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Enforcing oral agreements to develop land in English law

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Yaxley v Gotts [2000] Ch. 162 (CA (Civ Div))

Cobbe v Yeoman's Row Management Ltd [2008] UKHL 55; [2008] 1 W.L.R. 1752 (HL)

***I.C.C.L.R. 165 Introduction**

Commenting on the role of the doctrines of equity and trusts in the context of commercial relationships, Bramwell L.J. once said:

"Now I do not desire to find fault with the various intricacies and doctrines connected, with trusts, but I should be very sorry to see them introduced into commercial transactions, and an agent in a commercial case turned into a trustee with all the troubles that attend that relationship."¹

Similarly, other commentators have explained that equitable doctrines and remedies have "infiltrated English commercial law".² This view, however, is not shared by others who have explained that the application of equitable doctrines in the commercial context is:

"... merely doing what it has done historically and that is to temper the rigour of purely legal duties where that rigour is inappropriate".³

One particular context in which a commercial party may resort to the application of certain equitable doctrines in order to temper the rigour of purely legal duties is where there is an oral agreement "in principle" to develop land. Typically, a developer may enter into negotiations with an owner of land to purchase the land with a view to develop on it. While the parties may agree in principle to the sale of the land, the parties may not wish to enter into a final written agreement until matters such as planning permission or other regulatory requirements have been resolved. Until such time as a proper written agreement for the sale of the land is concluded, the parties run the risk that one of them may renege from the agreement they may have concluded "in principle". Equally where two or more parties enter into an oral agreement to exploit land jointly, the question arises as to the position should one of the parties withdraw from the agreement and attempt to claim the land in question absolutely.

The nature of an oral agreement to develop land has recently been examined by the House of Lords in *Cobbe v Yeoman's Row Management Ltd*,⁴ which involved an attempt by a claimant to enforce the provisions of an oral agreement to develop land by means of a claim based on two equitable doctrines, namely proprietary estoppel and constructive trusts. This article explores the decision in *Cobbe* and, in particular, examines the circumstances in which the law allows an oral agreement for the sale of, or disposition of some interest in land, to be enforced despite non-compliance with the formal requirements of s.(2)(1) of the Law of Property (Miscellaneous Provisions) Act 1989. Additionally, the article explores the doctrines of proprietary estoppel and constructive trusts as applied in *Cobbe* and explains the reasons why these doctrines failed to establish a proprietary claim on the facts of the case.

Cobbe v Yeoman's Row Management Ltd in the House of Lords

The facts of *Cobbe* involved an appeal by Yeoman's Row Management Ltd (Yeoman's) against a decision of the Court of Appeal which held that the claimant, Mr Cobbe, had

established a proprietary estoppel against Yeoman's arising out of an oral agreement between Yeoman's and Mr Cobbe.⁵ The essence of the agreement, which was conducted with one of the directors of Yeoman's, was to the effect that Mr Cobbe would seek planning permission out of his own pocket to develop land belonging to Yeoman's, and that if permission was obtained, Yeoman's would sell the land to Mr Cobbe for a sum of £12 million. The agreement also made provision for Mr Cobbe to receive vacant possession of the land in order to erect six town houses. Additionally, the agreement made allowance for Yeoman's to receive further profits from the sale of the town houses should Mr Cobbe succeed in making a profit in excess **I.C.C.L.R. 166* of £24 million. This agreement, which was concluded "in principle", did not cover all the matters relating to the sale of the land to Mr Cobbe, for example, matters relating to time scales regarding completion of the building of the flats, and so on. Planning permission was duly granted by the local authority; however, Yeoman's withdrew from the original agreement and claimed that Mr Cobbe has incurred expenditure on the land at his own risk. Mr Cobbe, however, commenced proceedings against Yeoman's on the grounds that they were estopped from denying the interest in the land they had promised to give to him. Furthermore, that Mr Cobbe had incurred the expenditure as a result of the assurances given by Yeoman's to him. Additionally, Mr Cobbe sought to argue that a constructive trust arose in his favour on the grounds of the unconscionability of Yeoman's conduct in withdrawing from the oral agreement. Therefore, on the grounds of both proprietary estoppel and constructive trusts, Mr Cobbe argued that the terms of the oral agreement should be enforced in his favour. Before looking at how these matters were resolved by the House of Lords, it is important to put into perspective three matters. First, what is the general position as regards oral agreements for the sale or disposition of interests in land? Secondly, on what grounds will a constructive trust in land arise where there is an agreement to develop land by two or more parties? Finally, what are the grounds for a claim to an interest under proprietary estoppel?

Contracts for the sale or dispositions of interests in land

Insofar as the general position as regards contracts for the sale or other dispositions of interests in land is concerned, the matter is governed by s.2(1) of the Law of Property (Miscellaneous Provisions) Act 1989, which provides that:

"A contract for the sale or other disposition of an interest in land can only be made in writing and only by incorporating all the terms which the parties have expressly agreed in one document or, where contracts are exchanged, in each."

Section 2(1) of the Law of Property Act 1925 abolished the doctrine of part performance to contracts entered into after September 27, 1989. The doctrine of part performance, which had been enshrined in s.40 of the Law of Property Act 1925, allowed a party who had part performed in reliance of an agreement to purchase land to seek specific performance of the contract for the sale of land. The element of part performance was the grounds for a decree of specific performance. The doctrine of part performance was regarded by the Law Commission in its *Report on Formalities for Contracts for the Sale etc. of Land*⁶ as being unsatisfactory and bringing with it a great deal of uncertainty in contracts for the sale of land. Under s.2(1), where a contract for the sale of an interest in land or some other disposition of land is not in writing, the contract is void. However, s.2(5)(c) of the 1989 Act holds that the existence and operation of constructive trusts is not affected by s.2(1). Although s.2(1) of the Law of Property (Miscellaneous Provisions) Act was intended to bring about a radical change in the law, the Law Commission in its *Report on Formalities for Contracts for the Sale etc. of Land*⁷ commented that:

"To minimise disputes, reliable incontrovertible evidence of the existence and terms of a transaction needs to be available for later reference, but it is equally important that the law should not be so inflexible as to cause unacceptable hardship in cases of non-compliance."⁸

Given the provisions of s.2(5) of the Law of Property (Miscellaneous Provisions) Act 1989, it is possible for an oral agreement for the sale or disposition of an interest in land to be capable of being enforced where it gives rise to the imposition of a constructive trust. The matter is illustrated by the decision of the Court of Appeal in *Yaxley v Gotts*,⁹ where the

plaintiff decided to purchase land for development purposes with the intention of building flats for letting out. The land was, however, purchased by the defendant, who orally agreed with the plaintiff that the plaintiff would be entitled to the ground floor flats in return for working on the upper floor flats as well acting as a letting manager for the defendant. The agreement was not put into writing as required by s.2(1) of the Law of Property (Miscellaneous Provisions) Act 1989, and therefore was technically void. Despite the absence of writing, the Court of Appeal held that a proprietary estoppel arose in favour of the plaintiff who had been assured an interest in land and had relied on the assurance by suffering a detriment in developing the land.

It will be seen later in this article that a claimant will be able to establish an equity based on estoppel provided that he has relied on some assurance made by the defendant and has as a result of such reliance suffered a detriment.¹⁰ Where the claimant successfully establishes an **I.C.C.L.R. 167* equity in his favour, the court satisfies the equity by the award of remedy. In most cases, the award of the remedy is to give effect to the interest which the defendant has led the claimant to believe would be given. In *Yaxley v Gotts*, Walker L.J. held that the proprietary estoppel also gave rise to a constructive trust imposed on the defendant as a result of his unconscionable conduct. Walker L.J explained that the doctrine of proprietary estoppel was very similar to the constructive trust. He explained that a:

"... constructive trust of that sort is closely akin to, if not indistinguishable from, proprietary estoppel. Equity enforces it because it would be unconscionable for the other party to disregard the claimant's rights. Section 2(5) expressly saves the creation and operation of a constructive trust".¹¹

Although Walker L.J. expressed the view that constructive trusts and proprietary estoppel are very similar, it has to be emphasised that there are some fundamental differences between the two concepts. Fundamentally, proprietary estoppel involves the defendant making some representation to the claimant which is then relied on by the claimant to his detriment. The constructive trust imposed in common intention cases requires a common intention as to the shared ownership of land.¹² At the heart of the common intention constructive trust is the element of a common intention of bargain. Typically, the common intention or bargain will have been made at the time of the acquisition of the property. The common intention or bargain relates to an understanding that the ownership of land in question will be shared between two or more persons. Typically, the common intention trust will arise where a legal owner of land has a common intention that another person, who is not named on the legal title, will nevertheless acquire some beneficial interest in the land. It is possible for the common intention or bargain to have been made after the acquisition of the property. Equally important is the element of detriment or change of position. This requires the claimant to have acted upon or relied on the common intention to his detriment.

While s.2(5)(c) of the Law of Property (Miscellaneous Provisions) Act 1989 expressly states that the written requirements in s.2(1) did not apply to the operation of constructive trusts, the decision of the Court of Appeal in *Yaxley v Gotts*¹³ allowed the statutory exemption in s.2(1) to be extended to cases of proprietary estoppel by assimilating the doctrine of proprietary estoppel with constructive trusts. It is this aspect of the decision in *Yaxley v Gotts* which, perhaps, extended the range of oral agreements capable of enforcement beyond that envisaged by the legislature.

Joint ventures to exploit land and the "equity in *Pallant v Morgan*"

It is fairly well established in law that where two parties enter into an agreement to purchase land with a view to exploit the land as a joint venture, and subsequently after the purchase one of the parties refrains from the agreement, equity will impose a constructive trust in order to recognise the right of the party whose interest is being refused to be recognised. This is known as the "equity in *Pallant v Morgan*"¹⁴ and arises so as to prevent the legal owner of land from keeping land for himself when it would clearly be unconscionable for him to do so in light of the agreement with the other party. In *Cobbe*¹⁵ Lord Scott explained the principle in *Pallant v Morgan* as follows:

"A particular factual situation where a constructive trust has been held to have been created arises out of joint ventures relating to property, typically land. If two or more persons agree to embark on a joint venture which involves the acquisition of an identified piece of land and a subsequent exploitation of, or dealing with, the land for the purposes of the joint venture, and one of the joint venturers, with the agreement of the others who believe him to be acting for their joint purposes, makes the acquisition in his own name but subsequently seeks to retain the land for his own benefit, the court will regard him as holding the land on trust for the joint venturers. This would be either an implied trust or a constructive trust arising from the circumstances and if, as would be likely from the facts as described, the joint venturers have not agreed and cannot agree about what is to be done with the land, the land would have to be resold and, after discharging the expenses of its purchase and any other necessary expenses of the abortive joint venture, the net proceeds of sale divided equally between the joint venturers."¹⁶

The constructive trust arising under the "equity in *Pallant v Morgan*" is part and parcel of the much wider ground for the imposition of a constructive trust, which is that a defendant is not entitled to keep absolutely for himself in circumstances where he has agreed to respect the beneficial interest therein of the claimant. The matter was neatly explained by Millett J. in *Lonrho Plc v Fayed (No.2)*,¹⁷ where the learned judge commented that:

***I.C.C.L.R. 168** "... [E]quity will intervene by way of constructive trust, not only to compel a defendant to restore the plaintiff's property to him, but also to require a defendant to disgorge property which should have acquired, if at all, for the plaintiff. In the latter category of case, the defendant's wrong lies not in the acquisition of the property, which may or not have been lawful, but in his subsequent denial of the plaintiff's beneficial interest. For such to be the case, however, the defendant must either have acquired property which but for his wrongdoing would have belonged to the plaintiff, or he must have acquired property in circumstances in which he cannot conscientiously retain it against the plaintiff."¹⁸

The facts of *Pallant v Morgan*¹⁹ involved two parties who agreed prior to an auction of a piece of land in which both were interested that one would bid for the land while the other would refrain from bidding. The agreement was to the effect that if the bid was successful the land would be divided by both parties. The party who bid for the land was successful in acquiring it; however, it subsequently failed to agree the terms of division of the land between the parties and sought to claim absolute ownership of the land. The court held that the land was held on constructive trust for the both parties jointly, and that if the parties disagreed as to the division of the land, it was to be divided equally among them. More recently, in *Banner Homes Group Plc v Luff Development Ltd*²⁰ the Court of Appeal took the opportunity to re-examine the nature of the "equity in *Pallant v Morgan*". The case involved a failed joint venture between two developers to exploit land in Berkshire, England. The developers were initially rivals in the same business; however, they reached an oral agreement to the effect that one of them should withdraw from the purchase of the land. However, once the land had been purchased by one of the developers, the other developer would then become part of a joint venture partnership for the exploitation of the land. The evidence before the court was that there were extensive negotiations with their respective lawyers about the formation of the joint venture partnership. The defendant company, which succeeded in purchasing the land, subsequently sought to resile from the agreement between the claimants and sought to develop the land personally. Chadwick L.J. in the Court of Appeal held that a constructive trust arose in favour of the claimant to the effect that the claimant was entitled to one-half of the shares in the company which eventually went on to develop the land.

In the course of his judgment, Chadwick L.J. explained the necessary ingredients for the imposition of a constructive trust under the "equity in *Pallant v Morgan*".²¹ First, there must be a pre-acquisition agreement by two parties, namely the acquiring party and the non-acquiring party, which makes it inequitable for the acquiring party to deny a right in the acquired land to the non-acquiring party. Secondly, it is not a prerequisite that the agreement be legally enforceable, for example, the agreement may well be orally made and void under s.2(1) of the Law of Property (Miscellaneous Provisions) Act 1989. Thirdly,

the pre-acquisition agreement is to the effect that the acquiring party will take steps to acquire the property in which both the acquiring party and non-acquiring party will have an interest. Finally, the acquiring party has obtained some advantage as a result of the non-acquiring party not taking the land in its name or that the non-acquiring party has suffered some detriment. In most cases, the advantage or detriment will take the form of the non-acquiring party having been kept out of the market and thereby having missed the opportunity to exploit a commercial advantage.

Proprietary estoppel

Inevitably, in cases where there is a joint venture to exploit land for development purposes, or there is some other agreement to exploit the land, a potential claimant will also seek to rely on the equitable doctrine of proprietary estoppel. The proprietary estoppel claim will be of particular relevance in cases where a defendant is already the owner of the land and makes some assurance to the claimant that the claimant will acquire some interest in the land as a result of his development activities on the defendant's land. The essence behind proprietary estoppel is to prevent a legal owner of land from denying a proprietary right in land which he has led the claimant to believe will become his. The doctrine is neatly explained by one leading commentary on land law, which states that:

"... [T]he doctrine of proprietary estoppel gives expression to a general judicial distaste for any attempt by a legal owner unconscientiously to resile from assumptions which were previously understood, and acted upon, as the basis or relevant dealings in respect of his land. In curtailing the unconscionable disclaimer of such underlying assumption, the estoppel principle is ultimately directed against the abuse of power."²²

***I.C.C.L.R. 169** Judicially, Oliver J. explained the doctrine as one which:

"... requires a very much broader approach which is directed rather at ascertaining whether, in particular individual circumstances, it would be unconscionable for a party to be permitted to deny that which, knowingly, or unknowingly, he has allowed or encouraged another to assume to his detriment than to inquiring whether the circumstances can be fitted within the confines of some preconceived formula serving as a universal yardstick for every form of unconscionable behaviour".²³

A successful claim to an interest under proprietary estoppel requires that the defendant has made some assurance or representation that the claimant will acquire an interest in the defendant's land. Secondly, that the claimant has relied on the assurance or representation by changing his position. Finally, that as a result of the representation and subsequent change of position, the claimant has suffered a detriment which makes it unconscionable for the defendant to deny the very rights in the land which he led the claimant to believe would be his.

In the context of oral agreements for the development of land which are subject to further contractual negotiations, it is generally not possible to invoke the doctrine of proprietary estoppel. Unless the agreement arrived at by the parties is the definite and final irrevocable agreement, there is no room for the doctrine of proprietary estoppel on the grounds that the legal owner of the land, who may well have agreed in principle to grant some interest in the land, can always resile from the agreement. The matter is neatly illustrated by the decision of the Privy Council in *Att Gen of Hong Kong v Humphrey's Estate (Queen's Gardens) Ltd*²⁴ where a prospective purchaser of land expended money on the legal owner's land in the confidence that the legal owner of the land would sell the land to him. The agreement between the vendor and the purchaser had not been finalised and was subject to further terms and conditions. The Judicial Committee of the Privy Council held that in circumstances such as these where there was no formal agreement between the vendor and the purchaser, there could be no room for the proprietary estoppel. The purchaser in such a case knew that the vendor could resile from the agreement, and therefore there could be representation or assurance on the part of the vendor. Furthermore, in the knowledge that the vendor may resile from the agreement, the purchaser could not be seen to have truly relied on any representation or assurance that may have been given. Given the fact that withdrawal from the agreement was a real

possibility, it could not be said that there was anything unconscionable about the vendor's subsequent withdrawal.

The decision in Cobbe v Yeoman's Row Management Ltd

At first instance, Etherton J. held that a proprietary estoppel arose in favour of Mr Cobbe on the grounds that an assurance was made that he would have an interest in land belonging to Yeoman's and thereby suffered a detriment in expending money in reliance on that assurance.²⁵ Etherton J. held that a proprietary estoppel arose in favour of Mr Cobbe despite the fact that there were further negotiations to be made between the parties. In the course of his judgment, Etherton J. held that the proprietary estoppel was sufficient grounds for the enforcement of the terms of the oral contract. It is this aspect of the decision of Etherton J. which is significant in that, despite s.2(5), which states that nothing affects the operation of constructive trusts, the learned judge was clearly of the view that an independent proprietary estoppel, without any reference to a constructive trust, could nevertheless be invoked to give effect to an oral contract for the sale of an interest in land. Unlike in *Yaxley v Gotts*,²⁶ Etherton J. explained that, although the facts could give rise to a constructive trust, the case was best decided on the grounds that an estoppel, independent of a constructive trust, arose in favour of Mr Cobbe. The learned judge explained that:

"Yeoman's had encouraged Mr Cobbe to believe that, if Mr Cobbe succeeded in obtaining planning permission in accordance with the second agreement, that agreement would be honoured, even though it was not legally binding, and that, in reliance on that belief, Mr Cobbe, to [the knowledge of Yeoman's] and with [its] encouragement, acted to his detriment. I have also concluded that, in all the circumstances, [Yeoman's] took an unconscionable advantage of him."²⁷

On the basis of the estoppel, Etherton J. held that Mr Cobbe was entitled to a half share in the increased value of the property as a result of the planning permission. The decision of Etherton J. was approved by the Court of Appeal.

The House of Lords, however, overruled the decision of the Court of Appeal which had affirmed the decision of Etherton J. at first instance. There are three significant aspects to the decision of the House of Lords. First, the House of Lords ***I.C.C.L.R. 170** emphasised that proprietary estoppel was not a vehicle by which the formality requirements of s.2(1) of the Law of Property (Miscellaneous Provisions) Act 1989 could be ignored. In other words, proprietary estoppel could not be used as a mechanism by which an oral contract for the sale of an interest in land could be enforced. Lord Scott held that:

"... [P]roprietary estoppel cannot be prayed in aid in order to render enforceable an agreement that statute has declared to be void. The proposition that an owner of land can be estopped from asserting that an agreement is void for want of compliance with the requirements of section 2 is, in my opinion, unacceptable. The assertion is no more than the statute provides. Equity can surely not contradict the statute."²⁸

This aspect of the decision of the House of Lords clearly rejects that proprietary estoppel can provide the basis of the enforcement of an oral agreement for the sale of an interest in land.

The second important feature of the decision in *Cobbe*²⁹ related to the question of whether a case for proprietary estoppel arose on the facts. At first instance and in the Court of Appeal, it was held that Mr Cobbe had established a successful claim to a remedy on the grounds of estoppel. In the House of Lords, Lord Scott attempted to address the question of estoppel by simply asking the question as to what exactly were the grounds for invoking the doctrine of estoppel. It has already been observed above that a successful claim on grounds of proprietary estoppel requires the claimant to establish that an equity has arisen in his or her favour, in particular, that the defendant made some assurance to the claimant that the claimant would have some interest in the land. Lord Scott held that the facts did not give rise to any estoppel on the grounds that Yeoman's had not made any concrete assurance that Mr Cobbe was to be given some interest in the land. The oral agreement which had been entered into was nothing more than an agreement "in principle". There was

still room for further negotiations and the agreement did not refer to all the terms which the parties would have wanted to include. In this respect Mr Cobbe could not be heard to be asserting that the oral agreement was enforceable but for the absence of writing. Lord Scott explained that the oral agreement did not profess to create an expectation that Mr Cobbe would be granted an interest in land. At most the expectation Mr Cobbe had was that there would be further negotiations which would lead to a formal agreement. In this respect, the decision in *Cobbe* illustrates that an oral agreement "subject to contract" is repugnant to a finding of proprietary estoppel. Lord Scott explained that:

"... [T]he reason why, in a 'subject to contract' case, a proprietary estoppel cannot ordinarily arise is that the would-be purchaser's expectation of acquiring an interest in the property in question is subject to a contingency that is entirely under the control of the other party to the negotiations..."³⁰

Finally, in relation to the question of whether a constructive trust arose in favour of Mr Cobbe, the House of Lords held that no such trust had arisen on the facts despite what may have been perceived as unconscionable conduct on the part of Yeoman's. In the course of his judgment, Lord Scott explained that, while there were instances where a constructive trust arose when two or more parties negotiated the joint venture to develop land, also known as the "equity in *Pallant v Morgan*",³¹ the facts of the present case were very different from those cases where a constructive trust arose in the joint venture to develop land. On the facts of *Cobbe*³² Lord Scott held that the "equity in *Pallant v Morgan*" did not arise. Unlike the facts of *Pallant v Morgan*, in the present case the land was already owned by Yeoman's and there was no joint venture agreement to develop the land before the land was purchased by Yeoman's. The basis of the imposition of a constructive trust in cases such as *Pallant v Morgan* is that it would be inequitable for the defendant to retain absolute ownership in property when he purchased the property knowing that he was to jointly exploit it with the claimant. Having dismissed the "equity in *Pallant v Morgan*", Lord Scott proceeded to question what other grounds there could be for the imposition of a constructive trust in favour of Mr Cobbe. Having failed to find any other grounds for the imposition of a constructive trust on the facts, Lord Scott questioned whether a constructive trust could be simply imposed in favour of party who had failed to receive an expected benefit under an unenforceable oral agreement "in principle". To this question, his Lordship explained that:

"... [A] claim for the imposition of a constructive trust in order to provide a remedy for a disappointed expectation engendered by a representation made in the context of incomplete contractual negotiations is, in my opinion, misconceived and cannot be sustained by reliance on unconscionable behaviour on the part of the representor."³³

Having failed to establish a claim based on constructive trust and proprietary estoppel, the ***I.C.C.L.R. 171** House of Lords held that Mr Cobbe was entitled to a sum based on quantum meruit for his efforts in seeking planning permission.

Commentary and conclusions

The decision of the House of Lords in *Cobbe* illustrates the precise nature of certain oral agreements to develop land which are subject to further contractual negotiations. Oral agreements in land, which purport to sell or confer some interest in land, are void under the provisions of s.2(1) of the Law of Property (Miscellaneous Provisions) Act 1989. Nevertheless, attempts to enforce them may arise where a claimant purports to argue that the unenforceable agreement is subject to a constructive trust or is sufficient to give rise to a claim based on proprietary estoppel. The decision of the House of Lords makes it clear that, while an agreement which gives rise to a constructive trust may be enforced despite the absence of writing under the s.2(1) of the 1989 Act, a claim based purely on proprietary estoppel will not. In this respect, the decision of the House of Lords clearly rejects any notion that estoppel cases are exempt from the requirements of s.2(1) of the 1989 Act. However, leaving the s.2(1) requirement aside, the decision in *Cobbe* makes it clear that gentlemen's agreements, which are essentially agreements made in principle, cannot give rise to estoppel claims because of the lack of unconscionability which is raised. Despite what may be seen as the apparent unconscionability by a disgruntled claimant who feels

that the agreement should be carried into effect, there is much to be said for the words of Lord Walker, who explained that the estoppel doctrine is:

"... not a sort of joker or wild card to be used whenever the Court disapproves of the conduct of a litigant who seems to have the law on his side".³⁴

Finally, in relation to the imposition of a constructive trust, while it is perfectly possible to establish such a trust on the well-known "equity in *Pallant v Morgan*", where it would be unconscionable in the case of a joint venture to exploit land to deny the non-acquiring party an interest in land, no such equity arises where a defendant who already owns land enters into an agreement which is subject to further negotiations. The reason for this is that the level of unconscionability is far too weak for the imposition of a constructive trust.

I.C.C.L.R. 2009, 20(5), 165-171

[1.](#)

New Zealand and Australian Land Co v Watson (1880-81) L.R. 7 Q.B.D. 374 CA at 382.

[2.](#)

Goodhart and Jones, "The Infiltration of Equitable Doctrines into English Commercial Law" (1980) 43 M.L.R. 489.

[3.](#)

Editorial Comment, "Commercial Equity" (1993) 14 *Company Lawyer* 42.

[4.](#)

Cobbe v Yeoman's Row Management Ltd [2008] 1 W.L.R. 1752 HL.

[5.](#)

Cobbe [2006] 1 W.L.R. 2964.

[6.](#)

Law Commission. *Report on Formalities for Contracts for the Sale etc. of Land*. 1987. Law Com. No.164, para.5.14.

[7.](#)

Law Commission. *Report on Formalities for Contracts for the Sale etc. of Land*. 1987. Law Com. No.164.

[8.](#)

Law Commission. *Report on Formalities for Contracts for the Sale etc. of Land*. 1987. Law Com. No.164, para.4.

[9.](#)

Yaxley v Gotts [2000] Ch. 162 CA (Civ Div).

[10.](#)

The requirements for a successful claim to proprietary estoppel were laid out in *Taylor Fashions v Liverpool Victoria Trustees Co Ltd* [1982] Q.B. 133 Ch D.

[11.](#)

Yaxley v Gotts [2000] Ch. 162 at 180.

[12.](#)

See generally, *Lloyds Bank Plc v Rosset* [1991] 1 A.C. 107 HL.

[13.](#)

Yaxley v Gotts [2000] Ch. 162.

[14.](#)

Pallant v Morgan [1952] 2 All E.R. 951 Ch D. For an excellent discussion of the doctrine, see N. Hopkins, "The *Pallant v. Morgan* 'Equity'?" [2002] Conv. 35.

[15.](#)

Cobbe [2008] 1 W.L.R. 1752.

[16.](#)

Cobbe [2008] 1 W.L.R. 1752 at 1769.

[17.](#)

Lonrho Plc v Fayed (No.2) [1992] 1 W.L.R. 1 Ch D.

[18.](#)

Lonrho [1992] 1 W.L.R. 1 at 9-10.

[19.](#)

Pallant v Morgan [1952] 2 All E.R. 951.

[20.](#)

Banner Homes Holdings Ltd (formerly Banner Homes Group Plc) v Luff Developments Ltd (No.2) [2000] Ch. 372 CA (Civ Div); see also *Kilcarne Holdings Ltd v Targetfollow (Birmingham) Ltd* [2004] EWHC 2547 (Ch).

[21.](#)

Banner Homes [2000] Ch. 372 at 397.

[22.](#)

K. Gray and S. Gray, *Elements of Land Law*, 6th edn (2009), p.1197.

[23.](#)

Taylor Fashions [1982] Q.B. 133 at 151.

[24.](#)

Att Gen of Hong Kong v Humphreys Estate (Queen's Gardens) Ltd [1987] A.C. 114 PC (Hong Kong).

[25.](#)

Cobbe v Yeoman's Row Management Ltd [2005] W.T.L.R. 625 Ch D.

[26.](#)

Yaxley v Gotts [2000] Ch. 162.

[27.](#)

Cobbe [2005] W.T.L.R. 625 at [123].

[28.](#)

Cobbe [2008] 1 W.L.R. 1752 at 1769.

[29.](#)

Cobbe [2008] 1 W.L.R. 1752. See M. Pawlowski, "Oral Agreements: Estoppel, Constructive Trusts and Restitution" [2008] L. & T. Review 163.

[30.](#)

Cobbe [2008] 1 W.L.R. 1752 at 1767.

[31.](#)

Pallant v Morgan [1952] 2 All E.R. 951.

[32.](#)

Cobbe [2008] 1 W.L.R. 1752.

[33.](#)

Cobbe [2008] 1 W.L.R. 1752 at 1773.

[34.](#)

Cobbe [2008] 1 W.L.R. 1752 at 1775.