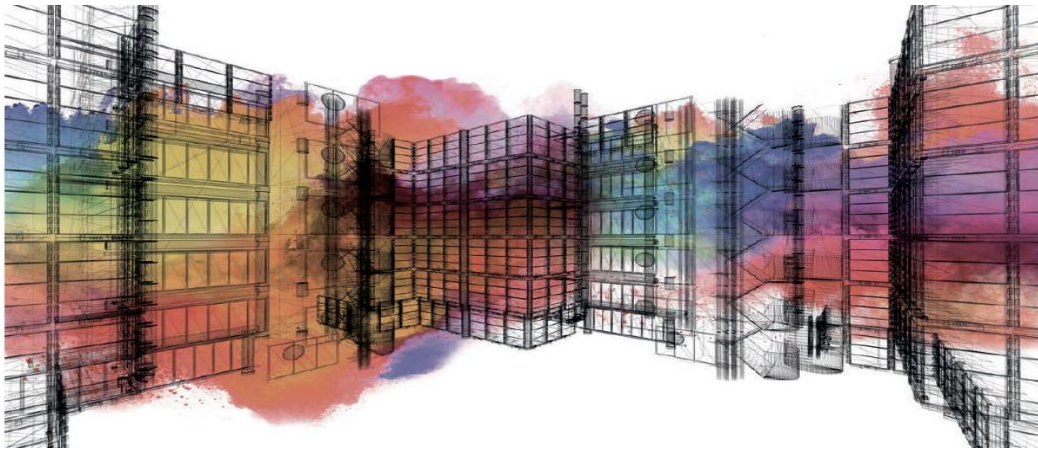


# THE PRINCIPLES OF LAND LAW

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## *Ali v Dinc* [2020] EWHC 3055 (Ch)

The judgment of Worthington QC sitting as a Deputy High Court Judge in *Ali v Dinc* is a detailed examination of the range of legal structures which can arise in land law in response to a transfer, not intended as a gift, but which was not, on its face, a typical sale. The Court examines not only proprietary estoppel and presumed resulting trusts, but also liens and, critically, the *Quistclose* trust (amongst much else). For the purposes of this note, to link closely to the material covered in the textbook, I will focus on the *Quistclose* trust; the comments on the line of case law around *Mortgage Express v Lambert* and the role of section 26 LRA 2002; and the comments on proprietary estoppel. The details of the trust response, and the relationship with the unjust enrichment, go beyond the scope of

*The Principles of Land Law* and are therefore not considered here.

### Facts

The facts of the case, although unclear in many respects, in outline are fairly simple. C (Ali) held title to two properties. He transferred these titles to D1 (I Dinc). These transfers were made for no consideration, but they were not intended as a gift. Instead, the judge found, they were based on an arrangement between the parties, the true nature of which remains unclear. However, one element was clear: it was intended that D1 would take title to the property and then utilise the property to raise funds which would then be paid to C. D did not do this. Instead, D entered into two transactions. First, he granted a 999-year lease to his brother (D2) in respect of a flat in one of the

properties. This was also a gratuitous transfer. Second, he granted a charge in relation to the other property, in return for c £460,000. He did not give this money to C, but instead used it as if it were his own. Both the lease and the charge were registered.

The question for the Court (amongst others) was whether C obtained any proprietary interest in the property following the transfer to D, and whether that interest would give rise to a claim against D1, and be binding on D2 and D3.

### Decision

The Court held that there was indeed a proprietary interest generated in C's favour. This was through the *Quistclose* trust. Such a trust emerges when one party takes property belonging to another for a specified and mutually known

This case relates to the discussion of priorities in registered land in chapter 5, and implied trusts in chapter 7.  
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purpose. If the receiver utilises the property for some reason other than that understood between the parties, then a breach of trust will result.

Worthington QC very carefully explained the nature of the *Quistclose* trusts, examining existing case to law identify its salient features. Per the judge:

“If money is lent on the mutual understanding that it should not be at the free disposal of the borrower, but should be used exclusively for a specific purpose, then a stipulation will be implied that if the purpose fails then the money must be repaid. The borrower cannot simply use the funds for other purposes. Crucially, these obligations will be specifically enforced. The result is that, on receipt of the loan funds, the borrower will hold those funds on trust for the lender until the funds are used for the specified purpose. The borrower obtains legal title to the funds, but the lender retains the beneficial interest, under a resulting trust, until the funds are used for the nominated purpose. This trust recognises that the loan funds never form part of the borrower’s assets, able to be disposed of as the borrower wishes. Because the trust is resulting, not express, it does not need to be in writing even when the subject matter is land: s.53(2) of the Law of Property Act 1925 (“LPA”) [232]

For our purposes, it is necessary to note three features. First, the trust arises upon receipt of the loaned property (here, the legal title to the properties). Second, the trusts arises where there is a clear mutual understanding that the property can only be used for a specified purpose by the receiver of the property (in this case, to raise funds to give to C). Third, this is an implied trust and therefore does not need to be in writing as per section 53 LPA 1925. This meant that in the instant case, D held on trust for C as soon as the legal title was transferred. The nature of the



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## Unenforceable agreements, trusts, and priorities

trust was such that D was authorised to use the property in order to raise funds to give to C.

What are the consequences of this finding of a *Quistclose* trust? First, it means that C obtained a proprietary interest in the form of an interest under a trust. As we shall see, this interest is in its nature capable of being overriding on a transaction of the estate in question. Second, it means that any action by D which involved utilising the property for any purpose other than to raise money for C would be a breach of trust. In such cases C would be entitled to a remedy against D for their breach of trust. Third, any action which *was* an instance of using the property to raise funds would not be a breach of trust and as a result C had consented to such transactions and could not take priority over them.

What did this mean for D2 and D3? As far as D3 was concerned, the grant of the charge to D3 was entirely in-keeping with the terms of

the trust. Thus, C could not have priority over D3’s interest, regardless of the question of actual occupation etc. However, the grant of the gratuitous lease to D2 could not be seen in this light. It was a breach of trust, and C’s interest was capable of taking priority over D2’s lease. Whether it did so or not is a question for the priority rules in the LRA 2002. In this case, since the lease was not made for valuable consideration, the normal priority rule in section 28 applied. This section institutes a first in time rule, and since C’s interest in the property arose before D2’s, C’s interest would be binding on D2.

As far as D1 is concerned, they would be liable to account for the funds raised by the charge but not given to C in breach of trust. C could insist that the whole transaction be unwound as far as D1 and D2 are concerned, requiring D1 to re-transfer title, and for D2 to surrender the lease. D3’s charge would remain, but C would be entitled to recover those sums from D1.

Those conclusions were the essence of the case. However, for our purposes two more points require consideration. First, Worthington QC considers the line of case law considering the effect of section 26 on potential overriding interests. In *Mortgage Express v Lambert*, Lewison LJ reasoned (in effect), albeit *obiter*, that any interest which would deprive a registered title of its worth could not override as that would amount to a 'questioning' of title. Such questioning is prohibited by section 26. However, this *obiter* interpretation of section 26 is cast into doubt in *Ali v Dinc*. Per the judge:

"there is an important difference of legal principle between impugning the title of a disponee and asserting a competing interest that reduces the value of the disponee's title, even reducing its value to nil. The two ends are delivered on quite different grounds, and have quite different consequences, even though sometimes the financial impact of both outcomes may be identical. But identical financial outcomes are not sufficient reason to merge different legal concepts.

It follows that, despite the *obiter* comments in *Mortgage Express*, I am not persuaded that s.26 of the LRA prevents a party from asserting a potentially overriding interest as against a registered disponee: in my view s.26 is directed at protecting the disponee's title (i.e., his legal title), not its priority. I therefore decline to hold that s.26 prevents C from asserting the potential priority of his equitable proprietary interest in the Properties as against D2 and D3". [312]-[313].

The second point it is useful to highlight is the comment of the judge in respect of proprietary estoppel. The Court highlights that although estoppel can arise in cases of failed contracts, it cannot do so where the entirety of what it achieves is to render binding an otherwise enforceable contract *on the terms* of that contract.

Whilst there is much more that could be said about this judgment, it is perhaps most useful as an example of clear and thorough reasoning about all the different forms of rights which may arise in complex transactions involving land where parties do not reduce their agreement to a written contract in appropriate form.