

WHEN CHANCERY MEETS FAMILY

SOLE NAME CASES, JOINT NAMES CASES and INTERVENOR CLAIMS

AN UPDATE ON PROPERTY DISPUTES

LUKE BARNES

3 DJB, 15 Took's Court, London EC4A 1LB

SEMINAR ONE

Welcome to this short seminar, whose SRA level is “Update”. Aimed at providing a survey of current law and recent authorities in the area, its anticipated duration is 1 hour 30 minutes. It is not aimed at imparting a comprehensive knowledge of this complex area of law, but to be a useful introduction to the current state of the law.

	page
Appetisers and general principles	2
A. SOLE NAME CASES – establishing the beneficial interest	5
B. JOINT NAME CASES – <i>Jones v Kernott</i> : the principles in practice	20
C. QUANTIFYING THE BENEFICIAL INTERESTS – actual, inferred or imputed intention	27
D. VARIATION OF THE BENEFICIAL INTERESTS – detriment and disposition	30
E. INTERVENOR CLAIMS	41
F. PRACTICE POINTS	45
G. AUTHORITIES	47

Appetisers

- Don't confuse inference and imputation
- Establishing a beneficial interest and quantifying it are different exercises
- Fairness is not a factor in establishing a beneficial interest and only a default factor in quantifying the interest. Needs are all but irrelevant.
- A case based on generalised contributions which neglects or omits the essential elements of common intention and detrimental reliance is seriously flawed
- Detriment plays a vital role in establishing a beneficial interest (sole name cases), varying the interests informally or even disposing of an interest by way of a constructive trust
- Whoops ! Disposing of an established beneficial interest by signed writing (s53.(1)(c) LPA 1925) is easier than you may think
- Properly pleaded statements of case (particulars of claim / defence and counterclaim in CPR part 7 and points of claim / defence in intervenor claims) are more compelling than long witness statements
- Equitable doctrines concerning undue influence, illegality, common and unilateral mistake, fraud, occupation rent, the equity of exoneration and even the presumption of advancement may come into play in a seemingly routine case – all to come in Seminar Two !
- Luke's 2025 Legal 500 entry (Private client: trusts and probate) reads: "Luke is an exceptional barrister both in terms of his judgement and his people skills. He is bright, respected and highly regarded. He goes out of his way to be helpful and leaves no stone unturned". More Legal 500 details in the attached website profile.
- Luke offers a TOLATA Private Neutral Evaluation and FDR service. Specimen retainer letter attached.

WHEN CHANCERY MEETS FAMILY

2025 SEMINAR TWO - ‘TLATA ADD-ONS’

AN UPDATE ON PROPERTY DISPUTES INVOLVING RELATIVES AND COHABITANTS

LUKE BARNES

3 DJB, 15 Took’s Court, London EC4A 7LB

A.	Occupation rent	1
B.	Undue influence	3
C.	Mistake	12
D.	Illegality	14
E.	The extent of the TOLATA jurisdiction - ordering a buy-out etc.	19
F.	Joint bank accounts	21
G.	Equity of exoneration	25
H.	The presumption of advancement	27
I.	Practice points	27
J.	Authorities	28

I. PRACTICE POINTS

- in all sorts of cases, be alive to the possibility that a key transaction may have been vitiated by fraud, mistake or undue influence – but do not rush into ill-considered proceedings
- *Patel v Mirza* and *Stoffel & Co v Grondona* have greatly liberalised the law on enforcing claims tainted by illegality – but drug dealers still face an uphill struggle to claim successfully
- the TLATA jurisdiction is wide and probably will continue to expand
- the same applies to the scope of common intention constructive trusts
- joint bank accounts: find the account opening document and take careful instructions on why the account was set up and how it was operated
- come out of left field – plead the equity of exoneration
- the presumption of advancement may arise in many cases – including joint bank accounts
- don't hesitate to apply for witnesses to be excluded until their evidence is heard – *Luckwell v Limata* [2014]
- G.L.O.B.E. (get Luke on board early !)