

Proprietary estoppel and licitation in Jersey Law

Briefing Summary: Where co-owners of jointly owned property cannot agree over the sale or division of indivisible land, the Royal Court of Jersey can order a sale *en licitation* (by public auction). The remedy stems from the legal principle that joint owners cannot be compelled to remain in co-ownership. This was the case in *Birmingham v Le Hegarat* [2025] JRC 012, in which it is believed to be the first time since 1972 that a *licitation* has been ordered. The decision also supports the position that proprietary estoppel forms part of Jersey law.

Service Area: Dispute Resolution and Litigation

Location: Jersey

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Created Date: 26 March 2026

What happened?

In January 2025, the Royal Court of Jersey ordered the sale *en licitation* (by public auction) of a property that was jointly inherited by four children as owners in common in indivisible shares following the death of their father in 2019. The property in question was a farmstead that the children's parents had bought in the seventies and worked as a potato farm. The order was sought by the three sisters, the plaintiffs, after they had been unable to reach an agreement with their brother, the defendant, over the sale or division (known as a *partage*) of the property.

In its judgment, the court rejected a counterclaim by the defendant that the whole property had been promised to him by his father, that he had lived at the property his whole life and had taken over the farm and purchased the stock and farm equipment after his parents' retirement in 1989. There was a valid will leaving the property equally to the four siblings. However, this document considerably pre-dated the defendant taking over the operation of the farm. The defendant relied upon the remedy of proprietary estoppel to resist both the '*licitation*' application and to claim ownership of the property in its entirety, arguing that the plaintiffs would be unjustly enriched if they were to receive equal shares in the property.

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However, the court found against the defendant on the evidence. The court ruling that the essential elements of a claim in proprietary estoppel were not made out: that there was insufficient evidence of a promise being made to the defendant; and that the defendant had not relied upon or acted to his detriment on the faith of such a belief. The unjust enrichment claim fell away for similar reasons.

The order for sale *en licitation* allowed for a period of a maximum of 10 months for the defendant to vacate the property and to allow the parties to negotiate a private sale or agreement for its division. The court also ordered that in the event that the defendant refused or neglected to give effect to the order directing the sale of the property by auction, the contract of sale would be executed by the Viscount to have effect and transfer the interest of the defendant in the property.

The doctrine of proprietary estoppel in Jersey law

Proprietary estoppel is a well-established part of English law. Although there are a number of varieties of estoppel, in general terms an estoppel is said to arise where a promise has been made in reliance on which a person has acted to their detriment, which make it "unconscionable" for the person making the promise to rely on their strict legal rights. In those circumstances an "equity" arises, and the law provides a remedy based upon the minimum equity necessary to do justice. In some cases, this may require the property, or the value thereof, to be transferred to the recipient of the promise. However, in other cases the remedy required may be less than this. The authorities emphasise the need for the relief provided by the court to be proportionate to the detriment suffered by the person relying on the promise.

Whether the doctrine of proprietary estoppel (variously referred to as promissory, proprietary or equitable estoppel) can be applied in Jersey has been the subject of some debate. Criticism has focussed on the direct conflict between proprietary estoppel and the rules of Jersey land law. Firstly, because Jersey law does not recognise a theoretical division between the legal ownership of immovable property and its beneficial ownership. Secondly, because the court cannot make an order for specific performance to create or extinguish an interest in land, as it cannot compel a party to pass a contract before the Royal Court. The court can however make an order for damages as an alternative to specific performance.

Birmingham v Le Hegarat has reinforced the position that proprietary estoppel forms part of Jersey law, approving the approach of the Royal Court in *Maçon and Maçon v Quérée* [2001] JLR 80 and reiterated in *Cannon v Nicol* [2006] JLR 299. The court finding that the doctrine may be tailored to fit Jersey law, i.e. by allowing damages in lieu, even though the court cannot otherwise order the transfer of the property. The fundamental purpose of proprietary estoppel is to prevent unconscionable conduct. Once the necessary elements are made out, the Jersey court still has a wide range of remedies for the unconscionable behaviour that can be applied in a way that will not offend established Jersey principles.

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While *Burmingham v Le Hegarat* is a further judgment upholding proprietary estoppel as a remedy in Jersey, all of the authorities, including those doubting its application, are judgments of the Jersey Royal Court and are therefore not strictly binding on the Royal Court in future cases. A definitive answer to this question therefore awaits either a decision by the Court of Appeal or by specific legislation.

Sale en *licitation*

The law relating to sale *en licitation* is well-established. It is based on the Jersey law maxim "*nul n'est tenu de rester dans l'indivision*" (No one is obliged to remain in joint ownership). In *Ritson v Slous* [1973] JJ 2341, the Royal Court stated: "*We are satisfied that it is the contestable right of the owner of an undivided share of any real estate to enforce the sale of such real estate, and we know of no rule of law which prevent this court from divesting a person of his property when the justice of a case dictates that it be done*".

In order to end co-ownership, the property in question is put up for sale at public auction. Each co-owner is free to bid at the auction to try to become the land's sole owner. The risks of *licitation* are that a sale by public auction carries with it the uncertainty of whether the sale price will be more or less favourable than a private sale and, in cases where the co-owners are interested in acquiring the property outright, that the property might be acquired by a third party. The auction is a "no reserve" auction.

Because a sale *en licitation* is so rarely ordered there is a lack of clarity on the process to be used. A supervising jurat is appointed to oversee the sale process and to report back to the Royal Court. In *Burmingham v Le Hegarat*, the plaintiffs brought a representation seeking various orders in relation to the sale process (e.g. appointment of marketing agents, auctioneer, setting commissions, final longstop date for sale, division of the costs of sale, etc) and for the appointment of a supervising jurat. It is not clear whether the supervising jurat has the power to adjudicate between the parties should any issues arise in relation to the sale process. In future, it may be helpful to include in the court order a provision that the parties have liberty to apply to the Royal Court if the event they cannot resolve any issues.

It is usual for contracts for the sale and purchase of property to include a clause that the vendor will provide vacant possession. This means that a property is sold empty of occupants, personal belongings, and rubbish on completion. Failure to do so potentially gives rise to a claim by the purchaser for damages and/or to refuse to complete the contract as a repudiatory breach. Because situations in which *licitation* is sought involve circumstances in which the co-owners cannot agree, it can be the case that one or other of the co-owners does not co-operate with the process, including by refusing to vacate the property and/or to remove their belongings. The other co-owners have no ability to evict a co-owner refusing to leave prior to the sale – because pending the termination of the co-ownership each of the co-owners has the right to make use of the whole property (*Haas v. Duquemin & Anor* [2002] JLR 271). Eviction and proceedings to remove property left behind can only effectively be brought by the new purchaser following completion. To avoid difficulties associated with the potential inability to guarantee vacant possession, the auction sale and purchase contracts can be tailored to manage the risk of a breach, e.g. by providing for retentions in respect of the costs of eviction or removal of goods, liquidated damages, or that the co-owners will use best endeavours to provide vacant possession.

Practical conclusions for industry

Burmingham v Le Hegarat illustrates the Royal Court's disposition towards the remedy of proprietary estoppel and further develops the line of Jersey law authorities that detail both the essential requirements of proprietary estoppel, and how the court will approach what redress is needed to stop the unconscionable conduct in a way that is fair to all parties.

In addition, the judgment confirms that sale *en licitation* remains a valid form of remedy to end co-ownership of a property, despite its rare usage. Procedural pitfalls can be avoided by carefully considering the drafting of court orders and the contract of sale, as well as preserving the ability of the parties to apply for further orders in the event of an inability to agree on the sale process.

Finally, *Burmingham v Le Hegarat* serves as a useful reminder of the importance of recording a person's wishes as to how their property will be inherited in a valid will, and in particular of the need to update or redo these documents in light of changing circumstances, in order to avoid potential future disputes and possibly lengthy and costly litigation.

FAQs

1. What is a sale *en licitation* and when can it be ordered?

A sale *en licitation* is a public auction ordered by the Royal Court when co-owners cannot agree on the sale or division of indivisible property. It is based on the rule that no one can be forced to remain in co-ownership.

2. Why was a licitation ordered in this case?

The four co-owners inherited the property in equal shares but could not agree on its sale or division. The court ordered a *licitation* after rejecting the defendant brother's claims that he had been promised the entire property.

3. Why did the defendant's proprietary estoppel claim fail?

The court found insufficient evidence of any promise made to the defendant and no proven reliance or detriment. The essential elements of proprietary estoppel were not made out, so the counterclaim failed.

4. Does proprietary estoppel form part of Jersey law?

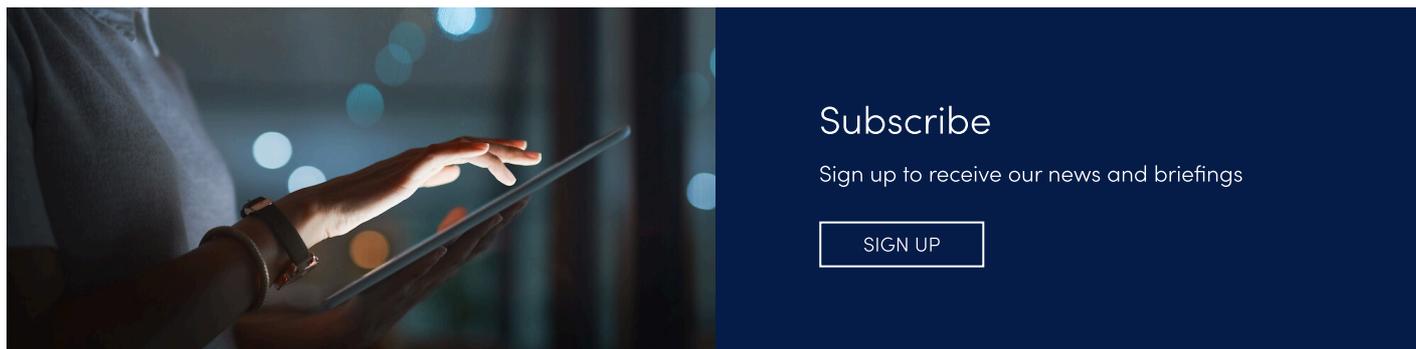
Yes. The court reaffirmed that proprietary estoppel applies in Jersey, but remedies must be tailored to Jersey law—typically through damages, since the court cannot compel transfer of immovable property.

5. What practical lessons does this judgment highlight?

The case confirms that *licitation* remains a valid remedy to end co-ownership and highlights the importance of clear, up-to-date wills, and carefully considering the drafting of court orders and the contract of sale, as well as preserving the ability of the parties to apply for further orders in the event of an inability to agree on the sale process.

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