the payment of funeral costs and other estate administration expenses.

The process is simply broken down into the following three stages:

1. Instruct us to sell a certificated UK shareholding
2. We'll sell the shares and provide a contract note within 48 hours
3. The proceeds will be remitted into your client account within 7 working days

This service is available for a fixed fee of £160, plus VAT, per shareholding. Dealing rates and charges also apply.

If you're interested in finding out more about our new services, call our Client Services Team on 0345 87 27 600.



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