Neutral Citation Number: [2021] EWHC 1599 (Ch)

Case No: PT-2017-000104

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
PROPERTY TRUSTS AND PROBATE LIST (CH)

Royal Courts of Justice
Rolls Building, London EC4 1NL

Date: 16/06/2021

Before :

DEPUTY MASTER BOWLES

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Between :

Jaswinder Kaur Sangha	**Claimant**
- and –	
(1) The Estate of Diljit Kaur Sangha **(2) Sundeep Singh Sangha** **(3) Mandi Vanderpuye** **(4) Harbiksun Singh Sangha** **(5) Jagpal Kaur Sangha**	**Defendants**

Case No: PT-2019-000757

AND IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF
ENGLAND AND WALES
PROPERTY TRUSTS AND PROBATE LIST (CH)

Between :

Jaswinder Kaur Sangha **Claimant**

- and –

Sundeep Singh Sangha **Defendant**

Mark Blackett-Ord (instructed by **Sebastians**) for the **Claimant** in both Claims
William East (instructed by **Huggins & Lewis Foskett**) for the **1st, 2nd and 3rd Defendants** in PT-2017-000104 and the **Defendant** in PT-2019-000757
Henry Hendron (instructed by **Richard Hendron**) for the **5th Defendant** in PT-2017-000104

Hearing dates: 21st, 22nd, 23rd, 26th, 27th, 28th, 29th and 30th October, 2nd November and 14th December 2020

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Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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DEPUTY MASTER BOWLES

Deputy Master Bowles :

1. Hartar Singh Sangha (Hartar) died on 3rd September 2016, in Chandigarh, in the Punjab region of India, aged 72. He had been the owner of very substantial assets in India and in the United Kingdom. These two Claims are concerned with the validity of Hartar's wills and the devolution of his assets, under those wills, or otherwise, as between the members of what I will call his extended family. I will refer to the two Claims as the probate claim and the property claim.

2. The Claimant, in the probate claim, Jaswinder Kaur Sangha (Jaswinder) was married to Hartar, in Jalandhur, in India in 1992. She was, at that date, 23 years of age. Hartar was, then, 48 years of age. It was an arranged marriage. Hartar and Jaswinder had one child, Harbiksun Singh Sangha (Harbiksun). Harbiksun was born on 1st March 2001 and is, now, 20 years of age. He is the fourth Defendant in the probate claim but has taken no part in these proceedings. The validity of Hartar's marriage to Jaswinder is in issue in these proceedings, but, by agreement of the parties, is not to be the subject of a determination in this trial.

3. The reason why the validity of Hartar's marriage to Jaswinder is in issue is that for many years Hartar held himself out as being married to Diljit Kaur Sangha (Diljit), by whom Hartar has had two children, Sundeep Singh Sangha (Sundeep) and Mandi Vanderpuye (Mandi), who are, respectively, the second and third Defendants in the probate claim. Diljit was born in 1942 and died in March 2018, aged 75. Diljit was, initially the first Defendant in the probate claim. Following her death and by my order of 5th April 2018, the probate claim has been carried on against her estate, as first Defendant, and Sundeep has been appointed to represent her estate.

4. Sundeep and Mandi and Diljit's estate all contend that Diljit was lawfully married to Hartar, in October 1962, in an arranged Sikh wedding ceremony in the Punjab. If that be right, then, since this marriage has never been dissolved, the necessary consequence would be that Jaswinder's purported marriage to Hartar was never valid. The potential relevance of the validity, or otherwise, of these marriages will appear later in this judgment.

5. Sundeep was born in October 1969 and Mandi in April 1972. They were both born in the United Kingdom. Hartar had come to the United Kingdom in 1963 and Dijit had joined him, as his spouse, in 1965. After a period in rented accommodation, Hartar purchased a property at 17 Empress Avenue, in Ilford. That property was retained as the family home for Hartar, Diljit, Sundeep and Mandi until 1990, when they moved to 142 Hainault Road, in Chigwell. Hartar had purchased the Hainault Road plot in 1983 and had, over time, constructed a family home on that site.

6. At some point, prior to 1990, Hartar's sister, Jagpal Kaur Sangha (Jagpal), the fifth Defendant, had come to live with Hartar, Diljit, Sundeep and Mandi at Empress Avenue, while studying for a PhD in Economic Geography, in London. Jagpal moved with the rest of the family to Hainault Road in 1990.

7. Diljit continued to live at Hainault Road for the rest of her life. Mandi, however, moved out shortly before her nineteenth birthday, having fallen out with her father over her choice of partner. That estrangement continued until 2002, when Mandi contacted

Hartar and when, according to Mandi's uncontested evidence, their relationship was restored.

8. In 1991, Diljit and Jagpal fell out and Diljit asked Jagpal to leave. Sundeep's evidence, upon which much of the current summary is based and which evidence I very substantially accept, is that Diljit believed that the very close relationship which had developed between Jagpal and Hartar was an unhealthy one.

9. In the event, it would appear that this was the catalyst for the breakdown of the relationship between Hartar and Diljit. When Jagpal left Hainault Road, Hartar left as well. They returned to India and both went to live in Chandigarh.

10. By the date that Hartar left the United Kingdom, in 1991, he had had considerable business success. Initially, he operated a building firm and builders' merchants H S Sangha Ltd, from a property at 656-658 Romford Road, in Manor Park. From 1972, however, his business had been run through the medium of a different company, SBM Warehouse Ltd (SBM), the shareholding in which was held jointly by Hartar and Diljit. That business first traded from the Romford Road address, but, thereafter, expanded into a considerable number of premises.

11. By 1988, its principal business was that of a bathroom equipment retailer, bathroom wholesale distributor, importer and manufacturer. The company had premises at 656-666 Romford Road, Manor Park, together with locations in Brentford, Finchley and Swiss Cottage. A large distribution centre at Hartmann Road, Silvertown was, subsequently transferred to 4-28 Varcoe Road Southwark (Varcoe Road). In 1990, Hartar purchased further premises at 103-107 Windmill Road, in Brentford. That property had been purchased in a dilapidated state, but, subsequently, on renovation, consisted of eighteen residential units (bedsitters), on the upper floors and a bathroom/plumbing shop, run by SBM, on the ground floor.

12. Sundeep first worked with/for Hartar at SBM. He began working in what was, in effect, the family business from the age of ten. He would run errands at weekends and in the evening during school term and work in the business during school holidays. Sundeep had aspirations to attend university. His evidence, at trial, however, which I accept, is that, even before taking A levels, he was placed under considerable pressure by Hartar to abandon those aspirations and to come to work full-time in the business. In the result, following poor A level results, which Sundeep puts down to the fact that he was, already, devoting too much time to his work in the business, and despite, as I understand it, commencing, but not completing, courses to improve his results, Sundeep, from1988, began to work full-time for SBM. Sundeep's evidence, which, again, I accept, is that, to persuade Sundeep to come into the business, Hartar promised that Sundeep would succeed to the business and would come to own and run the businesses for his own benefit and that of his mother and sister.

13. As will appear later in this judgment, this promise, by Hartar, and other like promises, said to have been made, over the years, to Sundeep by his father, in respect of Hartar's business and properties, is at the heart of the property claim, whereby Sundeep asserts that he is entitled, by the application of principles of proprietary estoppel, to the beneficial ownership of some half dozen properties, owned, or jointly owned, by Hartar and Jaswinder, during Hartar's lifetime, and now allegedly vested in Jaswinder by survivorship.

14. Sundeep's work, in and for SBM, embraced a multiplicity of activities, ranging from collecting rent from the premises owned by Hartar/SBM, to, as he put it, running errands, to working as a sales person in the company's branches, at, variously, Romford Road, Varcoe Road, Brentford and, from 1990, Windmill Road. He worked long hours with, he says, modest payment. His understanding, from his father, was, always, that this was the family business, which would one day pass to him.

15. From 1991, when Hartar and Jagpal left Hainault Road and moved to India, basing themselves in Chandigarh, Sundeep was left with the de facto management of SBM. Sundeep's evidence, which I accept, is that Hartar had not left SBM in good condition. A part of its problems had been that Hartar had entered into a transaction with an organisation called Wrekin Electricals giving rise to a liability of circa £100,000. Monies, to the tune of circa £140,000 had also been spent upon a computer system. The business was under invested and over stretched. National Insurance, PAYE and tax were unpaid and creditors were chasing. As time progressed and as Hartar's business activities in India grew, monies were, it seems, extracted from SBM and transferred to India to support those activities.

16. In the result, Sundeep, still in his early twenties, was left with the management of what was, eventually, a failing business and to confront, with minimal experience, the familiar problems associated with such a business. Throughout this period, Sundeep remained, as I understand it, in close contact with his father, who now divided his time between England and India and who continued to reassure Sundeep that his efforts would ultimately be rewarded by the inheritance of the business. It was Sundeep, however, who had to deal with creditors, solicitors, accountants and bankers, as well as dealing with the day by day problems of cash flow.

17. In 1994, SBM was wound up. Although the circumstances are somewhat opaque, Varcoe Road, which was the main warehouse premises from which SBM operated, was transferred, purportedly by Barclays Bank, as mortgagee, to Jagpal, in consideration of £215,000. In 1999, that property was re-transferred by Jagpal to Hartar and Jaswinder, for no stated consideration and, latterly, sold on for a sum which is said by Jagpal to have been in excess of £2M. Those proceeds were, apparently, applied in the purchase of premises, at 40-52 Napier Road, in Gillingham. Jagpal contends that it was agreed, in 2002, that she would receive £250,000 and an interest in Napier Road, in recognition of her entitlement arising out of the sale of Varcoe Road, but that that arrangement was never put into effect.

18. As already stated, Hartar and Jaswinder's marriage, or, purported marriage, took place in August 1992. At that date, neither Diljit nor Sundeep were made aware that that event had taken place. It was only in 1994 that Sundeep and, latterly, his mother found out that Hartar had purportedly married Jaswinder.

19. In that year, Sundeep went to India with his father and stayed with him at his home in Chandigarh, H No. 768 Sector 8 Chandigarh (the Chandigarh property). Over dinner at the Chandigarh Golf Club, Hartar informed Sundeep that he had married Jaswinder. Diljit, herself, was only informed of this event, by Sundeep, when he returned to England. On the same evening that Hartar made his disclosure, Hartar and Sundeep had a conversation at the Chandigarh property in which Hartar told Sundeep that he, Hartar, would deal with Hartar's developing Indian business affairs. Sundeep was to look after

the family's business, or affairs, in England and, on Hartar's death, Sundeep would be his successor and would be getting everything in the UK.

20. The family's business, or affairs, in England, in and after 1994, was very different from the business as previously carried on by SBM. Sundeep, through the medium of a company, incorporated as the London Bathroom Centre, subsequently changed to Waterforce Ltd (Waterforce), took over, in effect, the business of SBM, as it had been carried on from the commercial unit at Windmill Road. Other previous outlets of SBM, owned by Hartar, were let out under what Sundeep called 'package' arrangements, whereby the tenant, under the arrangement, ran his own business from the outlet, including the sub-letting out of any residential parts, paying Hartar an overall rent, or payment, for the use of the unit, but with Hartar having no managerial involvement, or connection, with the business carried on.

21. Although Sundeep's evidence is that the corporate arrangements put in place at Windmill Road were so arranged at the behest, or requirement, of his father, and although he complained of the choice of Windmill Road, as being the least worked up of the various ex SBM outlets and the furthest from the family home at Chigwell, the fact remains that, at age 25, Sundeep was placed in the ownership and control of his own business and with the advantage that he was, in effect, inheriting the goodwill and business that SBM had developed in the Windmill Road commercial unit. Sundeep was the sole shareholder. The business was autonomous. The profits, as well as the responsibility, were his. The only connection with Hartar was that the premises were leased from Hartar, at an ostensible passing rent of £21,000 per annum. Sundeep and Hartar's agreement was that that rent, which Sundeep put at £2000 per month, would be paid to Diljit, to meet Hartar's concern that he should not be seen in the Punjabi/Sikh community as having abandoned her. Waterforce remained Sundeep's business and the main focus of his work from 1994 to 2011 and, at least until 2002, as set out later in this judgment, the main source of his income.

22. In regard to Hartar's other business, or affairs, in England, Sundeep's role, after 1994, given the nature of the arrangements that Hartar had set up, was limited. As he explained in evidence, he retained responsibility for the collection and the banking of rent collected for Hartar from the residential units at Windmill Road. In practice this task was carried out by a Waterforce employee, Sandhu Singh. He would also, from time to time, collect and bank cash rents from other of Hartar's outlets and, as he put it, carry out any further errands his father required in respect of those outlets, including occasional discussions with insurance agents and solicitors. Sundeep did not over-egg this 'work'. He described his dealings with insurers and solicitors as 'filling in the gaps'. He recalled picking up rent from premises in Romford Road and Fairhazel Gardens, in Swiss Cottage and also making occasional collections from Chadwell Heath and Berwick Street. In re-examination, he reckoned on his father's 'errands', as he referred to them, as amounting to two hours work per week and, specifically in respect of rent collection, that he might collect rent from Berwick Street twice a year, when his father wanted monies paid into particular accounts. He acknowledged that he had no dealings at all in respect of a number of his father's properties, or outlets, and that, as one would expect, the preponderance of rents were paid by cheque or standing order without any reference to him. He further acknowledged that in the period 2002 to 2007, following the meeting and discussion set out in the next following paragraphs, there was a degree of estrangement between father and son, such that Sundeep did little for Hartar and such

that he would not take his calls. After 2007, as Sundeep put it, the situation between father and son 'normalised'.

23. Although Jaswinder's evidence is that she first came to the United Kingdom in 1998, Sundeep's evidence, at trial, was that it was only in 2002 that he was first told by his father that Jaswinder was in the United Kingdom and that he and Jaswinder had set up a home in this country. Sundeep and Diljit had had no prior warning of this fact. Sundeep visited his father, at the old family home at Empress Road, where Hartar and Jaswinder had been staying. Sundeep was, understandably, concerned at the effect that Jaswinder's arrival in the country would have both on his mother and upon his own position. This led to a discussion between Hartar and Sundeep in which Hartar reassured Sundeep that both he and his mother would be looked after and that Windmill Road and his other properties would be transferred to Sundeep.

24. In specific regard to Windmill Road, Hartar told Sundeep that, subject to a payment of £3000 per month (apparently later rising to £3500, or £4000 per month), to be paid to himself and Jaswinder, he should retain, for himself, the rents from the residential units; saying and explaining, according to Sundeep, that Windmill Road was his anyway.

25. It was following these discussions and in despite of this new and, ostensibly, advantageous arrangement that Sundeep, as mentioned above, entered into a period of semi-estrangement from his father. He was, as he explained, waiting for his father to make the promised transfers. He was, also, at that stage, seeking legal advice for Diljit as to his father's purported remarriage and as to Diljit's entitlement on a divorce. In the event, Diljit took no action and, in the event, although no steps were taken to make any transfers to Sundeep, father and son became close again.

26. Notwithstanding Hartar's continuing failure to effect any transfers of property, promises of such transfers continued to be made. In 2009, on a visit with his father to India, Hartar told Sundeep that he should not worry and that, in the end, the United Kingdom property and business would be transferred. Similar promises were, again, made in 2011/12 and 2015.

27. In 2016, Sundeep became aware that, notwithstanding all Hartar's assurances to Sundeep, Hartar had, in fact, transferred a number of properties, including Diljit's home, at Hainault Road, not to Sundeep but into the joint names of himself and Jaswinder. Hartar told Sundeep that he had had problems (which Sundeep took to be tax problems) which he had had to sort out, but, in what turned out to be a final conversation, on 1st July 2016, he, yet again, promised that, on his return from India, he would 'deal with things properly' and make sure that properties were transferred into Sundeep's name. Hartar died, in India, on 3rd September 2016. No transfers had been effected.

28. The arrangement as to Windmill Road continued until 2011. The Waterforce rent continued to be paid to Diljit. Jaswinder and Hartar received £3000, perhaps £3500/£4000 per month, from the Windmill Road residential rents, together, according to Sundeep, with additional monies out of which Hartar paid the very large (circa £2000 per month) electricity payments associated with the residential premises, but with the balance of the residential rents accruing to Sundeep.

29. A further, potentially important, event took place in March 2002; namely that Jagpal was married. It appears, although, again, not fully explored in the evidence, that Jagpal's marriage precipitated a very serious estrangement between Hartar and his sister. My understanding is that up until that marriage, Jagpal and Hartar had worked together (with, it would appear, some success) in the development of Hartar's Indian business and property affairs. Jagpal was, according to Jaswinder, director of two of his companies and signatory, with Hartar, of a number of his accounts. Jagpal was (and, as I understand it, still is) a 25% owner of the Chandigarh property. Following Jagpal's marriage, however, disputes broke out. Hartar, seemingly, expected that, now she was married, Jagpal should 'return' her interest in the Chandigarh property, in the same way that she had 'returned' Varcoe Road.

30. There was, also, I think, litigation over another property, in which Jagpal claimed a one eighth interest and of which she retained possession. As explained later in this judgment, echoes of these disputes and of the antagonism between Jagpal and Hartar created by these disputes emerge both in a manuscript addendum to a will made by Hartar in 2003 and, again, in a will, heavily in dispute, in these proceedings, purportedly made in 2007. Jagpal's case, however, is that, by the end of Hartar's life, there had been a rapprochement between brother and sister, reflected, inter alia, in the provision made for her in what she asserts to be Hartar's final will, made in the year of his death, 2016.

31. Reverting to the position in the United Kingdom, Sundeep's evidence is that, from about 2008, Waterforce was in financial difficulty. The financial crisis which overtook the United Kingdom in 2008 resulted in the withdrawal of the credit lines upon which Waterforce had relied.

32. The immediate consequence of this was that, in 2010, Sundeep sought funds from his father to keep the business running and that, in the event, Hartar provided him with £150,000, which he was able to use to repay friends who had, themselves, put up money to keep Waterforce afloat. That £150,000 was never repaid, as such, albeit that a mortgage taken out by Hartar, negotiated by Sundeep, and which had, initially, been intended, by Hartar, as the source of the funds to be used to assist Waterforce, was, until about 2013, paid from the rent receipts from Windmill Road, at the rate of £1600 per month. Sundeep believes that the monies advanced under that mortgage, taken out on a property at 433 Bromley Road, Bromley, were used to buy a property, or properties, in Gillingham.

33. The ultimate consequence, however, of the financial crisis and credit crunch was that, in November 2011, Waterforce ceased to trade and was dissolved. Sundeep negotiated an arrangement with one of his Waterforce employees, a Mr Balvinder Gill, whereby Mr Gill would, in effect, take over the Waterforce business and goodwill paying Hartar a rent of £6,500 per month for the property and the established business.

34. The arrangement as to that rent was that it should be paid to Diljit, with the residential rents, subject to the payment to Hartar and Jaswinder, as already set out, remaining with Sundeep. In practice, in respect of the residential rent, those that were paid by cheque were, according to Sundeep, passed to his father, in payment of his 'share', with the cash payments retained by Sundeep as his 'share'. In re-examination, he placed a value on those payments of circa £50,000 to £60,000 per year.

35. The arrangement with Mr Gill operated as intended until 2013. However, from that date onward, Mr Gill fell into very substantial arrears. In that circumstance, the income retained by Sundeep went to maintain both himself and Diljit.

36. Following the letting to Mr Gill, Sundeep did not, as he put it, in cross examination, carry on any 'conventional work'. Until the commencement of the property claim he was, however, still collecting the rents from the residential units at Windmill Road and was still involved, to an extent, in the day by day management of those units.

37. He was, for example, involved in the arrangement of a statutory demand for unpaid rent served on Mr Gill, in Hartar's name, in March 2016. He was also, in 2016, liaising with his father, following correspondence and notices from the London Fire Brigade and from Hounslow Council housing enforcement officers, in respect of works required to be carried out to and in respect of the residential units, at Windmill Road, in order to bring them into compliance with current regulatory standards. After Hartar's death and until terminated, in or about April 2018, by the commencement of the property claim, he continued to play a role in the management of the residential units and in the carrying out of some of the required works.

38. In December 2016, shortly after Hartar's death, a discussion took place as to the transfer of Windmill Road and, perhaps, Hainault Road to Sundeep, together with a sum of money. Jaswinder's evidence is that she was placed under some pressure from other members of Hartar's family to make some provision for Sundeep and Diljit. The fact is that no transfers were ever effected and that, by the end of February 2017, Jaswinder's solicitors were asserting that the disposing will was that dated 5th March 2003, discussed later in this judgment, and that under that will no provision was made either for Sundeep or Diljit.

39. Although, at this trial, the property claim has been concerned, solely, with Sundeep's claim in proprietary estoppel, the property claim was, in fact, commenced by Jaswinder. In the claim, as issued, Jaswinder, as registered proprietor, sued Sundeep in respect of what she alleged to be his unauthorised collection of rents and his unauthorised interference in the management of the residential units. She sought injunctive and declaratory relief such as to preclude him from both activities and, also, an account of rents that Sundeep had received in respect of the residential units since the death of his father.

40. Sundeep's answer to that claim was to aver that he was the beneficial owner of Windmill Road, by way of the application of principles of proprietary estoppel and, by his Counterclaim, that, by the application of the same principles, he was, also, the beneficial owner of six other properties which, at that stage, he averred had fallen into Hartar's English estate. It is this Counterclaim, subject to some amendment, as explained later in this judgment, which has been pursued before me.

41. Additionally, in the years from 2011, Sundeep continued to carry out 'errands' for his father. They ranged from helping him to select a new car, to monitoring auction particulars, with a view to Hartar purchasing a property in Acton, to researching tax and planning questions for his father, to seeking savings on utilities, to assisting Hartar with the internet, to helping Hartar and Jaswinder find a school for Harbiksun. Sundeep, also, assisted Hartar, in respect of a bankruptcy petition issued against him, in 2013. Materially, potentially, to the ambit of the property claim, Hartar was made bankrupt,

pursuant to that petition, but, subsequently procured an annulment of that bankruptcy. Sundeep was the person, as I understand it, who organised the provision of the monies required to procure the annulment.

42. Other than the foregoing, Sundeep's main activity, or concern, after 2011, was to look after his mother, Diljit. Diljit had been suffering from a condition subsequently diagnosed as erythromelalgia, since 2002. The condition caused her to have extremely painful swollen legs and within two or three years of diagnosis she was finding it very difficult to leave home. Ever since 1994, when Hartar's relationship with Jaswinder had been revealed, it had been Sundeep's understanding that his mother was his responsibility and, in 2011, when the Waterforce business had ceased, Hartar had specifically asked Sundeep to look after her.

43. Sundeep never considered asking his father for financial assistance, in order to bring in professional care. Diljit was his mother and the idea of farming out her care to a third party simply did not arise. Hartar, also, would never have considered bringing in professional care. In his eyes, the introduction of a carer would have diminished his status in his community. In that community, the impression he gave was that Diljit and Sundeep had been given everything they needed.

44. From 2011 to 2015, Sundeep estimates that he spent one third to one half of his time looking after Diljit at Hainault Road. His mother, he told me, tried very hard to look after herself, but, as time passed, Sundeep had to 'fill the gaps'.

45. In 2015, Diljit was diagnosed with breast cancer and underwent surgery and radiotherapy. Sundeep took her to all her many medical appointments, juggling his time between his mother and his son, Tian, who was preparing for his A levels. At the beginning of 2016, Diljit began to develop back problems and, after a series of investigations and false diagnoses, it emerged that cancer had recurred. Sundeep's estimate is that, after the death of his father, his care for his mother was virtually a 100% commitment. As already stated, Diljit died in March 2018.

46. Also as already stated, Hartar was, at the date of his death, the owner of very substantial assets both in India and in this jurisdiction.

47. Jaswinder, in evidence, placed a value of £30M on his Indian estate, as at the date of Hartar's death, albeit that that value, she said, had diminished by 35%, as a result of falls in the market since Hartar's death.

48. The net value of Hartar's estate for probate, in this jurisdiction, has been put at £1,107,727. That figure, however, excludes assets, shown in the IHT account, filed by Jaswinder in August 2017, as passing to her by survivorship, to the value of £10,079,470. As already stated, it is, principally, to those assets that Sundeep claims a beneficial entitlement in the property claim.

49. The particular properties over which Sundeep asserts an interest, in addition to Windmill Road, are 142 Hainault Road, 76 Berwick Street, 1061-1063 High Road, Romford, 433 Bromley Road and 217/219 Balmoral Road. A further property, 3 Marlborough Parade, is included in the Counterclaim, but, since, by amendment, dated 10th October 2019, the Counterclaim is formulated against Jaswinder and not Hartar's

estate and since 3 Marlborough Parade was, at all times, held solely in Hartar's name and, so, falls into his English estate, the claim against that property is not pursued.

50. As regards, the properties in respect of which the claim is advanced and which, subject to an issue arising out of Hartar's 2013 bankruptcy and its annulment, are said to be vested in Jaswinder, by reason of survivorship, the position can be summarised as follows.

51. Windmill Road was, as already stated, purchased by Hartar, in 1990. It was transferred into the joint names of Hartar and Jaswinder in November 2001. Hainault Road had been purchased by Hartar as long ago as 1983 and, although, as already stated, the long term family home of, in particular, Diljit it was, nonetheless, transferred into the names of Jaswinder and Hartar in August 2010. 433 Bromley Road and 1061-1063 High Road, Romford had, also, been in Hartar's long term ownership (since 1998 and 1996, respectively), until transferred into the joint names of Hartar and Jaswinder in August 2010 (Bromley Road) and June 2015 (High Street, Romford). 76 Berwick Street and 217/219 Balmoral Road were both purchased, in, respectively, September 2004 and August 2004, in the joint names of Hartar and Jaswinder. Sundeep's case is that both those properties were purchased with the proceeds of sale of 656-666 Romford Road, sold in April or May 2004, those properties having been, for many years, held by Hartar in his sole name.

52. All of the above properties, save 217/219 Balmoral Road, are shown in the IHT account as passing to Jaswinder by survivorship. 217/219 Balmoral Road is, however, not so shown. Rather, it appears in the IHT account as passing, in part, into Hartar's estate, on the footing that it was held by Jaswinder and Hartar as tenants in common. The TR1, transferring the property to Jaswinder and Hartar appears, however, to show a beneficial joint tenancy, and, in consequence, to give rise to a survivorship in favour of Jaswinder; prima facie, taking that property, also, out of Hartar's English estate.

53. Sundeep's contention, in respect of the properties transferred into joint names, is that, by the date of those transfers, those properties were already subject to an equity in favour of Sundeep, arising out of the promises made by Hartar and Sundeep's actions in reliance upon those promises and that, in consequence, when transferred into joint names, the interest, ostensibly taken by Jaswinder, was taken subject to that equity and subject, therefore, to the relief to be granted to Sundeep, in crystallisation of that equity; namely, in his contention, the transfer to Sundeep of the beneficial interest in each relevant property.

54. In respect of the properties purchased in Hartar and Jaswinder's joint names, Sundeep's contention is that, because the properties sold were, when sold, subject to an equity in his favour, the proceeds of sale were, likewise impressed with that equity and the equity can and should, therefore, be traced into the property purchased with those proceeds, such that Hartar and Jaswinder's interest in those properties and, now, Jaswinder's interest, by survivorship, was, at all times, subject to the equity and to the relief to be granted in crystallisation of the equity.

55. Both Sundeep's foregoing contentions have, however, to be considered subject, as already indicated, to a point raised by Mr East, counsel for Sundeep, in the property claim, namely that the normal consequences of survivorship, where property is, or has

been, held on a beneficial joint tenancy, do not arise in this case, by reason of the bankruptcy, albeit, eventually, annulled, to which Hartar was subject in 2012.

56. The bankruptcy point arose late in the proceedings and was raised by Mr East pursuant to his duty, as counsel, to the court to draw relevant matters to the court's attention, notwithstanding that they might be contrary to his client's case.

57. The point, shortly summarised, is this; that the effect of Hartar's bankruptcy was to sever the joint tenancy in any properties then held as joint tenant, such that, thereafter, those properties were held as tenants in common. The annulment of the bankruptcy did not have the effect of setting aside the severance, with the result that all the jointly owned properties, subject to the property claim, save for 1061-1963 High Street, Romford, which was only placed in joint names in June 2015, were, at the date of Hartar's death, held as tenants in common in equal shares and with the further result that Hartar's beneficial share in each of those properties fell into his estate and did not vest in Jaswinder by survivorship.

58. Given that, as set out in the recitals to my order of 11th June 2020, Sundeep's property claim is only advanced against Jaswinder and in respect of property held by Jaswinder and is not advanced against Hartar's estate, the consequence, or effect, of the above point, if correct, is to significantly reduce the property interests, held by Jaswinder, over which he can assert his alleged equity.

59. Mr East seeks to meet this difficulty in two ways. He contends that, even though Hartar's estate is not party to the property claim and, therefore, that no relief can be granted, or directed, against that estate, the court can, should it be found in the probate claim, that Jaswinder is the sole beneficiary of Hartar's English estate and, therefore, entitled, as beneficiary, to the undivided half shares, in the various properties where severance has taken place, direct, as against Jaswinder, in these proceedings, that those undivided shares, when vested in her in due course of administration of Hartar's estate, be so vested subject to Sundeep's equity and subject to the crystallisation of that equity, by the transfer to Sundeep of her beneficial interest in those undivided shares.

60. In the alternative, as I understand his submissions, he contends that, because Jaswinder holds, by survivorship, the legal estate in all the relevant properties, it is open to the court to declare, as against her, as the legal owner of the properties, that she holds those properties, at law, subject to Sundeep's equity and the crystallisation of that equity, such that she hold the properties for Sundeep beneficially.

61. I turn next to a consideration of the probate claim. One of the reasons why the property claim and the probate claim have been heard together is that the outcome, or result of the probate might, it is said, impinge upon the relief to be granted in the property claim. I have already indicated, in paragraph 60, one area where the result of the probate claim may be relevant to the relief granted in the property claim. From another perspective, Mr Blackett Ord, for Jaswinder, contends that an outcome in the probate claim, whereby Sundeep secures substantial benefits from either Hartar's Indian, or English estate, is likely to be material to the court's decision as to the extent of the relief to which Sundeep might be entitled in respect of any equity that he may have made out against Jaswinder. Put simply, if Sundeep is a substantial beneficiary of Hartar's worldwide estate, then, given that the alleged equity is said to arise from Hartar's unfulfilled promises, those benefits should be brought into the balance in determining the extent,

if any, of the relief to which he might be entitled in satisfaction of any equity, or in determining that the testamentary benefits received are sufficient to satisfy any such equity.

62. In the light of these potential interactions between the probate claim and the property claim, I intend, in this judgment, to deal, first, with the probate claim and, then, in so far as is necessary and possible, factor the outcome of the probate claim into my consideration of the property claim.

63. There are before the court four known wills made, or allegedly made, by Hartar. There is, further, a suggestion, no more, arising from Jagpal's evidence that another will existed under which she received a 25% interest. That, however, has not been explored.

64. The first known will, in time, is that dated 20th July 1979. That will was prepared in England by English solicitors, Crust Lane and Davis. The validity of that will is accepted by all parties. Under the will and subject to the provision of a life interest in favour of Diljit, in respect of the income of one half of Hartar's estate, the estate was left in trust for Sundeep and Mandi in equal shares. That will did not differentiate between Hartar's English estate and any other estate, no doubt, because, as at 1979, Hartar's business activities in India were yet to commence.

65. The second known will, in time, is that dated 5th March 2003. By her claim, in the probate proceedings, Jaswinder sought, in the event that she failed to prove in solemn form a subsequent will, dated 16th April 2007, to prove this will in solemn form. At the outset of this trial, Sundeep, Mandi and Diljit's estate, while not asserting a positive case in opposition to the validity of the 2003 will, when executed, wished to put Jaswinder to proof of that validity. In the event, by the end of the trial, the validity of the 2003 will was no longer in issue.

66. The 2003 will was executed in Chandigarh. It was what has been termed a registered will, that is to say a will which, post execution, was subjected to a process, established under Indian law by the Registration Act 1908, whereby a will, or other relevant document, can be 'endorsed', by those executing the document in question, in the presence of a registration officer. In this instance, the will, having been executed by Hartar and two witnesses (a Mr Jagdish Singh, an Indian advocate, who carried on, as I understand it, much of Hartar's property work in India, and a Mr Gurdeep Tiwana (Mr Tiwana), an important witness at this trial, and who had worked for and with Hartar, in respect of his Indian affairs, since 1988 and now works for and with Jaswinder), was taken by Hartar and his witnesses to the office of the sub-registrar, where the will was, effectively, re-executed and then left for recording and registration. Jaswinder's evidence is that a copy of this will was given to her by Hartar and retained.

67. The will recited that Hartar was the owner of a number of properties and then went on to identify, as those properties, a number of particular Indian properties, the shares and profits of a limited company, 'all bank accounts and deposits with any banks and pending claims and cases of properties' and all 'moveable and immovable properties in India at the time of my death'. Among the particular properties were three properties in which Hartar had what he called 'deprived rights', meaning, as I understand it, Jagpal's rights in properties held in joint names by Jagpal and Hartar, which, according to the will, Jagpal should have transferred to Hartar after she got married. In respect of those

properties, the will provided that, in the case of the pre-decease of Jaswinder and Harbiksun, they should pass to Sundeep.

68. The will went on to state that Hartar's 'desire' was that Jaswinder and Harbiksun would 'acquire own and possess' his 'properties along with all rights, titles, interests thereto' and to provide that, after his death, Jaswinder and Harbiksun should 'be the sole and absolute owners of properties along with all rights, titles, interests attached thereto'. It repeated that, in the event of Jaswinder's and Harbiksun's pre-decease, 'all properties' should go to Sundeep and cancelled 'all my wills and testaments made earlier'.

69. Although validity is not an issue in respect of this will, construction is.

70. Jaswinder contends that, in the event that this will comes into play, and has not been superceded by a later will, then it operates to dispose of the entirety of Hartar's worldwide estate and, in so far as the 1979 will had not been revoked by Jaswinder's marriage to Hartar, then it has been revoked by the clear words of cancellation contained within the 2003 will.

71. Sundeep, Mandi and Diljit's estate contend that this will, on its true construction, disposes only of Hartar's Indian estate and, further, that having regard to the factual matrix, the will's revocation, or cancellation, provisions do not operate to revoke the 1979 will, which, in consequence, remains a valid instrument in respect, as I understand it, of Hartar's English estate. Their secondary contention, if, contrary to their primary submission, the 2003 will revokes the 1979 will, or, if, contrary to their case, Jaswinder was lawfully married to Hartar and that marriage revokes the 1979 will, is that that revocation results in an intestacy in respect of Hartar's English estate.

72. Both of these contentions would, if the court finds that the 2003 will is the disposing will, require the court, in due course, to determine the validity of Jaswinder's marriage to Hartar. The primary contention would raise the question as to whether the 1979 will, even if not wholly revoked by the 2003 will, had been revoked by Hartar's purported marriage to Jaswinder. The secondary contention would, also, require the determination of the validity of Jaswinder's marriage, in the context of the determination of her rights, if any, arising on the existence of an intestacy in respect of Hartar's English estate. In that circumstance, a further issue is, potentially, raised between the parties, but excluded from this trial; namely the issue of Hartar's domicile, at the date of his death. Jaswinder's contention is that his domicile, at death, was India and, therefore, her rights on intestacy will be those arising under Indian law. Sundeep, Mandi and Diljit's estate all contend that Hartar was domiciled in England and therefore, that the provisions of the Administration of Estates Act 1925 would apply. I have not been told, at this trial, what differences, if any, exist as between the English and Indian laws on intestacy, or, therefore, whether domicile is likely to have any material effect upon the rights of the parties, in the event that an intestacy arises.

73. The 2003 will was made two years after the birth of Harbiksun and a year, or so, after Jagpal's marriage. The contents of the will demonstrate that, by 2003, Hartar was well on the way to developing his Indian businesses. Those contents also demonstrate that he was, by that date, already in dispute with Jagpal as to the 'return' of properties held, or partly held in her name. At some date, following execution, a manuscript note has been added to the will, alongside the signatures of the two witnesses. That note states 'make sure that no property goes to Jagpal Kaur all my property to transfer to my wife

Jaswinder and son Harbiksun'. Jaswinder's evidence, not, I think, significantly in dispute is that Hartar wrote the note on the will at some point following execution of the will, in a further reflection of his dispute with Jagpal and his clear wish, at least at that stage, that Jagpal should not secure any of 'his' property.

74. The third will, or purported will, which is before the court is that dated 16th April 2007 (the 2007 will). Its authenticity is hotly disputed, as between, primarily Jaswinder, on the one hand, and Sundeep, Mandi and Diljit's estate, on the other; their case being that the entire will has been concocted by, or on behalf, of Jaswinder and that the entirety of the evidence as to its creation and execution is invented and untrue.

75. The 2007 will is a holograph will. Three witnesses were called as to the execution of the will; Mr Balraj Singh, Mr Kulbir Singh Khaira (Mr Khaira) and Mr Tiwana. Mr Tiwana and Mr Balraj Singh gave evidence that the will had been written, by Hartar, in his own hand, and signed by Hartar in their presence. Mr Khaira, in his oral evidence, said that he had not been present when the will was written by Hartar, or when Hartar signed the will. He had been summoned, by Hartar, to the living room of the Chandigarh property, from his nearby office, and by the time he had arrived the will had already been signed by Hartar and by Mr Balraj Singh, as witness. Hartar had requested Mr Khaira to sign as the second witness and he had signed.

76. The purported will is written on a standard will form, which had, apparently, been previously signed, by Hartar, in blank, and previously dated 25th August 2000. The previous, apparent, writings are made in blue ink and the previous date has been crossed out in black. The body of the purported will is written in black ink and the will has, purportedly, been signed by Hartar in ten places. All his signatures, other than the apparently earlier signature, are in black ink. As appears above, the will was, allegedly, drawn up and executed in Hartar's living room at the Chandigarh property.

77. As already stated, it is the contention of Sundeep, Mandi and Diljit's estate that the entirety of the foregoing evidence, as to the making and execution of the will, has been invented and the will fabricated; the suggestion being that the fabrication took place, probably, in, or about, April 2017, for the purpose of defeating the point, raised by their solicitors, in correspondence, that the 2003 will only operated as a devise of Hartar's Indian estate and did not devise his English estate.

78. In regard to its content, the 2007 will purported to revoke all previous wills and codicils, to appoint Jaswinder and Harbiksun as executors and to provide that all Hartar's estate should go to Jaswinder, or, in default, to Harbiksun.

79. The meaning and effect of Hartar's gift of his estate to Jaswinder is set out in the will; namely that 'all (Hartar's) bank accounts, removeable and irremoveable property in India and UK (England)' should go to Jaswinder. The will provides, further, that, in respect of all his 'pending court claims and other disputes' Jaswinder should benefit. In respect of Jagpal, the will goes on to state that 'Jagpal Kaur or others should give my property and shares and money owing to her (Jagpal Kaur) to pay back to my wife per claim in courts' and to confirm that 'my sister Jagpal Kaur should not make any claims on my property and company and should stay away from my family'.

80. At the purported date of the 2007 will, Harbiksun was six years of age. The will, if written and executed, as alleged, was, also, made at, or towards, the end of the period

when, according to Sundeep, there had been a partial estrangement between himself and Hartar.

81. No points of construction arise in respect of the 2007 will, although, as appears later in this judgment, a point concerning the formalities of execution does arise, in the event that I accept that the 2007 will was created, as claimed by Jaswinder, and is not a fabrication. If authentic and valid and if not, itself, revoked by a subsequent will, it disposes, in favour of Jaswinder, of the entirety of Hartar's English and Indian estate and revokes the 2003 will.

82. A potential subsequent will is advanced by Jagpal. It is a will, ostensibly prepared with the assistance of an Indian advocate, Mr Amritpal Singh Bedi (Mr Bedi) and dated 21st March 2016, some six months, therefore, before Hartar's death. The will is said to have been executed by Hartar at Mr Bedi's office, in the old courthouse in Kapurthala, to have been witnessed by Mr Bedi and by a Mr Bahadur Singh and retained by Mr Bedi, following execution, in the expectation that it would, in due course, be collected by Hartar for registration.

83. The will is said to have come into the possession of Jagpal in March 2017, having been obtained by Jagpal's husband from Mr Bedi. In addition to these proceedings, it is relied upon by Jagpal in proceedings against Jaswinder and Harbiksun, in Kapurthala, in India, in which, in April 2017, a so-called 'status quo' order was obtained, preventing Jaswinder and Harbiksun from completing transfers of property into their names in pursuance of the provisions of the 2003 will.

84. Jaswinder contends that this will (the 2016 will) is not an authentic will, that the evidence as to its preparation and execution and as to the circumstances in which it has come into Jagpal's hands has all been invented and that the will has been fabricated by Jagpal, or on her behalf.

85. Sundeep, Mandi and Diljit's estate, having initially challenged the 2016 will, now take a neutral position as to authenticity, but contend that if the will is valid and authentic then its revocation provisions have the effect of revoking all previous wills and that, since it is common ground that the will only disposes of Hartar's Indian estate, it gives rise to an intestacy in respect of Hartar's English estate, with the consequence that the issues, as to Hartar's domicile and as to Jaswinder's marital status, as explained in paragraph 72 of this judgment, will arise for a subsequent determination.

86. Jaswinder's case on construction, in the event, contrary to her case, that the will is found to be authentic, is that the revocation provisions go only to the revocation of wills relating to India, leaving, therefore, the disposal of Hartar's English estate, by way of the 2007 will, untouched.

87. The 2016 will does not appoint executors. It provides that Hartar's 'owned properties at Chandigarh, land and factory at Village Gholumajra, near Dera Bassi, land and other properties at district Kapurthala, Punjab, Bank accounts and deposits with any bank and other moveable and immoveable properties in India' should all be divided in equal shares between Sundeep, Diljit (described as Hartar's wife), Harbiksun and Jagpal. In respect of Jagpal, the 2016 will, acknowledged Hartar's and Jagpal's past differences, but stated that Hartar did not want to ignore her support 'on many aspects'. It described

itself as being 'Hartar's last and final will' and stated that 'all such previous documents stand cancelled'.

88. The 2016 will was not raised in these proceedings until late in the day. Its existence first came to the attention of the court in May 2019, at which date the court made directions, agreed by the then existing parties, joining Habiksun and Jagpal as defendants, as being persons named in the 2016 will, requiring Jagpal to lodge the original will in court by 14 June 2019, or file and serve evidence explaining her inability to do so, and further requiring her to serve and file a defence and counterclaim by that date. Jagpal was not party to these directions and, at that stage, she was acting in person.

89. The matter came before the court in September 2019. The defence which had been lodged by Jagpal, acting in person, pleaded, in paragraph 18, that the 2016 will 'revoked any purported preceding Will' and, in paragraph 19, while purporting not to raise a positive case as to the 2016 will, requested that the 2016 will be proved in solemn form. No formal Counterclaim was advanced. Her witness statement, filed in accordance with the May 2019 order, explained that the original will had been lodged in court in connection with the proceedings in Kapurthala, referred to in paragraph 83 above, and that the will would not be released by the Indian court until the conclusion of those proceedings. The witness statement exhibited a letter from her counsel in the Indian proceedings, dated 26th August 2019, confirming that position.

90. Jagpal appeared in person at the 17th September hearing. The order made reflected that Jagpal was, in fact, making an affirmative case in respect of the 2016 will and reflected, also, the potential difficulties arising out of the fact that the original will was not in court. To meet that problem and, in particular, to procure, or ensure, that the 2016 will could be made available for expert examination, the court directed that Jagpal write to the court in Kapurthala, in a form agreed by the parties, requesting that the court provide facilities for the examination of the 2016 will (together with a letter, purportedly from Hartar, that Jagpal had lodged with that will) by all relevant parties. The court's order, also, required Jagpal to lodge an amended Defence and Counterclaim, further setting out her position, by the 1st October 2019 and made provision for the parties to file evidence as to the creation and validity of the 2016 will.

91. An amended Defence and Counterclaim was duly filed, exhibiting the affidavits of the two allegedly attesting witnesses of the 2016 will, Mr Amritpal Singh Bedi (Mr Bedi) and Mr Bahadur Singh, and raising a number of matters going to the validity of the 2007 and 2003 wills. Jagpal did not, however, in form, plead a Counterclaim. Rightly, no point has been taken on this, given that it has been the parties' common understanding, since, at least September 2019, that Jagpal is, in fact, if not form, propounding the 2016 will. In reflection of that understanding, at the opening of this trial I directed that Jagpal's Defence and Counterclaim be treated as propounding the 2016 will.

92. In regard to the examination of the 2016 will, the letter directed by the court and sent by Jagpal, in accordance with that direction, has borne substantial fruit. Facilities were made available to the parties in the court complex in Kapurthala and the handwriting experts/document examiners instructed by Jagpal and Jaswinder were able to examine and photograph both the original of the 2016 will and the letter lodged with that will. Facilities were also made available to Sundeep, Mandi and Diljit's estate, who were, at that stage, challenging the 2016 will. In the event, however and although a report was

prepared, on their behalf, no expert evidence was called, or relied upon, by those parties in respect of the 2016 will.

93. It remained the case, at trial, that the original of the 2016 will, although examined, as set out above, remained in the custody of the Indian court and, unlike the 2003 and 2007 wills, had, therefore, not been lodged in this court, in compliance with CPR 57.5. A witness statement, lodged, at my request, by Jagpal, at the commencement of the trial, set out the advice that she had received from her Indian lawyer, to the effect that in no circumstances would the 2016 will be released by the Indian court until the Indian proceedings had been concluded and that it was, for that reason, that the experts' examination had had to take place in the court precinct. A letter, dated 22nd October 2020, made clear that the Indian proceedings were ongoing.

94. The court is and was well aware of the importance of CPR 57.5 and of the lodgment of original testamentary documents in court, as explained and discussed, by Henderson LJ, in **Re Payne [2018] EWCA Civ 985**. In this case, however, I took the view that the trial could and should proceed even in the absence of the original 2016 will.

95. As appears from the procedural history, the parties had, for a long time, been aware of the prospect, or possibility, that the original 2016 will would not be available at trial. It is for that reason that steps were, successfully, taken to ensure the availability of the original will for examination in India. The success of those steps and, in particular, the fact that all relevant parties were enabled to inspect and investigate the original will had the effect that the absence of the original will from the trial made no discernible difference to the conduct of the trial.

96. Mr Blackett Ord, for Jaswinder, who was properly concerned to draw attention to CPR 57.5, did not allege any prejudice arising from the absence of the original; nor did any other party assert prejudice, or suggest, or submit, that, in the particular context of this case, the proceedings, at least as they related to the 2016 will should be adjourned.

97. This is not a case where, as in **Re Payne**, the availability of the original 2016 will might have cast light on a disputed question of attestation, or where, as discussed by Henderson LJ, the original will might have been of assistance to the court in respect of the joinder, or service, of parties. The issue, in this case, is fabrication, or, invention and there is no suggestion, on any part, that the availability of the original at trial, as opposed to its availability in the controlled conditions of the precinct of the Kapurthala court, has in any way precluded a proper investigation of that issue.

98. With the exception of one issue, as to the attestation of the 2007 will, if genuine, as mentioned in paragraph 81 of this judgment, the validity, or otherwise, of the 2007 and 2016 wills (or, indeed, the 2003 will) have not turned upon the formalities of execution.

99. All three wills were executed, or purportedly executed in India and, in consequence, the question of the law to be applied in determining proper execution is determined by the provisions of section 1 of the Wills Act 1963.

100. That section provides that 'a will shall be treated as properly executed if its execution conformed to the internal law in force in the territory where it was executed …or in a state of which, at either (the time of its execution or of the testator's death) he was a national'.

101. In this case Hartar was a UK national at both of the above dates and, as such the wills, if executed, in accordance with English law, will have been properly executed. Likewise, given that it has not been contended, or established, that the applicable Indian law of execution differs from English law, the internal law applicable at the place of execution (i.e. India) will be treated as being English law.

102. All of the three wills contain attestation clauses and, in consequence, the application of English law to the three wills, treating all three as genuine, gives rise, in each case, to a presumption of due execution, which, in the usual case, can only be rebutted by the strongest of evidence. In relation to the 2003 and 2016 wills, no such evidence has been advanced, with the result that, if the court finds that the 2016 will is genuine then it will also find the will to have been duly executed.

103. In respect of the 2007 will, however, Mr East, while not resiling one iota from his contention that the will is fabricated, also advances, in the event that the will is found to be genuine, an alternative case of want of due execution.

104. That case arises out of the evidence of Mr Khaira, as set out in paragraph 75 of this judgment and, in particular, his evidence that he only joined Hartar and the other witness to the will, Balraj Singh, after the will had been signed by Hartar and by Balraj Singh. On the basis of that evidence, if true, Mr East submits that I cannot be satisfied that the requirements of attestation have been fulfilled.

105. In this regard, Mr East further submits that in circumstances where the evidence establishes that the supposed execution and attestation is not in conformity with the attestation clause, then the presumption of due execution has no application and any question of execution, or attestation, must be resolved upon the basis of the actual evidence before the court.

106. In this case the attestation clause, contained in the will form purportedly used in respect of the 2007 will, avers that the will was 'signed by the testator/testatrix in our presence and by us in his/hers'. If Mr Khaira be right, then that is not the way that the will was executed and attested.

107. In light of the decisions cited by Master Teverson, in **Wrangle v Brunt [2020] EWHC (Ch) 1784**, at paragraph 144, including my own decision, in **Wilson v Lassman [2017] EWHC 85 (Ch)**, I am disposed to agree with Mr East that, in this case, attestation must be established without recourse to the presumption.

108. That said, it remains, in my view, the case that, in recognition of the important public interest in upholding valid testamentary dispositions, recognised in **Re Payne**, at paragraph 45 and which underlies and feeds into the presumption of due execution, the approach which the court should adopt, in determining question of execution and attestation is one which, where possible, tends in favour of upholding the disposition rather than defeating it.

109. In this case and, in application of that approach, I have had no difficulty in determining that, even on the footing of Mr Khaira's evidence, attestation is duly made out.

110. It not being in doubt, for this purpose, that the will was in writing and signed by Hartar with the intent of giving effect to the will, the relevant provisions of section 9 of the

Wills Act 1837 (the Act), as substituted by the Administration of Justice Act 1982, are sections 9 (1)(c) and (d).

111. Pursuant to section 9(1)(c), no will shall be valid unless 'the signature is made or acknowledged by the testator in the presence of two or more witnesses present at the same time; and (by section 9(1)(d)) each witness either (i) attests and signs the will; or (ii) acknowledges his signature, in the presence of the testator (but not necessarily in the presence of any other witness)'.

112. As to signature, Mr Khaira's evidence is that, by the time that he arrived in the living room at the Chandigarh property, the will had been signed by Hartar and signed, as witness, by Mr Balraj Singh. It follows that Hartar' signature was not made in the presence of two witnesses present at the same time and, therefore, that to comply with the requirements of section 9(1)(c) of the Act, Hartar must have acknowledged his signature, after Mr Khaira came into the room and joined Hartar and Mr Balraj Singh in the room.

113. Although there is no direct evidence of that acknowledgment and although no questioning was directed to any witness as to acknowledgment, I have little doubt that, if Mr Khaira's evidence be true, such an acknowledgment will have place. It seems to me that the clear probability, in that event, is that, in the process of requesting Mr Khaira to sign the will, as witness, and in the process of supervising Mr Khaira's signature, Hartar will have acknowledged, whether by word, or deed, that he had already placed his signature on the will. Conversely, it seems highly unlikely, if the facts are as asserted by Mr Khaira, that Hartar would, or could, have requested Mr Khaira to sign the will, as witness, or supervised that signing, without, in some way, acknowledging the signature that he had already placed on the will. There is no suggestion, in Mr Khaira's evidence, or any of the evidence, that Mr Balraj Singh had left the room before Hartar requested Mr Khaira to sign, as witness, or before Mr Khaira made his signature as witness and, in consequence, I am satisfied that Mr Balraj Singh was with Mr Khaira and Hartar throughout those events and throughout the period when Hartar will have acknowledged his signature on the will.

114. In the result, I am satisfied that, if Mr Khaira's evidence is correct the requirements of section 9(1)(c) of the Act are satisfied.

115. In my view, nothing turns on section 9(1)(d). That section requires each witness to either sign and attest the will in the presence of the testator, or acknowledge his signature, as witness to the will, in the presence of the testator. It is not, as is clear from the bracketed words at the end of the section, a requisite of due execution that both witnesses have to be present, together with the testator, at the time when each attesting witness either signs the will, or as the case may be, acknowledges his signature on the will.

116. In this case there is no doubt that, on the basis of Mr Khaira's evidence, each witness signed in the presence of Hartar and, as it seems to me, in so doing, satisfied section 9(1)(d) of the Act.

117. Following circulation of this judgment in draft, I was reminded by Mr East of his submission, made in oral argument, as part of his final submissions, that a further requisite of the due attestation of the will by the witnesses to the will was that the

attestation by each of the witnesses to the will took place after the testator's signature on the will had been made or acknowledged by the testator in the presence of two witnesses present at the same time.

118. On this footing, he submitted that, because Mr Balraj Singh had signed and attested before Hartar had acknowledged his signature in the presence of Mr Khaira and Mr Balraj Singh and because there was no evidence of any further attestation, or acknowledgment of his signature, by Mr Balraj Singh after Mr Khaira had joined Hartar and Balruj Singh in the living room and after Hartar had, himself, acknowledged his own signature to Mr Khaira in the continued presence of Mr Balraj Singh, attestation was not made out.

119. I do not accept these submissions. It is undoubtedly the case that Mr East's submissions would have been correct, in the context of section 9 of the Act, as in force prior to its amendment by section 17 of the Administration of Justice Act 1982 Prior to that amendment the 1837 Act, as amended by the Wills Act Amendment Act 1852, had provided that, for a will to be valid, the testator's signature 'shall be made or acknowledged in the presence of two or more witnesses present at the same time and such witnesses shall attest and subscribe the will in the presence of the testator'. The words 'and such witnesses shall attest' were construed prospectively and as meaning 'shall then attest'; with the result that, unless both necessary witnesses attested after the will had been signed or acknowledged by the testator in their joint presence, the will was invalid.

120. That consequence is not repeated in the current section 9 of the 1837 Act, as substituted by the Administration of Justice Act 1982. There is nothing in the language of section 9(1)(d), as currently in force, or in the requirements of that sub-section, as set out in paragraph 115 of this judgment, to replicate the meaning, or the effect, that attached to section 9 of the 1837 Act prior to the 1982 amendments; nor, the 1982 Act not being a consolidation act, is there any reason, or expectation, that the substituted section 9 should bear the same meaning and give rise to the same requirements as its predecessor.

121. Accordingly, I am satisfied that, as set out and explained in **William, Mortimer and Sunnucks – Executors Administrators and Probate (21st Edition),** at paragraphs 9-24 and 9-25, the situation, which arises in this case, if Mr Khaira's evidence be correct (namely the situation where a testator signs in the presence of one witness, who then attests and where, subsequently, the testator acknowledges his signature in the presence of the first witness and a second witness, who then attests), is one which meets the language and fulfils the requirements of section 9(1)(d) of the Act as to attestation.

122. I add, although, in light of the foregoing it is not necessary to my decision as to formalities, that had it been necessary, I would have been able to conclude, on the facts, assuming, again, that Mr Khaira's evidence is correct, that the probability is that Mr Balraj Singh did acknowledge his signature to Hartar after Hartar had himself acknowledged his signature to Mr Khaira and Mr Balraj Singh.

123. As with Hartar's own acknowledgment to the two witnesses, there is no direct evidence of this. That is not surprising. As already set out, the emphasis at trial was not directed to the formal validity of the 2007 will (or the 2016 will) but to the question of authenticity. The consequence of that emphasis was that neither of the parties endorsing, or attacking, the 2007 will focused their attention upon formalities and, in

particular, any issues of formality arising out of what was the un-foreshadowed and, I think, unexpected evidence as to his attestation of the will which was given by Mr Khaira. The result is a lacuna in the evidence and, in that context, the court must, in determining whether the relevant acknowledgment was made by Mr Balraj Singh, have regard to all the circumstances and, therefore, to the core probabilities.

124. Building upon the discussion in paragraph 113 of this judgment, it seems to me that the likelihood, when Mr Khaira joined Hartar and Mr Balraj Singh in the living room of the Chandigarh property, is that, as well as Hartar, in some manner acknowledging his already existing signature on the will, Mr Balraj Singh will have acknowledged his.

125. This was not a meeting of strangers. As is set out, later in this judgment, at paragraph 238, all of the three people who, on Mr Khaira's evidence were present when the 2007 will was executed and attested, were closely associated with Hartar and, as it seems to me, with each other. Mr Balraj Singh had been working for and with Hartar for some thirty years. Mr Khaira was, I think, actually living at the Chandigarh property at the date of the alleged execution of the 2007 will. Mr Tiwana had been, as I describe him later in this judgment, Hartar's factotum for many years.

126. In that context, there is no reason to believe that when Mr Khaira was summoned by Hartar and asked to witness the will, the parties and, in particular, Mr Balraj Singh stood in silence. It is much more likely, looking at the circumstances, that there was, among these close acquaintances, some conversation, or discussion, and that that discussion would have included an assertion, or indication, by Mr Balraj Singh that he had already signed the will, as witness. The question, then, is as to sequence and, as to that, the greater probability, as it seems to me, is that such an assertion, or indication, would have occurred after Hartar had, himself, requested Mr Khaira to sign, as witness and, in so doing, acknowledged his own signature on the will. It seems to me very unlikely, given Hartar's dominant personality, as adverted to at various later stages of this judgment, that Mr balraj Singh would have adverte to his own signing as witness before Hartar had, himself requested Mr khaira to witness his signature and, thereby, acknowledge that signature.

127. In the result and, as already set out, in paragraph 122 of this judgment, had it been necessary, I would, while recognising the decision as marginal, have been prepared to determine that, on the balance of probability, both Mr Khaira and Mr Banjal Singh had attested the will after Hartar had acknowledged his signature in their joint presence.

128. For the reasons already given, however, in paragraphs 119 to 121 of this judgment, such a determination is not necessary to my determination that, on the basis of Mr Khaira's evidence, the 2007 will was duly executed and attested

129. Turning to the questions of authenticity and construction, the starting point is the 2016 will. If that will is authentic, then it will determine the destination of Hartar's Indian estate. Correspondingly, the construction of that will, as to revocation, will, if authentic, determine whether Hartar's English estate devolves under an earlier will, or by way of intestacy.

130. The burden of proof in cases of alleged forgery has been the subject of some debate in the authorities. In **Wrangle v Brunt**, where a will was produced some ten years after the death of the testator and allegedly signed at the direction of and in the presence of

the testator, but not by the testator, counsel representing those asserting forgery accepted that the legal burden of establishing forgery lay upon them. In **Supple v Pender [2007] WTLR 1461**, the question as to whether the burden lay on the party seeking to propound the will to defeat the allegation of forgery, or upon the party seeking to establish the forgery to make good that contention was left, expressly, unresolved. In **Face v Cunningham [2020] EWHC 3119 (Ch)**, His Honour Judge Hodge QC took the view that the burden of establishing the due execution of a will carried with it the burden of establishing the authenticity of the will, such that the ultimate burden of proof lay upon the party propounding the will.

131. I agree, with respect, with Judge Hodge. A party propounding a will must prove that the will propounded is in writing, signed by the testator and duly witnessed. A fabricated will, or a forged will, if there is a difference, will not meet those requirements. It follows that, where forgery, or fabrication, is raised, the obligation on those propounding the will in question will be to negative that contention, as part of the process of establishing the validity and due execution of the will.

132. That said, however, the practical and evidential implications of the existence of this ultimate legal burden of proof must, as I see it, be seen in the context of the particular allegation of forgery, or fabrication, which is being advanced against the will which is being propounded and the evidential burden to be met by those advancing the allegation in question, in order to establish the probability of that allegation.

133. As is well understood, the standard of proof, in determining whether or not any fact be established in a civil suit, is, in all cases, that of the balance of probability; whether the fact, or event, in question is on the evidence more probable than not. That standard remains the same whether the fact in question between the parties is a trivial one, or, as in the case of an allegation of forgery, or fabrication of a will, whether the fact contended for is one which involves serious dishonesty and wrongdoing.

134. Where, however, the allegation is one of serious wrongdoing, the court, in its assessment of the probabilities will, as explained by Lord Nicholls**, in Re H and Others [1996] AC 563**, at pages 586/7, have regard to the fact that the more serious the allegation the less likely it is that the alleged event occurred and the stronger the evidence required to establish that the allegation is made out. As it was put by Ungoed-Thomas J, in **In re Dellow's Will Trusts [1964] 1 WLR 451,** at 455, cited in **In Re H and Others**: 'The more serious the allegation the more cogent is the evidence required to overcome the unlikelihood of what is alleged and thus prove it.'

135. Applying the foregoing proposition to a case, such as the present, where it is said, albeit by different parties, that both the 2007 will and the 2016 will are forged and fabricated, the starting point, in each instance, is and must be, given the very serious nature of the allegation, that the greater likelihood (one might say the far greater likelihood) is that the wills are genuine rather than the wills are invented.

136. In consequence, while the legal burden of proving each will rests upon the party propounding it (Jaswinder, in respect of the 2007 will; Jagpal, in respect of the 2016 will), the inherent unlikelihood, in each instance, that the will in question has been fabricated and forged, has the effect, as it seems to me, that, absent the cogent evidence of fabrication and forgery required to make good that contention, the legal burden,

resting upon the proponent of the relevant will, to establish the authenticity of that will, is highly likely to be made good.

137. In regard to the evidence going to, or against, the authenticity of each of the two wills, the approach which has been adopted in a number of cases of alleged forgery, or fabrication (**Pittas v Christou [2014] EWHC 79 (Ch)**, **Wrangle v Brunt**), following the decision of Mr Peter Leaver QC, sitting as a Deputy Judge of the Chancery Division, in **Supple v Pender [2007] WTLR 1461**, is to focus, initially, upon the evidence of those persons said to be present when the will was made. I adopt that approach. I am not, however, wholly persuaded that, in adopting that approach and in the assessment of the credibility of those said to be present when the will was made, it is, always, right, as in **Supple v Pender**, to make that assessment entirely independently of any expert evidence that might be available and on the footing that that assessment should stand even if in contradiction of such evidence. It seems to me that there might well be cases where the weight of the expert evidence, in contradiction of the witness evidence, is such as to impugn the credibility of that evidence.

138. In the light of the matters discussed in paragraphs 134 and 135 of this judgment, it is salutary, I think, to set out just what, in this case, the allegations of forgery and fabrication, in respect of each will, actually entail.

139. In both instances, the allegation embraces not just the invention and fabrication of an entirely untrue document, coupled with the forgery of Hartar's signature, or signatures, upon it (the 2007 will is, ostensibly, signed by Hartar in ten separate places), but, also, the concoction, in each case, of an entirely invented set of circumstances in which the will is said to have come into being, as well as the further concoction of the provenance of the will; that is to say how it came to hand, such as to be available to be propounded. It entails, also, the recruitment, by those advancing the false documents, of false witnesses prepared to tell false stories in court and to put their signatures to the false documents. In each case, what is alleged, in answer, to the will sought to be propounded, is that the party propounding that will has engaged, with others, in a serious, comprehensive and dishonest conspiracy.

140. In the case of the 2007 will, there is the additional feature that the 'story' advanced, as to the creation of the will, is that the will was written by Hartar in his own hand, with the necessary consequence that those fabricating the false document will have had, not merely to simulate Hartar's signature, but, also, to simulate his handwriting on a document extending over two pages. Pertinently, in this context, **Williams Mortimer and Sunnucks – Executors Administrators and Probate (21st Edition)**, comments, at 9-77, that '(f)orgery of a whole will in imitation of the testator's writing is rarely attempted unless the will is very short. More usually the forgery is of the signature of the deceased and the attesting witnesses to a typed document'.

141. The clear effect of the foregoing paragraphs, taken in isolation, is to demonstrate the very serious nature of the allegations being advanced and, consequentially, when set against the alternative proposition, that the evidence advanced by those propounding the wills is, essentially, true, the inherent improbability of those allegations.

142. The court recognises, of course, the possibility that allegations of fabrication and forgery, of the type made in this case, could be true and recognises, also, that, in this case, the value and extent of Hartar's estate, in particular his Indian estate, necessarily,

affords a motive for the serious misconduct alleged. The court recognises, also, that, in this case, other serious allegations have been made, as between Jaswinder and Jagpal, arising, it would seem, from the production, by Jagpal, of the 2016 will and the use that she has made of that will in the Kapurthala proceedings. Both Jaswinder and Mr Tiwana have been committed for trial in respect of the alleged attempted murder of Jagpal's husband. Conversely, Mr Khaira made allegations, in the course of his oral evidence, that he had had to leave India, for Canada, because of threats made to him by Jagpal's husband.

143. All that said, however, it remains the case, as it seems to me, that the forgery and fabrication of a will and the prosecution of a suit propounding an entirely fabricated and forged will is a rarity and, for that reason, improbable and that, in consequence, conduct of the scale and of the extent alleged in this case, will require cogent evidence before it can be established.

144. I am not persuaded that, in this case, such evidence exists in respect either of the 2007 will, or the 2016 will.

145. Reverting to the 2016 will, the primary evidence, as to its creation and execution, is that of Mr Bedi, who, allegedly, drew up the will, as well as witnessing the will, and that of Mr Bahadur Singh, the other alleged witness to the will. It is, necessarily, Jaswinder's case that the entirety of their evidence is untrue and invented.

146. I found both these witnesses to be entirely credible. Their evidence, to me, was straightforward and without any attempt at dissimulation. I had no sense, at all, that they were giving a dishonest, or an invented, account. Nor was any reason, at all, advanced as to why they should have behaved in that way.

147. Mr Blackett-Ord had, at the outset of the trial, sought to persuade me that these two witnesses should not be allowed to give evidence. He had submitted that, because, Jagpal had not served witness statements from each of them, in accordance with the court's directions, permission should not be granted for their evidence to be heard.

148. I rejected that submission and allowed an application by Jagpal that affidavits from each of Mr Bedi and Bahadur Singh, which had been exhibited to Jagpal's amended Defence and Counterclaim and which had, therefore, been available to the parties for many months, should stand as their witness statements and that they should be permitted to give evidence. In making that decision, I had regard not merely to the fact that the affidavits had been before the court and in the hands of the parties since October 2019, but, also, the guidance, in respect of the special importance of hearing the evidence of attesting witnesses, set out in **Re Payne**, at paragraph 48.

149. The evidence given by Mr Bedi and Mr Bahadur Singh was roundly criticised by Mr Blackett-Ord in his closing submissions. His point, properly taken, was that the evidence given by both witnesses expanded very significantly upon the relatively short affidavits which had been exhibited to the amended Defence and Counterclaim. Those affidavits said little more, in respect of the creation, execution and attestation of the will, than that Mr Bedi prepared the will at the instance of Hartar, that it was read over to Hartar and Mr Bahadur Singh and then signed and witnessed.

150. The evidence which emerged at trial was that the process of the creation and execution was very much more drawn out, that the will was written out, in Punjabi, by Mr Bedi, at Hartar's dictation, that it was read over to Hartar, by this time in the presence of Mr Bahadur Singh, that it was then taken by Mr Bedi to be typed, that two copies were typed in English by a Mr Sadhu, that both typed copies of the will were then signed by Hartar and witnessed by Mr Bedi and Mr Bahadur Singh, that Hartar took away one copy and the other was left with Mr Bedi, in the expectation that Hartar would return and that the will would then be registered.

151. Mr Blackett-Ord characterised this evidence as made up 'on the hoof' and explained its absence from Mr Bedi's and Mr Bahadur Singh's affidavits on the basis that, at the date of those documents, this evidence had not been invented.

152. I do not see this evidence in the same way. It seemed to me that this was evidence honestly given and that, when questioned by Mr Blackett-Ord, the details of the preparation and execution of the will simply unfolded in answer to his questions. The reason, as it seems to me, that the evidence came out in such greater detail at trial and the reason why that detail was not present in the two affidavits was quite simply that, until trial, the detail had never been sought. Jagpal had had, in the preparation of this case for trial, only limited representation. She had not put in witness statements for the attesting witnesses and the clear likelihood is that, until asked as to the detail at trial, that detail was never investigated. My clear impression was not that the witnesses were making it up, but that, for the first time, they were being asked what happened and, for the first time, they were giving their full account.

153. In regard to the content of their evidence, given the suggestion that it is all made up, I can see no good reason why the circumstantial account of the production of the two wills should have been invented. It seems much more likely that the evidence is true. Similarly, Mr Bahadur Singh's evidence that he was sitting with friends in a shop when Hartar, in effect, summoned him to witness the will, is not the kind of detail which, as it seems to me, is likely to have formed part of an invented account. It is of a piece with the somewhat high handed character of Hartar, as it emerged at trial and as is discussed, from time to time, later in this judgment, and has, to me, a clear ring of truth.

154. In assessing and accepting Mr Bedi's and Mr Bahadur Singh's evidence, I have taken into account the full range of other material which might tend against the veracity of their account and support the suggestion of invention.

155. Mr Blackett-Ord, understandably, attached considerable weight to the expert evidence of Doctor Jassy Anand, the forensic document examiner, called as a witness by Jaswinder and to her conclusion that Hartar's signature on the 2016 will was a forgery.

156. Expert evidence in respect of Hartar's signature on the 2016 will and, also, in respect of his signature on an undated letter, allegedly sent to Jagpal at her address in India, was provided to the court by two very experienced document examiners, each with over twenty years of experience; Doctor Anand, on behalf of Jaswinder, and Doctor Inderjit Singh, for Jagpal. A report, in respect of the 2016 will, was also prepared by a Mr Randir Singh, on behalf of Sundeep, Mandi and Diljit's estate and D. Mr Singh's report was not, however, relied upon by those parties. Mr Singh had not inspected the original of the 2016 will and his report did not acknowledge his obligations to the court under CPR 35.

157. Mr Blackett-Ord described Doctor Anand's evidence as being 'delivered forcefully' and being that of 'a proudly independent woman' and sought to compare her evidence favourably to that given, to the opposite effect, by Jagpal's expert witness, Doctor Inderjit Singh. He submitted that Doctor Singh's evidence was, in effect, inferior, because Doctor Singh, while inspecting the original of the 2016 will, had relied, in making his comparisons between the will signature and Hartar's 'standard', or accepted, signatures, upon photocopies of the 'standard' signatures, where Doctor Anand had carried out her comparisons against original documents. Mr Blackett-Ord, also, drew particular attention, when cross-examining Doctor Singh, to the fact that Doctor Anand's opinion, as to the authenticity, or lack of authenticity, of Hartar's signature was shared by Mr Randhir Singh.

158. As set out in paragraph 137 of this judgment, I do not think that the approach adopted in **Supple v Pender**, whereby the credibility of those present at the making of the will is assessed entirely independently of the expert evidence and whereby that evidence, if found to be credible, will, in effect, override contradictory expert evidence, is always and necessarily correct. I am not persuaded, however, on the facts of this case, that such weight as can be given to Doctor Anand's evidence is nearly sufficient to impugn the credibility of Mr Bedi and Mr Bahadur Singh.

159. Doctor Inderjit Singh described Doctor Anand's evidence as 'dishonest'. That was not the case. Doctor Anand is an experienced document examiner and I have no doubt at all that her evidence was given honestly and in good faith. There was, however, nothing measured in her evidence and no capacity, so far as I could tell, to see any other point of view, or any other possibilities. When cross-examined, or challenged, by Mr Hendron, counsel for Jagpal, she became very excitable, to the extent that some of her answers, until reined back by the court, became incomprehensible 'white noise'.

160. What, ultimately, however, became clear from her answers in cross-examination and her answers to questions from the court is that her conclusions, as to the authenticity of Hartar's signature upon the 2016 will and upon the undated letter, relied, wholly, upon the accuracy of her identification and interpretation of very small details, within the questioned signatures, pointing, in her view, towards those signatures having been forged.

161. It is, perhaps, inevitable that, when investigating questioned handwriting, or questioned signatures, an investigator's conclusions will have to be based upon small details and limited indicia. Equally, however, as it seems to me, an investigator should acknowledge the weight that he, or she, is placing upon limited materials and, in consequence, acknowledge possible alternatives. Doctor Anand seemed to me to lack that ability and, in the result, I found her evidence unpersuasive. I felt that her 'firm and considered' opinion that Hartar's signatures, upon both the 2016 will and the undated letter, were forged invested far too much weight in the limited materials upon which her conclusions were based and, in consequence, that her conclusions were not conclusions upon which the court could, safely, rely.

162. As already stated, Mr Blackett-Ord sought to find additional expert support for Jaswinder's case, on forgery, by reference to the report prepared by Mr Randhir Singh, upon behalf of Sundeep, Mandi and Diljit's estate. I have considerable misgivings in placing any reliance upon a report which has not been proved before the court, was not based upon an examination of the original of the 2016 will and does not acknowledge

the author's duty to the court. It seems to me that it would only carry weight to the extent that it was adopted by another witness. In this case, although parts of the report were put to Doctor Singh, there was no question of those parts, or any of them, being adopted.

163. Doctor Singh's position, following his own investigation of the questioned signatures, was that both Doctor Anand's conclusions and Mr Randhir Singh's conclusions were wrong, that Hartar's signature, both on the 2016 will and the undated letter (in respect of which, I think, Mr Randhir Singh expressed no view), was genuine and that the factors within those questioned signatures, which, in Doctor Anand's mind, pointed squarely to forgery, were, simply, not there to be found.

164. Mr Blackett-Ord elected not to cross-examine, or challenge, Doctor Singh, as to the particular details, within the questioned signatures, upon which he had based his opposite conclusions. Those conclusions, reached by a very experienced document examiner, were, accordingly, left, effectively, untested.

165. In this state of the expert evidence, it seems to me that, far from undermining the credibility of Mr Bedi and Mr Bahadur Singh, the expert evidence is, at the least, neutral and, perhaps, if anything, tends to support that credibility.

166. The expert evidence is not just relevant, as it relates to the presence of Hartar's signature upon the original of the 2016, itself, but, also, as it relates to the undated letter to which reference has already been made.

167. That letter has been produced by Jagpal and is relied upon by her as evidence that, towards the end of his life, Hartar wished to reconcile with her and as being consistent with and, hence, supportive of the reconciliation that, she says, took place between herself and Hartar, before his death, and which, as she would contend, explains the fact that, despite their undoubted years of animosity, Hartar elected to make provision for her in the 2016 will. Her evidence, as to the letter, is that it was sent to her address in India, at a time when she was in England and that she saw it, in about December 2016, after Hartar's death, when she visited India.

168. Mr Blackett-Ord is right in his submission that, other than this letter and the 2016 will, itself, there is no document evidencing, or pointing towards, that reconciliation. His submission is that the letter is a self-serving forgery, that Jagpal's evidence, as to the letter, is untrue and invented and that, since the 2016 will is, as he put it, a 'fake', Jagpal's evidence, as to the circumstances in which the 2016 will came into her hands, must, also be untrue and invented. If that last were to be right, then, since it is Jagpal's evidence that it was Mr Bedi who produced his retained copy of the 2016 will to her husband, it would, inevitably, subvert Mr Bedi's and Mr Bahadur Singh's evidence, notwithstanding that that evidence otherwise bore all the appearances of veracity.

169. I do not find that Jagpal's evidence is invented, or that the undated letter is a self-serving forgery.

170. I did not think that Jagpal presented as a dishonest witness. Rather the opposite. She seemed to me to give her evidence in an open and straightforward way and I saw no reason to disbelieve her. Mr Blackett-Ord made much of her alleged failure to take all proper steps to get the original of the 2016 will into court, with the implication, I think,

that she was seeking to avoid the 2016 will facing scrutiny. That was not, at all, my sense of the matter. My perception was that, once Jagpal came on the scene, she did all she could to assist the court in its enquiry. Although firmly challenged by Mr Blackett-Ord as to the authenticity of the will and, hence, at least implicitly, as to the truth of her evidence as to the manner in which the 2016 will came into her hands, Mr Blackett-Ord chose not to test that aspect of her evidence in any detail, nor, curiously, to explore that evidence with Mr Bedi, from whose hands the 2016 will had, allegedly, been received, first by her husband and, then, by Jagpal, herself.

171. As to the alleged forgery of the undated letter, there is, as already stated, no expert evidence of forgery upon which the court can safely rely. On the contrary, there is expert evidence, unchallenged and untested as to the detail underlying the expert's conclusions, that the letter was signed by Hartar.

172. In that circumstance, any finding of forgery would have to be founded upon the inherent implausibility of the contents of the letter and/or upon the credibility of Jagpal's evidence, both as to how the letter came into her hands and generally.

173. Mr Blackett-Ord drew particular attention to the opening parts of this letter, in which Hartar purports to set out and to acknowledge the role that Jagpal has played in that success. Mr Blackett-Ord describes this content as 'obsequious' and 'sycophantic' and suggests that it is inconceivable that Hartar, a dominating man who did what he liked, would have written in that way.

174. I am not persuaded. The letter, taken as a whole, amounts to an attempt by Hartar to build bridges with Jagpal and to explain how Jaswinder and, so it would seem, Mr Tiwana had been responsible for the rift between them and for keeping them apart. It would appear to have been written at a time when Jagpal was refusing to entertain contact with Hartar. It is detailed and circumstantial.

175. It is, also, I think, of some significance that the reference, in the letter, to Jagpal receiving an interest of 25% under Hartar's will, is, as I read it, plainly not a reference to the 2016 will. Rather it appears to be a reference to a different will, or potential will, that Hartar showed to Mr Tiwana and Mr Tiwana mentioned to Jaswinder. The plain implication from the letter is that it was this will which was the catalyst for the breakdown in relations between Hartar and Jagpal, which, by the time this letter was written, Hartar was seeking to resolve.

176. None of the foregoing suggests to me that the letter is invented and a forgery. If Jagpal had wanted to create some invented support for her supposed reconciliation with Hartar, then it seems highly unlikely that she would have created a letter in this form. Rather one would have expected that the letter would have been written in terms that explicitly confirmed that they had reconciled and explicitly confirmed his intention to reflect that reconciliation by way of some measure of testamentary disposition. If this letter is an invention it is a very imaginative and nuanced invention. I do not believe that to be the case.

177. Nor do I think that there is anything to be made of the fact, adverted to by Mr Blackett-Ord, that there is a discrepancy between Jagpal's evidence, as to how she came by the letter, and the statement in the letter itself that he was leaving the letter with a friend, in some way undermines the veracity of her evidence.

178. It may be that the letter was left with someone and then posted on to Jagpal. What matters, though, is that, if this letter was a concoction, one would expect Jagpal to give evidence consistent with the letter that she, or someone on her behalf, had concocted. Far from the discrepancy undermining her evidence and supporting the suggestion of forgery it, in my view, cuts the other way.

179. The letter, itself, if, as I find, not a forgery, is persuasive evidence that, prior to his death and consistently with Jagpal's own evidence, Hartar was seeking to reconcile with his sister. Set in that context, the provisions of the 2016 will, benefitting Jagpal and acknowledging, in its language, her past support, are not, at all, out of place.

180. Nor, standing back, is there anything intrinsically unlikely in that reconciliation, or change of heart, or, consequentially, in Hartar, in the end, wishing Jagpal to benefit from his will.

181. There is no doubt but that Jagpal and Hartar had been very close; so close that, when Diljit wished Jagpal gone from her home, Hartar went too. There is no doubt either that Hartar and Jagpal worked together, successfully, for a number of years and even, as Jaswinder acknowledged in her evidence, that, at one time, she and Jagpal, too, had been close. Accordingly and while not at all undervaluing the very clear animosity which is shown in the 2003 and 2007 wills and in the manuscript note appended to the 2003 will, it does not seem to me to be at all unlikely that Hartar, getting older and, as he says in the letter, not feeling good about his health, should want to make his peace with Jagpal, or that, in recognition of their past relationship and their past and successful business connection, he should want to benefit her substantially in his will.

182. Mr Blackett-Ord points out that no other of the witnesses in the case had any awareness of the supposed reconciliation between Jagpal and Hartar. He, also, draws attention to evidence from Sundeep that the reason given by Hartar for his non-attendance at a family wedding in 2016 was that Jagpal would be there. He queries, also, as to why Mr Bedi and Mr Bahadur Singh, neither of whom was close to him, should have been selected to assist in the preparation and attestation of the 2016 will.

183. Mr Blackett-Ord further queries the likelihood of Hartar choosing to make a will which, so far as it related to the Indian estate, disinherited Jaswinder and which, if intended to revoke all previous wills, had the further effect of disinheriting both Jaswinder and Harbiksun (as the default beneficiary under the 2007 will), in respect of his English estate, save to the extent that their inheritance might be saved by the rules of intestacy.

184. I do not consider that the fact that other family members were unaware of any reconciliation between Hartar and Jagpal has any significant bearing upon the existence, or otherwise, of such a reconciliation. Mr Blackett-Ord rightly submitted that Hartar was a person who did what he liked. It is also clear from the evidence that it was no part of his pattern of behaviour to inform people of what he was doing. He did not inform Sundeep or Diljit of his purported marriage to Jaswinder until after the event. He did not inform them that he was bringing Jaswinder to England until long after they had arrived. He did not inform Sundeep that he had been transferring properties into his and Jaswinder's joint names until after he had made those transfers. There is no reason to think that he would see the need to inform anyone of his reconciliation with Jagpal.

185. Rather, there is good reason to believe that he might well not have wanted to advertise his reconciliation. Hartar was, on all the evidence, a very proud man and very conscious of his position and his place in the Sikh/Punjabi community. Having very publicly fallen out with Jagpal and having maintained an estrangement for many years, I can well see that he might regard his reconciliation with her, if made public, as giving rise to a loss of face. It may well be that it was for this same reason that, when, as I find, he decided to make the 2016 will, he elected to do so using a lawyer and a witness who were not part of his close social group.

186. I do not think that Hartar's absence from a family wedding carries the matter any further. I accept Sundeep's evidence as to what he was told by his father. Equally, I have no reason to disbelieve what I was told by Jagpal; namely that she was told by her sister that Hartar was absent because Jaswinder did not want him there, if Jagpal was there. If the episode shows anything, it shows the difficulties that Hartar might have faced if he had acknowledged his reconciliation with Jagpal.

187. Likewise, I do not think that the fact that the 2016 will disinherits Jaswinder, in respect of Hartar's Indian estate and, potentially, disinherits both Jaswinder and Harbiksun, in respect of his English estate, is, in the context of this case, of any great significance in the determination of the authenticity, or otherwise, of the 2016 will. Hartar had, by both his 2003 will and, accepting its authenticity, his 2007 will, been prepared to exclude what Mr East, for Sundeep, Mandi and Diljit's estate, called Hartar's first family from his testamentary dispositions (as discussed later in this judgment, I do not think that the provisions of the 2003 will left in place any part of the 1979 will). There is no good reason to think that he might not have been prepared, later in his life, to do the same, in respect of his second family, particularly as, even putting aside any benefits on intestacy, such a 'disinheritance' would not have left Jaswinder and, through her, Harbiksun unprovided for.

188. By 2016, as set out in paragraph 48 of this judgment, properties to a value in excess of £10M pounds were held, as between Jaswinder and Hartar, in joint names and with the consequent expectation that, on Hartar's death, those properties, to that order of value, would vest in Jaswinder outside Hartar's estate. Additionally, a number of other properties in Napier Road and Skinner Road , Gillingham, in Kent, are shown in the schedule to the IHT account lodged in respect of Hartar's estate, as being properties in which Jaswinder had, at the date of Hartar's death very significant beneficial interests, having a value, in broad terms, in the order of a further £750,000.

189. Taken together and independently of any testamentary disposition, the lifetime provision that Hartar had made for Jaswinder, in terms of property ownership, meant that, on his death, the expectation would be that Jaswinder would have assets, in her own right, in the order of £11M and, consequently, that Jaswinder would have ample assets to provide both for herself and her teenage son. Harbiksun would, under the 2016 will, have, in addition and in his own right, a 25% share in Hartar's valuable Indian estate.

190. Put in this context, there is nothing intrinsically unlikely in Hartar deciding that he had made sufficient lifetime provision for Jaswinder and that his Indian estate could be used for other purposes. He, apparently, told an old friend, Sadhu Sangha, prior to visiting India, in either 2015, or 2016, that he intended to make provision for Diljit and Sundeep, who had, as set out earlier in this judgment, accommodated his conduct over many

years. That is what the 2016 will achieved. For reasons already discussed, I do not think that the fact that Hartar did not, also, mention an intention to benefit Jagpal is a matter of any significance.

191. Taking all matters together, I am satisfied that the validity and authenticity of the 2016 will has been established, that no sufficiently cogent evidence has been put forward to disturb that conclusion and that Jagpal has met and satisfied the legal burden of proof resting upon her, in advancing, or propounding, the 2016 will.

192. In the light of that conclusion, the next question for consideration is the effect of my finding that the 2016 will is valid and authentic upon Hartar's earlier wills.

193. There is also, because the 2016 will was made in India and is limited to Hartar's Indian estate, the question as to whether, in those circumstances, it would be appropriate for this court to formally admit the will to proof, or whether I should simply declare its authenticity and validity. This question, although raised, was not the subject of any argument and, in consequence, I prefer to leave it over for further discussion when this judgment is handed down.

194. Reverting, then, to the effect of my findings as to the 2016 will upon Hartar's previous wills, the question, as already foreshadowed, is one of construction and, in particular, as to whether the, apparently, clear words of cancellation, or revocation, contained in the 2016 take their literal effect. The words used could not, on their face, be clearer: 'This is my last and final WILL and all other such documents stand cancelled'.

195. The applicable law pertaining to the construction of the 2016 will is the law that the testator intended to be applied; the presumption being that that will be the law of the testator's domicile. In this case domicile is in issue. Since, however, no attempt has been made to produce any evidence showing that Indian rules of construction, as they pertain to wills, are any different to English rules of construction (the relevant choices of domicile being England or India), it is English law that will be applied.

196. Since **Marley v Rawlings [2015] AC 129**, if not before, it has been clear that the rules as to the construction of a will are, essentially, the same as those that apply to any other instrument. That approach requires the court to determine the intention of the testator having regard to the natural and ordinary meaning of the words used, the overall purpose of the document, any other relevant provisions of the document, the facts known, or assumed, by the testator at the time of the execution of the document and common sense. Where section 21 of the Administration of Justice Act 1982 (the 1982 Act) applies, however; namely where the will is ambiguous on its face, meaningless, or where evidence other than that of the testator's subjective intention, shows that the language of the will is ambiguous having regard to the surrounding circumstances; the court can, in a way that it ordinarily cannot when construing a contract, or other document, also have regard to evidence of the testator's subjective intention in respect of the meaning to be attached to the provision in question.

197. In this case, even if section 21 of the 1982 Act were to apply, there is no extrinsic evidence of Hartar's subjective intention, in respect of the revocation, or cancellation, clause (such as earlier drafts, notes given, or made, by the will draftsman, or statements made to the will draftsman), to assist the court and the court must, therefore, determine

the construction of the clause in question, having regard to the words used and the other materials set out in paragraph 196 above.

198. To the foregoing, the following should, perhaps, be added. As helpfully explained by Roger Wyand QC, sitting as a deputy judge of this Division, in **Lamothe v Lamothe [2006] WTLR 1431**, there is, potentially, a distinction to be drawn between the approach to be adopted in a case where the matter to be construed is purely as to the construction of the will in question and a case, such as the present, where the question for consideration impacts, also, upon the validity, or otherwise, of previous testamentary instruments.

199. In the present case, the court is construing the 2016 will with a view to determining whether the true construction of the 2016 will has the effect of revoking all earlier wills and is, adopting the terminology used in **Lamothe v Lamothe**, sitting as a court of probate and not merely, or solely, as a court of construction. In that context, the authorities, as fully discussed, in **Lamothe v Lamothe**, appear to indicate that a broad approach should be adopted to the admissibility of extrinsic evidence and that, quite extraneously of section 21 of the 1982 Act, extrinsic evidence going to the testator's intention is admissible.

200. In this case and as already stated, there is no subjective evidence of Hartar's intention, whether admissible under section 21 of the 1982 Act, or under the rules pertaining to extrinsic evidence, applicable where the court is sitting as a court of probate. In consequence, on the particular facts with which I am concerned, the fact, that I am sitting, in respect of the revocation clause in the 2016 will, as a court of probate, does not, as I see it, add anything to the materials which I should take into account in determining Hartar's intention in respect of revocation, over and above such materials as I should take into account applying the ordinary principles of construction set out above.

201. The fact, however, that I am sitting, in regard to the revocation of earlier wills, as a court of probate, is, however, relevant in determining the approach that I should adopt to the application of the rules of construction.

202. The helpful analysis of the authorities, carried out by the deputy judge, in **Lamothe v Lamothe**, makes very clear that a party who seeks to prevent an express revocation clause from having the effect that would follow from the plain meaning of the words used takes on a heavy burden. The revocation clause, itself, constitutes strong evidence of the testator's intention to revoke and clear and unequivocal evidence is required in order to establish that the literal language of the revocation clause did not represent the true intention of the testator.

203. In this case the plain meaning of the words of revocation used in the 2016 will could not be clearer. All other wills are cancelled. Accordingly, unless, in construing the will, as a whole and in its context, I conclude that it is unequivocally clear that Hartar did not intend that the words that he used have their literal meaning, I should give effect to that meaning. On that footing, taking, as I do, the 2007 will as authentic and valid, both that will and the earlier 2003 and 1979 wills fall away, with the consequence that Hartar's English estate is not disposed of by will and his English estate devolves on the basis of an intestacy.

204. That conclusion, if reached, has the effect that it will be necessary, in determining the disposition of Hartar's English estate, to resolve the questions pertaining to his domicile and the status of his 'marriages' to Diljit and Jaswinder, as outlined earlier in this judgment.

205. I am satisfied that there is nothing in the will, or the material surrounding circumstances, to sufficiently contradict the literal meaning of the words of cancellation used in the will, or to import, or denote, any unequivocal intent in the testator to modify, or limit, that meaning. In consequence and in accordance with the words used, the 2007, 2003 and 1979 wills all fall away and that the disposition, therefore, of Hartar's English estate will require the resolution of the issues set out in the preceding paragraph of this judgment.

206. Mr Blackett-Ord, in resisting that conclusion, understandably focused upon the fact that the consequence of the literal construction of the revocation clause was, as set out above, to create an intestacy as to the English estate. His submission was that that fact provided, in itself, the necessary unequivocal clarity required such as to allow me to determine that the revocation clause in the 2016 will must be construed as revoking only Hartar's will, or wills, as they related to his Indian estate, leaving, in particular, the 2007 will untouched as a valid testamentary document pertaining to his English estate. In support of that submission, he drew my attention to the decision of Richard Sheldon QC, sitting as a deputy judge of the Division, in **Benjamin v Bennett and others**, digested at **[2007] All ER(D) 243 (Feb)**.

207. In that case, the deputy judge took the view that a Barbadian will, dealing solely with Barbadian property, headed Barbados and containing a wide ranging revocation clause, was not apt to revoke a prior English will dealing solely with the testator's English estate and containing, as the Barbados will did not, provisions as to the testator's burial and funeral services.

208. Although I have not had the benefit of the full report, I can readily see how, in that case, the deputy judge could have concluded that the claimant, seeking probate of the English will, had satisfied the burden of establishing that the revocation was intended to be limited only to prior wills relating to the testator's Barbados estate. The will was headed Barbados and, in consequence, its whole contents, including the revocation clause, was implicitly limited to Barbados. That fact, coupled with the fact that the Barbados will made no reference to funeral arrangements, with the result that those arrangements, important to the testator, fell away, unless the Barbados will did not revoke the English will, were, in the view of the deputy judge, sufficient to establish an unequivocal intention that the revocation clause was only intended to deal with the testator's Barbados assets.

209. In this case, I am not persuaded that the fact that the literal effect of the revocation clause in the 2016 will gives rise to an intestacy in regard to Hartar's English estate is, in the context of this case, sufficient to establish the clear and unequivocal intention that the revocation clause must have been intended to be confined to the revocation of those wills, or parts of wills, affecting, only, Hartar's Indian estate.

210. The starting point, of course, is that that is not what the revocation clause says. This was a will prepared, on the evidence, substantially at Hartar's dictation. Had he wanted to limit the effect of the revocation clause to those wills, or parts of wills, disposing of

his Indian estate, he could readily have said so. He did not. Nor, unlike, the Barbados will, in **Benjamin v Bennett**, is there anything in the 2016 will (such as the heading Barbados in that will) to give rise to any suggestion that the entire document, including the revocation clause, was limited to Hartar's Indian estate.

211. Most materially, in this case, the fact, that the literal effect of the revocation clause is to create an intestacy in respect of Hartar's English estate, must be set in the context of the steps that Hartar had taken, inter vivos, in respect of his English assets. I have set out in paragraph 188 of this judgment the steps that Hartar had taken, or believed that he had taken, to transfer the bulk of his English assets into the joint names of himself and Jaswinder, such that his expectation in 2016, when he made his 2016 will, will have been that those assets would not fall into his estate at all and would simply vest in Jaswinder by survivorship.

212. Set in that context, an election, when disposing of his Indian estate, to revoke, or cancel, all previous wills, including those pertaining to his English estate, on the footing that his English assets had been, or would be, disposed of inter vivos, does not seem to me to be at all implausible. Jaswinder's evidence, in respect of the provision Hartar had intended to make for her under his 2003 will, was that Hartar had told her that he had given her his Indian property under that will and that she would obtain his English property by way of transfers into joint names. I can see no reason to think that he might not have had the same approach in mind when making his 2016 will.

213. In so saying, I have not overlooked the submission made by Mr East and outlined in paragraph 57 of this judgment that, by reason of Hartar's 2013 bankruptcy, the intended beneficial joint tenancies in respect of the joint names properties were severed, such that, on Hartar's death, those properties were held as tenants in common in equal shares and such, therefore, that Hartar's beneficial half shares in those properties, post his bankruptcy, fell into his estate.

214. It does not seem to me that that fact, if it be a fact, is material in determining Hartar's intentions in respect of the revocation provisions of the 2016 will. There is no reason to believe that Hartar was aware, when he made the 2016 will, of the possible effect of his earlier bankruptcy upon the inter vivos provision that he thought that he was making, or had made, for Jaswinder. The 2016 will and the revocation provisions of that will must, as appears from **Marley v Rawlings**, be construed on the basis of the facts, as assumed by the testator, and, in this case, the facts which will have been assumed by Hartar, are that he had already taken steps to vest the bulk of his English assets in Jaswinder in the event of his death.

215. In the result and as set out above, I am satisfied that the revocation provisions of the 2016 will take effect in accordance with their plain literal meaning and with the results identified in paragraph 203 of this judgment.

216. The further effect of these conclusions is to render otiose the question of the authenticity of the 2007 will, as also, the questions of construction which have been raised in respect of the 2003 will. The 2007 will, even if valid and authentic when drawn, has been revoked by the 2016 will. The other two wills, of 2003 and 1979, are, likewise, revoked, with the result that the construction questions arising from the 2003 will and relating, in part, to the effect of the revocation provisions of the 2003 will upon the 1979 will, no longer require determination.

217. That said, I have, in the course of this judgment, indicated that it is my view that the 2007 will is an authentic and not a fabricated will and, on that footing, I have brought it into account, both in my consideration of the authenticity of the 2016 will and, also, in determining the proper construction of the revocation provisions of the 2016 will. I have also, on the footing of its authenticity, indicated that it is a valid will, in terms of formalities. Given those matters and given, also, that the question of the authenticity of the 2007 will was the subject of very considerable evidence and argument, I think it only fair to the parties to set out, albeit in somewhat foreshortened form, my reasons for believing and accepting the 2007 will as being authentic and not a fabrication.

218. On the same footing and because I have, in considering the authenticity of the 2016 will, taken into account, as set out in paragraph 187 of this judgment, my conclusions, as to the construction of the 2003 will, I will, also, again in somewhat foreshortened form, set out my reasons for reaching those conclusions.

219. My starting point, in respect of the 2007 will, is the same as in respect of the 2016 will, namely that the fabrication of the 2007 will would have required the proponents of the 2007 will to have engaged in the serious and comprehensive dishonesty set out in paragraph 139 of this judgment. Particular to the 2007 will, that conduct would have required, not merely the forging of Hartar's signature in ten, or so, places, but, also, as set out in paragraph 140 of this judgment, the will, being a manuscript, or holograph, will, the forging of the entire content of the two page document.

220. That scale of misconduct is, as discussed earlier in this judgment, inherently unlikely. It is, as I see it, equally, if not more, unlikely that persons, electing to fabricate a will, would choose to do so in the manner alleged; that is to say by the fabrication of a handwritten, multi-signatured document. The much greater likelihood, as mentioned in the citation from **Williams Mortimer and Sunnucks**, set out in paragraph 140 above, is that anyone fabricating a will would elect to fabricate a typescript, thereby minimising the extent of the forged writing required. Correspondingly, one would expect a forger to wish to forge the minimum of signatures, rather than, as has been allegedly done in this case, creating a document containing a large number of forged and, therefore, potentially questionable signatures.

221. In considering the likelihood of the alleged fabrication, it is, also, I think, relevant to consider the time scale within which, so it is alleged, the fabrication of the 2007 will took place. The contention advanced by Mr East's clients is that the 2007 will was fabricated in response to the suggestion made in correspondence by their solicitors, Huggins & Lewis Foskett, that the 2003 will, which was the will that Jaswinder was initially advancing as Hartar's last will, was confined in its effect to Hartar's Indian estate and did not dispose of his English estate. That suggestion was made in correspondence by letter dated 29th March 2017.

222. As emerged at trial, however, the 2007 will was, undoubtedly, in existence by 16th April 2017, on which date, a copy of the 2007 will was sent by email by Jaswinder to her solicitors. The necessary implication is that the 2007 will was concocted and made available to Jaswinder's solicitors within eighteen days of it being first suggested that the 2003 will was limited to the Indian estate and that the conspiracy to fabricate the false will was formed and put into effect, including the forging of the body, or content, of the will and the multiple signatures upon the will, the application of the false attestations of the alleged witnesses to the will and, presumably, at least the outline of

the 'story' to be put forward to explain the late appearance of the will, all within that limited period.

223. In considering the probability, or likelihood, that all that happened, in the way alleged, it is, I think, instructive, also, to have regard to the content of the 2007 will, given that its supposed purpose was to meet the contention that the 2003 will only disposed of Hartar's Indian estate.

224. The 2007 will does not simply make good the alleged deficiency in the 2003 will. It completely recasts Hartar's testamentary wishes. Instead of leaving his estate, whether Indian or worldwide, to Jaswinder and Harbiksun jointly, as in the 2003 will, it leaves his Indian and English estate solely to Jaswinder, with a gift of that estate to Harbiksun only if Jaswinder failed to survive Hartar by 28 days.

225. It is, of course, possible that those fabricating the 2007 will took the opportunity to modify the dispositions made by the 2003 will in this way. The far greater likelihood, however, as a matter of general probability, is that the 2007 will is a genuine will and that it was Hartar's own choice to change the dispositions that he had made. It seems to me, further, that that analysis far better explains the undoubted oddity that the 2007 will is written on an old will form, already signed by Hartar and dated August 2000. It is far more likely that Hartar, who, as I was told by Mr Balraj Singh, one of the alleged witnesses to the 2007 will, had the habit of making rough versions of his will and then cancelling, or tearing them up, had an old will form in his possession and elected to use it to make his 2007 will than that those fabricating his will happened to come across this part-completed form, presumably among Hartar's papers, and then, for some unexplained reason, chose to use that form upon which to fabricate the 2007 will.

226. Taking all these general and particular improbabilities together and reverting to the matters discussed in paragraphs 133 to 135 of this judgment, it is, as I see it, incumbent on those alleging the fabrication of the 2007 will to advance the cogent evidence of forgery and fabrication which will be required to override those probabilities and to satisfy the court that the legal burden resting on those propounding the 2007 will has not been met.

227. In this case, there is no positive evidence of forgery or fabrication, either in respect of the handwriting of the manuscript will, or in respect of Hartar's signatures. No attempt was made to establish by expert evidence that Hartar's supposed handwriting was forged. No witness gave evidence that the handwriting was not his. Jaswinder gave evidence that the will was in Hartar's handwriting. Mr Tiwana and Mr Balraj Singh gave evidence that they were present when Hartar wrote the will. Perhaps more significantly, Jagpal, when shown the 2007 will, agreed that the handwriting was that of her brother.

228. In regard to Hartar's supposed signatures on the will, the expert evidence adduced on behalf of Sundeep, his sister and his mother's estate, in opposing the authenticity of the 2007 will, ultimately concluded that the evidence for or against forgery was inconclusive. Set against that, the evidence called on behalf of Jaswinder and in support of the will was, to the effect, that there was what Dr Audrey Giles, the expert called on behalf of Jaswinder, called weak positive evidence that the signatures on the will were Hartar's.

229. Doctor Giles was a very impressive witness. Her report and her oral evidence was an object lesson in the methodology to be adopted by an expert witness. Her evidence was measured and nothing was over stated. She acknowledged the difficulties, in this case, of providing any scientific certainty as to whether Hartar's signatures had been forged. She explained that, because Hartar's genuine signatures were simple and highly variable, they were vulnerable to simulation. She noted that some of the questioned signatures on the 2007 will showed a degree of angularity and hesitancy in the pen lines, but noted, also, that a number of the comparison signatures contained similar features. Overall the signatures on the 2007 will fell within the range of variation seen in the comparison signatures. In consequence, while allowing for the possibility of simulation, she felt able to conclude that there was 'positive, albeit, weak evidence to support the view that the signatures' on the 2007 will 'are genuine signatures..'

230. Doctor Giles was asked in cross examination as to the meaning to be attached to her finding of weak positive evidence. She explained that she would regard strong positive evidence as indicating an opinion in the '90% certainty range', that weak positive evidence fell into a more nebulous area, but didn't just mean something just over 50%. It signified that there were more factors in favour of the conclusion reached than there were against that conclusion.

231. The effect of that evidence, which I entirely accept, is that, while the possibility exists that Hartar's signatures were forged, the clear probability based upon the expert evidence, is that Hartar's signatures on the 2007 will are genuine. The consequence of that, as I see it, is to create another element of improbability which those asserting fabrication and forgery will need to overcome, if the court is to be satisfied that the burden on those propounding the 2007 will is not made out.

232. Mr East's clients meet that challenge, as they have to, by contending that the evidence of the alleged witnesses to the making of the 2007 will are lying and that the related evidence, as to the circumstances in which the 2007 will allegedly came to hand, is, likewise, completely untrue.

233. They seek to back that up by what they say is the notable absence of any reference to the 2007 will in the two sets of Indian proceedings commenced in (the Kapurthala proceedings and parallel proceedings initiated by Jaswinder in Chandigarh), until 2019, and that even then the 2007 will is only first acknowledged in response to an application made by Jagpal in the Kapurthala proceeding, in which she raised, in those proceedings, the fact that the 2007 will was being relied upon by Jaswinder in these proceedings.

234. They rely, also, upon the fact that in the Spring and early Summer of 2017 applications were being placed before the Estate Office in India to transfer properties named in the 2003 will to Jaswinder and Harbiksun, in reliance upon that will, rather than in reliance upon the 2007 will.

235. Reliance is also placed upon the alleged unlikelihood that Hartar would leave his first family unprovided for and the further unlikelihood both that a successful businessman like Hartar would make his will without professional guidance and that, having made provision for Harbiksun in his 2003 will, he should have removed that express provision in the 2007 will.

236. Turning to the evidence as to the making of the 2007 will and of its subsequent discovery, it seems to me that in order to establish the forgery and fabrication of the 2007 will, it is wholly insufficient to point to areas of that evidence which might be seen as unsatisfactory, or unreliable. On the facts of this case, what is required, in order to meet and overcome both the general and the particular improbabilities inherent, in the allegation of fabrication and forgery, is evidence of such inadequate quality as to warrant, when considered in conjunction with those surrounding circumstances as are said to support the contention of fabrication, the conclusion that the evidence in question is, colloquially, a pack of lies, invented and put together for the purpose of providing a false provenance for the fabricated document.

237. I am not able to form that conclusion.

238. The three witnesses allegedly present at the making of the 2007 will were Mr Tiwana, Mr Balraj Singh and Mr Khaira. All three had been closely associated with Hartar, in his lifetime. It would not, therefore, be at all surprising if they had been present, as they contend, at the making of the 2007 will.

239. Equally, Mr East was able to draw attention to the fact that all of the three, have, or certainly had, in 2017, at the date of the alleged fabrication of the 2007 will, a continuing relationship with Jaswinder.

240. Mr Tiwana holds Jaswinder's power of attorney and, as attorney, he has been closely involved, on her behalf, in the Indian proceedings. With Mr Balraj Singh, he was involved in the Spring and early Summer of 2017 in the presentation of the application for transfer of properties into the names of Jaswinder and Harbiksun referred to in paragraph 234.

241. Mr Khaira had lived at the Chandigarh property from 2001, while managing a unit set up by Hartar to manufacture taps and bathroom fittings. He had, he told me, left that employment in 2008 to set up his own business. He had, however, remained in contact with Hartar and, after Hartar's death, Jaswinder. After Hartar's death he had, when asked, continued to help Jaswinder and, when helping Jaswinder, to use the Chandigarh property as a temporary address. He had also, after Hartar's death, retained a directorship of one of Hartar's companies, Sangha and Sangha Industries Ltd. He had also been a signatory to a bank account in relation to an entity called Ceramica Sangha, which he said was one of Hartar's businesses. Although he was named, with Hartar, as one of the principals, with Hartar, of this entity, he claimed no involvement in its business. When the account was closed in 2017, he passed all the proceeds to Jaswinder.

242. Mr East's contention is, or must be, that, given these relationships, each of these three witnesses were prepared (his suggestion is, I think, for payment) to conspire with Jaswinder in the fabrication of the 2007 will and in the creating of a false provenance for that will. It is, however, one thing to help someone (Jaswinder) in her litigation, business, or property affairs and quite another to engage in wholesale fabrication and forgery.

243. In regard to the specific evidence as to the creation of the 2007 will, Mr East's careful and detailed submissions identified a number of inconsistencies and anomalies, of greater or lesser weight, as between the evidence of the three witnesses .His submission

was that, taken together, these matters rendered their evidence unreliable and unbelievable.

244. There are undoubtedly significant inconsistencies and anomalies in the evidence given by the three witnesses.

245. The most glaring inconsistency is that two witnesses, Mr Tiwana and Mr Balraj Singh assert that Mr Khaira was with them and with Hartar in the living room of the Chandigarh property while Hartar was writing out and signing his will, while Mr Khaira, himself, states, as set out earlier in this judgment, that he was only summoned by Hartar, from his nearby office, after Hartar had written and signed the will.

246. The other major anomaly relates to Hartar's earlier, blue ink, signature on the will form used in the production of the 2007 will. Both Mr Balraj Singh and Mr Khaira stated in their evidence that, what I will call, Hartar's blue signature was made by Hartar, on 16th April 2007, on the occasion of the execution of the 2007 will, and was made with a black pen. That evidence (not supported by Mr Tiwana) was plainly untrue.

247. Other discrepancies, as to the order of signing by the witnesses and the use, or not, of the same pen, by Hartar and Mr Khaira, in the signing and witnessing of the will, exist, but, in the context of determining whether the whole body of evidence is fabricated, seem to me to carry little weight. They are just the discrepancies that one might expect to exist when witnesses are asked to recall the detail of distant events. In this regard, while I note that Mr East persuaded each of these three witnesses to assert that the signing and witnessing of this will was an important event, I am afraid that I take that evidence with a pinch of salt. This was no more than the execution of a will.

248. I have no doubt at all that the source of the untrue evidence, as to Hartar's blue signature, is to be found in the fact that the two witnesses in question had not, until the trial, seen a colour copy of the 2007 will. By the same token, I have no doubt at all that apparently explicit evidence given by Mr Balraj Singh, as to the placing of the multiple signatures on the 2007 will, has much more to do with reconstruction, based upon sight of a copy of the 2007 will, than upon genuine recollection.

249. I am not, however, persuaded that those matters serve Mr East at all in proving fabrication. In my view, the fact, that Mr Balraj Singh and Mr Khaira were mistaken as to Hartar's blue signature and the fact that elements of Mr Balraj Singh's evidence reflects reconstruction rather than recollection, both tend to show that their evidence, if inaccurate, nonetheless related to a real occasion of execution, rather than an invented one.

250. In particular, if, as contended, they had been party to the creation, in 2017, of a false will, using an old part-used will form, then, it seems to me, that they would have been well aware of the pre-existing contents of the will form and would have been highly unlikely to conflate the existing signature with the forged signatures. In contrast, if the reality is, as I think, that each witness was giving genuine, if imperfect evidence, of events fourteen years ago and in respect of a document only fleetingly seen during the attestation process, then it is both likely and understandable that the mistake which has been made would have been made.

251. I take much the same view in respect of the dichotomy between the evidence of Mr Khaira and that of Mr Balraj Singh and Mr Tiwana. It seems to me that if the 2007 will was a fabrication and if the evidence of these three witnesses was also a fabrication, then it is highly unlikely that the three conspirators, or any of them, would depart radically from their agreed, invented and, presumably, rehearsed story. It is much more likely that their apparent difference of recollection is just that; a difference of recollection in respect of events fourteen years ago.

252. To that I add this. I am completely satisfied that Mr Khaira was telling me the truth about his involvement in the execution of the 2007 will. His account had, to me, the plain ring of truth. It had absolutely no feel of an invented story. His account, although different from his fellow witnesses, was given in an entirely open and straightforward fashion. There was no attempt to 'square' his account with that of the other two witnesses, or, in any way, to dissemble. The evidence, itself, of his being summoned by Hartar, seemed to me to be completely in keeping with Hartar's pattern of behaviour and Hartar's expectation that others would do what he wanted when he wanted. Looked at from the other perspective and as foreshadowed above, I can think of no reason why, if Mr Khaira's evidence was fabricated, it should, in the context of what must have been a concerted fabrication, have departed so radically and obviously from the false evidence given by the other two witnesses.

253. My clear conclusion is that Mr Khaira was not lying and that he gave honest and, as it seems to me, accurate evidence as to the execution of the 2007 will. In regard to the two other witnesses, while I regard their evidence as inaccurate as to detail, I am satisfied that they were present at the signing and attestation of the will, on 16th April 2007, and, therefore, that the 2007 will is not a fabrication. Correspondingly and consequently, I am also satisfied that Mr Balraj Singh's and Jaswinder's evidence, as to the discovery of the 2007 will, whatever may be its inaccuracies, is not evidence which has been invented, for the purpose of providing a false provenance for a fabricated will.

254. The essence of that evidence is that, in April 2017, Mr Balraj Singh, who runs a real estate business and who had for many years assisted Hartar in his property transactions, came across the will, while looking through other documents in his possession relating to Hartar's properties. His evidence was that he had been given the will, for safe-keeping, by Hartar after it had been executed, had lodged it with other important documents but had, then forgotten about it. Mr Balraj Singh was eighty years of age at the date of trial and would, therefore, have been about seventy five at the date of Hartar's death and in his mid-sixties at the date when the will was executed. Having found the will, he gave it to Jaswinder, who, as already stated, sent an electronic copy to her English solicitors on 16th April 2017.

255. Mr East takes the point that, in her email of 16th April 2017, Jaswinder asserts that she found the will among papers given to her by Mr Balraj Singh and that this contradicts both Mr Balraj Singh's evidence and also her own written evidence which was to the same effect as that of Mr Balraj Singh.

256. I entirely accept the inconsistency. Mr East submitted, that the source of the inconsistency was Jaswinder's wish to distance herself from any personal involvement in the finding of the will and to present the will as having been found by an independent third party, Mr Balraj Singh, when this was, in fact, not the case. That analysis, if

correct, does not do credit either to Jaswinder or to Mr Balraj Singh, who would have had to be involved in the lie. It does not, however, import, necessarily, or at all, that the 2007 will was not found among Hartar's property files, or that the 2007 will was fabricated. Be that as it may, having seen and heard Mr Balraj Singh cross-examined on this point, I am satisfied that his evidence of his finding of the will among his papers is to be believed.

257. Mr East's other point goes to what he submits is the plain implausibility of the 2007 will being forgotten, or overlooked. His thesis is that the making of this will would have been, he says, a very important event, which would have stuck in the mind of all those involved, such that so soon as Hartar died, those close to him and aware of the making of the will would have brought its existence to Jaswinder's attention.

258. That fact, he submits, coupled with what he submits to be the weak and unpersuasive excuses proffered by the relevant witnesses, in explanation of their failure to bring the will to Jaswinder's attention, is enough (taken, he would submit, with the inadequacies in the evidence given in respect of the making and execution of the will) to warrant the court forming the conclusion that the entire body of evidence as to the finding of the will is invented, in order to provide the necessary false provenance for the fabricated will.

259. I have already dealt with the evidence as to the making and execution of the will. In regard to the implausibility of the will being overlooked, or forgotten, Mr East builds his submission upon the perceived importance of the will and its execution to those involved in, or witness to, its execution. I do not find myself able to accept his premise.

260. The reality is that the 2007 will was executed over nine years before Hartar's death. The persons present at its creation and execution had no material interest in its contents. It was, to them, a passing event. I do not find it remotely unlikely, in that context, that its existence was not a thing that bulked large in any of their minds, at and following the date of Hartar's death. Rather, I find it wholly plausible that the will, having been given to Mr Balraj Singh for safe-keeping was put away and forgotten, substantially, in the way that Mr Balraj Singh told me in his evidence; evidence which, as already stated, I believe. In that context, the explanations proffered by Mr Tiwana and Mr Balraj Singh, that the will might have been given to Jaswinder, or that the will might have been destroyed, were, as it seems to me, much more likely to be ex post facto rationalisations than attempts to explain a 'cover up'.

261. The plausibility, or likelihood, that the 2007 will was, simply, overlooked is, I think, reinforced by the fact, as I collected it from the evidence, that the importance of the 2007 will was not fully understood by Mr Tiwana and Mr Balraj Singh. To those steeped in the law of probate, this may seem surprising. It seemed clear to me, however, that Mr Balraj Singh and Mr Tiwana, a property dealer and, if he will pardon the description, a general factotum for Hartar and now Jaswinder, did not understand the impact of the 2007 will upon the 2003 will and, in particular, that the 2007 will would, or would probably have, revoked the 2003 will. Mr Balraj Singh appeared to me to be genuinely of the view that he could take steps, in reliance upon the 2003 will, notwithstanding the existence of the 2007 will.

262. Correspondingly, it is not all clear that these gentlemen had, at least at the outset fully understood the contents of the 2007 will and, in particular, that its effect was to remove

Harbiksun as a beneficiary in respect of his father's estate. There is, as discussed a little later in this judgment, some evidence that both Mr Tiwana and Mr Balraj Singh were, it appears, quite happy to continue with applications to the Indian Estate office to transfer properties into the joint names of Jaswinder and Harbiksun even after the discovery of the 2007 will. Even at trial Mr Tiwana was still, as it appeared to me, of the view that the default provision, in favour of Harbiksun, rendered him a joint beneficiary under the 2007 will.

263. What, I think, is clear is that, contrary to Mr East's submissions, as outlined in paragraphs 233 and 234 of this judgment, the conduct of Mr Tiwana and Mr Balraj Singh, in the period after the 2007 will came, or purportedly came, to light, is completely inconsistent with the 2007 will being a fabrication.

264. It is, to me, inconceivable that, if the 2007 will had been fabricated, as alleged, the fabricators, Mr Tiwana and Mr Balraj Singh being, allegedly, two of them, would then have proceeded as if the 2007 will did not exist. This applies both in respect of the Indian proceedings and in respect of their dealings with the Estate Office.

265. The 2007 will, if fabricated, was, as already set out, fabricated before the 16th April 2017. Yet, in responding, in May 2017, to the proceedings brought by Jagpal, in Kapurthala, no mention, at all, is made of the allegedly newly fabricated 2007 will and reliance is purportedly placed upon the 2003 will. Later in 2017, in response to an application by Jagpal, dated 16th August 2017 those acting for Jaswinder, effectively, reiterated their reliance on the 2003 will. While it is, on any view, curious that the 2007 will, having been found, was not, until very late in the day, referred to in the Indian proceedings, it seems quite extraordinary, that having gone so far as to fabricate a will, those responsible would then have elected, in proceedings relating to Hartar's wills, to proceed without reference to the fabricated document.

266. The position as to Mr Tiwana's and Mr Balraj Singh's dealings with the Estate Office, in 2017, is, on Mr East's case, even more extraordinary.

267. The 2007 will, as already set out, does not merely alter Hartar's testamentary dispositions so as to provide for his English as well as his Indian estate, but, also, alters those dispositions, such as to render Jaswinder the sole beneficiary of his estate and to divest Harbiksun of the half share in Hartar's Indian estate to which he would have been entitled under the 2003 will.

268. If the 2007 will were a fabrication then that latter change in Hartar's testamentary dispositions, in favour of Jaswinder and to the exclusion of Harbiksun, must have been deliberately determined upon and included, by those fabricating the will, for the purpose of enhancing Jaswinder's entitlement in respect of Hartar's estate and further to enable those dealing with his estate to utilise the will for the purpose of securing Jaswinder's sole title to Hartar's Indian property.

269. In that context and given that purpose, it seems to me to be inconceivable that, having gone to the trouble of fabricating the will and changing the dispositions under the will in favour of Jaswinder, those helping Jaswinder in respect of Hartar's Indian property (that is to say Mr Tiwana and Mr Balraj Singh, themselves, on Mr East's thesis, conspirators in the fabrication of the 2007 will) would not, thereafter, make use of the

fabricated will, in order to procure, as must have been intended, Jaswinder's sole title to the Indian properties.

270. Mr East's case, however, is that that is exactly what happened. He focused, in particular, upon a notice issued by the Estate office, in June 2017, which referred to an application made for a property transfer into the names of Jaswinder and Harbiksun, pursuant to the provisions of the 2003 will and to evidence, given by Mr Balraj Singh and, initially, also, by Mr Tiwana, that that application had been made in late May, or early June, 2017 and, therefore, well after the date when the fabricated will had allegedly come into being.

271. That conduct is, or would have been, entirely inconsistent with the 2007 will being a fabrication and would have been, if the will had been fabricated, entirely contrary to the intended purpose of that fabrication.

272. My only caveat as to the foregoing is that there seems to me to be some doubt about the application date, in respect of the June 2017 notice. Mr Tiwana, having originally agreed that the application would have been made in, or about, late May, subsequently resiled from that evidence and suggested that there was a long time lag between an application being made and the Estate Office sending out a notice. He suggested that the application might have been made in March, or even earlier. If that be right, then, while the reference to the 2003 will, in an application made prior to mid-April 2017, would be consistent with the 2007 will not having been discovered by that date, it would not necessarily be inconsistent with fabrication.

273. What, with respect to Mr East, however, is clear is that none of this material supports his case on fabrication.

274. The final point for discussion, standing back, is the sheer unlikelihood, as Mr East submits, that Hartar would make a will which made no provision either for his first family or for Harbiksun and further that he would have made the 2007 will without professional advice.

275. I do not find that conduct at all unlikely.

276. Hartar was, as set out in paragraph 187 of this judgment, quite prepared to make his 2003 will in terms that left no testamentary provision in place for his first family. In regard to Harbiksun, aged six at the date of the will, there would have been considerable good sense in not making specific provision for him and in leaving his provision in the hands of his mother.

277. Nor do I find any unlikelihood in Hartar making the 2007 will without professional advice. Mr East, in his skilful cross examinations, was able to persuade a number of witnesses that Hartar tended to take professional advice in respect of important matters. I was not similarly persuaded, certainly in respect of his testamentary affairs. The evidence is that he took minimal, if any, advice in respect of both the 2003 will and the 2016 will. The evidence, also, is that he was, as explained by Mr Balraj Singh, in the habit of writing wills and then tearing them up.

278. As much to the point is the character of the man. The clear pattern of his behaviour, as already stated, is that he was a man who did what he liked. Mr Balraj Singh, who knew

him over some thirty years described him in that way and as being someone who could not be changed and was averse to the taking of advice. Mr Tiwana, also a long term friend, or acquaintance, of Hartar, described Hartar as a man who did what he wished and wouldn't listen to anybody. I see nothing at all unlikely, in this context, in Hartar acting in the way that I find that he did.

279. In the result, I am satisfied, for all the reasons discussed in this part of this judgment, that the 2007 will was an authentic and, when made, a valid will.

280. Turning to the 2003 will, I have already indicated in a number of places in this judgment (paragraphs 187 and 276) that I am satisfied that the effect of the 2003 will was to leave no testamentary provision in place for the first family and to revoke the 1979 will.

281. The issue turns upon two related questions of construction. Did the 2003 will dispose only of Hartar's Indian estate? If so, did the revocation provisions of the 2003 will only revoke the 1979 will to the extent that it dealt with Indian assets? There is, I think, no doubt but that if the 2003 will did dispose of the entirety of Hartar's estate, then the revocation clause in that will would have revoked the 1979 will.

282. I have already set out, in paragraphs 196 and 197 of this judgment, the general principles of construction to be applied when construing the will, as a court of construction, and, in paragraphs 198 to 202, the approach to be adopted when the court is sitting as a court of probate and determining the continued validity, or otherwise, of previous testamentary documents. The question as to whether the 2003 will disposes only of the Indian estate is a pure point of construction. The question as to whether the revocation provisions of the 2003 will revoke all, or only part, of the 1979 will falls to be determined on the footing that the court is sitting as a court of probate.

283. The core provisions of the 2003 will are set out at paragraphs 67 and 68 of this judgment. The structure of the will and the underlying intent seems to me to be completely clear. The will identifies a number of Hartar's properties, indicates his wish that those properties should be acquired and owned by Jaswinder and Harbiksun after his death and, in his words, bequeaths those properties to Jaswinder and Harbiksun.

284. The question, then arising, is whether the description of the properties owned by Hartar and to be bequeathed to Jaswinder and Harbiksun is apt to describe only Hartar's Indian estate, or whether it is intended to describe and, therefore, bequeath his entire world wide estate.

285. I am in no doubt at all that the properties identified, described in and demised by the 2003 will do not embrace and are not intended to embrace Hartar's worldwide estate; more particularly, his entire English estate. As set out above, the properties intended to be demised under the 2003 will were the properties described and identified in the will. The will does not identify any of Hartar's English properties and, therefore, does not pass those properties.

286. There remains a question as to whether any part of Hartar's English, or non-Indian estate, was intended to pass under the 2003 will. The only assets mentioned in the 2003 will which were not explicitly Indian assets were the assets described, respectively, as 'all bank accounts and deposits with any banks and pending claims and cases of properties' and 'Shares of limited company and profits from it'.

287. Those assets were listed, as items (f) and (g), in Hartar's list of owned properties and were listed between item (e), which consisted of agricultural land at Jallandhar, and item (h), which relates to what Hartar termed his 'deprived rights', meaning, as already stated, Jagpal's rights in three Indian properties held in joint names with Jagpal and which, according to the will, Jagpal should have transferred to Hartar, on her marriage. The final item in the list, item (i), 'all moveable and immoveable properties in India at the time of my death', makes plain Hartar's intention that the 2003 will should demise his entire Indian estate.

288. I think it highly unlikely, given the context in which items (f) and (g) are found, in the 2003 will, and given the intent that the 2003 will should pass the entirety of Hartar's Indian estate, that Hartar should have intended, while in process of disposing of his Indian assets, to pick out from his English assets and separately demise to Jaswinder and Harbiksun the contents of his English bank accounts and deposits, or the shares and profits from any English company he might own. Hartar was the owner of at least one Indian company (Sangha and Sangha Industries Limited) and will also have had bank accounts and deposits in India. It is very much more likely, in the context of a will disposing of his Indian estate, that it was these items that he intended to dispose of by his 2003 will and not his English bank accounts and shareholdings.

289. I am satisfied, accordingly, that the 2003 will was limited in its effect to the disposition of Hartar's Indian estate and did not dispose, at all, of his English estate and that it is, on that footing that the revocation provisions of the 2003 will should be construed.

290. The revocation provisions are succinct and clear: 'I cancel all my wills and testaments made earlier'. There are no words of limitation, such as to limit the cancellation, or revocation, to wills pertaining to Hartar's Indian estate, or to provide that earlier wills and testaments are revoked, or cancelled only to the extent that they dispose of Hartar's Indian estate. The provision is entirely clear, entirely unequivocal and, as set out earlier in this judgment, at paragraph 202, affords strong evidence of Hartar's intention to revoke any earlier will (specifically, his 1979 will), which can only be met, or overridden, by clear and unequivocal evidence that the literal meaning of the words used was not the intended meaning.

291. Mr East's submission, strikingly similar to that advanced by Mr Blackett-Ord, in respect of the revocation provisions of the 2016 will, is that, in construing the 2003 will, I can find the necessary unequivocal clarity, that the revocation provisions were not intended to have their literal effect, in the fact that the consequence of giving those provisions literal effect and treating them as giving rise to a revocation of the 1979 will is, or would have been, had the 2003 will taken effect, to create an intestacy as to Hartar's English estate that Hartar could not have intended. His submission, rather, was that Hartar's 'scheme' was to treat the 2003 will as disposing of his Indian estate, while keeping in place his 1979 will, for the benefit of his first family, save in so far as that will disposed of the Indian estate.

292. Ex hypothesi, there is nothing in the unequivocal and unlimited terms of the revocation provisions of the 2003 will to support this submission, or to suggest that only a partial revocation of the 1979 will was intended. The evidence in respect of the 2003 will, as with Hartar's other wills, is that the words used were very substantially Hartar's own words and had he wished to only revoke his previous will to the extent that it dealt with his Indian assets he could readily have said so.

293. One is left, only, with the bald point that the literal construction of the 2003 will gives rise to an intestacy in respect of the English estate and a want of provision for the first family. I am not at all persuaded that that is enough to establish, unequivocally, that that was not, or could not have been, Hartar's then intention.

294. At the date of the 2003 will and as demonstrated by the 2003 will, Hartar's focus was upon Jaswinder, upon his two year old son, Harbiksun and his Indian businesses. He had, in 1994, effectively set Sundeep up in the Waterforce business at Windmill Road and made arrangements with Sundeep whereby, to retain his, Hartar's respectability in his community, the rent payable by Waterforce for Windmill Road would go to Diljit. His focus, as he had explained to Sundeep, in 1994, when he disclosed his purported marriage to Jaswinder, was now on his Indian businesses, leaving Sundeep to deal, to the limited extent necessary, with his English affairs.

295. Although, Hartar had, at their meeting in Empress Road, in 2002, described Windmill Road as being Sundeep's, he had, in fact, already, in November 2001, transferred the title to that property into the joint names of himself and Jaswinder. Correspondingly, although, at the Empress Road meeting, Hartar had promised Sundeep that he would transfer his English properties to Sundeep, in point of fact, Hartar had not, by 2003, or at all, made those transfers and, as Sundeep told me in his evidence, his father and he were in a state of semi-estrangement. Far from having his first family in mind in respect of his English estate, it appears from Jaswinder's evidence, as set out at paragraph 212 of this judgment, that his intention, in respect of his English assets was that they, too, would eventually pass to Jaswinder by way of transfers into joint names, as, largely, has ultimately been the case.

296. The conclusion I reach, in all these circumstances, is that, at the date of the 2003 will, Hartar had 'moved on'. Having made the Windmill Road arrangements, in part, at least, to preserve his own 'respectability', he had, at that stage, no continuing interest in his first family. The promises he had made to Sundeep did not reflect any actual intention, on Hartar's part, to perform those promises, but were designed, simply and solely, to ensure Sundeep's continued co-operation, if and when required.

297. In that state of affairs, I do not think that there is any proper basis upon which I could conclude, or infer, that Hartar had his first family in mind when making his 2003 will, or that his intention in respect of revocation was to keep his 1979 will 'alive' to the extent that it dealt with his English estate. Rather, I conclude that the revocation clause was intended to take effect in accordance with its terms and, therefore, that, had the 2003 will been the operative will, it would have revoked the 1979 will.

298. The end result of all of the foregoing is that, as set out in paragraph 191 of this judgment, the 2016 will is valid and authentic and disposes of Hartar's Indian estate, in accordance with its terms, that the revocation provisions of the 2016 are effective to revoke all Hartar's earlier wills and that the consequences of those conclusions are those set out in paragraphs 204 and 205 of this judgment. The question as to whether I should formally admit the 2016 will to proof, I leave to further argument.

299. I turn now to the property claim and to the question as to whether Sundeep has acquired an equity by way of proprietary estoppel, enforceable against Jaswinder, in respect of property now vested wholly, or in part, in Jaswinder and, if so, what is the proper satisfaction of that equity.

300. Before dealing with the core questions of assurance, reliance, detriment and satisfaction, there are, in this case a number of important preliminary matters for determination.

301. The first such matter relates to the interaction between the probate claim and the property claim and, in particular, whether, as explained in paragraph 61 of this judgment, the result of the probate claim is, or would be, material, or relevant, in the determination of any relief to which Sundeep might be entitled should his equity be established.

302. In my view the answer to that question is 'yes'. There are two potential aspects of the matter; firstly, there is the fact that, on my findings, Sundeep will receive one quarter of Hartar's Indian estate, which estate is said by Jaswinder to have a value, even allowing for falls in the market since Hartar's death, of some £20M (see paragraph 47); secondly, there is the fact that Sundeep may, also, as a result of his father's testamentary arrangements, have further, potentially, substantial entitlements, in respect of Hartar's English estate, arising out of Hartar's intestacy, in respect of that estate.

303. I have no doubt that, in determining what is, or might be, due to Sundeep in the satisfaction of any equity that he may establish, some account must be taken of the fact that his father has made substantial disposition in his favour out of his Indian estate. The fact, that Hartar may have chosen to make provision for Sundeep out of his Indian estate, in lieu of making good his inter vivos promises, cannot render the court blind to that provision when determining the extent to which any equity arising from Hartar's promises remains unsatisfied.

304. The more difficult question is as to whether any further substantial benefits arising in favour of Sundeep, in consequence of his father's intestacy in respect of his English estate, should also be brought into account.

305. With a little hesitation, I think the answer to this question is, also, 'yes'.

306. I had considered whether any such benefits might be considered res inter alios acta. On reflection, however, it seems to me that those benefits, if they arise, derive from Hartar and, as such, ought to be borne in mind when determining whether, or to what extent, any equity arising out of Hartar's conduct towards Sundeep has been satisfied.

307. The second matter for consideration is the basis upon which the property claim is made against Jaswinder.

308. As set out in paragraph 53 of this judgment, Sundeep's case against Jaswinder is that, in respect of the properties initially held by Hartar, as sole owner, and subsequently transferred into the joint names of Hartar and Jaswinder, Sundeep had, already, by the date of the first such transfer (that of Windmill Road, in November 2001) acquired the equity upon which he now relies. His submission, consequentially, is that, upon that transfer and upon each following transfer, both the interest retained by Hartar and the interest that passed to Jaswinder were already fixed with that equity, such that, upon Hartar's death and assuming the operation of survivorship, the sole beneficial ownership, arising from that survivorship, was, also and in its entirety, fixed with Sundeep's equity.

309. Mr Blackett-Ord does not, in principle, dispute that a third party transferee of property, such as Jaswinder, can be fixed with, or bound by, an equity attaching to that property. He is right not to do so. It is very well established that such an equity can bind third parties, whether the transfer takes place at a time when the equity is inchoate and has not been the subject of an order crystallising, or satisfying the equity, or whether the transfer is effected after the equity has crystallised.

310. There are, of course, limitations to the application of the principle. The equity will not bind a purchaser of an estate in registered land, subject to the equity, unless the equity takes effect as an overriding interest. Arguably, if the proper satisfaction of the equity would not entail the grant of a proprietary interest, but would be satisfied in some other way, then, because a transferee would not, ordinarily, be bound by a personal obligation of the transferor, the equity would, or should only be, enforceable against the transferor. Neither of those limitations, however, would apply in this case, where there is no contention that Jaswinder was anything other than a volunteer in respect of the transfers made in her favour, if and provided that the relief properly to be granted is, as contended by Sundeep, the transfer to Sundeep of the beneficial ownership of the subject properties.

311. Mr Blackett-Ord, nonetheless, submits, in effect, that, in this case, where any equity attaching to the transferred properties was inchoate at the point of transfer, Hartar's estate is an essential party. His contention is that, before a third party can be bound, the claim against the original promisor must be established and that that claim cannot be established unless the promisor, or his, or her, estate is party to the claim.

312. I cannot accept that submission. Mr Blackett-Ord is right, to the extent that a third party cannot be bound by an equity arising from proprietary estoppel, unless that equity has been established, as against the original promisor, prior to the transfer of the property, said to be fixed with the equity, to the third party. That, however, does not, in a case where no relief is sought, as against either the promisor, or his, or her, estate, entail, or require that the promisor, or that person's estate, be joined as a party. All that is required is that the material ingredients, giving rise to the equity, are established, as against the promisor, prior to the date that the relevant transfer of the property said to be subject to the equity is transferred to the transferee, such that the transferee takes subject to that equity.

313. The foregoing analysis, as is recognised by Mr East, cannot be applied to the situation where properties, over which an equity is asserted against Jaswinder, were not initially held by Hartar in his sole name but were purchased by Hartar in the joint names of himself and Jaswinder, as joint tenants in equity, such that, again assuming the operation of survivorship, they are now vested solely in Jaswinder

314. Mr East's contention, however, as set out at paragraph 54 of this judgment, was that, in this case, one could, in effect, trace, or follow, the equity which had arisen in favour of Sundeep, in respect of his father's long held property, at 556-666 Romford Road, into the two properties (76 Berwick Street and 217/219 Balmoral Road) which, so he submitted, had been purchased with the proceeds of that sale.

315. As set out at paragraph 50 of this judgment, Romford Road was sold in April, or May, 2004. 76 Berwick Street and 217/219 Balmoral Road were purchased, in Jaswinder's and Hartar's joint names, in, respectively, September and August 2004. There is,

accordingly, some congruence of dates, as between the sale and the purchases, upon which Mr East relies.

316. Mr East's analysis rests upon the proposition that where, in respect of particular property, an equity arises under the doctrine of proprietary estoppel and where that property is, therefore, held, by the promisor, subject to that equity, on a sale of that property the proceeds of that sale are themselves subjected to, or impressed with, the equity which had existed in respect of the property in question, such that any substituted property, purchased with those proceeds, is, itself, impressed with, or subject to, that equity.

317. I am not aware of any authority in which an equity arising under the doctrine of proprietary estoppel has been held to have been traced, or to be capable of being traced, into another property. No such authority was cited.

318. That is not to say that there are no arguments to be advanced. One can readily see that, in broad policy terms, it is undesirable that someone, who has acted in such a way as to create an equity in favour of another over his, or her, property, should be able, in effect, to destroy, or dissipate, that equity simply by selling the property and purchasing another with its proceeds.

319. On the other hand, Mr East's submission does not fit easily into the usual framework of property law. In the usual case where a registered property is sold by a sole owner, minor interests, not protected by actual occupation, neither bind the purchaser nor are overreached into the proceeds of sale. Mr East's submission, if correct, would create an exception to these well understood principles in respect of an interest, or right, which, although, in many ways, analogous to a property interest, is not a property interest.

320. That said, **Snell's Equity 24th Edition**, in considering, at 2-007 (b), the proprietary character of mere equities, suggests that there are circumstances where a mere equity may be enforced against the traceable proceeds of the original asset bound by the equity. Although the authorities cited in support of that proposition are, almost exclusively, cases where monies have been procured by fraud and where the question has arisen as to whether the original fraudulent transaction gave rise to a sufficient equity in the monies so procured to enable equitable tracing, I can see no principled reason why, on the assumption that the other requisites of equitable tracing are available, the proposition, set out in **Snell**, should not be applicable to cases where the equity in question is one arising out of proprietary estoppel.

321. That, however, still leaves open the large question as to whether an equity arising out of proprietary estoppel can fit within the established framework of equitable tracing, given that the essence of equitable tracing is that the tracing party is asserting a proprietary right in, or in respect of, the asset, or property, in respect of which relief is sought, on the footing that he, or she, had proprietary rights in respect of the asset, or property, the proceeds of which can be traced into that property.

322. An equity arising by way of proprietary estoppel is not, in itself, a property right, albeit that it may be satisfied by the grant by the court of a property right and might, therefore, be said to be capable of blossoming into a property right. Prior to satisfaction, in that way, however, a person asserting and entitled to a proprietary estoppel has no defined right of property, merely an inchoate right which may crystallise into, or be satisfied

by, the grant of a right of property. How then, rhetorically, can such a person be entitled to trace?

323. One answer, broadly similar to that applied in the fraud cases, is that, assuming that, in a particular case, the proper satisfaction of an equity arising over a property was, or would be, the grant of a property right in that property, then, by the explicit, or implicit, application of the maxim of equity that equity treats done that which ought to be done, the court having determined that the satisfaction of the equity warrants the grant of a proprietary right, could treat that interest as arising as at the date of the equity and, in consequence, as an interest which could be enforced, by equitable tracing, as against any property purchased with the proceeds of the property initially subject to the equity in question.

324. None of the foregoing was dealt with in argument at the trial and the questions and arguments potentially to be raised and advanced are not at all straightforward. In those circumstances, given that for the reasons set out below, a determination is not necessary for the resolution of this litigation and although I confess to a sympathy towards the conclusion postulated in the previous paragraph of this judgment, I prefer to leave the tracing question to be resolved in a case where the issues can be fully explored and where a determination is necessary to the court's decision.

325. In this case such a decision is not necessary because I remain unsatisfied, on the facts, that the properties, at 217/219 Balmoral Road and 76 Berwick Street, were purchased out of the proceeds of the Romford Road property. Mr East asks me to infer that that was the case, from the congruence of dates, as set out in paragraph 315, as between the sale of Romford Road and the purchase of those two properties.

326. I do not find myself able to draw that inference. This is not a case where the proceeds of sale of Romford Road went, directly, into the purchase of the Balmoral Road and Berwick Street properties. It appears, from correspondence with the Revenue, that the Romford Road property, or properties, were sold for about £1.9M in the Spring of 2004. Historic Office Copy entries show that Balmoral Road and Berwick Street were purchased for about £1.2M in the Autumn of 2004. There is no evidence, at all, however, as to where the proceeds of the Romford Road properties went, in the interim period following sale and prior to the purchases, or such as to demonstrate that it was those funds that were utilised in the purchase of Balmoral Street and Berwick Street.

327. Hartar was, in 2004, already a wealthy man, who had, or had had, many property interests. He had, according to Sundeep, been in the habit, while SBM was trading, of extracting monies from that company for the purposes of his Indian business. His 2003 will asserts that at least some of his Indian property was purchased with his 'earned funds from UK'. He had, as explained by Sundeep in evidence, set up so-called 'package' arrangements in respect of a number of what had been SBM outlets and was in receipt of income from those outlets. He was, until 2002, in receipt of the residential income from Windmill Road. He was, in short, a man of means, with a number of substantial sources of income, with assets both in India and England and with an apparent willingness to move monies about from one country to another.

328. Against that background, in the absence of any significant exploration of Hartar's financial arrangements, bank statements and money flows and in the absence of any direct connection between the proceeds from Romford Road and the monies used to

purchase Berwick Street and Balmoral Road, it seems to me that any inference that the proceeds of Romford Road went into those two properties verges on the speculative. One can properly infer that all, or some, of those proceeds may have gone into the two properties. One cannot properly infer, however, as a matter of probability, that that was the case.

329. In the result, I decline to hold that any equity that may have existed in favour of Sundeep, in respect of the Romford Road property, or properties, can be traced into either 76 Berwick Street, or 217/219 Balmoral Road.

330. The next matter for consideration is the bankruptcy point, raised by Mr East in his final submissions and summarised in paragraph 57 of this judgment.

331. Although detail is in short supply, there does not seem to be any doubt but that Hartar was made bankrupt in 2013 and that that bankruptcy was subsequently annulled. The historic Office Copy entries, in respect of 217/219 Balmoral Road record a restriction entered by the Official Receiver, as Hartar's trustee in bankruptcy, in May 2013 and it would appear that it was in consequence of that bankruptcy and the severance of the equitable joint tenancy held in that property, by reason of that bankruptcy, that, when preparing Hartar's IHT schedule, Hartar's interest in that property was treated as a beneficial half share, under a tenancy in common, and as falling into his estate and not as vesting in Jaswinder, by way of survivorship.

332. Although Office Copy entries for the other jointly owned properties do not show the same bankruptcy restriction, there can be no doubt but that Hartar's bankruptcy and the appointment of a trustee in bankruptcy would have resulted in a severance of the beneficial joint tenancies over any of those properties held in joint names, as at the date, in particular, of the appointment of the Official Receiver as trustee. The properties so affected would have been Windmill Road, Hainault Road, Balmoral Road, Berwick Street and 433 Bromley Road.

333. 1061-1063 High Road, Romford, was only transferred into joint names in June 2015, after the annulment of Hartar's bankruptcy, with the result that that joint ownership is not affected by the bankruptcy and with the further result that the equitable joint tenancy, arising from the 2015 transfer into Hartar's and Jaswinder's joint names, will have given rise to a survivorship in favour of Jaswinder.

334. The question arises, however, as to whether, in respect of the other five properties, the annulment of Hartar's bankruptcy revived the previous equitable joint tenancies in those properties, or whether, notwithstanding that annulment, the joint tenancies remained severed, such that, at Hartar's death, survivorship did not operate and, instead, Hartar's beneficial half shares, in those properties, derived from the severance of the original joint tenancies, fell into his estate.

335. The effect of this latter, were it to be the case, would be significant. It would mean that the properties, or property interests, held by Jaswinder and in respect of which Sundeep is asserting an equity would be reduced, both in extent and value, and that the property interests and their values, falling into Hartar's estate, would be correspondingly increased.

336. In particular, it would mean that Hartar's estate would be increased by one half of the value of each of the five foregoing properties and that the property, in Jaswinder's hands, against which Sundeep can directly assert an equity, in this litigation, would be reduced to High Road, Romford and to Jaswinder's beneficial half share in such of the other five properties as may, on the basis set out in paragraphs 53 and 308 of this judgment, have come into her hands already subject to an equity in his favour; namely Windmill Road, Hainault Road and 433 Bromley Road.

337. I analyse the matter in that way because, given my conclusion, at paragraph 329 above, that Sundeep cannot trace into the entirety of Berwick Street and Balmoral Road and given that no other basis has been put forward to justify Sundeep asserting an equity against Jaswinder's interest in those properties, it seems to me that, in respect of both Berwick Street and Balmoral Road, any equity that might exist in favour of Sundeep could only exist over Hartar's interest and that, since, following a severance, Hartar's share in those properties would fall into his estate, it would not be open to Sundeep to assert any equity at all against Jaswinder in respect of either property.

338. It is not in doubt, as already stated, but that the effect of a bankruptcy is to sever any existing joint tenancy by, at latest, the date when the bankrupt's estate vests in a trustee in bankruptcy. Nor is it in doubt but that the effect of section 306 of the Insolvency Act 1986 (the Act) is that the tenancy in common, arising on such severance, vests automatically in the trustee in bankruptcy upon the appointment of the trustee and, therefore, that, following that vesting, pursuant to the provisions of that section and subject to any annulment of the bankruptcy, that part of the bankrupt's estate, represented by the tenancy in common, is and remains vested in the trustee.

339. The effect upon that statutory vesting of an annulment of the bankruptcy is set out in section 282 (4)(b) of the Act, which provides that 'if any of the bankrupt's estate is (at the date of the annulment) vested under (among other provisions, section 306 of the Act) in (a trustee of the bankrupt's estate), it shall vest in such person as the court may appoint or, in default of any such appointment, revert to the bankrupt on such terms (if any) as the court may direct'.

340. In this case, at the date of the annulment and by the operation of section 306 of the Act, all Hartar's property, including his tenancies in common in respect of those properties previously held under equitable joint tenancies, was vested in his trustee. There being no suggestion that any appointment was made by the court in respect of those properties, or that the default provision set out in section 282(4)(b) did not apply, it was those properties which, on the annulment, reverted to Hartar.

341. Properties held in his sole name, such as High Road, Romford, and which had vested in the trustee in the same form as they had existed prior to the bankruptcy will have reverted to him in that form. Properties, however, which had been subject to severance, reverted, as it seems to me, in the same form as they had existed following severance; that is to say as interests held in common. It was those interests and not Hartar's pre-severance interests which were vested in the trustee as part of Hartar's bankruptcy estate and it was those interests, therefore and as correctly reflected in Land Registry Practice Guide 34, at section 5.4, which reverted to Hartar following the annulment.

342. The consequence of the foregoing, as already stated, is that, unless there is any proper route whereby Sundeep can, in these proceedings, assert any equity he may have against

property interests vested not in Jaswinder but in Hartar's estate, then the 'pool' of assets over which such an equity can be asserted will be limited to High Road, Romford and to Jaswinder's beneficial half share in each of Windmill Road, Hainault Road and 433 Bromley Road.

343. I am not persuaded that Sundeep can, in these proceedings, look for the satisfaction of any equity outside that 'pool' of assets.

344. Mr East advances two arguments, as set out at paragraphs 59 and 60 of this judgment.

345. His first argument, however, is predicated upon my finding, contrary to his submissions and contrary to my findings earlier in this judgment, that the 2007 will is not merely authentic but also that it is the dispositive will, in respect of which Jaswinder is both an executrix and also sole beneficiary of Hartar's English estate. It is on that footing, particularly the latter footing, that Mr East submits that I can and should grant relief against Jaswinder not merely in respect of her interest in those properties in which she received an inter vivos interest from Hartar but also in respect of the interests in Windmill Road, Hainault Road, Balmoral Road, Berwick Street and 433 Bromley Road that would come to her under that will.

346. I have already explained, in paragraph 337 of this judgment why it is that Sundeep can assert no claim to an equity in respect of Jaswinder's inter vivos interest in Berwick Street and Balmoral Road. In regard to the balance of Mr East's submission, the short answer is, simply, that the scenario contemplated by Mr East does not arise. The 2007 will is not the dispositive will and Jaswinder is neither the executrix of Hartar's estate, nor the putative beneficiary, in respect of Hartar's interests in the five properties set out above.

347. I would, in any event, have had some reservations as to Mr East's submission, even if the court's findings had accommodated it. In the contemplated scenario, the relevant interests would have formed part of Hartar's estate and would, pending administration of the estate, have vested beneficially in his executors. Jaswinder's only right, as beneficiary, would have been to call for the executors to assent those interests into her name in due course of the administration. An order, by way of relief, in respect of Sundeep's alleged equity, declaring or directing that Hartar's beneficial interests in the relevant properties pass not to Jaswinder but to Sundeep would, in substance, if not in form, be an order directed to Hartar's estate and requiring the estate, in proceedings to which it was not party, to assent the transfer of the relevant beneficial interests in a way not contemplated by the 2007 will.

348. Even if a form of words might be found, directed solely to Jaswinder, in her personal capacity, and operating only after the relevant beneficial interests had been assented to her in course of administration, such a direction would still require the court to direct that the estate assent the relevant interests, rather than, for example, joining with Jaswinder in a sale of the properties and, in consequence, the estate would still, as it seems to me, be a material party.

349. In the result, however and, as already stated, the 2007 will is not the dispositive will and the scenario, or situation, contemplated by Mr East does not arise.

350. Mr East's alternative submission is that the court can and should declare, as against Jaswinder, as the sole legal owner of the relevant properties, by survivorship, and in satisfaction of Sundeep's equity over the entirety of the beneficial interests in the relevant properties, including, therefore, those interests vested in Hartar's estate, that those properties are held beneficially for Sundeep.

351. Putting aside the position, as already explained, in respect of Balmoral Road and Berwick Street, the problem with that submission is that it involves and requires the court to make declarations as to the ownership of interests falling into Hartar's estate, such as to remove those interests from his estate, without any reference to those entitled to that estate, or representing that estate.

352. In light of the intestacy that exists in respect of Hartar's English estate and the outstanding issues as to Jaswinder's and Diljit's matrimonial status and as to Hartar's domicile it cannot be clear, at this stage, as to who will be entitled in respect of the estate. Nor, correspondingly, can it be clear that all potential beneficiaries of the intestate English estate would acquiesce in the court making declarations in favour of Sundeep in respect of estate assets. By way of obvious example, Harbiksun, who is not a party to the property claim, is likely to be a major beneficiary of the English estate. It is, as it seems, to me, highly unlikely that he would acquiesce in half, or any significant part, of the value of Berwick Street, Balmoral Road, Windmill Road, Hainault Road and 433 Bromley Road being transferred to Sundeep and falling out of his father's estate.

353. Put shortly and despite Mr East's persuasive advocacy, I am quite satisfied that it would be wrong in principle to make any orders, or declarations, in respect of the assets in Hartar's estate without the estate, or those interested in the estate, being before the court. For that reason, in determining the property claim and in determining what, if any, relief Sundeep is entitled to in satisfaction of any equity he may establish, I consider that that relief must be confined to the 'pool' of assets identified in paragraphs 342 and 343 of this judgment.

354. The starting point, in respect of any claim in proprietary estoppel are the promises, or assurances made by the person against whom the equity is said to exist.

355. In this case, it is not in doubt but that promises were made, in various forms and over many years. Nor is it in doubt that, other than, perhaps, the arrangements made, in 1994, in respect of Waterforce, as set out in paragraph 21 of this judgment, none of those promises, or assurances, ever came to fruition.

356. The factual position is summarised in paragraphs 12 to 45 of this judgment. That summary, as already stated, derives, substantially, from Sundeep's written and oral evidence, which, in very large part and subject to the reservations discussed later in this judgment, I accept. I found Sundeep's oral evidence to be honest, straightforward and open. I did not detect any attempt by him to avoid, or deflect, scrutiny.

357. The suggestion was advanced, by and on behalf of Jaswinder, that, in respect of any promises made to Sundeep when he was first persuaded to work with his father at SBM, such promises were, or might have been, conditioned upon Sundeep's business success at SBM. There is no evidence to support that suggestion, or that any suggestion of that kind was ever conveyed to Sundeep.

358. The suggestion was further advanced that any promises that Hartar may have made were not irrevocable, in the sense that they were intended to be relied upon. I am satisfied that that is not the case.

359. While Hartar's various promises and assurances were entirely empty, in terms of performance, I do not think, taken as a whole, that they were not intended to be relied on, or that reliance upon them would have been unreasonable.

360. It seems to me that Hartar's motivation in making the promises that he made may well have been different at different times. For example, promises were made both in 1994, when Sundeep was first informed of Hartar's marriage to Jaswinder, and in 2002, when Sundeep was first informed that Jaswinder had come to England. In both instances, it seems highly likely that Hartar's guilt, or embarrassment, at his treatment of his first family formed a part of his motivation in making the promises then made. Later on, when renewed promises were made, for example, in 2009, 2010/11 and 2015, as set out in paragraph 26 of this judgment, Hartar may well have felt that, having made his previous promises, he could not openly resile from those promises and was, in consequence, obligated to perpetuate the promises previously made.

361. Be that as it may, I am in no doubt but that the promises, when made, were intended to be taken seriously and that, in each case, were designed either to persuade, or encourage, Sundeep to do what Hartar wanted, or, simply, to make it easier for Hartar to carry on doing what he wanted without family opposition.

362. The much larger question, however, is whether, whatever Hartar's intentions, or motivations, Hartar's various promises and assurances were ever relied upon by Sundeep, to a material extent? Put another way, has Sundeep's life been shaped, as submitted by Mr East by his reliance upon his father's promises, or, quite a different thing, has it been shaped by his willingness to conform to his father's wishes?

363. Sundeep gave very extensive evidence at trial. As already stated, he was open and straightforward. What, however, was striking was the absence of any significant assertion that his conduct in respect of his father, or in respect of his career and business life, had been built upon his faith in his father's promises. He was perfectly clear that he had, throughout his life done what his father had wanted. He was equally clear that, from time to time, promises had been made and that he had requested his father to fulfil those promises. What was not to be found in his evidence is that it was his trust in his father's promises, rather than his loyalty to, or love, of his father, or the impact of his father's behaviour, or personality, or, even, his hope that his father would eventually perform his promises, which had motivated his behaviour.

364. In regard to Sundeep's written evidence, while there are limited references to his reliance upon his father's promises, as motivating his conduct and behaviour, as discussed later in this judgment, it is, at least, equally clear that a major motivator in respect of his conduct was his concern that he would be letting his father down, his desire to please his father and the impact of his father's powerful, overbearing and patriarchal personality.

365. The impact, or effect, of Hartar's personality and behaviour upon Sundeep's own conduct emerged very clearly both from Sundeep's written evidence, as to the

circumstances in which he joined his father's business, and the evidence given by a number of Sundeep's friends, all of whom gave evidence in support of Sundeep.

366. Sundeep's own evidence, at paragraph 13 of his July 2019 witness statement, was that the 'weight of pressure that I felt that my father was putting me under to work for the business was enormous. He made me feel that if I did not do what he wanted I would be letting him down and wondered what he might do if I didn't agree to his demands...'.

367. Jeffrey Adams, one of Sundeep's old school friends, described Hartar as intimidating, manipulative and egocentric and someone who would not take no for an answer. Sundeep, he felt, never conceived that he had other life choices. Sarebit Sangha, another school friend, also gave evidence of the pressure that Sundeep said had been imposed upon him to join the family business and of the fact that Sundeep, as the only male heir, felt that he had no option but to agree to his father's wishes. Dipesh Patel, a friend since 2000, described Sundeep as being under his father's spell and as having a blind allegiance to his father. He described Hartar as a powerful and dictatorial father and as having a power and dominance over Sundeep. Sundeep had felt unable to take any action adverse to Hartar for fear of breaking his relationship with his father. Adnan Mallick, another school friend, and Jeffrey Adams also drew attention to the impact of the Asian cultural tradition and the expectation, within that tradition, that a son follow into the family business.

368. In the light of all of the foregoing and although I entirely accept that promises were made, as set out in paragraph 12 of this judgment, and, indeed, that, at least at that stage, Sundeep believed those promises, I am not satisfied, or persuaded, that they were causative, at all, of his joining his father in SBM, or that he joined SBM in any way in reliance upon those promises.

369. I am quite satisfied that the far greater probability is that Sundeep succumbed to his father's parental pressure and to cultural tradition and that it was for those reasons and not in reliance upon his father's blandishments, as to his future in the business, that Sundeep joined his father at SBM. Sundeep, aged eighteen and under the pressures he, himself, described, in paragraph 13 of his 2019 witness statement, had no realistic option but to conform to his father's demands.

370. Having joined SBM, however, I am prepared to accept that Hartar's promises, as to Sundeep's future in that business, will, initially, at least have had an effect.

371. When Sundeep went into SBM, he worked, as set out in paragraph 14 of this judgment, long hours for what I accept was modest pay, taking on any and every role that was required of him. He did so, as it seems to me, not as an ordinary employee, but as a family member learning the business. His motivation, I have no doubt, was, in significant part, to please and impress his father. A young man, as Sundeep was, placed in his father's business and promised that business in the future, would, however, have had to have been more than human if he was not influenced, at all, by that promise. I am satisfied that one factor in what was Sundeep's enthusiastic espousal of the activities of SBM and one driver, in respect of his own performance at work, was the fact that Hartar had made promises to him as to his eventual ownership of the business.

372. I am not persuaded, however, that that reliance continued beyond 1991 and into the period when Hartar distanced himself from SBM and when, as set out in paragraphs 15 and 16 of this judgment, Sundeep, effectively, stood in as managing director.

373. In that period, or shortly after the commencement of that period, Sundeep will have become aware that SBM was a failing business and that any promises Hartar may have continued to make about Sundeep's future in that business were empty. Sundeep's evidence at trial as to the condition in which Hartar left SBM was caustic. He will have seen, from an early stage of this period of his involvement with SBM that he was, at his father's request, simply deferring the evil hour. In that context, it is unrealistic to think that his very considerable efforts to help his father during this time were founded upon his reliance, or belief, in promises as to his future ownership of a business which was demonstrably failing. What this period of Sundeep's life shows is that, whatever its cause, Sundeep's allegiance to his father and his desire to be well thought of by his father was deep rooted.

374. In 1994 SBM went into liquidation. In that year, also, as set out in paragraphs 19 to 21 of this judgment, Sundeep went to India and learnt that Hartar had entered into a form of marriage with Jaswinder. Hartar established Sundeep in the Windmill Road outlet that became Waterforce. Hartar put in place 'package' arrangements, in respect of a number of the previous SBM outlets and Hartar asked Sundeep to look after Hartar's UK business affairs, promising that Sundeep would be his successor and would get everything in the UK.

375. As further set out in paragraphs 21 and 22 of this judgment, from 1994 to 2011, Sundeep's main focus of work was Waterforce; his own business. Although his July 2019 witness statement painted a different picture (describing himself as working seven days a week in his father's UK business and as taking a reduced salary, as the price he was prepared to pay in order to make the UK business succeed), the reality, as he explained in his oral evidence was very different. Waterforce was Sundeep's own autonomous business and his payment from Waterforce was entirely unconnected with his father, or his father's requirements. His involvement in the residue of his father's UK business was very limited. The time he spent on what he termed his father's 'errands' was, he estimated, in the order of two hours a week. In the period of semi-estrangement, from 2002 to 2007, further discussed below, Sundeep, as he told me, did very little.

376. In 2002, Sundeep became aware that Hartar had brought Jaswinder to the UK and further discussions took place, as set out in paragraphs 23 to 25 of this judgment. Hartar reiterated his promise that his UK properties and, specifically, Windmill Road would be transferred to Sundeep and, also, set up the arrangements whereby Sundeep would retain, for himself, the balance of the rents from the Windmill Road residential properties. Although, as I have already commented, these arrangements were ostensibly very favourable to Sundeep, the circumstances in which they were made, coupled, as it emerged, with Hartar's non-performance of his promises, as to transfer, led to a period of semi-estrangement, not 'normalised' until 2007.

377. I am not persuaded that Sundeep's limited involvement in Hartar's business affairs, post 1994, can properly be attributed to Hartar's promise, or promises. As already stated, such a suggestion did not emerge from Sundeep's oral evidence and any such assertion

in Sundeep's written evidence, was made, as just set out, on an entirely different factual premise.

378. Taking, first, the period between 1994 and 2002, I do not think it at all likely that, when Sundeep carried out these limited 'errands' for his father, he did so because of his father's promise, or that it is at all likely that, without that promise, he would not have done as his father asked.

379. Nor, at that stage in their relationship, whatever might have been the case later on, when a pattern of broken promises had developed, do I think that Sundeep was carrying out errands for his father in the hope that he would, thereby, encourage his father to fulfil his promises. The reality, I think, is that Sundeep, while aware of his father's promise and while, no doubt, believing in that promise, did what his father asked simply because his father had asked him.

380. From 2002 onward, the position was, perhaps, slightly different. In the period to 2007, Sundeep did little for his father. Far from relying on his father's promises, he was, so it seems, waiting on his father's performance of those promises. After 2007 and faced with Hartar's continued non-performance, Sundeep, nonetheless, continued his limited assistance of his father. They had, as Sundeep said, become close again. It was for that reason, as it seems to me and not for any reason to do with any expected performance of Hartar's promises that Sundeep continued to assist his father.

381. Although Hartar's promises were from time to time renewed, as set out in paragraphs 26 and 27 of this judgment, and although Sundeep's written evidence espoused a continuing belief that his father would perform his promises, it must be in some doubt, from that stage onward, as to whether Sundeep really continued to have any belief that his father would actually perform his promises, or whether, as is, at least, hinted in Sundeep's written evidence, at paragraph 31, the true position is that Sundeep felt obliged to persuade himself that his father's promises were genuine.

382. In 2011, as set out in paragraph 33 of this judgment, Waterforce ceased to trade. From that date, Sundeep had, as he put it, no conventional employment. He remained involved in the management of the residential units at Windmill Road and he carried out a few further 'errands' for his father, as set out in paragraph 41 of this judgment. His major activity, or concern, however, from 2011 until the date of his father's death and until Diljit's own death was the care of his mother.

383. Mr East submitted that I should conclude that the care that Sundeep gave to his mother was provided by Sundeep in reliance, or, at least, partially in reliance, upon Hartar's promises in respect of the UK properties. I decline to form that conclusion. Having heard Sundeep, in evidence, I do not accept, for one moment, that his care for his mother was founded, in any way, upon any form of reliance upon his father's promises, or for any reason other than his love and concern for his mother.

384. Nor do I think that the modest errands carried out by Sundeep for his father, from 2011 until the date of his father's death, were carried out because of any belief that Sundeep may have retained in his father's willingness to perform his promises, or in reliance upon any such belief. As with so much of Sundeep's other conduct, Sundeep, while, no doubt, still hoping that his father would come good on his promises, did not found his conduct on that hope.

385. Mr Blackett-Ord, in his opening, at trial, referred to a disconnect between Hartar's promises and Sundeep's conduct. Having heard the evidence, I think that that disconnect is very largely made out and that, subject only to the matters discussed in paragraph 360 of this judgment, any burden of proof resting on Jaswinder, in respect of reliance and arising from the principle established in such cases as **Wayling v Jones [1995] 2 FL 1029** and **Campbell v Griffin [2001] EWCA Civ 990** has been met.

386. In the result, I am satisfied that, other than in the short period immediately following his joining SBM, Sundeep's conduct has not been premised, or predicated, upon his reliance upon Hartar's promises. Most particularly, I am satisfied that Sundeep's life has not been shaped by Hartar's promises. Standing back, the life defining, or life shaping, event in Sundeep's life was joining SBM. Sundeep's decision, if such it can be called, to join SBM derived not from Hartar's promises but from the weight of his father's pressure coupled with the deep seated cultural expectation to be found in the Asian community.

387. It follows from the foregoing, turning to the question of detriment, that the only detrimental reliance to which Sundeep can look and which could, potentially, raise an equity in his favour is that to be found in the short span of time when Sundeep, as a very young man, was first working in SBM and when he was happy to put in long hours at little pay, partly to please and impress his father, but, also, in the belief, occasioned by his father's promises, that the business of SBM would one day be his.

388. That analysis raises a number of further questions. Firstly, whether the detriment occasioned by Sundeep, in working as he did, was, in itself, of sufficient substance to constitute a relevant detriment. Secondly, given that actionable detriment, for purposes of proprietary estoppel, is that which arises from the promisor resiling from his promise, whether, in this case and in respect of SBM, Hartar did resile from his promise, or whether Sundeep's detriment arises not from Hartar's failure to keep his promise but from the failure of SBM. Thirdly, whether, looking at all the circumstances and balancing any countervailing benefits arising from Sundeep's reliance upon his father's promises, such detriment as Sundeep may have suffered has been compensated, or negated, by those benefits.

389. While I do not think that the detriment, to be found in a young man's under compensated hard work for a limited period, should be over regarded, I am not prepared to regard those matters as de minimis. Nor, however, can I see this detriment as being a detriment arising from Hartar's change of position, or withdrawal from his promise. Hartar did not withdraw from his promise as to SBM. Any detriment to Sundeep, in not succeeding to SBM, arose from the failure of SBM and not, in this instance, to any unconscionable change of position by Hartar, giving rise to a remedy in proprietary estoppel.

390. Rather, as it seems to me, Hartar's conduct, when SBM failed, was to seek to reflect his own promises to Sundeep, in respect of SBM, and Sundeep's hard work at SBM, both in his early days and in staving off the collapse, or eventual failure, of the SBM business, by, in substance, setting Sundeep up in his own business in the Windmill Road outlet. When that matter is brought into account, I do not see that Sundeep can, on any view, be said to have suffered any substantial, or actionable, detriment arising out of, or in respect of, his work at SBM, even if, contrary to my view, the work that he carried

on, as an acting managing director, was to be regarded as carried on in reliance upon Hartar's promises as to his future in the business.

391. The consequence of all of the above is that, despite Hartar's various promises, no equity has arisen in favour of Sundeep, with the result that Sundeep's property claim falls to be dismissed.

392. Even had a limited equity arisen, as contemplated in paragraph 387 of this judgment, I would have had some concerns as to whether such an equity should be enforceable against Jaswinder. It seems to me highly unlikely that any relief granted in satisfaction of such a limited equity would be reflected by anything other than a relatively modest financial payment. I do not think that the relief granted would, or should, extend to a proprietary interest. In that circumstance, there is, as set out in paragraph 310 of this judgment, a live question as to whether a third party transferee, such as Jaswinder, should be bound by an equity, giving, when satisfied, personal rights, only, when, ordinarily, a transferee of land would not take subject to such rights, or whether, in such a case, the equity in question is only enforceable against the transferor.

393. I add, for completeness, that even if I had found that the activities, or errands, carried out by Sundeep for his father, post 1994, had been carried out in reliance upon the various promises made by Hartar, from 1994 onward, as to the transfer to Sundeep of his UK properties, I would not have been minded to grant the relief sought, even in respect of the limited pool of properties that I have identified as being capable of being bound by any equity arising out of Hartar's non-performance of his promises in respect of those properties.

394. It seems to me that set against the relatively limited detriment to Sundeep which would have been occasioned if it had transpired that he had carried out the activities, or errands in question on the faith of his father's promises and, in that context, Hartar had then resiled, the relief sought would have been wholly disproportionate to the detriment suffered.

395. Mr East submitted that this case fell within the class of cases discussed by Robert Walker LJ (as he then was), in **Jennings v Rice [2002]EWCA Civ 159** and by Lewison LJ, in **Habberfield v Habberfield [2019] EWCA Civ 890**, where the arrangements between the parties have a contractual, or quasi-contractual flavour and where, the promisee having carried out his side of the quasi-bargain, the detriment suffered by the promisee, arising from the promisor's departure from his assurances, can only properly be met by fulfilling, in full, the expectations created by and resiled from by the other party.

396. I do not see this as such a case. I do not think that the arrangements, such as they were, between Hartar and Sundeep had the kind of quasi-contractual flavour envisaged by Robert Walker LJ, or Lewison LJ, in the cases cited above. It seems to me that relative to the conduct relied on by Sundeep, as giving rise to the equity for which he contends, Hartar's promises were extravagant and exorbitant. In such a case, the task of the court is to find a remedy which is sufficient to compensate for the detriment which has been suffered but which is not excessive, or disproportionate to that detriment. It remains a good working rule that the court should look for the minimum relief that satisfies the equity that has been created.

397. In this case, not merely would the detriment suffered by Sundeep, in the contemplated circumstances have been relatively modest, but, in evaluating that detriment, the court would have to bring into the balance the fact that the package of promises made by Hartar in 2002 included his promise that Sundeep should have the benefit of much of the income from the residential units at Windmill Road and that, in fulfilment of that promise, Sundeep had, as set out in paragraph 34 of this judgment, the benefit of that cash income, from 2002 until 2013, at the rate of some £50,000 to £60,000 per year.

398. Taking that matter into account and even without bringing further into the balance Sundeep's potential entitlements from Hartar's Indian estate and from the intestacy existing in respect of Hartar's English estate, I have no doubt at all that any equity that might have arisen in favour of Sundeep, consequent upon his work for his father from 1994 onward, would already have been satisfied and would not warrant the grant of any additional relief.

399. Be that as it may, I am satisfied that, for all the reasons set out in this judgment and as set out in paragraph 391 of this judgment, Sundeep's property claim must be dismissed.

400. I will, accordingly, dismiss Sundeep's Counterclaim.

401. In regard to the probate claim, I will grant declarations as to the authenticity and validity of the 2016 will and as to the revocation of all previous wills. I leave open for further argument the question as to whether I should formally admit the 2016 will to probate. Directions will, additionally, have to be given in respect of the issues of domicile and of the validity of Diljit's and Jaswinder's marriages, since, in light of the intestacy in respect of Hartar's English estate, those issues will now have to be determined.

402. Following discussion with the parties I have agreed that this judgment should be handed down without an attendance and that all outstanding matters be adjourned over. I would not, however, like to leave this matter without recording my thanks to all involved. The trial was conducted on a hybrid basis with evidence given both remotely and in person. My clerk, Peter Wognum, was of invaluable assistance in dealing with the technology involved and I am grateful. Much of the evidence was given via an interpreter. Ms Pandhal. She carried out her difficult task with great patience and skill and was an essential and effective conduit between the court and the witnesses. I thank, also, all counsel, solicitors and witnesses, both for their patience, when inevitable difficulties cropped up, and for their efficiency in dealing with documentary and other issues as they arose. A special note of thanks to Mr Blackett-Ord's pupil whose note of evidence has been of great value to me and to all parties.