

Peter owned and ran a large farm, but only employed one full-time employee, David. Peter had no family of his own, so David often stayed in the farmhouse with Peter, even though David had a family of his own. Particularly as Peter got older, David also helped Peter around the house with domestic tasks.

In 2005, Peter sold part of the farm for building. David organized the sale and made sure that the legal work was done. Peter and David had informally agreed that they would share the proceeds, which were £1 million. Peter also told David: 'Thanks for helping me with the sale, sort out my affairs when I die and I will see you all right.' David thought that this meant that Peter would leave him the farm in his will, so David made no claim to a share of the money.

In 2010, Peter died without leaving any will. His only relative, a brother, Gareth, claims the farm and the £1 million.

David thinks that some of the farm, at least, and half of the £1 million should come to him and seeks your help.

Advise David.

Suggested Answer

The student might start by outlining the basic requirements of estoppel and explaining how the courts have moved from a strict approach in *Willmott v Barber*, to a more liberal approach in cases like *Re Basham* and the stress on unconscionability and then back to a stricter approach in *Yeoman's Row v Cobbe*. *Thorne v Major* favours a liberal approach in, domestic, family situations, but is our problem here in that category, or is it a commercial situation? Working on the farm might be considered domestic, but the sale of land might be considered commercial.

If we consider the classic elements of an estoppel, Peter seems to make a representation to David, but is this specific enough, bearing in mind the warnings in *Cobbe* about the need for certainty in property dealings? *Thorne v Major* was less strict about this, but it depends whether we consider this a domestic situation or a commercial negotiation.

The representation was made after the work was done, so could David have relied upon it? *Cobbe* again springs to mind as does *Coombes v Smith*.

Detriment is broadly defined. It certainly includes working for another (*Thorne v Major* and *Gillett v Holt*), and caring for another has been recognised in *Re Basham* and *Henry v Henry*, among other cases. In addition to *Gillett*, there are several other successful estoppel claims where a family member worked on the farm for little or no pay, expecting to inherit: *Gill v RSPCA*, *Suggitt v Suggitt* and *Davies v Davies*.

If there is an estoppel, the minimum equity to do justice would seem to be to assess the value of the help that David has provided and reward him accordingly. Peter made no specific promise. This approach can be seen in *Jennings v Rice*, *Gillett v Holt* and was endorsed by the Privy Council as proportionality in *Henry v Henry*.

There has been no writing here and that would seem to be a contravention of s.2 (1) Law of Property (Miscellaneous Provisions) Act if we are looking at the land deal. Under s.2 (5) of the same Act, constructive trusts are exempt from the writing requirement, but despite the suggestion in *Re Basham* that a proprietary estoppel is a constructive trust, this is not strictly accurate. The same facts could give rise to both a constructive trust and an estoppel (*Yaxley v Gotts*), but the two doctrines are not identical. There could be a constructive trust here, as there is arguably a common intention and detriment. *Yeoman's Row v Cobbe* thought that land required writing and *Thorne v Major* just did not comment. Neither case considered older authority, such as *Crabb v Arun*, which did not require writing for an estoppel. On balance I would think that there is no need for David to prove the existence of any writing.