

June 29, 2025

## Good Faith & Estoppel in English Law: Principles in Flux (Abridged Version)

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**Date:** 29 June 2025

#### A. Introduction

English law is currently grappling with two doctrinal flashpoints: **good faith in contracts** and the **remedy for proprietary estoppel**. Both highlight a system in transition — marked by doctrinal flux, judicial experimentation, and calls for clarity.

**Good Faith** – Traditionally, English law has been sceptical of good faith, favouring contractual autonomy and legal certainty. Yet courts are increasingly willing to imply duties of fair dealing and cooperation, especially in “relational contracts” — long-term, trust-based arrangements. This marks a shift from the minimal honesty standard in *Interfoto Picture Library Ltd v Stiletto Visual Programmes Ltd* [1989] 1 QB 433 [439], toward more substantive obligations, as in [Yam Seng Pte Ltd v International Trade Corporation Ltd \[2013\] EWHC 111 \(QB\)](#) [121, 129-131, 144] and [Bates v Post Office \(\(No. 3\) Common Issues\) \[2019\] EWHC 606 \(QB\)](#) [1122]).

**Proprietary Estoppel** – The core debate is whether the remedy should meet the claimant’s expectation or compensate for reliance-based detriment. This controversy appeared in [Davies v Davies \[2016\] EWCA Civ 463](#); [2016] 2 P & CR 10 [50, 39] and reached the Supreme Court in [Guest & Anor v Guest \[2022\] UKSC 27](#) [50, 158]. There, the majority rejected a detriment-based model, holding that the remedy aims to fulfil the expectation, with proportionality acting as a cross-check rather than the primary rule [13, 50, 71-72, 158].

**Doctrinal Flux** – English law, long grounded in autonomy, is now more open to fairness-based interventions — particularly in cooperative or power-asymmetric settings. Courts are recognising relational dynamics and reliance-based expectations in modern commercial life.

Good faith duties are cautiously being implied into relational contracts (*Yam Seng*; *Bates*), while proprietary estoppel addresses unconscionable reliance (*Guest*).

**Looking Ahead** – The core tension is whether to formalise these developments through codification or continue their case-by-case evolution. Though the trend points toward greater contextual fairness and intervention, the law remains unsettled — particularly on the scope of implied duties and the

basis of estoppel remedies. The question is not whether change is happening, but how far it should go, and on what principled basis.

## **B. Key Themes:**

English contract and property law is in flux, largely due to the evolving treatment of **good faith** and **proprietary estoppel**. Courts are reassessing the balance between contractual certainty and party autonomy on the one hand and commercial fairness and protection against unconscionable conduct on the other.

### **1. Evolution of Good Faith in Contract Law**

- **Why it matters:** English common law's traditional reluctance to recognise a general duty of good faith is being reconsidered. Growing judicial acceptance reflects a move towards collaboration in contract performance, particularly in long-term relationships (*Yam Seng* [120-121, 123, 142]).
- **How it appears in recent case law:**
  - [\*\*\*Yam Seng Pte Ltd v International Trade Corporation Ltd \[2013\] EWHC 111 \(QB\)\*\*\*](#): Leggatt J noted English law was "swimming against the tide" by resisting good faith [120-121, 124]. He implied a duty encompassing honesty, cooperation, and fidelity to the bargain in "relational contracts" — those involving long-term commitment, communication, and mutual trust [129-131, 139, 142].
  - [\*\*\*Bates & Ors v Post Office Ltd \(\(No.3\) Common Issues\) EWHC 606 \(QB\)\*\*\*](#): Fraser J held that the contracts between the Post Office and sub-postmasters were relational, implying duties of good faith, transparency, co-operation, and trust and confidence [45(1), 326, 700, 705-707, 711, 720, 738]. He stated this duty extended beyond honesty to include avoiding "commercially unacceptable" conduct and maintaining fidelity to the bargain [710].
  - [\*\*\*Essex County Council v UBB Waste \(Essex\) Ltd \[2020\] EWHC 1581 \(TCC\)\*\*\*](#): Pepperall J adopted Fraser J's nine characteristics of relational contracts from *Bates*, and held the long-term PFI contract was a "paradigm example", justifying an implied duty of good faith [113].
- **Underlying policy concerns:** The aim is to promote fairness and cooperation in long-term commercial relationships, safeguard reasonable expectations in performance (*Yam Seng* [145]), and align with international norms. Despite concerns about vagueness, courts stress that good faith is context-specific but capable of principled application (*Yam Seng* [123, 142, 146-147, 154]).

### **2. Remedial Flexibility vs. Certainty in Proprietary Estoppel**

- **Why it matters:** This theme concerns how courts should remedy proprietary estoppel: by meeting the claimant's expectation or compensating their detriment. The choice affects property rights, legal certainty, and outcome predictability (*Guest* [7, 81, 136, 156-159, 171]; *Davies* [39]).
- **How it appears in recent case law:**
  - [\*\*\*Guest & Anor v Guest \[2022\] UKSC 27\*\*\*](#) is the leading authority, resolving the "lively controversy" [7, 136, 156-159]. The majority (Lord Briggs) rejected a detriment-based model, holding that the aim is to avoid unconscionability by fulfilling the claimant's promise or expectation [13, 53, 61, 69, 71, 76]. "Minimum equity to do justice" does not mean the cheapest remedy, but what is needed to prevent unconscionability [13, 30-31, 80]. Proportionality is a secondary check against injustice [72, 76, 68, 72, 85].

- The minority (Lord Leggatt) preferred a detriment-based approach, arguing estoppel aims to prevent harm from reliance, thus favouring the least onerous remedy [188-190, 195-197, 206, 232].
- Earlier cases like *Jennings v Rice* 1 P&CR 8 and *Davies v Davies* [2016] EWCA Civ 463; 2 P&CR 10 had raised the issue and endorsed proportionality but left the core purpose unsettled [42, 50, 52, 156-157].
- **Underlying policy concerns:** The aim is to prevent unconscionable conduct and ensure justice (*Guest* [174, 6, 40, 46, 48, 59, 65, 94, 61, 80, 4, 160]). The Supreme Court sought to enhance consistency and predictability, rejecting ad hoc "palm-tree justice" [81-82, 156, 162-164, 171-172, 181]. It also addressed the tension with formal statutory requirements in property law, affirming equity's role in preventing injustice despite non-compliance (*Guest* [4, 107, 175, 178, 192]).

### 3. Textualism vs. Contextualism in Contract Interpretation

- **Why it matters:** This theme concerns whether courts should interpret contracts strictly by their wording or consider broader commercial context and purpose. It affects party autonomy, certainty, and how unforeseen issues are addressed (*Guest* [94, 108-109, 112-113]).
- **How it appears in recent case law:**
  - *Bates & Ors v Post Office Ltd ((No.3) Common Issues) EWHC 606 (QB)*: Fraser J discussed leading authorities *Wood v Capita Insurance Services Ltd* A.C. 1173; *Arnold v Britton* A.C. 1619, describing interpretation as a "unitary exercise" balancing text, context, and commercial purpose [620-629, 660, 629, 630, 911, 915]. He warned courts not to rewrite contracts simply because the outcomes seem unfair [18, 32, 619-626], a sentiment echoed in *Essex* [94, 96]. He also criticised overreliance on the contra proferentem rule in commercial cases, favouring plain construction and commercial sense [634-638].
  - *Essex County Council v UBB Waste (Essex) Ltd [2020] EWHC 1581 (TCC)*: Reinforced the objective meaning of words in their "documentary, factual and commercial context" [87].
- **Underlying policy concerns:** Courts seek to preserve party autonomy and contractual certainty (*Yam Seng* [123, 152]; *Bates* [1096]; *Guest* [55]), while interpreting agreements as reasonable commercial parties would have understood them. Judicial restraint is key — avoiding hindsight-based re-interpretation (*Bates* [272, 623, 626, 745, 921]; *Essex* [94, 96]; *Guest* [108-109, 139-140]).

### 4. Judicial Intervention and Protection of Weaker Parties

- **Why it matters:** Despite English law's emphasis on contractual freedom, courts intervene where there is significant imbalance in bargaining power—especially in standard form contracts and where onerous terms are imposed.
- **How it appears in recent case law:**
  - *Bates & Ors v Post Office Ltd ((No.3) Common Issues) EWHC 606 (QB)*: Fraser J noted the Post Office's "extremely strong bargaining position" and that terms were "not open to negotiation" [982, 51(4)].
  - **Onerous/Unusual Terms:** Applying Interfoto, the court held that particularly onerous terms required specific notice; some SPMC terms were unenforceable due to lack of such notice [959, 961-962, 970-971, 975-979, 995, 1049, 1054-1055, 1102].
  - **Unfair Contract Terms Act 1977 (UCTA):** Certain terms (e.g. liability for losses,

compensation for loss of office) failed the reasonableness test under UCTA, showing readiness to intervene even in commercial contracts with unequal bargaining power—despite general judicial caution in this area [976, 1062–1110, 1095].

- **Implied Duties:** Relational contract findings imposed good faith duties on the stronger party (Post Office), requiring fair dealing, cooperation, and transparency [725–726, 1122].
  - ***Autoclenz v Belcher [2011] UKSC 41*** (cited in Bates): Emphasised identifying the “true agreement” by being “realistic and worldly wise” [915], especially where one party dictates terms [17, 865, 909–926].
- **Underlying policy concerns:** Courts aim to prevent abuse of dominant bargaining positions by requiring proper consent for harsh terms, promoting substantive fairness (via UCTA) and procedural fairness (e.g. notice for unusual terms) and by examining the real substance—not just the label—of the contract [915–922].

These developments signal a broader shift from classical contract theory as courts adapt to complex commercial and domestic contexts. While upholding certainty and autonomy, they increasingly intervene to ensure fairness and prevent unconscionable outcomes.

## C. Background

English contract and property law has developed through a complex interplay of tradition, evolving judicial interpretation and external influences.

### 1. Traditional Position Under English Law

English contract law traditionally emphasises **literal interpretation** of express terms to determine the objective meaning of the parties’ language (Bates [620, 621, 625]; Guest [209, 217–218]; Yam Seng [85–86]). Courts avoid rewriting contracts based on hindsight or perceived unfairness, even if terms prove harsh (Bates [626]; Guest [216, 218]). This supports commercial certainty (Yam Seng [123, 162]).

**Implied terms** fall into two categories:

- **In fact:** inserted to give business efficacy or where terms are so obvious they “go without saying” (Yam Seng [123, 127, 132]; Bates [690, 691, 694–696]; Essex [92–93]).
- **In law:** implied as inherent to particular types of contracts. Implication requires necessity, not mere reasonableness (Yam Seng [127]; Bates [695]).

English law has shown **historical hostility to a general duty of good faith** (Yam Seng [120–123]; Bates [638, 651]), favouring piecemeal solutions to unfairness (Yam Seng [121, 123]). This reflects a preference for individualism and a concern that a broad good faith doctrine would create legal uncertainty (Yam Seng [123]).

In **proprietary estoppel**, the doctrine originated defensively—preventing a party (A) from enforcing property rights against another (B) where A had encouraged detrimental reliance on a mistaken belief (Bates [714–715, 717, 719–721, 725, 736]; Guest [139, 145, 151, 188]). It was not initially a positive cause of action to enforce informal promises (Bates [714]; Guest [178, 205–206]).

### 2. Contrasts with Civil Law or International Practice

English law’s traditional resistance to a general duty of good faith sets it “against the tide” of many

legal systems (*Yam Seng* [124]). Civil law jurisdictions like Germany, France, and Italy have long recognised a broad good faith principle rooted in Roman law (*Yam Seng* [124]).

Other common law systems—including the US, Canada, Australia, and Scotland—have also increasingly embraced or implied good faith duties in contractual performance (*Yam Seng* [125–127, 129–131]; *Bates* [636–637]). This underscores a divergence in approach: English law prefers a piecemeal, case-specific model (*Yam Seng* [121, 123, 129–131]; *Bates* [721–722]).

In **proprietary estoppel**, early Australian cases, such as *Commonwealth v Verwayen*, leaned toward a **detriment-based remedy**. However, this position later shifted. High Court decisions like *Giumelli v Giumelli* and *Sidhu v Van Dyke* reaffirmed an **expectation-based approach** as the default, aligning more closely with English doctrine (*Guest* [56–60, 185, 230–233]).

### 3. Emergence of Key Judgments

Several landmark cases have shaped the modern approach to good faith and proprietary estoppel:

- ***Yam Seng Pte Ltd v International Trade Corporation Ltd [2013] EWHC 111 (QB)***: A key development, this case proposed that duties of good faith could be implied into “relational contracts,” even absent a general doctrine (*Yam Seng* [129–131, 139, 142, 152–153]). Leggatt J defined such contracts as long-term, trust-based relationships involving significant communication and cooperation (*Yam Seng* [142]). The implied duty required parties to avoid conduct deemed “commercially unacceptable by reasonable and honest people,” going beyond mere honesty (*Yam Seng* [138–144, 152–153]; *Essex* [114]).
- ***Bates & Ors v Post Office Ltd ((No.3) Common Issues) EWHC 606 (QB)***: Building on *Yam Seng*, Fraser J applied the relational contract concept to the Post Office–subpostmaster relationship (*Bates* [702–705, 710–712, 720–722, 725–729]). He identified key features: absence of terms excluding good faith, intent for a long-term relationship, and significant mutual commitment (*Bates* [725–727]; *Essex* [105]). The Post Office’s role as a public body reinforced its implied duty of good faith (*Bates* [730]).
- ***Essex County Council v UBB Waste (Essex) Ltd [2020] EWHC 1581 (TCC)***: Reinforced that long-term PFI contracts are paradigmatic relational contracts warranting implied duties of good faith (*Essex* [112–113]; *Bates* [696]). However, an express term contrary to good faith would preclude implication (*Bates* [683–684]).
- ***Guest & Anor v Guest [2022] UKSC 27***: Clarified the remedy in proprietary estoppel, rejecting the detriment-based model and affirming that the goal is to eliminate unconscionability, typically by fulfilling the claimant’s expectation (*Guest* [53, 61, 68–72, 75, 79–80, 93, 136, 156, 158–159, 168]). “Minimum equity to do justice” means a remedy sufficient to cure unconscionability, not merely the least burdensome (*Guest* [13, 25–26, 62, 65–67, 80]). The Court also addressed “acceleration” of inheritance promises, allowing for discounts where fulfilment is brought forward in time (*Guest* [63–64, 78–79, 90, 240, 241]).

### 4. External Drivers

**Commercial Realities and Sectoral Needs:** The complexity and duration of modern commercial relationships—particularly in sectors like waste management (PFI contracts) and network services (Post Office)—have driven courts to adopt more flexible interpretations and imply duties such as good faith. The Post Office’s tight control over sub-postmasters and their role handling public funds supported a finding of relational contracts (*Bates* [29–31, 730]). Courts also recognise that standard-form contracts often involve unequal bargaining power, prompting a move beyond rigid, “take-it-or-leave-it” reasoning.

**Academic Critique:** Legal scholarship has significantly influenced judicial reasoning. Academics have criticised the lack of clarity in doctrines like good faith and proprietary estoppel (*Guest* [158-159, 7, 170-171]; *Yam Seng* [150]; *Bates* [709]). The “lively controversy” over estoppel remedies spurred the Supreme Court in *Guest* to provide clear guidance and reduce litigation uncertainty (*Guest* [156, 158-159, 171-172]). Courts now acknowledge academic commentary as a valuable interpretive aid (*Yam Seng* [150]; *Bates* [709, 93]).

## D. Legal Issues and Analysis

English law on contract and proprietary estoppel has evolved significantly through recent landmark cases that clarified principles and resolved longstanding debates.

### Issue 1: Implication of Good Faith in Commercial Contracts

Traditionally, English law has been sceptical of a general duty of good faith in contract performance, preferring **piecemeal responses** to specific instances of unfairness (*Yam Seng* [121, 123]).

However, recent decisions in *Yam Seng*, *Bates*, and *Essex County Council v UBB Waste* show a clear shift toward recognising implied duties of good faith in certain commercial relationships—especially relational contracts.

### Authoritative Judicial Reasoning and Comparison of Views

#### 1. Traditional Stance and its Rationale:

In [\*\*\*Yam Seng Pte Ltd v International Trade Corporation Ltd \[2013\] EWHC 111 \(QB\)\*\*\*](#), Leggatt J (as he then was) noted the consensus that English law lacks a general good faith principle (*Yam Seng* [120-121]), citing Bingham LJ in *Interfoto Picture Library Ltd v Stiletto Visual Programmes Ltd* 1 QB 433, who observed that English law develops solutions “piecemeal” rather than adopting broad doctrines (*Yam Seng* [121]).

Leggatt J identified three core reasons for this “traditional hostility” (*Yam Seng* [123]):

- Preference for incremental solutions over general principles.
- An individualistic ethos, favouring party autonomy.
- Concern that a general duty of good faith would introduce uncertainty due to its subjective and vague nature.

#### 2. Emergence of Relational Contracts and Implied Good Faith:

Despite the traditional position, Leggatt J (as he then was) in *Yam Seng* noted that English law was “swimming against the tide” compared to civil and other common law systems like the US, Canada, Australia, and Scotland, which recognise a general duty of good faith (*Yam Seng* [124-127, 128]).

He concluded that a duty of good faith can be implied “in fact” into ordinary commercial contracts based on the parties’ presumed intention—consistent with established implication methodology, not as a general term implied “in law” (*Yam Seng* [132, 142]; *Bates* [705(2.67)]).

Leggatt J also introduced “**relational contracts**”, defined as long-term relationships involving substantial commitment, trust, communication, cooperation, and predictable performance (*Yam Seng* [142]; *Bates* [708]). Examples include joint ventures, franchises, and long-term distributorship.

The duty of good faith is **context-sensitive** and prohibits conduct that reasonable and honest people would find **commercially unacceptable**, going beyond mere honesty (*Yam Seng* [141, 144, 188];

*Bates* [709-710]).

### **3. Solidification and Application of Relational Contracts:**

***Bates & Ors v Post Office Ltd ((No.3) Common Issues) EWHC 606 (QB)***, Fraser J (as he then was) expressly affirmed and applied the **concept of relational contracts** to the sub-postmaster agreements, calling it “one of the most important issues” in the case (*Bates* [152-153, 161-162, 189, 31]). Drawing on Yam Seng, he identified **nine key characteristics** of relational contracts (*Bates* [725]):

1. No express exclusion of good faith duties.
2. Long-term contract intended to endure.
3. Performance with integrity and fidelity.
4. Commitment to collaboration.
5. Contract’s aims not fully captured in writing.
6. Mutual trust and confidence (distinct from fiduciary duties).
7. Ongoing communication and loyal, predictable performance.
8. Significant financial investment by one or both parties.
9. Elements of exclusivity.

All nine were found in *Bates*, with emphasis on the Post Office’s high degree of control and the sub-postmasters’ position of trust (*Bates* [730, 45]).

Fraser J rejected the academic view (referencing **Chitty on Contracts**) that good faith means only honesty, calling it “simply wrong” and affirming that it encompasses more (*Yam Seng* [188]; *Bates* [710]).

In ***Essex County Council v UBB Waste (Essex) Ltd [2020] EWHC 1581 (TCC)***, Pepperall J described a 25-year PFI contract as a “paradigm example” of a relational contract where good faith is implied (*Essex* [112-113]; *Bates* [683-685]). He accepted Fraser J’s nine features as helpful indicators but questioned whether the absence of inconsistent terms is a **characteristic** or merely a **precondition** (*Bates* [650-651]; *Essex* [106]).

Pepperall J also clarified that **entire agreement clauses** do not prevent implication, as implied terms help explain what the written contract means (*Essex* [110-111]; *Bates* [672-674]).

### **Coherence and Consistency in Development**

The development of good faith in English contract law is increasingly coherent. The initial “hostility” (*Yam Seng* [123]) has shifted to a more nuanced view, with good faith implied in specific, identifiable situations, mainly within “relational contracts” (*Yam Seng* [142], *Bates* [705-711], *Essex* [99-100]).

The objective test—“commercially unacceptable by reasonable and honest people”—remains consistent (*Yam Seng* [144], *Bates* [705, 706, 711, 738, 999, 1113], *Essex* [114-115]). Pepperall J’s clarification on “no inconsistent express terms” (*Essex* [106-107]) shows the courts refining the boundaries for implication.

Courts are building on *Yam Seng* by offering clearer guidance on what makes a contract “relational.” This shift from strict textualism to a contextual, purposive approach supports fair dealing without sacrificing contractual certainty.

### **Academic Commentary**

**McKendrick** (2019) notes the "traditional English hostility". **Collins'** [\*Is a relational contract a legal concept?\* \(2016\)](#) is referenced in *Bates* [705], with Fraser J (as he then was) acknowledging its "sceptical point of view" [736] but concluding the concept is not a "passing fad" [736]. Leggatt J (as he then was) references **Chitty on Contracts** in *Yam Seng* [121, 139, 188], while Fraser J critiques its narrow focus on honesty in *Bates* [710].

## Comparative Law Note

English law has traditionally diverged from civil law systems, which broadly recognise good faith (e.g. Germany's BGB §242, France's *bonne foi*) (*Yam Seng* [124]). The U.S. imposes a general duty of good faith and fair dealing (UCC, Restatement (Second)) (*Yam Seng* [125]). Canada and Australia also increasingly imply such duties (*Yam Seng* [126–128]) and even Scottish law accepts a broad duty (*Yam Seng* [129–131]). Recent English judgments—especially on relational contracts—mark a partial shift, addressing claims that English law was "swimming against the tide" (*Yam Seng* [124]).

## Sectoral Implications

**In Practice: Construction & Infrastructure** Long-term, complex projects (e.g. under PFI models) are increasingly classed as relational contracts, implying duties of good faith, cooperation, and fair dealing. This affects how discretion is used, how information is shared, and how disputes are handled. In [\*Essex County Council v UBB Waste \(Essex\) Ltd \(Rev 1\) \[2020\] EWHC 1581 \(TCC\)\*](#), a 25-year PFI contract was called a "paradigm example" of a relational contract [113], with duties implied (*Bates* [683–685], *Essex* [112–113]). Parties must shift from adversarial conduct to collaboration aligned with the venture's "spirit and objectives" [104].

**In Practice: Franchise & Agency Relationships** Franchise and agency arrangements involving mutual trust and long-term commitment are also susceptible to implied duties. In *Bates v Post Office*, the court held the sub-postmaster contracts were relational due to the "long-term mutual intention" [725.2], Post Office's "high degree of control" [29] and sub-postmasters' trust-based role [32, 726, 730, 785]. Conduct is therefore judged by what is "commercially unacceptable" to reasonable and honest people [705, 706, 711, 738, 999, 1113], extending beyond mere honesty [738].

## Issue 2: The Basis and Remedy of Proprietary Estoppel

Proprietary estoppel, especially concerning promised future property interests, has sparked a "lively controversy" (*Guest* [50, 52]) over whether its remedy should meet the claimant's expectation or compensate for detriment. In [\*Guest & Anor v Guest \[2022\] UKSC 27\*](#), the Supreme Court clarified that the remedy's primary aim is expectation-based.

## Authoritative Judicial Reasoning and Comparison of Views

### 1. The "Lively Controversy":

Lord Briggs in [\*Guest & Anor v Guest \[2022\] UKSC 27\*](#) described a "fundamental divergence" over whether the aim is to satisfy expectation or compensate detriment [7], a debate ongoing for over 25 years.

Lewison LJ in [\*Davies v Davies \[2016\] EWCA Civ 463\*](#) (quoted in *Guest*) summarised the two "fundamentally different" approaches [50]: one favouring expectation fulfilment unless disproportionate, the other protecting the reliance interest by compensating detriment [50, 158].

### 2. The Majority View (Lord Briggs):

- Lord Briggs, giving the majority judgment, firmly rejected the detriment-based approach [13,

71, 79], calling its logic "faulty" for focusing on detriment rather than loss of expectation [53].

- He stated the remedy addresses the unconscionability of repudiating a promise [13, 8], and courts should "start with the assumption" that enforcing the promise is the default remedy [75].
- Clarifying Scarman LJ's dictum in *Crabb v Arun District Council [1976] Ch 179*, he said "the minimum equity to do justice" refers to a remedy sufficient to negate unconscionability—often by fulfilling the expectation—not opting for the cheapest outcome [13, 25–26].
- Proportionality is a "useful cross-check," ensuring the remedy isn't "out of all proportion" to the detriment, but should not be applied via "detailed mathematical examination" [72]. Detriment with "lifelong consequences" resists simple valuation [72].
- Lord Briggs underscored equity's flexibility to deal with practicalities—e.g. providing a "clean break" where cohabitation is impossible, or adjusting for "acceleration" when inheritance is advanced during the promisor's lifetime [79, 6, 32, 63–64].

### 3. The Minority View (Lord Leggatt):

- In dissent, Lord Leggatt argued "proprietary estoppel" is "inapt," as estoppel is traditionally "negative and essentially defensive" [137, 108, 151], proposing "property expectation claim" as a better term [154–155].
- He viewed the "basal purpose" as avoiding or preventing detriment [189, 232] and preferred remedies that "impose the least burden on the defendant" when multiple options exist [197]—his reading of "minimum equity" [197].
- He criticised the lack of a "principled basis" for remedies, stating "English law needs to do better" [160] and warned against "palm-tree justice" [156, 163, 164].
- For revoked inheritance promises, he favoured compensation for reliance loss as fairer and more predictable [259–260].

## Coherence and Consistency in Development

*Guest & Anor v Guest [2022] UKSC 27* clarifies previously "confused waters" [17], with Lord Briggs confirming expectation-based relief as the doctrine's primary aim and rejecting the detriment-based view [71, 61, 69].

This aligns with the historical English approach of enforcing promises to prevent unconscionability rather than merely compensating reliance loss [61].

Though Lord Leggatt's dissent reveals ongoing conceptual debates, the majority promotes clearer, more predictable outcomes. The remedy remains flexible but is now firmly framed within an expectation-based model, with proportionality as a "cross-check" rather than the core principle.

## Academic Commentary

**Cooke** (*The Modern Law of Estoppel*) and **McFarlane** (*The Law of Proprietary Estoppel*) are cited as central figures in the expectation vs. detriment debate [7, 170]. Lord Briggs followed Cooke in noting English courts have long favoured expectation-based relief [38].

Lord Leggatt's dissent draws heavily on academics (e.g. Robertson, Mee, Samet, McFarlane, Sales, Gardner) supporting reliance-based approaches or criticising doctrinal incoherence [163–164, 170–171, 224]. He also cited Professor Dixon's "Jackson Pollock" metaphor to describe the doctrine's unpredictability [172].

## Comparative Law Note

**Australia:** Early dicta (e.g. *Commonwealth v Verwayen* HCA 10) leaned toward detriment avoidance [56, 66–67] but later cases (*Giumelli v Giumelli*, *Sidhu v Van Dyke*) shifted back to an expectation-based model, aiming to reflect the value of the promise where resiling is unconscionable [59–60, 232, 57–59, 230, 233].

**Canada:** In *Cowper-Smith v Morgan* SCC 61, the Supreme Court linked the remedy to proportionality and the detriment to be avoided [230].

## **Sectoral Implications**

**In Practice: Family Property & Inheritance Disputes** [\*\*\*Guest & Anor v Guest \[2022\] UKSC 27\*\*\*](#) offers key guidance for family and inheritance disputes, especially in farming families where informal inheritance promises are common. If a proprietary estoppel claim succeeds, the **default remedy** is to fulfil the claimant's **expectation** (e.g. property transfer or equivalent sum), not merely compensate detriment. This enhances predictability for claimants who made lifelong sacrifices based on such promises.

However, remedies remain flexible—courts may apply an “**acceleration**” **discount** for early inheritance or ensure a “**clean break**” where relationships have irreparably broken down [79, 6, 32, 63–65, 259–260, 16, 85, 128–129]. The goal is **substantial justice**, balancing expectations, family dynamics, and the promisor's situation.

**In Practice: Property Transactions & Land Development** For property professionals, Guest affirms that proprietary estoppel is not a general fairness tool or licence for “**palm-tree justice**” [156, 164, 162]. While the doctrine allows informal land interests to arise, it is grounded in **unconscionability**, with the **primary remedy being promise fulfilment**.

This reinforces legal certainty by clarifying when and how informal land promises will be enforced, and by confirming expectation-based relief—unless clearly **disproportionate or impracticable** [81].

## **E. Conclusion**

The current state of proprietary estoppel reflects a tension between flexibility and the need for principled, predictable application.

### **1. Codification or Restatement**

There is no move toward statutory codification but a clear trend toward restating and clarifying core principles [65, 81, 136, 160]. In [\*\*\*Guest & Anor v Guest \[2022\] UKSC 27\*\*\*](#), the Court addressed the long-standing remedy debate, with Lord Leggatt criticising the lack of clarity as leading to “inconsistent and arbitrary decision-making” [158–160, 163–164, 171–172].

Lord Briggs firmly rejected a detriment-based aim, stating it “has not taken root in England” [69, 71], and promoted a framework where **promise-fulfilment** is the starting point—tempered by practicalities, justice, fairness to third parties, and proportionality [61, 72, 75, 94]. This balances certainty and flexibility [81–82]. Lord Leggatt emphasised that equity must be principled and that judges must give reasons to ensure transparency and accountability [161, 166].

### **2. Doctrinal Drift or Stabilisation**

The doctrine has seen 25 years of drift over the remedy’s aim (expectation vs. detriment) [158–159, 7]. [\*\*\*Guest & Anor v Guest \[2022\] UKSC 27\*\*\*](#) marks a significant **stabilisation**, particularly by:

- **Rejecting detriment as the aim:** Lord Briggs confirms it should be “firmly reject[ed]” [69,

71], arguing the harm lies in repudiation and non-fulfilment [70].

- **Affirming expectation as the starting point:** Fulfilment is the "normal and natural remedy" [61, 75], especially in cases near the "almost contractual" end of the spectrum [77].
- **Using proportionality as a cross-check:** While not the goal, proportionality is "a useful guard against potential injustice" [68, 72, 94].

Lord Leggatt acknowledged this attempt at stabilisation but remained concerned about the lack of a clear mandate and the doctrine's "unprincipled and consequently unpredictable" nature [163–164, 171–172]. He favoured reliance loss compensation, particularly where promises are revoked before due [254–256, 259–260, 276]. Still, the majority judgment strongly advances a principled, expectation-based—but flexible—approach to proprietary estoppel in English law.

### 3. A Bifurcation between General Principles and Sector-Specific Carve-outs

The sources reveal a **bifurcation** (division into branches or parts) in how flexible equitable principles apply across contexts: informal family promises (proprietary estoppel) versus formal commercial contracts (implied duties of good faith/relational contracts).

**Proprietary Estoppel (Family/Informal Contexts):** Primarily used in domestic settings—often involving family farms or homes—where informal promises are common and formal contractual certainty is not expected [81, 108, 111, 187]. Lord Briggs contrasts this with business contexts [81], and Lord Leggatt observes that seeking a contract in such settings may be "superfluous or offensive" [187]. The remedy is flexible, focused on preventing "unconscionable conduct" and often fulfils the expectation interest [65, 61, 5].

**Implied Duties of Good Faith/Relational Contracts (Commercial Contexts):** English law does not imply a general duty of good faith in all commercial contracts [264] but may do so in **relational contracts**—long-term, trust-based agreements (*Guest* [264], *Bates* [705], *Essex* [99, 100, 129]).

In *Bates v Post Office*, the sub-postmaster contracts were found relational, implying duties of good faith, cooperation, and trust (*Guest* [264, 243–244], *Bates* [31, 1110–1112]), requiring the Post Office to exercise powers like suspension/termination in good faith (*Bates* [1117]).

In *Essex County Council v UBB Waste*, the court affirmed relational contracts and the usefulness of good faith implication (*Essex* [105–106]) but clarified that inconsistent express terms override implication (*Essex* [107]) and that a right to terminate is not generally subject to a good faith qualification (*Essex* [97]).

This reflects a narrower application of good faith in commerce—supporting certainty and fairness without invoking broad unconscionability, as seen in estoppel.

### Forward-looking Questions

1. How will courts distinguish "informal" vs "commercial" contexts, especially in hybrid family-business arrangements?
2. Will clearer proprietary estoppel principles reduce "snowballing" litigation, or will fact sensitivity still limit predictability?
3. Could the growth of relational contract principles push English law toward a broader, more unified doctrine of good faith in commerce?

### F. Key Takeaway:

Recent developments in proprietary estoppel and implied duties in relational contracts present both risk and opportunity. Clarity in arrangements and effective management of expectations are critical.

## 6.1 What to Watch For

### **Proprietary Estoppel - Informal Promises in Domestic Contexts:**

- **Vague Assurances & Detrimental Reliance:** Informal promises in family settings—even vague ones—can give rise to equity if relied upon to the claimant's detriment, including irreversible, life-changing decisions (Guest [4, 108, 154, 177, 59, 197-198]).
- **Unconscionability as Core:** The remedy aims to prevent the promisor's failure to take responsibility for reasonably relied-upon promises (Guest [13, 61, 94, 190-191]).
- **Expectation Starting Point, Proportionality Check:** Expectation fulfilment is the usual remedy, but courts check for disproportionality to detriment (Guest [61, 94, 68, 76, 218]).
- **“Clean Break” Awards:** Where relationships break down, courts may award a discounted monetary sum for early fulfilment of a future expectation (Guest [32, 63-64, 78, 98, 128-129, 259-260]).

### **Implied Duties in Commercial/Relational Contracts:**

- **Identifying Relational Contracts:** Recognised features include long-term duration, trust, cooperation, mutual investment, and loyalty (Yam Seng [48, 114, 123, 142, 135, 148-149], Essex [99-100, 103-105]). The Post Office-sub-postmaster contracts were found relational (Essex [103-104]).
- **Implied Duty of Good Faith:** Relational contracts include a duty not to act in a way deemed commercially unacceptable by reasonable and honest people—going beyond honesty to include fair dealing and fidelity (Yam Seng [152-153, 79-81, 110-111], Essex [112-117, 114-115]).
- **Limits on Discretionary Powers:** Discretionary powers (e.g. suspension/termination) must be exercised in good faith—not arbitrarily or unreasonably (Bates [404, 45(2)-(3)], Yam Seng [145, 204]).
- **Onerous/Unusual Terms:** Such terms must be brought clearly to the other party's attention to be enforceable (Bates [961-962, 979]), a key issue in the SPMC.
- **UCTA 1977:** Standard terms excluding liability or altering performance must meet the UCTA reasonableness test, with the burden on the party relying on them (Bates [1122(7)]).

## 6.2 How to Protect Clients

### **Proactive Drafting and Clear Communication:**

**Proprietary Estoppel:** Warn individuals making informal property or inheritance promises of potential estoppel claims. Encourage clear, written documentation (Guest [14, 178]). If informal promises are made, clarify their non-binding nature and discourage reliance by setting conditions or limits.

### **Relational Contracts:**

- **Define Good Faith Scope:** Clearly define or limit any intended duty of good faith (Yam Seng [135, 148-149], Essex [106]), though total exclusion of honesty is “hardly conceivable” (Yam Seng [149, 187]).
- **Draft Discretion Clauses Carefully:** Specify criteria for exercising powers and discretion to prevent abuse. Advise clients that powers must serve their proper purpose (Bates [404], Yam

Seng [145, 203-204]).

- **Highlight Onerous Terms:** Take steps to bring onerous/unusual terms to the other party's attention (e.g. highlighting, separate signing, or legal advice) (Bates [1122(4-7)]).

### **Risk Mitigation and Due Diligence:**

- **Assess Relational Nature:** Identify relational contract features early to determine applicable duties of good faith and cooperation.
- **UCTA Compliance:** Review standard terms for compliance with UCTA, especially those limiting liability or altering performance expectations. Unreasonable terms are unenforceable.
- **Document Detriment:** Advise potential estoppel claimants to record contributions or sacrifices made in reliance on promises (Guest [31-32, 282Appendix 1-2]).
- **Manage Breakdown Scenarios:** In failed relationships involving property promises, explore a "clean break" monetary remedy, including potential discounts for early receipt (Guest [78, 98, 259-260, 105]).

### **Post-Contractual Conduct:**

- **Maintain Transparency:** Encourage honest, open dealings. Misleading or withheld information may breach implied duties (Yam Seng [114, 64, 171]).
- **Fidelity to Bargain:** Advise clients to honour the contract's spirit, especially during unexpected developments (Yam Seng [152-153, 139], Essex [139]).

By addressing these issues proactively through drafting, negotiation, and relationship management, practitioners can better protect clients navigating proprietary estoppel and relational contract obligations.

### **G. Parting Thoughts**

*The evolution of English law on good faith and estoppel is less a romance than a tense affair between contractual rigidity and equitable fairness.*

*Yam Seng cracked the door open by recognising honesty duties in long-term commercial relationships—prompting academic enthusiasm and cautious judicial reception. Bates v Post Office escalated matters, exposing conduct the court found egregiously unfair. Essex v UBB confirmed that even in detailed, high-value contracts, courts may still imply a duty to act reasonably—because parties often fail to do so.*

*Guest v Guest delivered a Supreme Court-level reckoning with generational promises, sacrifice, and familial breakdown—resolved with a remedy balancing expectation and detriment. The Court's response was a case study in conscience, moral harm, and how far equity must go to undo a broken promise.*

*The result is a landscape where equity no longer plays sidekick to contract. Good faith, though still doctrinally uneasy, is now tolerated—even welcomed—where relational dynamics justify it. Proprietary estoppel, once modest, has evolved into a bold, fact-sensitive tool for achieving substantial justice.*

*English law hasn't gone fully continental—but it is sipping wine with equity, flirting with good faith, and questioning whether strict formalism still belongs at the party.*

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**#ProprietaryEstoppel, #RelationalContracts, #ImpliedTerms, #Unconscionability, #LegalDoctrine, #JudicialTrends, #GuestvGuest, #BatesvPostOffice, #YamSeng, #EssevxUBB, #CommercialFairness, #ExpectationsVsDetriment, #LegalScholarship, #LawAndJustice, #CommonLaw, #CaseLawUpdate**

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Arbitrator Assessor for the CIArb

ICE DRC Member

ICE DRC CPD Committee Chairman

Adjudicator Exam Question Setter for the ICE

CIArb Adjudication Panel Member since 2006

CIArb Arbitration Panel Member since 2006

CIC Adjudication Panel Member since 2010

Law Society Panel Arbitrator

RIBA Adjudication Panel Member since 2018

RICS Adjudication Panel Member since 2006

TECSA Adjudication Panel Member since 2012

FIDIC Adjudication Panel Member since 2021

ICE Adjudication Panel Member since 2021

RICS Dispute Board Registered since 2013

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