WHEN CHANCERY MEETS FAMILY

SOLE NAME CASES, JOINT NAMES CASES and INTERVENOR CLAIMS

AN UPDATE ON PROPERTY DISPUTES

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SEMINAR ONE: TLATA – The Nuts and Bolts

Welcome to this short seminar. Aimed at providing a survey of current law and recent authorities in the area, its anticipated duration is 1 hour. 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.

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 under a constructive trust and only a default factor in quantifying the interest. Needs are all but irrelevant.

- An express declaration of the trusts on which the property is to be held is *prima facie* determinative of the parties' beneficial shares, excluding any constructive or resulting trust – but it may be varied subsequently by a constructive trust or proprietary estoppel

- 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

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SEMINAR TWO

TLATA ADD-ONS – the real Chancery stuff !

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Appetisers

- occupation rent will require clear, fact-based argument either way – attention to detail !

- 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 tax evasion and drug trafficking will cause problems

- the TLATA jurisdiction will very probably 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 and remains a potent weapon – especially when direct / live evidence is unavailable

- don't hesitate to apply for witnesses to be excluded until their evidence is heard – *Luckwell v Limata* [2014]. The test is: will this enhance the quality, purity and reliability of the evidence