



Neutral Citation Number: [2025] EWHC 2806 (Ch)

Case No: PT-2021-LDS-000015

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS IN LEEDS
PROPERTY, TRUSTS AND PROBATE LIST(ChD)
DERIVATIVE CLAIM

Leeds Business and Property Courts
6 Westgate, Grace St. Leeds LS1 2RP

Date: 03/11/2025

Before :

MR SIMON GLEESON
(sitting as a Judge of the High Court)

IN THE MATTER OF THE ESTATE OF RAJ KAUR, DECEASED

Between :

Kanta Kaur

Claimant

- and -

(1) Kouri Kaur
(2) Lynsey Harrison (in her capacity as
administratrix of the Estate of Raj Kaur (Deceased))
(3) Lashmi Singh
(4) Lakhbir Kaur
(5) Sukhdev Kaur
(6) Sabu Singh
(7) Deep Kaur
(8) Sukhdev Singh
(9) Thakur Singh
(10) Gurmit Kaur

Defendant

David Rose (instructed by **Spencer West Solicitors**) for the **Claimant**
Nigel Woodhouse (instructed by **Benchmark Solicitors LLP**) for the **First Defendant**
Sarah Harrison (instructed by **Clarion Solicitors**) for the **Second Defendant**

The other Defendants did not appear and were not represented.

Hearing dates: 12-15 and 18-22 August 2025

Approved Judgment

This judgment was handed down remotely at 10.30am on 3 November 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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Mr Simon Gleeson:

1. The Parties

1. The Claimant and the First and Third to Tenth Defendants are the ten children of the late Sava Singh, who died on 18 May 2000 (“Father”), and his wife, the late Raj Kaur who died on 11 August 2014 (“Mother”). At all material times Father and Mother lived in a house in Leeds, where the children were brought up and which they all considered their family home (the “Family Home”).
2. For the sake of simplicity, I have referred the children by their first names. It may be helpful to note that, in a Sikh family, it is traditional to use the religious names Singh for men and Kaur for women (Singh meaning "lion" and Kaur meaning "princess" or "lioness"). Hence Sabu Singh is the brother of Kouri Kaur, and Sukhdev Singh is the brother of Sukhdev Kaur.
3. On 16 July 2014, shortly before her death, Mother made a will (“the Will”). The contents of that will are the cause of these proceedings.
4. The Second Defendant, Lynsey Harrison, who is not a member of the family, was appointed as Administratrix of Mother’s estate on 5 June 2018.

2. The Issues

5. Although there is a long list of points which I am asked to decide, the issues between the parties are relatively straightforward. They are four, these being:
 1. Was the money transferred by Mother to Kouri a loan or a gift and, if the former, what is the quantum of Kouri’s obligation to repay?
 2. Did Kouri remove and retain items of Mother’s gold during the period when it was in her possession?
 3. Did Kouri wrongfully retain monies paid to her as occupation rent for the Family Home during her executorship and fail to account for them to the estate?

4. Was the “Heads of Agreement” document executed on the 22 June 2015 intended to operate as a binding contract between the parties?

It is important to stress what matters are not in issue here. There is no suggestion of incapacity or undue influence over Mother, and therefore no challenge to the validity of either the will or the mortgages executed by her.

6. I think it may be important to stress the limits of the way in which the court can deal with issues of the kind before me. It is not up to me to decide – or even to express a view on – the question of the morality or otherwise of particular acts by particular individuals. This is not an area where the court has any discretion to award remedies based on the merits of individuals actions or inactions. The question as regards the first issue is simply one as to the intention of Mother at the time that the transfers were made. The question as regards the second and third issues – misappropriation of the gold and of the rent monies – is simply as to whether the claimants have proved their case on the balance of probabilities. The question in the fourth case is simply as to the application of the legal rules as to contract formation. In none of these cases is it my role to express any view as to the moral rightness or wrongness of the conclusion to which the law comes.

3. The Proceedings

7. These proceedings have a complex history, which I do not think it is of any great value to set out here. In summary, after Mother’s death, Kouri and Thakur were appointed executors and obtained probate. However, Thakur relatively soon stepped back from his role, leaving Kouri as sole executor. It proved impossible to settle the estate accounts due to disputes as to who owed what to whom, and it seems that bad blood between the siblings meant that no progress could be made in this direction. By 2018 the Family Home had still not been sold, since Sabu was occupying it and (it seems) refusing to move out. Kouri as executor, commenced possession proceedings against him. At the same time Kanta commenced proceedings seeking the replacement of Kouri as executrix by a professional executor (the “Removal Proceedings”). This application was agreed, and the Second Defendant was appointed sole executor to replace Kouri on 5 June 2018. On 30 November 2018 the Family Home was sold.
8. The fundamental dispute which prevented the estate accounts from being settled was as to amounts which Mother had advanced to Kouri before her death. Kanta (and other siblings) were strongly of the view that these should be repaid by Kouri, and were therefore assets of the estate. Although Kouri indicated a willingness in principle to make such payments, it proved impossible to reach agreement on the amount to be repaid. The dispute escalated, with Kanta arguing that Kouri was legally obliged to return the monies, and Kouri arguing that she was not.
9. Kanta strongly urged the Second Defendant to pursue the Loan Claim, and she had investigated it pursuant to her duties as Executrix. She took the position that the claim was doubtful, and that the (minimal) resources of the remaining estate would not be appropriately employed in bringing it. Thus, in the absence of any indemnity for costs incurred (which it is agreed as never offered) she took the view that the claim was one which should be fought as between the beneficiaries, and that she should remain neutral as regards such a claim.

10. By an Order dated 10 August 2020 (made in the Removal Proceedings), DJ Goldberg set a deadline by which Kanta should issue separate proceedings to pursue her allegations about the monies produced by the remortgages of the Property (the “Loan Claim”), if so advised.
11. Kanta issued the present proceedings as sole Claimant in relation to both the Loan Claim and the jewellery and rent claims on a derivative basis on 29 January 2021. She chose to join all of the beneficiaries of the Deceased’s estate as Defendants.
12. By Order dated the 15th of October 2022 Sukhdev Singh was added as co-Claimant (and became the Second Claimant) and permission to amend the Particulars of Claim was given. It should be noted that Sukhdev Singh was the residuary beneficiary under the will.
13. On 14 August 2023 various directions were given in relation to disclosure, evidence of fact and preparation of a Scott Schedule. There was an order for an ENE on 22 November 2023, but this was ineffective because none of the parties had served evidence. No ENE was ever re-listed.
14. None of the Defendants other than the First and Second have filed Defences. Therefore, under the terms of the Order of 14 August 2023, the other Defendants are debarred from defending.

4. The Evidence

15. There was remarkably little documentary evidence available in respect of any of the events described, and the primary source of evidence was the oral and written evidence of the family members.
16. The common denominator of the witness statements was a high degree of vagueness as to the recollections of the witnesses of relevant events. Many of the witness statements were contradictory as to minor details, heavily influenced by retrospection, and apparently motivated by a strong desire to blacken the character of the First Defendant. I was therefore able to establish the broad outlines of the relevant events, but many matters of detail are left to be dealt with by inference and deduction.
17. I also note that the Claimant’s witness statement (and those of her other supporting witnesses) were clearly drawn up by reference to witness statement of the First Defendant, since they take issue with a number of the assertions therein. Since the First Defendant’s Witness statement was dated 27 November 2023, whereas all of the Claimants witness statements (bar one) are dated 25 February 2025, my assumption is that the Claimant and her witnesses prepared these statements by reference to the Defendants’ Witness Statements. This does seem to me to be a breach of PD57AC, since a Claimant’s witness being examined in chief would not have had the benefit of hearing the Defendant’s evidence. I also think it casts considerable doubt on the veracity of this evidence, and where the Claimant’s evidence and the First Defendant’s evidence conflict, I am prima facie inclined to prefer the First Defendant’s evidence.

18. In terms of the substance of the evidence given, although there are a relatively large number of witnesses, the testimony of the sisters in particular is in most cases given from a distance. The reason for this is that is that, in accordance with family tradition, the girls' marriages were arranged at a fairly young age, and when a girl married, she and her parents expected that she would be completely absorbed into her husband's family, and to be obedient to him and to his parents. Her ability to communicate with her own family, and particularly her own parents, would be limited. The degree of limitation seems to have varied – for example Gurmit testified that because she had married into a very traditional family, she had been effectively unable to communicate with Mother for long periods of time. Consequently, the degree of contact between the married daughters and Mother was considerably less than might otherwise have been expected, and their ability to give evidence as to her activities and dispositions was correspondingly reduced. Sons, by contrast, were expected to live at the family home until they established themselves.
19. The witnesses whose evidence is of most value are therefore those who were most closely involved with Mother at the relevant time – Lakhbir and Thakkur. Lakhbir, who left an abusive marriage in 2002, returned to the Family Home, and acted as Mother's main carer from then until her death. Thakkur lived in the Family Home with Mother at all material times. There are a number of other witnesses who can speak directly to particular events, but I think it is these two who had the most direct involvement with Mother.
20. It is clearly the evidence of the First Defendant which is of most significance in this case, and the Claimants mounted a full-scale attack on its reliability. It is true that the First Defendant, whilst giving oral evidence, was remarkably non-specific as to events, frequently testifying that a particular thing "must have" or "would have" happened, rather than whether it did or not. However, her testimony remained consistent over two days of cross-examination. I also note that although it would have been relatively easy for her to bolster her case by attributing intentions or words to Mother, she did not do so – indeed her evidence in this regard seemed to me to be careful and thoughtful. Mr Rose, for the Claimant, sought to argue that the reason for Kouri's caution in giving evidence was to avoid any risk of being tripped up by her prior inconsistent statements, and that this demonstrated her duplicity in giving evidence. I do not agree.
21. A more significant problem with the evidence emerged in the last few days of the hearing. For some reason a detailed analysis of Mother's financial position was only conducted whilst the trial was in progress, and was only submitted as part of the closing arguments. This analysis showed that, from 2005 onwards, Mother's income constituted the benefits which she received from the state and payments made by Kouri out of the revenues of Roundwood Estates. These payments covered far more than the amount needed to meet the Mortgage interest due. In aggregate, between March 2008 and October 2014 interest payments on the various loans totalled around £54,000. In that period Mother received cash transfers from Kouri in excess of £110,000. There is no evidence from Mother's bank account of any of the other siblings giving money to her (or of her giving any substantial amount of money to them). A number of the sisters observed in the course of their testimony that "mum had money", the implication being that she had some funds elsewhere. In particular, they alleged that Mother had around £30,000 in a bank account. That may well have

been the case on the date when Father died, but it seems very likely that it will have been consumed by Mother's living expenses after his death. At the date of Mother's death Kanta identified three possible bank accounts in Mother's name. The Lloyds account contained no such balance. The Yorkshire Bank account contained £4,500, and it is agreed that this was given by Mother to Kouri on 12 July 2014 - before Mother's death – Kouri says, to pay for her funeral. There was no evidence before me of any Santander Account. Thus, the money Mother had, she had because Kouri had given it to her.

22. This raises the point that it is necessary in this regard to characterise not only the payments made by Mother to Kouri, but also those made by Kouri to Mother. It is entirely possible that the arrangement between Kouri and Mother may have been, as Lakhbir says in her evidence, that "Kouri borrowed money from her, and was paying it back", and that these payments by Kouri constituted repayments of the amounts paid to her. This would be consistent with Kouri's evidence. The critical section of her witness statement reads as follows:

"It was just a helping hand from a mother to a child. We never agreed I would pay her back, my mum didn't ever expect me to pay her back and she never did ask me to. I said to my mum at the time that I would make sure she was alright and that, meaning I would make sure she always had money, you know to live off and she was going to pay the mortgage and whatever else she needed from that, there was a lot of payments going into my mum's account from me or my business for this reason and the money I gave her would have been used to pay for the mortgage and whatever else she needed so it was not always the same amount. I always used to help my mum out anyway with money and stuff even before she gave me the money from the remortgage."

23. It may of course be a coincidence that the payments being made by Kouri to Mother over and above the interest payment were approximately equal to the principal repayment that would be required on a 15-year mortgage, or that the arrangement, viewed from a distance, has all the characteristics of exactly the sort of equity release arrangement that a person in the position of Mother might be advised to enter into if she wished to remain in her home. However, it is a fact of which I think I am obliged to take note.

5. The Preliminary Procedural Matters

24. There were a number of preliminary issues which required to be addressed before the substantive issues could be addressed, and these took up the first day of the hearing.

5.1 The Position of Sukhdev Singh

25. As noted above, Sukhdev Singh, having initially been joined as a defendant, applied to be and was joined as a Claimant on 13 May 2022. On 24th January 2025, Sukhdev Singh by e-mail indicated to Kouri's solicitors that he was "resigning from the case

against Kouri Kaur regarding the inheritance” and was not aware that the “[appeal to be heard by HHJ Jackson on 28th January 2025] has been taking place”. This e-mail was sent by Kouri’s solicitors to the court and to the Claimant’s solicitors. His position was canvassed at the beginning of the appeal hearing before HHJ Jackson and in the absence of evidence that he had dis-instructed his solicitors the action proceeded. Nonetheless Kanta’s solicitors by their Leading Counsel agreed that Sukhdev Singh’s intentions as to proceeding with the claim needed to be dealt with prior to the trial.

26. It appears from correspondence between the Claimants’ and Kouri’s solicitors that, prior to the notice of discontinuance, the Claimants’ solicitors had filed an application under CPR r.42.3 seeking a declaration that they had ceased to be the solicitor acting for Sukhdev Singh. However, this application was discontinued by the Claimant’s solicitors when they received the notice of discontinuance.
27. The problem that this process created is that the notice of discontinuance, alone and without more, was ineffective to remove Sukhdev Singh as a claimant. CPR r. 38.2 (2) provides that where there is more than one claimant, a claimant may not discontinue unless every other claimant consents in writing or the court gives permission. It is common ground that neither of these conditions was in fact satisfied.
28. It therefore follows that as at the first day of this hearing Sukhdev Singh was still a party to this action as a Claimant, despite the fact that he probably believed that he was not. I therefore had to decide how to deal with the situation.
29. CPR r 38.2(2) gives no guidance on the principles to be applied by the court when considering such an application. In *Stati v Republic of Kazakhstan* [2018] EWCA Civ 1896 [29] David Richards LJ, speaking for the Court (at [31]) approved the following extract from the judgment of HHJ Simon Barker QC (sitting as a Judge of the High Court) in *Singh v The Charity Commission* [2016] EWHC B33 (Ch):

"(1) the rules do not prescribe any particular test for permitting discontinuance or, for that matter, for setting aside a notice of discontinuance; (2) a claimant's desire to bring proceedings to an end where there is no counterclaim should be respected, not least because a claimant cannot be compelled to prosecute a claim; (3) the court has an inherent discretion including as to the timing of any discontinuance; (4) as with any judicial discretion, it may only be exercised in accordance with principle but is otherwise unfettered; (5) the court's objective, both substantively and procedurally, is to achieve a just result according to law and to limit costs to those proportionate to the case; (6) the consideration required of the court is of all the circumstances and not merely those concerning only one party or only some of the parties; (7) when considering all the circumstances, conduct, particularly that aimed at abusing or frustrating the court's process or securing an unjust tactical advantage, is relevant and may well be important, but it is by no means conclusive; and, (8) when considering all the circumstances, the court should also have in mind its realistic

options, which may include imposing conditions while the proceedings remain extant."

30. It seems to me that there is no benefit to anyone in not accepting Sukhdev Singh's wish to cease to act as a claimant in this action. I was therefore prepared to treat him as having ceased to be a Claimant as of the first day of the trial, and an order was made to that effect. However, I have no information as to why he wished to discontinue, or what the relevant considerations were. Consequently I was unable to say whether his release as a party completely could have any detrimental effect on any of the other parties. I also note that, as the residuary beneficiary under the will, it seems to be important that he be a party to, and bound by, an action arising out of it. I therefore ordered that he be joined as a Defendant (albeit debarred from defending) as of the moment when he ceased to be a Claimant.
31. The ordinary consequence of discontinuance under CPR r.38.6 is that a costs order is deemed to have been made for the claimant to pay the defendant's costs up to the date of discontinuance, assessed on the standard basis, unless there is an application for a modification of the default position. I will be prepared to hear representations as to whether this should apply here when the question of costs arises for determination.

5.2 Whether the Court Should Permit this Action to be Brought as a Derivative Action?

32. The claims in the current proceedings are clearly ones which are vested in Mother's estate, and as such in the normal course of events would be brought by the Second Defendant as Administratrix on behalf of the estate. However, the Second Defendant, having considered whether the bringing of such claims would be in the interest of the estate, has determined that it would not. The Claimant therefore seeks to bring this claim as a derivative claim.
33. A beneficiary of an estate is able to bring a Derivative Claim on behalf of the estate if there are 'special circumstances'. In *Hayim v Citibank NA* [1987] AC 730, after reviewing the authorities Lord Templeman stated (p.748):

"These authorities demonstrate that a beneficiary has no cause of action against a third party save in special circumstances which embrace a failure, excusable or inexcusable, by the trustees in the performance of the duty owed by the trustees to the beneficiary to protect the trust estate or to protect the interests of the beneficiary in the trust estate."

More recently, in *Roberts v Gill* [2010] UKSC 22, Lord Collins stated (at para 46):

"The cases go back to the 18th century, and many of them were reviewed in *Hayim v Citibank NA* [1987] AC 730. The special circumstances which were identified in the earliest authorities as justifying a beneficiary's action were fraud on the part of the

trustee, or collusion between the trustee and the third party, or the insolvency of the trustee, but it has always been clear that these are merely examples of special circumstances, and that the underlying question is whether the circumstances are sufficiently special to make it just for the beneficiary to have the remedy...”

34. In relation to disputes between beneficiaries of trusts or estates, however, the position is rather different, and the starting point appears to be that the beneficiaries should themselves litigate the issues, at their own cost, with trustee or personal representative being neutral. In *Alsop Wilkinson v Neary* [1996] 1 WLR 1220, Lightman J stated (p.1225):

“In a case where the dispute is between rival claimants to a beneficial interest in the subject matter of the trust, rather the duty of the trustee is to remain neutral and (in the absence of any court direction to the contrary and substantially as happened in *Merry's case* [1898] 1 Ch. 306) offer to submit to the court's directions leaving it to the rivals to fight their battles.”

Further, in *Lines v Wilcox* [2019] EWHC 1451 (Ch), HHJ Paul Matthews observed at para 21:

“But 'hostile' trust disputes are or may be different. If it is a case where there are in effect rival claimants to the fund, the trustee's or personal representative's role should normally remain neutral and allow the rival claimants to fight out the matter between them.”

This is further emphasised by the decision of the Court of Appeal in *Re Evans* [1986] 1 WLR 101 where Nourse, LJ stated (p.107):

“In my view, in a case where the beneficiaries are all adult and sui juris and can make up their own minds as to whether the claim should be resisted or not, there must be countervailing considerations of some weight before it is right for the action to be pursued or defended at the cost of the estate. I would not wish to curtail the discretion of the court in any future case but, as already indicated, those considerations might include the merits of the action. I emphasise that these remarks are directed only to cases where all the beneficiaries are adult and sui Juris. The position might be entirely different if, for example, one of the beneficiaries was under age.”

35. The Second Defendant clearly had regard to these authorities when considering her proper course of action, and in a letter to Kanta's solicitors dated 20 April 2022, explained her position as that:

“...the nature of the dispute is one between warring beneficiaries, whereby it is more appropriate to let the

beneficiaries (who are all of full age) make up their own mind as to whether or not they wish to pursue the claim...”

36. The First Defendant argued that the action should not be allowed to proceed in this form, and that the correct course of action was for Kanta to have provided the Second Defendant with an indemnity as to costs in order to enable her to bring such an action on behalf of the estate.
37. On the particular facts before me, I considered that the action should be permitted to proceed as a derivative action. My primary reason for this was it seemed to me that the dispute to be litigated, having festered for 10 years, would continue until it was resolved, and that, pursuant to the overriding objective of the CPRs as set out in CPR 1.1, it was appropriate to decide it at this time in this place, where all the parties stood ready to engage. A further adjournment would, it seemed to me, create further costs without advancing in any way the objectives of justice.
38. The First Defendant also argued that, since the Second Defendant’s decision not to bring the Loan Action in the name of the estate was properly reached, it was inappropriate to allow the Claimant to – in effect – go behind it. I do not agree. As Lord Templeman says in the passage from Hayim quoted above, it is not necessary to justify a derivative action to argue that a trustee has breached his duty – an alleged failure of a trustee may be *excusable or inexcusable*. Where a trustee has properly concluded that bringing a particular action would not be in the interests of beneficiaries, it should be open to a beneficiary to come to court at his own expense to establish that that decision was wrong, which he can do by successfully bringing that action. It is important that a beneficiary should not in this regard be able to usurp the functions of the trustee, and to that extent it is clear that “special circumstances” must be present (see *Roberts v Gill* [2010] UKSC 22 at paras 103 & 110). However, in a situation where neither the trustee nor the other beneficiaries nor the court has any objection to such proceedings being brought, and the distribution of the trust estate is in practice in suspended animation until the dispute concerned is resolved, the bringing of proceedings in this form is simply the most efficient route to the resolution of the issues, and I am prepared to permit it.

5.3 *The Admissibility of Witness Statements in Earlier Proceedings*

39. The Claimant asked to place in evidence a number of Witness Statements filed by the First Defendant in other proceedings. However, the proceedings in which these witness statements were filed were settled without a hearing. CPR 32.12 therefore prevents them being used as evidence in these proceedings without either the consent of the First Defendant or the court. The First Defendant, unsurprisingly, did not consent. No application was made to me for permission under CPR 32.12(b), and I doubt whether a convincing application could have been made in any event. I therefore excluded these witness statements.

5.4 *The Scott Schedule.*

40. The action relating to the various items of Jewellery involved competing lists of different items. In order to assist with this dispute, paras 17 to 24 of the Order of DJ Royle dated 14 August 2023 ordered the preparation and filing of a Scott Schedule relating to each disputed item of jewellery. This was to contain comments from the Claimant, the First Defendant and any other party. The Schedule was duly prepared. It contains comments from the Claimant and various Defendants.
41. The Scott Schedule was not verified by Statements of Truth from the various contributing parties. There is no express provision for this in the CPR, and the Order of 14 August 2023 is silent upon the matter. In the Technology & Construction Court Guide, para 5.6.1 it is made clear that each party's entries on a Scott Schedule should be supported by a statement of truth. There is no corresponding provision in the Chancery Guide.
42. The precise status of a Scott Schedule is unclear. It can be described as a hybrid between a statement of case and a witness statement. It sets out the parties' cases in relation to specific items (thus expanding on the pleadings) but it also contains elements of evidence, here particularly in column 11 (observations of other parties). Notably, CPR 22.1(1) requires that both a statement of case and a witness statement be verified by a statement of truth. It would therefore seem strange and inconsistent that this should not be required in the case of a Scott Schedule.
43. However, the schedule itself consisted of nothing more than an assembly of statements from the different parties as to certain disputed facts. It seemed to me that it was in the nature of a joint submission by both sides summarising the differences of opinion as to certain specific issues. The statements made therein were, were necessary, put to the witnesses concerned as part of their oral examination, and verified. Since it was (or should have been) entirely clear to all those involved that the schedule itself would be treated as evidence given by the parties concerned, I did not consider it necessary to go through the performance at a late stage of requiring statements of truth.

6. The Facts

44. The family history follows a well-established pattern. Father moved to the UK in 1963 at the age of 21 and began to work hard. He acquired and operated a shop, which in time became several shops, which in time became a supermarket and a number of other properties. At the age of 44 he purchased the Family Home, where he and the family lived thereafter. His relatively sudden death at the age of 58 came as a great shock to the entire family.
45. It seems clear to me that the primary expectation that Father and Mother had of themselves was that they should provide for their children. This was an expectation that they imposed on themselves, that they and the siblings felt came from their community, and which they performed cheerfully and enthusiastically. Regular gift-giving from parents to children seems to have been the rule throughout the life of the family. The same does not appear true in reverse – a number of witnesses observed that parents would be very unwilling to take anything from their children, and that in particular, where a parent had given money, jewellery or other value to a child, it would be unthinkable for them to demand repayment.

46. In addition to regular subventions, there were certain substantial expenditures. As regards daughters, this meant the provision of dowries to the daughters' husband's family on marriage. As regards sons, this meant paying for an appropriately grand wedding, and providing assistance with the establishment of an appropriate family home. The impression that I received from all of the siblings who testified was that if Father and Mother had known that they would die penniless but having substantially provided for all their children they would have been content.
47. During her life Mother acquired a substantial amount of jewellery, some of which she wore regularly and kept in a small chest ('petti') at the Property, whilst other pieces were kept in a safe deposit box at Yorkshire Bank.
48. It is significant to note that throughout her life Mother was functionally illiterate. There was some debate as to what this meant in practice – as some of the siblings pointed out in their evidence, before Father's death she was involved in the management of his businesses, and after his death she managed to live on her own, managing bank and doctor's visits without assistance.
49. It is agreed that Mother spoke very little English, and her children communicated with her in Punjabi. Counsel for the Claimant argued that this meant that she must necessarily have been financially unsophisticated, since she could not have kept or examined the books and records of the family businesses. I unhesitatingly reject this submission – I am well aware that it is entirely possible for experienced businesspeople to manage extremely complex financial affairs "in their heads".
50. I note in passing at this point that I do not accept that illiteracy is a marker either of weakness of intellect or of an inability to grasp what is going on around one. Part of the Siblings case is that Mother had no (or very little) idea of what was being done in her name, despite the fact that she seems to have had things explained to her. That may be right, or it may be wrong. However, I do not accept that the fact of illiteracy has any bearing on how likely it is that a person will understand any verbal explanation of a transaction that involves them. Illiteracy is not stupidity.
51. Father's death in 2000 seems to have left the family in straitened circumstances. The siblings rallied round to the extent that they could, and a number of them (notably Kouri, Lakhbir and Kanta) moved into the Family Home at various times to help Mother.
52. Upon Father's death title to the Family Home passed to Mother. There was an outstanding mortgage in favour of Leeds & Holbeck Building Society at this time. There is no evidence of the amount owed at the time of Father's death.
53. In 2005 the Property was mortgaged to Habib Bank Zurich ("the Habib Loan"). It seems from the limited documentation available that what was actually going on here was that the First Defendant, Kouri Kaur, wished to take out a loan to establish an estate agency business, Roundwood Estates Limited. However, since that business was at that time nascent, the loan was supported by a mortgage on the Family Home. Thus, the Loan was from Habib Bank to Roundwood Estates, and the mortgage on the Property supported what was in effect a guarantee by Mother of the loan. There is a Legal Charge in favour of Habib dated 6 October 2005.

54. Kouri's Defence (at para 8(c)) states that she believes that the Habib Loan was for somewhere between £100,000-£110,000. Since it is highly unlikely that the Habib Bank would have been prepared to rely on a second charge, I assume that some of the proceeds would have been required to have been used to discharge the Leeds & Holbeck Mortgage. That would suggest that the amount received by Roundwood Estates would have been in the region of £85,000. This is broadly consistent with para 12 of Kouri's First Witness Statement.
55. The Habib Loan seems to have been a short-term commercial facility at a relatively high interest rate. Four months after it was entered into it was refinanced by mortgaging the Family Home directly. Thus, on or about 9 February 2006 the Family Home was remortgaged for £130,299 to St James' Place Bank. The effect of this transaction was to release Roundwood Estates from any obligation to repay the money which it had borrowed from Habib Bank, and to leave the liability to repay the amount lent with Mother. This transaction involved a borrowing of rather more than the nominal value of the Habib Bank loan, with a surplus of £38,986 being paid to Roundwood Estates.
56. Two years later the Family Home was again remortgaged for £150,000 (plus £1,800 fees) to Godiva Mortgages. The surplus of £18,845.72 was again paid to Roundwood Estates Ltd.
57. In May 2014 Mother was diagnosed with late-stage liver cancer and informed that she had very little time left to live. In July 2014 Kouri arranged for solicitors, Avery & Walters, to attend upon Mother and draft a Will for her. She was duly attended by a solicitor (Mr Steven Whiting) who was accompanied by another solicitor from his office who spoke Punjabi. On 16 July 2014 instructions were taken for a Will, which was duly prepared and executed the same day ("the Will").
58. I think the following facts about the execution of the Will are significant. First, it was prepared and executed in some haste, since Mother knew that she did not have long to live. Second, the attendance notes of the solicitors who attended her record her as being lively and engaged, and contain no indication that she was confused or unaware of her position. Third, this is a will prepared by a testator who knew that it was likely to take effect in a few weeks – and there is therefore no question of subsequent facts having affected the position as between the beneficiaries in a way which the testator might not have expected.
59. The contents of the Will can be summarised briefly thus:
 1. Kouri, Thakur and the directors of Avery & Walters Ltd were appointed as executors (clause 2.1).
 2. The executors were directed to divide Mother's jewellery kept in her bank deposit box between the Siblings in accordance with a list signed by Mother and kept with the Will, but in default of such list was to be divided between the Siblings at the discretion of her trustees (Clause 3.1(i)).
 3. Mother's furniture and household goods were given to Thakur (clause 3.1(ii)).

4. The Property was given to such of the Siblings as should survive her (clause 3.1(iii)).
5. Mother's residuary estate was given to Sukhdev Singh (Clause 6.1).
60. As Mother's health deteriorated, members of the family congregated in the house. On 17 July 2014 Mother went to the bank, transferred £4,600 from her bank to Kouri to pay for her funeral, and removed a safe deposit box (the "Safe Deposit Box") containing the bulk of her jewellery. This box was taken to the Family Home, where it was taken to Mother's bedroom and opened in the presence of Kouri, Gurmit and Thakur. It seems that the box contained some gold jewellery belonging to other members of the family, and those items were removed and given to those members of the family who were present in the house. The rest of the jewellery was laid out on Mothers' bed, and it seems that this was an emotional occasion for all present. There was clearly some discussion as to which members of the family should have which pieces. It appears that Mother gave some indications as to how some pieces might be dealt with. Kouri, who was present, wrote a paper list of the items present, along with some notes of Mothers' indications as to how she thought certain specific items should be dealt with. The manuscript document does not survive, but we have a typescript document which Kouri says is a faithful transcription of the manuscript list (although this claim is challenged).
61. It is common ground between the parties that there was no signed list of the jewellery in the Safe Deposit Box. Since the box was not brought to the house until after the will was executed, any list created at that time or thereafter could not take effect as a testamentary document.
62. It is common ground that Kouri then took the box away. The Claimant says that she was instructed by Mother to give the deposit box containing the jewellery to Avery & Walters, although this is disputed (and seems highly unlikely – Solicitors are not usually prepared to custody valuable property).
63. Mother died on 11 August 2014. It seems that almost immediately after her death disputes which had been festering between the siblings as to who should get what broke the surface.
64. It was entirely clear on the face of the Will that the amount to be distributed to the beneficiaries was the value of the house after the redemption of the outstanding mortgage. Thus the £260,000 or so which they expected to accrue to the estate from the sale of the house would in fact be £100,000 or so once the mortgage had been paid off.
65. After Mother's death, Avery Walters made attempts to deal with her estate. However, they seem to have been unable to obtain documentation such as bank statements, insurance details and documentation regarding the house and the mortgage. The Claimant says that these failures were the fault of Kouri for not providing the information. Kouri says – I think entirely reasonably – that since all of the documents required by Avery Walters would have been sent to the Family Home, and she was at that time in London, it cannot have been as a result of her failure that these documents were not provided.

66. The reality of the position was in fact extremely straightforward – Kanta, and a number of her siblings, thought that Kouri should repay the principal sum outstanding on the Mortgage, since the loan concerned had been taken out for her benefit. As matters progressed and bitterness mounted, further allegations were made against her – one being that she had misappropriated certain items of jewellery during the time that the Safe Deposit Box was in her possession, and the other being that she had charged rent for occupation of the property after Mothers’ death which she had not accounted for to the estate. However, the primary source of dispute remained the mortgage, and the question of whether Kouri should repay it.
67. As a result of these disputes, Avery & Walters felt unable to act in the administration of the estate and renounced probate on 12 February 2015. Thakur also subsequently renounced his executorship on or about 22 June 2015. Kouri therefore sought and obtained a grant of probate in her sole name on 24 August 2015.
68. The Safe Deposit Box was with Kouri from the date when she removed it from the Family Home. On the 29 October 2014 Kouri took the gold then in the Safe Deposit Box to a professional Jeweller, Sanjeev Jewellers, who valued it at £24,000 and provided a detailed list of the items presented to them.
69. Kouri, Lakhbir and Deep met at a gold shop in August 2015. Kouri’s evidence (which is not disputed) is that the gold that was present in the gold shop was divided equally by value between the siblings. Lakhbir and Deep received their shares directly, also taking the shares attributable to Kanta, Sukhdev Singh, Lashmi and (possibly) Thakur. Kouri took and passed on the shares to go to Sukhdev Kaur and Gurmit. She also took the share due to Sabu, which she subsequently agreed to buy from him.
70. The position as regards the Family Home after Mother’s death is not entirely clear. The Will was clear that Thakur should be able to live there for as long as he wanted. However, his evidence was that this was not an entirely comfortable position for him – partly because he was living in the house of his immediately deceased mother, and partly because other members of the family – who, fairly, regarded it as their own family home - continued to occupy it on an occasional basis. His immediate response was to invite his cousin Jimmy Singh and Jimmy’s girlfriend Ruksana Hussain to move in, which they seem to have done in around October 2014. They stayed for a period. However, in February 2015 his brother Sabu – who had been recently released from prison – also moved in, and it seems that Thakur regarded this as the final straw, moving out in May 2015. Sabu remained in residence for the next three years.
71. During this period Sabu regularly expressed his desire to buy the property from the estate – an arrangement which Kouri was happy to agree. However Sabu then embarked on an extensive stalling campaign, repeatedly claiming that he had an offer of a Mortgage in circumstances where this was most unlikely to be the case. Sabu’s then girlfriend, a mortgage broker, who - surprisingly – gave evidence, assisted him by providing e-mail confirmations that a mortgage would be forthcoming, but this never materialised. Eventually, in August 2017, Kouri, as sole executor, commenced possession proceedings against Sabu in respect of the property. The property was eventually sold in November 2018. The Claimants allege that in this period Kouri charged Sabu rent, for which she did not account to the estate.

72. During this period the other siblings seem to have formed the view that the delay in selling the property was the result of inaction by Kouri (although how they expected Kouri to sell the property with an adverse occupier in possession is unclear). Kanta therefore issued proceedings seeking removal of Kouri as executor of the estate (pursuant to Section 50 of the Administration of Justice Act 1985). This resulted in the making of a Consent Order by DJ Pema dated 5 June 2018, which replaced Kouri with the Second Defendant, a solicitor and professional administrator. She sold the Family Home on 30 November 2018 for £267,500, out of which she paid £161,803.97 to redeem the Third Remortgage.
73. Kanta demanded that the Second Defendant pursue Kouri for recovery of the amount required to redeem the Mortgage and also for claims relating to the rents and the jewellery. The Second Defendant made enquiries of Kouri as to whether she was prepared to pay these sums to the estate, but upon being told that she was not, concluded that there was no basis to pursue the matter further. The Second Defendant provided a reasoned and detailed response to Kanta explaining why she did not consider such an action as being in the interests of the estate, citing the chances of success and the lack of funds in the estate. Kanta therefore decided to commence proceedings herself. These are those proceedings.

7. The Mortgages and the Advances

74. It is accepted that the vast majority of the amounts borrowed by Mother on the Mortgages were paid to Roundwood Estates for the benefit of Kouri. The Claimant's argument, in a nutshell, is that this amount was a loan to Kouri, and therefore should be repaid by her to the Estate.
75. There is a technical point which arises here as to the position as regards the First Mortgage – since this borrowing was a borrowing by Kouri's firm Roundwood Estates secured on the Family Home, it can be argued that this was not money advanced by Mother to Kouri. However, that loan was refinanced by Mother, so that in effect Mother borrowed money in her own name on the security of the Family Home and then used that money to discharge the debt owed by Kouri to Habib Bank, the lender under the First Mortgage. I think that where A discharges a loan made to B on B's behalf, that transaction constitutes a transfer of value from A to B. Consequently, I think it is correct to say that the total advance from Mother to Kouri can be accurately assessed as the amount advanced to Mother under the Third Mortgage less the amount applied in the redemption of the Leeds & Holbeck Mortgage – that is, around £127,000.
76. A point upon which much emphasis was placed by the Claimants throughout the hearing was that, because the Mortgages were arranged by Kouri (or, more accurately, by an independent mortgage consultant who operated out of Roundwood Estate's offices), Mother may not have known very much about them. This seems entirely possible. However, the problem with this submission is as to the conclusions to be drawn from it. As noted above, there is no challenge to the mortgages themselves, and no challenge to the mental capacity of Mother. Possibly more importantly, at least two of the claimant's witnesses give evidence that Mother had some involvement in the arranging of the Mortgages– Kanta says that Mother came to Kouri's office to see a mortgage advisor (who spoke her language), and Lakhbir says that her mother told her that she had lent money to Kouri. In addition, Mother's signature appears on the

mortgage documents, and it appears that she had obtained at least some legal advice as regards the arrangements. I also note in passing that the note of the attending solicitor of the meting to prepare the will (at which none of the children were present) is to the effect that it was Mother who told him that the house was subject to a Mortgage. There is therefore no doubt that Mother was aware that the Family Home was the subject of a series of Mortgages and that the proceeds of those mortgages had gone to Kouri.

77. There is, perhaps unsurprisingly, no direct evidence of Mother's intentions as regards the transfer to Kouri. I think that it is clearly true that the common expectation of Mother and Kouri was that Kouri would transfer to Mother sufficient money to enable her to meet the interest payments on the Mortgage. I also note Lakhbir's evidence that:

"I realised mum had a new bank Lloyds bank, mum ask me to read them and check her bank asked started to ask me if I could tell her if money had been put in by Kouri, I asked me to check if Kouri put money in her bank, she told me that Kouri borrowed money from her, and was paying it back and she only gave it because Kouri was going to pay the mortgage that's why she gave it."

It therefore seems that Mother was very well aware of the position, both as regards the existence of the Mortgage and as to its size (which could be relatively reliably estimated from the size of the monthly repayments).

78. This brings me to Mother's financial position after Father's death. This can be fairly accurately assessed by reference to the Lloyds Bank statements, of which we have a complete record. I note two preliminary points. The first is that Mother does not appear to have been a user of modern payment services. Payments in (such as benefits) were received into her bank account, a few standing orders (for utility bills and suchlike) came out of it. Otherwise, she paid frequent visits to the bank branch in order to withdraw large sums of cash, which she presumably used for day-to-day living expenses. The second is that the account seems to have been efficiently managed – cash surpluses were not allowed to build up, and withdrawals were carefully managed in order to avoid overdrafts (and their attendant charges).

The Evidence as to Mother's Intentions

79. There is almost none. As noted above, it was a common theme of the evidence given by the sisters that their perception of the expectations placed upon them by their culture was that, when they married, they effectively left their maternal family and became part of their husband's parents family. This perception seems to me to have been best summarised by Gurmit in her witness statement:

"When I moved with my in laws, my mum's family lived just down the road in Bristol and I remember her saying to me that don't think just because the family were down the road that I could just take myself away from my husband and his family and go and visit them whenever I want. She told me she didn't

want that, and I had to stay with my husband's family. That was our culture.”

80. The reason for emphasising this is that the amount of contact between Mother and her daughters was therefore necessarily intermittent. Thus, the question of who knew what about Mother's affairs requires careful analysis.
81. Whilst Father was alive, he seems to have been in sole charge of the family finances. When he died, Kanta moved to Leeds to help her mother, and Lashmi seems to have managed the process of transferring his assets to Mother. Kouri's evidence is that she also came to Leeds at that time and moved into the Family Home. In 2002 Kouri moved back to London, and Kanta moved in with her in London.
82. In 2002 Lakhbir left an abusive marriage and moved in with her Mother to the Family Home. She had moved out by 2005, but lived near the Family Home, and continued to be the primary carer for Mother. It seems that it was Lakhbir who applied for the disability grant which was used to convert the garage into a downstairs wet room in 2009. Lakhbir's evidence is that she saw all of her mother's correspondence, and in particular reviewed her Lloyds bank account. She accepts that she was aware that Kouri was paying money into the account on a regular basis. She also accepts that she and other siblings were told by Mother that she had advanced money to Kouri for her business.
83. The evidence of a number of the sisters, which I accept, is that Mother and Father would not have discussed their dealings with one of the siblings with another – consequently I believe Lakhbir's evidence that she did not know any of the details of whatever arrangement Mother may have had with Kouri beyond the fact that Mother had given money to Kouri, that the money had been secured by a mortgage of the Family Home, and that Kouri was making transfers to Mother in respect of the interest on that mortgage.

Kouri's Subsequent Conduct

84. A separate question here is as to the significance of statements made by Kouri after Mother's death. The Claimants say that in the period following Mother's death Kouri made numerous statements in which she confirmed that the advances were loans and that she was liable to repay the sum required to redeem the Third Mortgage (less what had been required to redeem the Leeds & Holbeck mortgage in 2005).
85. It is not entirely clear to me how helpful any of these are. It is accepted by the Claimant that the question to be decided is whether in agreeing to the Mortgages and the transfer of the monies raised to Kouri, Mother was intending such monies to be a loan to Kouri or a gift to her. The position at law is correctly summarised in Halsbury's Laws of England (Gifts, Vol 52 (2020)) at [201]

“a gift is effective when the donor intends to make it a gift [Meisels v Lichtman [2008] EWHC 661 (QB) at [71]] and the recipient takes the thing given and keeps it, knowing that he has done so: the mere fact that the recipient regards the thing given

as a loan and intends so to treat it does not by itself prevent the transaction from being effective as a gift [Dewar v Dewar [1975] 2 All ER 728, [1975] 1 WLR 1532, applying Cochrane v Moore (1890) 25 QBD 57, CA, and Standing v Bowring (1885) 31 ChD 282, CA.]”.

86. The statements on which the Claimant relies are clearly indications of a preparedness by Kouri to contribute to the estate – a preparedness which I find unsurprising. However, they do not, singly or together constitute an acknowledgement of any intention on the part of Mother that there should be a legal liability on Kouri to prepay the amounts advanced.
87. I think some of the suggestions that there were “admissions” from Kouri resulted from a somewhat technical analysis of the use of the word “borrowed” in this context. It was clear to me from the oral evidence that this word was not used in any technical sense amongst the family – indeed, a number of them used it as a transitive verb, so that the phrase “she borrowed it to me” was used to describe a transfer from her to me.
88. Kouri gave indications at different times that she would be prepared to pay money back into the estate, but none of those indications provide any clear evidence that she and Mother had a common intention that this should happen. Thus, for example, in writing to her siblings in 2014, she describes the arrangement between her and Mother as follows:

“This was borrowed money and not a loan. My mother has borrowed money to all my siblings and has never made a loan agreement.”

Thus, I do not think that the fact that Kouri used the term “borrowed” from time to time to describe the money advanced by Mother is a particularly helpful fact in trying to understand the position between them. I also do not think that any of these can be taken as “admissions” in the sense of acknowledgements of legal liability.

The Law

89. The general position at law is that where monies are advanced for no apparent reason, the advance is presumed to have been a loan which is intended to be repaid: *Seldon v Davidson* [1968] 1 WLR 1083. In that case the claimant demanded the return of a sum of money which she alleged she had lent to the defendant. The defendant by his defence admitted receipt of the money, but claimed that it had been a gift. The court held that since the payment of money prima facie imported an obligation to repay it, (per Wilmer LJ at 1088 at B) once the defendant had accepted that he had received the money, the onus was on him to prove the facts which he alleged showed that it was not repayable. In simple terms, there is a presumption of law that gratuitous payment are not intended as gifts, which can be rebutted by showing that the payer did in fact intend the payment to be a gift.
90. The Claimants argue – correctly – that that in a case of this kind the evidence of the recipient of a transfer must be treated with care and suspicion – see for example the comments of Kay, J in *Re Finch* (1882) 23 Ch D 267 at pp.276-7:

“This is a claim made by a living person against the estate of a person who is dead. It is the rule - and it is a sensible rule - to require before giving weight to the testimony of that living claimant that such testimony should be corroborated in some way or other.

If this case had been tried before a jury, and the jury had found in favour of the claimant, I am not prepared to say that there would have been any principle of law to enable us to set aside the verdict; but where we have not had the advantage of having twelve men in the box, the ordinary practice of the Court is to be very reluctant to give effect to the uncorroborated statement of anybody, as against the estate of a deceased person.”

91. Para [216] of Halsbury’s Laws of England on Gifts notes that

“A gift alleged to have been made by a deceased person cannot, as a general rule, be established without some corroboration. In some cases the judges have definitely stated that the court cannot act on the unsupported testimony of a person in his own favour, but there is now no hard and fast rule that the evidence of the alleged donee must be disbelieved if uncorroborated. It must be examined with scrupulous care, even with suspicion, but if it brings conviction to the tribunal which has to try the case that conviction will be acted on.”

The footnote to this paragraph identifies a very large number of authorities which address this point, but I do not think a recitation of their substance would add anything to the admirably concise summary quoted above.

92. Where there is a dispute as to intention in the making of a gift, it is the intention of the donor that is crucial, rather than that of both parties: *Meisels v Lichtman* [2008] EWHC 661 (QB) at [71].

The Presumption of Advancement

93. However, within families the position is more subtle. The presumption of repayability can be met by a counter rebuttable presumption of advancement. The presumption of advancement may itself be rebutted by extraneous evidence that the transferor did not intend a gift. However, if there is no evidence at all, then in a family context (as here, between parent and child) the outcome is that the transfer will be treated as a gift.
94. The Claimants say two things in this context. One is that there is in fact sufficient evidence to displace the presumption of advancement in this particular instance. The second is that the presumption itself is outdated and should not be relied on
95. The presumption of advancement is based on the idea that the parent has a moral obligation to provide for their children: *Bennet v Bennet* (1879) 10 ChD 474 at 477 per Sir George Jessel MR. For a modern upholding of the presumption of advancement see *Farrell v Burden and Southgate* [2019] EWHC 3671 (QB). In that case the judge relied on the decision of the Court of Appeal in *Laskar v Laskar* [2008]

EWCA Civ 347, where Lord Neuberger (with whom the other judges agreed) said at [20]:

“The presumption of advancement still exists, although it was said as long ago as 1970 to be a relatively weak presumption which can be rebutted on comparatively slight evidence (see per Lord Upjohn in *Pettit v Pettit* [1970] 1 AC 777 at 814). I would add that it is even weaker where, as here, the child was over eighteen years of age and managed her own affairs at the time of the transaction.”

96. It was submitted to the Judge at first instance in *Farrell* that the presumption did not apply to a non-dependent child who was not a minor. He rejected that submission, holding that “The presumption may be weaker in the case of an adult child who is financially independent, but that does not mean that the presumption does not apply at all.” (at [13]). I think that this is a correct statement of the law as it stands.
97. I also note that I find the idea that the presumption of advancement as between parent and child is somehow outdated frankly incomprehensible. As a result of the massive transfer of wealth between generations which has occurred in this country (and elsewhere) over the last forty years or so, it is a social expectation which has practically hardened into convention that parents with assets use some of those assets to “advance” their children, providing them with deposits for houses, start-up funding for businesses and subventions for sudden emergencies. There can be few in this country at least who do not know what is meant by the term “the bank of mum and dad”. I think it is equally clear that transfers of this kind would only in extraordinary circumstances be regarded by the parties thereto as having any commercial return element, or connoting any resulting trust for the return of the monies advanced. It seems to me to be entirely correct that the starting point for the courts in cases of this kind should be to presume that they are gifts advanced without expectation of repayment or return unless the facts indicate otherwise. I also note that transfers of this kind are, almost definitionally, not made to children who are entirely financially dependent on their parents. Indeed, in the most commonly encountered manifestation of transfers of this kind - the advancement of a deposit for a house to be purchased on mortgage – the fact that the child concerned is financially independent is a *sine qua non* for the mortgage in the first place. Consequently, I do not think that the fact that a child is financially independent of its parents is *per se* of any relevance to the question of whether the presumption applies or not.
98. Viewed from this perspective, the fact that the funds advanced by Mother to Kouri were in respect of – and appear to have been used - to establish her in business as an estate agent is entirely on all fours with the context in which the presumption of advancement as between parent and child were intended by the courts to operate.
99. My attention was also drawn to the fact that the presumption of advancement is prospectively abolished by s 199(1) of the *Equality Act 2010* from a day to be appointed. Even leaving aside the question of whether I should have regard to unenacted legislation, I do not think that the measure is of any relevance to this case. The reason that the presumption of advancement has attracted judicial opprobrium is where it is applied as between husband and wife (see, for example, the speeches of Lord Reid and Lord Diplock in *Pettitt v Pettitt* [1970] AC 777, and see the Law

Commission report *The Illegality Defence* (Law Com 320) which recommended its abolition, but which is addressed exclusively to matrimonial issues). I am inclined to speculate that the reason that s.199(1) has not been brought into force is precisely because it is too widely expressed to perform the task for which it is intended, precisely because it would apply to the position between parent and child as well as to its intended target of intra-marital transfers. In any event I do not believe its existence is relevant to the issues before me.

Conclusion

100. As Lamm J stated in *Mackowik v Kansas City* (1906) 94 SW 256 at 262, “Presumptions may be looked on as the bats of the law, flitting in the twilight but disappearing in the sunshine of actual facts”. This is clearly accurate, but it is fair to point out that where there are no actual facts available to the court, presumptions continue to perform a useful role.
101. So the decision I must make is as to whether there is sufficient evidence to enable me to form a view as to Mother’s actual intention, or whether I must conclude that there is no such evidence and allow the presumption to operate? A presumption is always displaced by evidence, but there must come a point where the available evidence for the intentions of a transferor is so weak that applying the presumption should be preferred as an approach.
102. This case seems to me to sit fairly close to that border. However, I do not think that it crosses it – there is some evidence of the factual context in which the transfers were made and of the financial positions of the parties at the relevant times. It is possible to reconstruct by inference the pressures under which they were placed, and a plausible account which fits all the relevant facts can be constructed. I therefore think that the primary issue for me is simply to establish, on the basis of the evidence, the most likely account of Mother’s intentions and state of mind at the time that the transfers were made.
103. None of the siblings – and in particular the daughters – felt able to give any evidence at all as to what they believed the intentions of Mother were at the time when the transfers were made – their evidence was all of the form “she would not have done...”. The Claimant, although she is adamant that the making of such a gift is not something which she thinks her mother would have done, cannot say that she did not intend it. Conversely, the First Defendant, although it would have been open to her to give evidence to the effect that her mother intended the property transferred to be a gift, did not do so. I am inclined to treat this as a demonstration that none of the parties are able to give any direct evidence as to what Mother’s intentions were – which suggests to my mind that the most likely reality was that Mother had given no thought to this particular issue, and that if anyone had asked her at the time of the transfer “what do you think should happen as regards these transactions if you were to die suddenly in the near future?”, the answer that they would have received would have been “I don’t know – I will have to think about it”.
104. The key point as regards the arrangement between Kouri and Mother, I find, is that neither party gave any thought to its details. Whilst matters were ongoing the arrangement must have seemed advantageous to both sides – Mother could give Kouri a helping hand to start her business without incurring any additional cost (provided

that Kouri continued to meet the interest payment – which she did), and Kouri could obtain funding at significantly lower cost than she would have paid for a commercial loan to her or her business. I very much doubt that either party gave any thought to how this might play out in the event of Mother's early death.

105. Mr Rose, for Kanta, argued that it must have been the common intention of Mother and Kouri that Kouri would ultimately pay off the Mortgage, since otherwise Mother would be destitute and homeless. This is not entirely correct – net of the mortgage the house was still worth more than £100,000, and it is possible to find accommodation of various forms for that sum even in Leeds.
106. However, it must have been clear to both Mother and Kouri that, in order to enable Mother to remain in the Family Home, it was necessary to do something fairly urgently. At the time of Father's death the repayments on the remaining Leeds & Holbeck mortgage were around £5,000 per year, whilst Mother's only income was from benefits and totalled something over £6,000. I think that it must have been clear to both Mother and Kouri that, if Mother was to remain in the Family Home, something would have to be done. That something was the Mortgages.
107. There are, however, two parts to this arrangement. Not only did Kouri make good the interest costs arising from the borrowings, but for the duration of the arrangement she paid Mother's living expenses. I find it impossible to conclude that these payments were not part of the arrangement between Kouri and Mother – especially since there is no sign of any other payments being received from any other sibling.
108. If I ask whether it is likely to have been Mother's intention to make a gift of half the value of the house to Kouri, I conclude that it is clear that it was not. However, it is worth noting that if Mother had survived for another 10 years, and Kouri had continued to make payments to her at the same rate as she did during her life, Mother would have received from Kouri roughly the amount borrowed – in other words, over the course of approximately 15 years, the payments from Kouri to Mother would have roughly equalled the amount borrowed on the 15-year mortgage.
109. I therefore conclude that Mother's intention was to assist her daughter whilst at the same time realising some of the value in the house, thus enabling her to live beyond her state pension. Mother intended to obtain a benefit – in the form of the cash payments – in exchange for the taking out of the Mortgages. However, I do not believe that it would have been Mother's intention that the payments made by Kouri should be disregarded – having received £50,000 from Kouri in repayments, she would not have sought further repayment of the whole of the £130,000 advanced to her. In all the circumstances, therefore, I am satisfied that the terms of the arrangement between Mother and Kouri were that Mother advanced these funds to Kouri on the basis that Kouri would repay her over time. I also think that, if the arrangement had been terminated early, Kouri's obligation would have been to repay the amount borrowed less the repayments made. I therefore think that Kouri's obligation to the estate is to repay the amount advanced less the amounts received by Mother over and above the interest payments – somewhere in the region of £80,000.
110. There is an outstanding question which I was not able to resolve as to whether Kouri paid £25,000 on behalf of Mother to fund Thakkur's wedding, as recorded in the Heads of Terms. Since this document was signed by the Claimant, I am inclined to

take the view that she accepts that this was in fact the case. If that can be established, then that payment would constitute another voluntary transfer by Kouri to Mother, which should be treated in the same way as the other transfers. That would leave an amount of £55,000 to be paid by Kouri to the estate.

111. This conclusion can be analysed slightly differently – if the transfers made by Mother to Kouri were repayable, there is no possible reason why the transfers made by Kouri to Mother should not be treated in the same way. However, the outcome is the same.
112. This takes me to the question of what the position is or should be as regards the interest accrued on the Mortgage after Mother's death. It seems that Kouri continued to pay interest on the Mortgage for some time after Mother's death. She was under no obligation to do this, and any such payments are recoverable by her from the estate.
113. A further question arises as regards the £18,751.28 surplus generated by the Third Remortgage. Kouri says that this money was required for repairs and improvements to the Family Home, and was spent on such improvements. I heard a great deal of conflicting evidence about what costs were incurred when, by whom they were paid, and on what they were spent, but I was unable to form any clear view of what the true position was.
114. It seems that there were two sets of renovations done on the house, one in 2009 and another in 2013. The 2009 renovations included the creation of a downstairs toilet and a wet room to accommodate Mother's disability. Lakhbir organised for this to be paid for by Leeds City Council. Kouri's evidence is that significant other work was done at this time, which she paid for out of the monies received from the mortgage, and the fact that such work is done is also asserted by Thakur. However, Lakhbir and others say that no work was done other than that funded by the Council. Thakur's evidence is that the work done cost £40,000 in total, of which he contributed £20,000.
115. It is generally accepted that major renovations were put in train somewhere around 2013 in preparation for Thakur's marriage, although it is not clear who paid for these in what proportion.
116. I think it is the case that if Mother had transferred this money to Kouri for the purpose of Kouri's spending it on improvements to the Family Home, there would be good grounds for holding that, although the transfer was not a gift, the obligation to return it would be extinguished if the money was in fact applied for the purpose for which it was designated. I am sure that this money was paid to Kouri, but I cannot form any clear view on the balance of probabilities as to how it was applied, or whether it was applied for the benefit of Mother. I therefore find that this amount is *prima facie* repayable by Kouri.

The Nature of the Repayment Obligation

117. The principle that a gratuitous transfer is repayable is frequently described as giving rise to a resulting trust. This is clearly the case where the transfer is a transfer of real or personal property. However, in this case the transfers were transfers of money, whose effect – as a matter of law – would be the enrichment of the recipient at the expense of the transferor but without any direct transfer of tangible property. There

are a number of ways in which this situation could be legally analysed – one possibility would be as a matter of restitutionary law, another would be the assertion of an enforceable contract of loan – but the way the case was put before me was solely on the basis of an equitable resulting trust.

118. I think that this is broadly the right approach, but it requires a little refinement. There is no doubt that as a matter of legal title the transfer of funds by Mother to Kouri was valid and effective. I think it is equally clear that there was nothing which the common law could recognise as a contract to repay the money. Any such repayment obligation therefore arises in equity. However, that obligation is not in any way a compensatory obligation – the obligation to pay a specific amount of money in equity is simply an equitable debt obligation. In cases of this kind, as James and Baggelley L.JJ. held in *In Re Collie* (1878) 8 Ch. D. 807

“The Court of Chancery never entertained a suit for damages occasioned by fraudulent conduct or for breach of trust. The suit was always for an equitable debt or liability in the nature of debt.”

119. The distinction between claims for equitable debts, equitable damages and claims for breach of trust is discussed in detail in Part III of Chapter 4 of McGregor on Damages (22nd ed.), but I am satisfied that this is a clear case where the outcome, if the gift cannot be established, is that equity will impose on the recipient an obligation in the nature of an equitable debt due from the recipient to the transferor.

8. The Gold Jewellery

120. The Claimant alleges that specific items of gold jewellery, which were in the Safe Deposit Box at the time when Kouri removed it from the Family Home, were removed and misappropriated by her before the meeting at which the gold jewellery was distributed. In order to make this case, the first step is for the Claimant to produce evidence which shows that, on the balance of probabilities, the specified items were in the Safe Deposit Box at the specified time.
121. The Claimant’s evidence for this is wholly inadequate. She has put forward a list of items of Jewellery which she claims were in Mother’s possession at the date of her death. This list is set out in paragraphs 23 and 24 of the Particulars of Claim, and forms the basis for the Scott Schedule. She explains the basis for the list as being her memory of what Mother had worn at Thakkur’s wedding in August 2013. Since the Claimant’s list appears to have been compiled many years after the event (possibly in 2023) I struggle to accept that it is reliable or accurate. I also note that the evidence of Ashok Mason as to how it was compiled is as follows:

“Kanta showed me photographs of the gold items worn by their parents and asked me if I could help with providing an estimation of the gold based on knowing their spending habits, their likes, and generally the design style we sell and sold in my shop. Some of the items looked familiar as pieces we have sold in our shop in earlier times”

122. I suspect that the Claimant's list may be an approximate summary of the items of gold which their parents had possessed at different times in the past. However, it is simply not evidence of the contents of the Safe Deposit Box at the time when Kouri removed it from the Family Home. I also note that the evidence of Thakur and other witnesses was that Mother used to give gold to other family members, and occasionally used it for other purposes – for example, multiple witnesses agreed that on an occasion when Sabu had been kidnapped, gold was given as part of the ransom paid.
123. On this point the most direct evidence that I have is that of Gurmit, who was in the room when the Safe Deposit Box was opened and examined in detail. She says as follows:

“I have read the Scott Schedule, and many of the items which have been listed by Kanta and Bobby are not things which were ever in the box at the time it came from the bank and we went through it and sorted it out. ... I looked at every item of mum's which was in there and the Scott Schedule is just wrong. I have looked at the valuation from Sajeev Jewellers and I think it is accurate.”

She says – I find, unsurprisingly – that Mother wanted certain items to go to certain recipients, and in some cases sought to give particular items to those present. She also wanted certain things done with certain items – most notably, one of the three heavy necklaces she wanted melted down to make three wedding sets for each of Sukhdev Singh's daughters. This Kouri seems to have done. Also, the box contained gold items belonging to other family members, and at this point Mother sought to return these. Thus gold belonging to Lakhbir's son, Thakur and Kanta was removed from the box and given to them.

124. There is then a list drawn up by Kouri. She says that this list was drawn up in manuscript with the gold in front of her during the process which Gurmit describes; albeit that what was produced in evidence was a typed text which she says she made up from her initial handwritten list.
125. It is agreed that, before Mother's death, Kouri took the Safe Deposit Box from the Family Home. Her explanation for this is that Mother asked her to take it, because she was concerned that if Sabu learned that the box was in the house he might try to steal it. Sabu was – for the majority of this time – in prison. However, he was released on 28 July 2014, and he had at least one visit with Mother before her death on 11 August. He does not seem to have behaved well on this occasion. Gurmit's evidence is that Mother had told her that she believed that Sabu “had been in her bedroom looking for the box of gold”. Whether or not there was any substance to this belief, I think it is entirely plausible that Mother would have wanted the Safe Deposit Box somewhere beyond his grasp. I therefore do not think that any conclusions can be drawn from the fact that she removed and retained it.
126. The Claimant makes two further points about the distribution of the gold. The first is that Mother did not keep all of her jewellery in the Safe Deposit Box, but kept some in a chest in her bedroom for day-to-day wear. Clause 3.1(i) of the Will deals with “gold held in my bank safety deposit box”. It follows that any gold not in the safety deposit box (*scil.* at the date of death) may not be divided amongst the siblings, but

should pass to the residuary legatee, that is, Sukhdev Singh. It is therefore possible that the distribution of the gold which Kouri performed as executor may, in respect of some items, have been outside her powers as an executor. This in turn means that Kouri's decision to withhold some of the gold from her siblings for the benefit of various grandchildren was *ultra vires* her powers as executor.

127. However, this argument only has any force if, at the date of Mother's death, any gold remained in the Family Home. It seems likely that when the gold was spread out on Mother's bed, any gold in the house would have been added to it, and it also seems likely that, at the conclusion of the exercise, all of the gold (apart from that actually worn by Mother on a daily basis) would have been put away into the Safe Deposit Box. The evidence is that Mother was worried about the security of the gold whilst it remained at the house, and it seems extremely unlikely that she would have kept back any significant items when she gave the Safe Deposit Box to Kouri for safekeeping. There is no direct evidence on this point, but it seems to me to be most likely that there was no gold left in the house for the siblings to argue over save for that which Mother actually wore on a day-to-day basis. Consequently, I think that, apart from this, all of the gold was, at the time of Mother's death, in the Safe Deposit Box, and therefore subject to the discretion of the executors as to its distribution.
128. This does, however, leave the question of what Mother did wear on a day-to-day basis. The only evidence I have for this is the (unsurprisingly conflicting) evidence as to what she had on when her body was prepared for her Funeral. Deep lists this as being her gold earrings, three bangles on her wrist, her nose stud and her wedding ring, and this is largely corroborated by Lashmi and Lakhbir. Deep says that Mother had 14 gold bangles in total, and this is confirmed by Lashmi. Deep's evidence is that these bracelets were removed by her in hospital, since they interfered with the drip in Mother's arm. Deep wore them back to the house, and that they were then placed with the other gold. There is no evidence as to what became of the other gold items that were on Mother's person. However, there is no evidence that Kouri appropriated any of these items.
129. The second point that the Claimants made about the distribution of the gold is that the Will provides that the gold should be "divided between my children in such manner as my [Executors] in their absolute discretion think fit". Kouri's evidence was that she had kept back the portions of some of the siblings in order to deal with them. It is not disputed that at the time that the gold was shared out, Kouri was the sole executor. The Claimants say (and I think Kouri accepted in evidence) that she dealt with some of the gold in accordance with what she clearly believed to be Mother's wishes (as recorded on the typed list) by reserving it for some of the grandchildren as wedding gifts. It is agreed that the typed list is not a testamentary document, and the powers which Kouri had are to be determined by reference to the Will alone. What is said is that the discretion conferred by the Will only permitted distribution amongst the children, and that reserving certain elements to grandchildren fell outside the scope of her powers.
130. I do not accept this argument. I think that, in this particular family context, a power to distribute assets amongst children includes a power to distribute to children of those children, and I think such a gift is properly regarded as a gift to the child concerned. Consequently, I find that a reservation of gold for the grandchildren of the testator is implied by the power to distribute to the children of the testator.

131. The Claimants ask for an order that the First Defendant deliver up to the Second Defendant as administrator of Mother's estate any jewellery which is still in her possession, or to pay to Mother's estate its value of damages. They further ask that, where jewellery has been dealt with inconsistently with the terms of the Will, damages should be awarded where such jewellery cannot be retrieved and appropriately distributed. I find that they have established no basis for the making of any such order.

9. The Rental Receipts

132. It is not disputed that between the death of Mother and the appointment of the Second Defendant as Administrator of Mother's estate, various people occupied the Family Home. Initially the only occupant was Thakur – unsurprisingly since the Will specified that he should be entitled to reside there for as long as he wished. However, this arrangement proved uncongenial to him, and he invited Jimmy and Ruksana to come and live with him for a period. His evidence was that Sabu then moved in, and shortly thereafter he moved out.
133. The allegations surrounding rent seem to be based on two tenancy agreements. One is an assured shorthold tenancy agreement granted to Ms Ruksana Hussain on 1 October 2014 for a rent of £800 per month. It appears that Sabu moved in in October 2015, and there is a similar agreement with him dated 1 June 2015 for a rent of £600 per month. A third tenancy agreement was entered into – also with Sabu - on 26 October 2016 for a rent of £537.33 per month. In all these cases, Roundwood Estates entered into the agreements on behalf of the landlord.
134. Sabu seems to have begun paying rent at the rate of £600 per month in October 2016, and to have continued to pay this until September 2017. It appears that the purpose of this payment was to cover mortgage interest, council tax and other liabilities, and the evidence of Carol Davies – which on this point I have no reason to doubt – is that these sums were paid directly to Godiva Mortgages. He also claimed to have given Kouri £10,800 in cash to recompense her for the interest payments on the mortgage which she had been making since Mother's death, although the question of whether this payment was ever received by her is disputed. It seems that after Sabu was evicted from the Family Home in late 2017 no further payments were made, so that as a result the liability on the mortgage had risen to £161,803 by the time the Family Home was finally sold on 31 November 2018.
135. It is clear to me that these tenancy agreements were created in order to obtain housing benefit for the person identified as the tenant – there is correspondence in respect of both arrangements with Leeds City Council Welfare and Benefits Service which shows that these benefits were applied for, and it seems likely that they were received. There is, however, no evidence at all as to whether any rent was paid by Ruksana or Sabu under these arrangements to anyone. I note in passing that the reason for the change in the arrangement with Sabu in October 2016 is that at that point Sabu was both living in the property and proposing to buy it. What seems to have happened is that the rental payments were thereafter set at a level roughly equal to the payments due on the outstanding mortgage.

136. It seems to me to be highly likely that the reason for this is that Sabu had not in fact been making rental payments, but had simply been collecting housing benefit for his own benefit. However, once he had expressed an intention to purchase the Family Home, he needed to begin making payments toward the mortgage, and the ostensible rent was therefore reduced to the amount required for that purpose.
137. As regards the rent ostensibly received from Sabu, the Claimant makes the curious argument that the arrangements between Mother and Kouri had the effect of Kouri's being liable to make repayments on the outstanding Mortgage herself. Thus, they argue, even if the rental payments due from Sabu had been received and paid to the mortgage lender, this would simply have discharged an obligation which was in fact incumbent upon Kouri, and that Kouri should be required to account for those receipts to the estate. I am not entirely sure what the legal basis for this suggestion might be, and I was not enlightened by the submissions made by counsel for the Claimant. I reject this submission.
138. There is no evidence that Kouri received any payment from Ruksana or Thakkur – indeed a solicitors letter of the 5 February 2015 records that no such rent was paid or received. In this regard, the documents presented in the possession proceedings against Sabu are enlightening. What they allege is that Sabu paid nothing until September 2016, and thereafter paid a total of £6,530 until September 2017. They say nothing about the identity of the Payee, and the evidence is that these payments were made directly to Godiva Mortgages.
139. I think the position as regards rent is as follows. There is no evidence that Kouri received any rent from Ruksana, and I do not think that she did. Sabu paid rent from October 2016 to September 2017, set at an amount equal to the interest payments on the outstanding mortgage, and it seems that these monies were applied in payment of those interest amounts. There is no suggestion that rental income was paid by any other person. Consequently, I find that Kouri did not receive for her own benefit any payments from any person for which she has not accounted to the estate.
140. As regards rent, I am not required to make specific findings as to what amounts were paid – the remedy sought is an account, so the decision for me is simply as to whether the facts justify ordering such an account to be taken. I find that there is no reason to order any such account.

10. The “Heads of Agreement”

141. The “heads of agreement” dated 22 June 2015 seems to have been one stage in the increasingly acrimonious dispute between Kanta and Kouri as regards the estate. This document records a number of agreed payments to be made to and from the estate, in particular an agreement by Kouri to pay the principal on the outstanding Godiva mortgage. It seems to me to be entirely clear why Kouri would have agreed to this – the situation at her mother's death had resulted in her receiving a very substantial windfall at the expense of her siblings. However, I do not think that this provides any indication as to the understanding between her and Mother – rather it is an attempt to restore family relations.
142. This document does, however, raise a separate issue, that being as to whether it was intended to be an enforceable agreement in its own right?

143. On balance, I think it was not. The position as regards arrangements made between family members in respect of family affairs are something of a grey area in the law of contract, mostly because it is unusual for family arrangements to be intended to have the effect of legally binding contracts. *Balfour v Balfour* [1919] 2 KB 571 is sometimes wrongly cited as authority for the proposition that family arrangements cannot give rise to legally binding agreements. However the true position is that where there is a clear intention to create legal relations, a binding contract can arise between family members in the same way that it can arise between any other two competent persons.
144. In this case, however, it is reasonable to give some weight to the way in which the document describes itself. This is because it was drawn up by a Solicitor – Mr Tagg – summarising an agreement reached between the siblings at a meeting at his office. The choice of the description “Heads of Agreement” was therefore his. I think it is clear that any lawyer would have understood the difference between a pre-contractual agreement and a contract. I also think that, since what he was doing was recording the agreement reached after a family conference between siblings in dispute with each other, he would not have assumed that the outcome of such a discussion would have been intended to be contractually binding. I therefore think his selection of the words “Heads of Agreement” to designate the document was deliberate, and intended to reflect what he perceived to be the nature of the consensus reached between the parties.
145. There is no magic to these words per se. As Joanne Wickes KC (sitting as a DHCJ) said in *Pretoria Energy Company (Chattering) Limited v Blankney Estates Limited* [2022] EWHC 1467 (Ch),
- “Nor is the label "heads of terms" conclusive: a document referred to as "heads of terms" may be intended to be a non-binding record of the broad principles of an agreement to be made in formal written documents subsequently negotiated, or may be intended, in whole or part, to be a binding contract governing the parties' relations until a more detailed agreement is drawn up, as in *Green Deal Marketing Southern Ltd v Economy Energy Trading Ltd* [2019] EWHC 507, [2019] 2 All ER (Comm) 191 and *Mahmood v The Big Bus Company* [2021] EWHC 3395 . (at [28]).”
146. However, in this case there was no proposal for these terms to be incorporated in any subsequently negotiated formal document, or for the heads of terms to be anything other than a note of an agreement as to how the siblings would behave towards each other. In a case of this kind, I would require some evidence of an intention to contract before finding that a document of this kind was intended to have binding legal effect, and there is no such evidence here.

11. Pre-Judgment Interest

147. The list of issues which I was asked to address include a question as to whether, if any amount as held to have been due from Kori to the estate, pre-judgment interest should be ordered on that obligation.

148. The remedy which the Claimants have obtained is an equitable remedy, and the principles to be applied are those in respect of equitable compensation. Equitable compensation is the personal remedy (as opposed to a tracing or proprietary remedy) available against trustees, or others in a fiduciary position, whose acts or omissions amount to a breach of trust or fiduciary duty (see *Auden McKenzie v Patel* [2019] EWCA Civ 2291, per David Richards LJ at [31]). In this case, I have found that Kouri was in possession of trust property; being the amounts advanced to her by Mother. Upon Mother's death, she should have returned the net amount adjusted as I have described above to the estate. In all claims for equitable compensation, the beneficiary is entitled to have the trust properly administered, so he is entitled to have made good any loss suffered by reason of a breach of duty (*AIB v Redler* [2014] UKSC 58 per Lord Toulson at [66]). By failing to repay this amount at this time, she deprived the beneficiaries of this right.
149. As David Richards LJ said in *Interactive Technology Corporation Ltd v Ferster* [2018] EWCA Civ 1594 at [16]:
- “Equitable compensation is apt to include a payment made to restore to a claimant the value of the assets or funds removed without authority by a trustee or other fiduciary, such as a director. It may also include reparation for losses suffered by the claimant...”.
150. I do not see that there have been any losses incurred as a result of the non-payment beyond the loss of the amount itself. It is not the case that earlier payment of the amount due would have resulted in an earlier sale of the Family Home and a resulting saving on mortgage interest, since the cause of the delay in sale was Sabu's occupation of the property, and it would have been impossible to sell it any earlier than it was sold regardless of when Kouri repaid the money. It was also established by Kouri's solicitor at that time that the mortgage lender would not permit partial redemption beyond a minimum level in any one year (5%).
151. Issues as to interest are to be determined at a later hearing.

12. Summary of Conclusions and Findings

152. The issues in the current proceedings which I am asked to decide are as follows:

1. Were the surplus proceeds of the three remortgages of the Property, which were paid to Kouri and/or her company Roundwood Estates Limited and used for her own benefit (including the establishment of her estate agency business Roundwood Properties), effectively loans by Mother to Kouri which are repayable to Mother's estate by Kouri?

The amounts paid by Mother to Kouri are *prima facie* repayable by Kouri. However credit should be given for the amounts over and above the interest payable on the Mortgages paid by Kouri to Mother, for interest paid by Kouri on the mortgage after Mother's death, and for the £25,000 advanced by Kouri to finance Thakur's wedding.

2. Alternatively, were all or some of these payments gifts by Mother to Kouri?

No

3. What were the surplus proceeds of the First, Second and Third Remortgages?

Kouri's obligation is to repay the amounts advanced to her. This is assessed as the principal amount of the Godiva Mortgage when drawn down – that is, £150,000, - less the sum applied in redemption of the Leeds and Holbeck Mortgage – that is £22,000.

4. Should Kouri be required to reimburse Mother's estate in respect of all or a part of the amount paid by the Second Defendant to redeem the Third Remortgage?

No. Kouri's obligation is to repay the amounts advanced to her. It is unconnected with the amount outstanding on the Mortgage

5. If so, in what sum?

See 3. above.

6. What jewellery was owned by Mother at the date of her death?

The jewellery itemised in the Sanjeev Jewellers valuation.

7. What jewellery was worn by Mother, and what was kept by her in the Safe Deposit Box at the bank?

At the time of her death, all of Mother's jewellery apart from the few items of daily wear, were in the Safe Deposit Box.

8. What became of that jewellery following Mother's death?

It was retained by Kouri until it was distributed amongst the siblings.

9. In particular, what part of Mother's jewellery is now held by Kouri?

None, save for that to which she is entitled.

10. How should Mother's jewellery have been dealt with following her death?

The jewellery should have been distributed at the discretion of the executor amongst the children (including grandchildren).

11. Did Kouri deal with all or any part of the jewellery correctly and in accordance with the legal position following Mother's death?

Yes

12. If not, should Kouri be ordered to deliver up any jewellery to the Second Defendant and/or compensate Mother's estate in respect of the value of any such jewellery – and in the latter case, in what sum?

This issue does not arise.

13. Should Kouri account to Mother's estate for sums which she received as income from the Property which she was acting as executor?

No – no such sums were received.

14. If so, in what sum?

This issue does not arise.

15. Should Kouri pay any interest to Mother's estate in respect of any sums she is ordered to pay to it?

Yes – interest in the form of equitable compensation should be payable from the date of Mother's death on the net amount at an investment rate.

16. If so, in what sum?

To be determined at a subsequent hearing.

17. Who should pay the costs of these proceedings?

To be determined at a subsequent hearing.