40TACD2022

[REDACTED]

Appellant

V

REVENUE COMMISSIONERS

Respondent

DETERMINATION

Introduction

1. The Appellant received gifts of agricultural property and non-agricultural property comprising residential property from her parents on the same day in October 2013 and claimed agricultural relief in accordance with Capital Acquisitions Tax Consolidation Act 2003 (CATCA), section 89. The Appellant argued that she received the agricultural property before she received the residential property and therefore after receiving the agricultural property she was a "farmer" and therefore entitled to reduce the market value of the agricultural property by 90% for the purposes of establishing a liability to capital acquisitions tax.

2. The Respondent refused the agricultural relief on the grounds that there was no evidence to support the Appellant's assertion that she received several benefits of agricultural property in priority to the residential property. The Respondent also asserted that where there is more than one gift on the Valuation Date, all gifts must be looked at collectively as if all benefits had been received contemporaneously and not in isolation.

3. Therefore in this appeal it is necessary to establish whether Appellant received the gift of agricultural property from her parents before receiving non-agricultural property and thereafter to determine whether all benefits received on the Valuation Date must be considered collectively at the end of the day or in isolation at a particular point in time.

Background

4. During October 2013, the Appellant received the following gifts from her parents:

   (a) One quarter share of agricultural land at [*****] with a market value of €80,000;

   (b) Agricultural land at [*****] valued at €200,000. A deduction of €100,000 was made in respect of the transfer of a residential property transfer by the Appellant to her father on 8 October 2013. The value of this gift of the Agricultural land was therefore €100,000.

   (c) Residential property at [*******] valued at €[******]0,000, with an exclusive right of residence for her parents;

5. By reason of the gifts being made in October 2013, the Appellant failed to file a gift tax return which was due by 31 October 2014. Following intervention from the Respondent, the Appellant filed a gift tax return on 27 October 2015 claiming agricultural relief.

6. The Respondent refused agricultural relief on the grounds that the provisions of CATCA, section 89 were not satisfied throughout the entirety of the Valuation Date and where there is more than one gift on the Valuation Date, all gifts must be looked at collectively as if all benefits had been received contemporaneously and not in isolation.

7. By notice of assessment dated [******] July 20[******], the Appellant was assessed to capital acquisitions tax in the amount of €30,921 plus surcharge.

8. By notice of appeal dated 14 August 20[******], the Appellant appealed the assessment raised. The Appellant contended that she is entitled to agricultural relief as she was a farmer within the meaning of the CATCA, section 89 on the valuation date and after taking the gifts of the agricultural property, and this was not affected by the receipt of a separate gift or non-agricultural property later on the same day.

Legislation

9. CATCA, section 89(1) establishes definitions of " *agricultural property* " , "*agricultural value*" and "*farmer* ":

   "agricultural property " means –

(a) *agricultural land, pasture and woodland situate in a Member State and crops, trees and underwood growing on such land and also includes such farm buildings, farm houses and mansion houses (together with the lands occupied with such farm buildings, farm houses and mansion houses) as are of a character appropriate to the property, and farm machinery, livestock and bloodstock on such property …"*

"agricultural value " means the market value of agricultural property reduced by 90 per cent of that value"

"farmer" in relation to a donee or successor, means an individual in respect of whom not less than 80 per cent of the market value of the property to which the individual is beneficially entitled in possession is represented by the market value of property in a Member State which consists of agricultural property, and, for the purposes of this definition –

(a) *no deduction is made from the market value of property for any debts or encumbrances (except debts or encumbrances in respect of a dwelling house which is the only or main residence of the donee or successor and which is not agricultural property), and*

(b) *an individual is deemed to be beneficially entitled in possession to –*

(i) *an interest in expectancy, notwithstanding the definition of "entitled in possession" in section 2, and*
(ii) *property which is subject to a discretionary trust under or in consequence of a disposition made by the individual where the individual is an object of the trust,"*

10. CATCA, section 89(2) (as it applied in 2013) provides the relief and states:

"Except where provided in subsection (6), in so far as any gift or inheritance consists of agricultural property -

(a) *at the date of the gift or at the date of the inheritance, and*

(b) *at the valuation date,*

and is taken by a donee or successor who is, on the valuation date and after taking the gift or inheritance, a farmer, section 28 (other than subsection (7)(b) of that

section) shall apply in relation to agricultural property as it applies in relation to other property subject to the following modifications -

(i) in subsection (1) of that section, the reference to market value shall be construed as a reference to agricultural value,

(ii) where a deduction is to be made for any liability, costs or expenses in accordance with subsection (1) of that section only a proportion of such liability, costs or expenses is deducted and that proportion is the proportion that the agricultural value of the agricultural property bears to the market value of that property, and

(iii) where a deduction is to be made for any consideration under subsection (2) or (4)(b) of that section, only a proportion of such consideration is deducted and that proportion is the proportion that the agricultural value of the agricultural property bears to the market value of that property."

11. CATCA, section 2 defines the date of the gift as:

"the date of the happening of the event on which the donee, or any person in right of the donee or on that donee's behalf, becomes beneficially entitled in possession to the benefit, and a reference to the time when a gift is taken is construed as a reference to the date of the gift"

12. CATCA, section 2 also defines "*entitled in possession"* as *"having a present right to the enjoyment of property as opposed to having a future such right, and without prejudice to the generality of the foregoing a person is also, for the purposes of this Act, deemed to be entitled in possession to an interest or share in a partnership, joint tenancy or estate of a deceased person, in which that person is a partner, joint tenant or beneficiary, as the case may be, but that person is not deemed to be entitled in possession to an interest in expectancy until an event happens whereby this interest ceases to be an interest in expectancy*;"

13. The "*valuation date*" is defined by CATCA, section 30(1) as the date of the gift.

14. Accordingly, in the present case there is no dispute, the valuation date and the date of the gift are one and the same date.

Material Findings of Fact

The evidence of the Solicitor acting for the Appellant - [******]

15. [******], the solicitor who acted on behalf of the Appellant in relation to the transfers of agricultural land and residential properties by way of gifts from her parents during October 2013. Based on [******]'s evidence, I have made the following material findings of fact:

    a) On 13 August 2013, [******] received a letter from a [******], the solicitor acting on behalf of the Appellant's parents, enclosing a copy of the note of instructions from the Appellant's parents which the Appellant had drafted with regard to the transfer of the properties. That note included the following paragraphs:

        "From a timing perspective it is important that the transfer of the bungalow back to [******] and a transfer to the siblings of the share of the remaining sites in the 'bungalow' are undertaken first.

        Once this is completed and stamped, then transfer of [******] to all 4 children is to be undertaken. The transfer of the lands in, [******], [******] and the [******] can also be undertaken at this time.

        Once all the lands in [******], [******] and the [******] are completed and stamped, the transfer of the houses ([******]) can be undertaken.

        [******] is the solicitor acting on behalf of the children, and please contact Michael accordingly."

    b) The Appellant also sent a similar note to [******] in and around the same time.

    c) On 26th September 2013 the Appellant emailed [******] with the following updated instructions:

        "Further to our conversation yesterday I have outlined below the proposed timing and sequence of the Transfers.

        Firstly the transfer of the bungalow (less part of the sites) from [******] to [******]; and the simultaneous transfer of the [******] from [******] to [******]….

        All other land transfers can also be undertaken at this time:

- *The transfer of the bungalow site to the siblings.*
- *Transfer of [******] to all 4 children*
- *Transfer of Small Angle, [******] to [******]*
- *Transfer of Big Angle, [******] to [******]*
- *Transfer of The [******] to [******]*
- *Transfer of the half acre site, [******] is to [******].*

Once the above transfers are completed and stamped, we need to allow a period of time before transferring the residential property. The residential transfers will need to be completed on Monday 14th October – the day before the Budget in case any changes to tax would have a negative impact. Therefore, would it be possible to transfer all the land transactions by say Monday 30 September which will then provide a two week time period before completing the residential properties? I have outlined below the residential transactions for clarity.

- *[******] [******] to transfer number [******] to [******].*
- *[******] [******] to transfer number [******] to [******].*
- *[******] [******] to transfer number [******] to [******].”*

d) However [******] did not complete the transfers as set out in the Appellant’s email as he was *“away on holidays, as I say, so the timings weren't accurate and, two, I suppose - I don't have a note as to why, but there were probably issues that needed to be addressed, documents that needed to be drafted when I got back from holiday, etcetera.”*

e) On 8th October the Appellant transferred her interest in a residential property to her parents.

f) On 9th October 2013, [******] attended the offices of [******] to take possession of all the transfer deeds executed by the Appellant’s parents. However while [******] drafted a contemporaneous note recording the fact that the documents were handed over, [******] confirmed that there was no particular order or structure in the handing over those documents.

g) On 26th October 2013, the Appellant attended the offices of [******] to go through the execution of the deeds of transfer. As he was experienced in property conveyancing, he was mindful of the importance of the timing of the transfer of the land whereby the agricultural lands were to be transferred in priority to the non-agricultural property. Furthermore some of his clients had claimed agricultural

relief and therefore he was familiar with the statutory provisions. As such all of the properties were transferred in accordance with the chronology outlined in the Appellant's email to [******] of 26th September 2013 with the residential property being transferred last.

h) [******] was not concerned that the Appellant's brother was living in [******] and had not sign the transfer deeds as from an administrative point of view the Land Registry will accept transfers without the transferee executing where a freehold title is passing.

i) [******] followed the chronology of instructions contained in the Appellant's email of 26th September 2013 with the transfers of agricultural property to be executed in priority to the transfer of residential property. Furthermore the agricultural property was more valuable and it would have be his practice to transfer the higher value properties before the residential property.

j) While the Land Registry only requires the transferor to have executed the deed of transferee to entitle the transferee to become the registered owner, [******] was of the opinion that a gift has to be accepted but from a conveyancing perspective, the transferee need not execute the documents.

k) While the Appellant signed the deed of transfer on 26th October 2013 in [******]'s office, [******] received instructions from the Appellant to proceed with the transfer of the brother's gift. [******] was also furnished with the PPS number of the Appellant's brothers and was therefore satisfied that the brothers had accepted the gift.

l) Some of the documents were stamped on different days as [******] "*didn't have the PPS numbers of [******] or [******] when I went to do the filing on 28th. It was also a bank holiday Monday so I didn't particularly want to spend the whole day in the office*."

m) The transfers of the agricultural land and the residential property were thereafter stamped. There was no particular order in relation to the chronology of stamping. [******] did not regard stamping of the documents as critical.

n) [******] was unable to explain why Mr [******] from [******] Solicitors had written to the Appellant's parents on 25th October 2013 confirming that "*the transfer to your children of the properties have completed.*"

o) [******] was unable to explain why the accountants acting on behalf of the Appellant, [******] [******], had informed the Respondent on 4th July 2016 that the transfer of properties took place on 25th and 26th October 2013 with the agricultural lands transferred first when he had confirmed that all transfers took place on the same day.

p) Finally [******] confirmed that a professional negligence claim had been made by the Appellant in respect of his purported failures to execute the transfers of property as set out in the Appellant's email of 26th September 2013.

The evidence of the Appellant's father - Mr [******] [******]

16. Based on Mr [******] [******]'s evidence, I have made the following material findings of fact:

a) During 2013, he and his wife decided to transfer the family farm and some other assets to his 4 children including the Appellant after receiving tax advice in relation to estate planning from [******] specifically the availability of agricultural Relief in accordance with CATCA, section 89.

b) In order to balance the assets between the children and avail of agricultural relief it was planned that:

i. The Appellant would transfer her property known as the "Bungalow" as consideration and this would also assist in ensuring that her assets after the proposed transfers to her would comprise at least 80% agricultural assets;
ii. Mr [******] and his wife would then transfer the agricultural lands and thereafter the residential properties to the Appellant.

c) In order to carry out the various transfers of the agricultural lands and the residential properties, separate firms of solicitors were instructed whereby [******], acted for the Appellant and her siblings and [******] acted on behalf of Mr [******] and his wife.

d) The Appellant assisted Mr [******] with instructing the solicitors and the solicitors were aware of the advices specifically the need to time and sequence of the transfers. The Appellant's solicitor, [******], in particular, interacted directly with the tax advisor in relation to the agricultural relief in advance of the transfers. As confirmed by [******], the Appellant had sent

various communications so instructions would be clear in relation to timing and sequencing which was important to carry out the transfers.

e) There was clear instructions to carry out the transfers in an order and sequence in which the agricultural lands were to be transferred to his children first and only after that were the other assets to be transferred.

f) Both solicitors were acutely aware of the key features that:

(i) Agricultural Relief was being claimed,
(ii) the 80% "*Farmer Test*" was a key component of agricultural relief,
(iii) The Appellant needed to transfer the bungalow as consideration,
(iv) The agricultural lands must be transferred first in order,
(v) Only then were the other assets to be transferred.

g) Mr [******] prepared the transfers with his solicitor [******] and signed the documents as presented by [******] but was unable to recollect in what particular order. However he made a note in his diary on 10 October 2013 that "*as far as [******] is concerned everything is signed now …. [******] OK with dates …Ml [******] will sort out Farms (first) and Houses – last*."

h) The parent's solicitor, [******] passed away a number of years ago.

The evidence of the Appellant

17. Based on the Appellant's evidence, I have made the following material findings of fact:

(a) Her evidence confirmed the factual background given by [******] and her father.

(b) Both Solicitors were aware of the tax advices and planning behind and the sequencing of the transfers and the need to pass the farmer test in order to meet the requirements of agricultural relief. Her notes and emails summarised the instructions and specified in particular that the agricultural lands should be both transferred and stamped before leaving a period of time before transferring the residential property.

(c) She travelled from Dublin on 26th October 2013 to attend the offices of [******] and the transfers were executed by her and her sister in the presence of [******] in his office on that day. She signed the deeds for agricultural land before signing the deeds for the residential properties.

(d) [******] and [******] were instructed to ensure that the transfers were executed in the order as instructed so that the consideration comprising the Bungalow would be provided by the Appellant so that the agricultural property would be transferred first, that a period of time be allowed to elapse and then the non-agricultural property would be transferred.

(e) Agricultural relief was accordingly claimed on the basis that on the valuation date she took gifts of the agricultural property and was a farmer on the valuation date after taking the gift.

(f) As far as she was concerned, her attendance at the office of [******] on 26th October 2013 was merely to complete certain administrative requirements. She had been advised by [******] that "*to receive a gift that you don't actually need to sign to receive it, so I understood that those transactions could be completed and stamped without our attending to sign…*" As such her evidence was that her signature on the deeds was required for *"'good for file keeping that there are signatures, even though they weren't legally necessary… it was nice to have, is what I understood from it, to have the documents signed."*

Farmhouse – Agricultural Property

18. An issue arose as to whether the property in which the Appellant obtained an interest in expectancy which necessitated a new hearing at which evidence was given to establish if [******] could be considered to be a "*farmhouse*" and therefore "*agricultural property*". As such, based on the evidence of the Appellant and the Appellant's father on 28th October 2021, I have made the following material findings of fact:

a) the Parents built "The Bungalow" on farmland at [******] when they were first married in the 1970's and lived in that property until approximately 2007 when it ceased to be used as a farmhouse;

b) the original access road from the Bungalow to the farm was demolished as was part of the farmyard when other family members developed their part of the farm which is now known as [******] in circa 2005 – 2008;

c) the Appellant's parents owned part of the land now known as [******] which was originally used for grazing cattle;

d) in or about 2007 the Appellant's parents built three houses on this land, [******];

e) in or about 2007 the Parents decided to move to [******], a modest two-storey 4-bedroom detached house, which became their primary residence and built a new access roadway for agricultural purposes from the back garden of [******] to the adjoining farmland. This enabled access to the farm by jeep, tractor and by foot etc. as needed and it is used throughout the day to check on the animals and undertake daily agricultural activities. This side access roadway through the garden of [******] is the main access for farming activities, farm goods deliveries, machinery, vet visits etc. [******] is less than 150 metres from the farm buildings. The Appellant's parents continue to physically farm at [******] Farm on a daily basis and the main access for all machinery and agricultural vehicles is through the [******] property via the side entrance of [******].

f) the back door of [******] provides immediate access to a utility room for the storage of wellington boots, outerwear and farming equipment, and a handbasin to wash hands before entering the kitchen. There is an office downstairs where the Appellant's parents undertake farming administration duties and store all relevant farming documents,

g) the Appellant's parents store workwear, animal medicine and some farming tools in the house and have an office downstairs where diaries, files and all relevant documents regarding the farm are maintained;

h) The farm was operated in partnership between the Appellant's parents and their son [******] until approximately 2013 and it was carried on by a company from 2013. The company does not own the lands;

i) [******] has been the family home for over 13 years and operates as the house used for farming on the adjoining [******] Farm;

j) when [******] was transferred to the Appellant in 2013, the Appellant's parents retained a right of residence and continue to reside there;

k) there is no right of way from [******] to the Appellant's share of the 13 acres at [******]. However, there is still access/right of way through the entrance by the Bungalow. The Bungalow has been rented since 2010 and is no longer a farmhouse;

l) The Appellant's parents own the 29 acres and the Appellant and her siblings own the 13 acres transferred to them by her parents;

Grounds of Appeal

19. The Appellant's Grounds of Appeal are set out in Section 4 of the Appellant's Notice of Appeal dated 14 August 20[******] in the following terms:

> *"The Revenue assessment to CAT has been raised to disallow a claim for Agricultural Relief under section 89(2) CATCA 2003 on the alleged grounds that the appellant was not a farmer "on the valuation date and after taking the gift" of the agricultural property.*
>
> *The contention of the appellant is that on the basis of the correct interpretation of the wording of the Section she only had to satisfy the Farmer test immediately after taking the gift of the agricultural property and not throughout the whole day on which the property was gifted to her.*
>
> *Summary of the facts and of the appellant's reasons for disagreeing with the Revenue Commissioners assessment is as follows*
>
> 1. *On 26 October 2013 appellant was gifted property by way of three separate transactions in the following order i.e.*
>
> *Gift 1 – agricultural property*
> *Gift 2 – agricultural property*
> *Gift 3 – nonagricultural property*
>
> *2. Appellant's contention is that in accordance with the wording of section 89(2) ATCA 2003 she is entitled to Agricultural Relief because she was a farmer within the meaning of the legislation on the valuation date and after taking the gifts of the agricultural property and that this is not affected by the receipt of a separate gift of nonagricultural property later on the same day.*
>
> *3. Revenue hold a different view but have not in the opinion of the appellant, satisfactorily demonstrated the legislative basis for same."*

20. While prefacing her evidence to the effect that it was a long time ago and difficult to remember what she thought at the time, she gave evidence at the time of making the appeal, she was not aware of the definition of *agricultural property* and that it could include a farmhouse and that on that basis therefore did not understand/believe that it

was *agricultural property* at that time. However subsequently on having conversations with her brother she became aware that it may be a farmhouse and that a farmhouse may come within the meaning of *agricultural property* for the purposes of the relief.

21. Therefore as a material findings of fact, I found that the Appellant, at the time of lodging the appeal, was not aware that [******] could be a "*farmhouse*" in accordance with CATCA, section 89.

Appellant's Submissions

22. The issue in this appeal essentially concerns the meaning, operation and effect of CATCA, section 89. Therefore, the question of the rules for statutory interpretation are of significance to this case.

23. Agricultural Relief is provided for in CATCA, section 89. Essentially, agricultural relief operates on the basis that to the extent that a gift consists of agricultural property (at both the date of the gift of the valuation date) and it is taken by a person who "*on the valuation date and after taking the gift*" is a "*farmer*" then for the purposes of valuing the agricultural property, the market value of the agricultural property is reduced by 90%. Agricultural relief is a relief of a peremptory/mandatory nature (i.e. in other words it "*shall apply*" where the relevant criteria are met) and on that basis therefore applies immediately once the criteria have been met and does not need to be claimed. While there are specific provisions which provide for a clawback of agricultural relief, none of these provisions are relevant in the present circumstances.

24. From a timing perspective, it is stated in the wording of agricultural relief that the beneficiary must be a farmer "*on the valuation date and after taking the gift*". The wording does not express/state that the person must be a farmer throughout the entirety of that day. If it was the case that a person had to be a farmer throughout entirety of that day this would tend to rule out someone who had no assets at the beginning of the day and only met the farmer test towards the end of the day when agricultural assets are transferred to him. Such an interpretation would not make sense in the context of the transfer of a farm to a child.

25. Such an interpretation would also be inconsistent with the wording of the relief, which expressly states that it only considers the individual's status as a "*farmer*" at a particular point in time on the Valuation Date. As a result, therefore, the wording of the agricultural relief is time specific because the actual wording used in the Act provides for a specific time coordinate i.e. that time on the Valuation Date immediately after the gift has been taken. The wording expresses that the timing for the

application of the test is "*after the taking of the gift*". In other words, the full day/date is not contemplated by the provision. This is abundantly clear from the fact that that the assets held by the beneficiary at any point in time prior to taking the benefit are not of any relevance and are disregarded. Therefore, the wording "*after the taking of the gift*" qualifies the requirement to be a farmer "*on the valuation date*" to any point in time on the Valuation Date after the time when the gift has been taken.

26. In the Determination 10 TACD20[******], the Commissioner had to consider very similar wording and to decide whether the Appellant in that case was *"at the date of the inheritance"* beneficially entitled to any other dwelling house for the purposes of a claim to relief under CATCA, section 86. In that case, the Respondents argued that [******]e of the words "*at the date of the inheritance*" did not refer to the time of the death on the day but that it meant that the full 24 hours in the day was referred to/encompassed. The Commissioner held that the words "*at the date of the inheritance*" were clear and the plain and ordinary meaning should be used and held that those words mean "*at any time on the date of the inheritance, i.e. at any time during the 24-hour period*."

27. In the circumstances of the present case, the wording is very similar in that the donee must be a farmer "*on the valuation date*". It is submitted that there is no material difference between the wording "*at the date*" and "*on the date*" and in the normal course of events, giving them their plain and ordinary meaning they can be used interchangeably, for example, "*the liability must be discharged on that date*" or "*the liability must be discharged at that date*". The expressions therefore mean exactly the same thing and "*on the valuation date*" simply means at any time during that 24-hour period. In addition, it is submitted that, the inclusion of the additional wording "*and after taking the gift*" adds additional support for the Appellant's argument that what was intended, was a point in time, in this case point in time "*after the taking of the gift*". It was submitted that there is no need to add an additional wording to complicate this provision. It is submitted that it would be necessary to add in additional wording to give it the meaning that the Respondent contends for in this case and that that is not permitted.

28. There is no wording in the legislation which adds the additional criterion that all benefits received on the Valuation Date must be considered collectively.

29. In accordance with the rules for statutory interpretation, the legislation must be interpreted on the basis of the plain ordinary meaning of the actual words used, and there is no scope for adding in any intendment or adding in additional criteria which do not appear in the legislation itself. It is submitted that the Appellant clearly falls within

the wording and meets the criteria set out in the legislation giving them their plain or ordinary meaning and that there is no necessity basis for the addition of additional wording and/or criteria as suggested by the Respondent. It is worth noting that even the Revenue Notes for Guidance which provide for the Respondent's own interpretation of the provision do not include any such additional criteria/wording. The Appellant is therefore clearly entitled to the Agricultural Relief in accordance with CATCA, section 89.

Order of Transactions

30. The order in which the transactions were carried out and which deed was executed first must be considered. In the normal course of events it should be presumed that the deeds were executed in the order to give effect to the intention of the parties. In *Re Kilnoore Ltd (in liquidation) Unidare plc v Cohen and another*, 730 All England Law Reports [2005] 3 All ER, Lewison J. held:

> *"Moreover, it seems to me that where parties to a transaction involving the execution of multiple documents intend them to be executed in a particular order which is necessary to give effect to the intended transaction, the court should be ready to presume that they were executed in the correct order to give effect to the transaction (compare Gartside v Silkstone and Dodworth Coal and Iron Co (1882) 21 Ch D 762; Eaglehill Ltd v J Needham Builders Ltd [1972] 3 All ER 895 at 905, [1973] AC 992 at 1011)."*

31. Furthermore in *Gartside v. Silkstone and Dodworth Coal and Iron Company* (1882) 21 ChD 762, Fry J. concluded:

> *"I think the law stands in this way, that when two deeds are executed on the same day, the Court must inquire which was in fact executed first, but that if there is anything in the deeds themselves to show an intention, either that they shall take effect pari passu or even that the later deed shall take effect in priority to the earlier, in that case the Court will presume that the deeds were executed in such order as to give effect to the manifest intention of the parties."*

32. When considering the intention of the parties, the court is not limited to internal evidence and in the documents themselves. In *Michaels and another v Harley House (Marylebone) Ltd*, 446 All England Law Reports [1997] 3 All ER, Lloyd J. opined:

> *"In Gartside's case Fry J considered the contents of the respective debenture deeds in order to determine the intended order. But I do not think that the court is limited to*

internal evidence of that kind. Fry J also looked at the board resolution pursuant to which the debentures were issued, and said that he found nothing in that to show the intended priority of the debentures. I infer that if there had been any such indication in the resolution, he would have taken that into account. Here there is similar material, in the two sale agreements and in the escrow memorandum, executed in accordance with the share sale agreement, and providing for the completion procedure. Given that, by cl 2.1 of the share sale agreement it was conditional on the property sale agreement first being completed, I consider that I should infer and find, and I do so, that the contractual order of events was respected. The same sequence is set out in paras 2.2 to 2.4 of the escrow memorandum. It would have been even clearer if that memorandum had said that the conditions of the escrow for the share transfer and loan note transfer included the prior release from escrow of the property transfer, but in my judgment that is what the document amounts to, and that is in any event clearly indicated by cl 2.1 of the share sale agreement. I therefore accept Mr Lewison's submission that the shares were not transferred until after the transfer of the building had been executed unconditionally."

33. Evidence was given that the transactions were intended to be carried out in a particular order and that the relevant deeds were executed in keeping with that intention and so as to ensure that the Appellant's assets reflected the 80% farmer test "*on the valuation date and after the taking of the gift*".

34. It is submitted, therefore that the Appellant was a farmer on the valuation date after taking the gift.

Execution of Deed

35. A Deed is an instrument or document, which is in writing and meets certain minimum formalities. Historically, in order to be considered to be a deed, the instrument had to be in writing, sealed and delivered and was usually also signed.

36. The Irish law relating to deeds has been changed/altered with effect from the 1 December 2009 so that it is no longer required that a deed is sealed but it is still essential that the instrument must be properly headed/described and when made by an individual must be signed by the individual and that signature attested by a witness. It is also essential that the Deed is delivered as a deed by the person executing it or by someone on his behalf. The 2009 changes confirm the existing Common Law rule that a deed has no effect until such time as it is actually delivered. In other words, while there have been changes to the law relating to the execution of deeds it is absolutely clear

that the deed must be signed and actually delivered and a deed has no effect until such time as the deed is delivered.

37. The law relating to delivery therefore means that delivery is an essential formality which gives effect to the Deed. If a Deed is written and sealed and signed it still has no effect until such time as it is actually delivered. The purpose of delivering a deed is to make a clear indication to the person receiving the Deed that it is to become operative. There are a number of ways in which this can be carried out including a verbal statement accompanying the handing over of the Deed and can also potentially be presumed from the action of the parties. Therefore, delivery can be carried out by words alone or even without words by the act, contract or party from which it can be inferred that delivery is to be carried out.

38. However, in order for it to be an act of delivery there must be some indication that the person executing the deed wants it to be treated as a deed and it is really matter of fact to determine whether there was a delivery. While it is possible for a deed to be treated as delivered by the act of leaving the deed in someone else's possession in cases where there were no instructions to the contrary (i.e. instructions countermanding the intention of delivery) it would seem that where a person comes into the possession of the deed for a limited purpose this would not necessarily be the case. In cases where a person comes into possession of a document or where it is countermanded in some way that it has the intention to deliver the document it would not seem to be a delivery. No evidence of countermanding, revoking or cancelling an order issued by another person.

39. In the circumstances of the present case it was all times clear that the deeds were to be executed in a particular order so there is a clear/manifest countermanding of there being a delivery of the deeds on 9 October 2013.

40. It is not one of the necessary formalities for a deed that it be dated and it does not affect the validity of the Deed even if it has an inaccurate or false date and evidence is generally admissible to prove the true date of the deed (i.e. the date of the delivery of the Deed). Historically it would not have been uncommon for the date to be omitted altogether to avoid difficulties with prescription. Because of this it is the date of delivery that is of importance to the operation of a deed. Evidence is admissible concerning the date of delivery even in the face of a different date appearing on the face of the deed historically. Even where a deed is dated, the deed still takes effect from the date of its delivery and not from the date on the deed. However, there is a presumption that a deed is delivered on the day of its date unless there is a contrary indication. Therefore, where a deed is signed and contains an execution clause the

historical position would have been the *prima facie* but instead it was delivered. Therefore, in circumstances where there is an attestation clause in the document there may be *prima facie* evidence that the deed was delivered then it would still be admissible to demonstrate that deed was not so delivered.

41. In the circumstances of the present case there is a date on the deeds of 26 October 2013 and therefore it should be presumed to be the date of such time unless it is proved otherwise.

42. It is also worth noting that, while a deed must be executed by a grantor it is not entirely necessary for a deed to be signed by the other party because, the other party benefiting the under the deed is bound by it once he has accepted the benefit. There is a long and well established chain of authority as set out **Norton on Deeds** which is recognised as the definitive position as in the recent Irish Supreme Court decision in *Camiveo Limited v Dunnes Stores* [2015] IESC 43.

43. Page 26 of Norton on Deeds states the position as being:

> *"Though execution of a Deed is necessary to bind the Grantor, yet a party takes the benefit of a Deed is bound by it though he does not execute it: Littleton S 374: Co Litt. 230b, 231a;Com. Dig. Tit. Fait, A 2; Y. B. 8 Edw. 4 (1468) 8 b; Brett v Cumberland (1619), 2 Roll. Rep. 63; R v Houghton-le-Spring (1819), 2 B. & Ald. 375; Webb v Spicer (1849), 13 Q.B. 886; 78 R.R 540; Formby v Barker, [1903] 2 Ch. 539; p. 549; 72 L.J Ch. 719; May v Belleville, [1905] 2 Ch. 605; 74 L.J. Ch. 678; Elliston v Reacher, [1908] 2 Ch. 665, at p. 673; 78 L.J. Ch. 87; Chambers v Randall [1923] 1 Ch. 149; 92 L.J. Ch. 227; and such non-executing party can sue on covenants with him contained in the deed: Archard v Coulsting (1843), 6 Man. & Gr. 75, at p. 78. "*

44. In the very early case from 1619 of *Brett v Cumberland* (1619), which related to a deed of lease, it was held that in that case the defendant was bound under the lease despite the fact that he had not signed it because his actions (i.e. paying the rent) was evidence of "*he accepting thereof and enjoying it":*

45. In the latter case from 1819 of *R v Houghton-le-Spring* (1819) 2 B. & Ald. 37 relating to a deed of service it was held that although the deed was not signed by the master, it was binding on the master because he had accepted the services of the servants:

> "*Bayley J. The only question in this case is, whether the execution of the indenture by the servant only is sufficient to constitute a valid contract of hiring. Now in order to do that, there must be an obligation both on the part of the servant and the master;*

here it is admitted, that the execution by the servant, bound him to serve for a year; and the objection is only that the master was not equally bound to keep him. But if the master, knowing the terms by which the servant is bound, accept his service, then I apprehend that the agreement must be considered binding on him, although he has not executed the deed. For it is laid down in Co.Litt. (230 b. note 1), that a party who takes the benefit of a deed, is bound by it, although he has not executed it."

46. In the 1849 case of *Webb v Spicer (1849), 13 Q.B. 886: 78 R.R 540* the plaintiffs were parties to a deed of indemnity, they were present when it was executed and they assented to it and acted upon it but they did not execute it/sign it. The deed was nonetheless effective and they were entitled to sue on it because "*he assent to it and take a benefit under it*":

> *"The plaintiffs did not execute the deed; but they assented to it, are described as parties, and took the promissory note as one of the securities described in the schedule, and upon a covenant of indemnity for so doing. It appears from Com. Dig. tit. Fait. (A, 2), and Co. Lit. 231 a., that a man may be bound by the covenants of a deed in which he is described as a party, though he does not execute it, if he assent to it, and take a benefit under it;"*

47. In the 1902 decision in *Formby v Barker (1903) 2 Ch. 539* which concerned a deed of transfer of land to a company which was subject to a covenant not to build a shop. The company did not sign the deed. A later assignee of the company wanted to build a shop and the plaintiff sued to prevent this under the covenant. The company was bound under the deed despite that it had not signed it because it took possession of the land and claimed under the deed:

> *"By a deed of July 27, 1868, R. H. Formby, the owner of land at Formby in Lancashire, and his mortgagees conveyed that land to the Mutual Land Company in fee simple. The deed contained a covenant on their part which was intended to be executed by them; but in fact they did not execute the deed. As, however, they took possession of the land by virtue of the deed and the defendant claims under them, the non execution of the deed by the company only results in this that their rights thereunder are merely equitable, because there is no legal covenant."*

48. In *May v Belleville [1905] 2 Ch. 605.* the deed of conveyance included a right of way. It was executed by the vendor but not the purchaser. The purchaser took possession of the land, but claimed he was not bound by the right of way. It was held that

because he had taken possession of the land under the conveyance, he was bound by it:

> "*Under that conveyance Jay took possession. Was Jay, then, entitled to say that in as much as the right of way could only be created by grant, and he did not execute the deed, there existed no right of way, and that the reservation effected nothing? In other words, if there were rights of way previously exercised in respect of such farms, can he say, by reason of his non-execution of the deed, "I am not bound by that"? In my judgment he cannot. Suppose that Jay were the defendant in this action. He is a person who has taken possession of the property under a conveyance which shews that he is to make a certain grant. What right has he to say that he is not bound in equity to give effect to the terms upon which he so obtained possession? The Statute of Frauds does not apply; there is part possession; the bargain is shewn by the terms of the conveyance. Jay can be called upon by the plaintiffs to give effect to the terms upon which he obtained possession, namely, the creation of those rights of way."*

49. In the recent Supreme Court decision in *Camiveo v Dunnes Stores* the deeds were leases. Dunnes had entered into the lease with a third party who assigned the landlord's interest to Camiveo. Dunnes did not challenge the leases as such, but did challenge Camiveo's entitlement to enforce the landlord's interest in them, because the vendor had executed the assignment but Camiveo had not. Clarke J held that the legal position is well settled as set out in Norton on Deeds:

> *"[[******]] The legal position is, in my judgment, well settled and is simply and authoritatively stated in the leading text book, Norton, A Treatise on Deeds (2nd ed., Sweet & Maxwell, 1928) at p. 26, where the author says that "[t]hough execution of a deed is necessary to bind the grantor, yet a party who takes the benefit of a deed is bound by it though he does not execute it"*

50. Clarke J set out that the principle as identified in **Norton** is conclusive and when a party purports to take the benefit under deed they will be bound under the terms of that deed even if they have not executed it:

> *"[20] However, it is in that context that the second aspect of the principle identified in Norton, A Treatise on Deeds (2nd ed., Sweet & Maxwell, 1928) seems to me to be conclusive. It is clear that a party who purports to take the benefit under a deed will be bound by the terms of that deed even if they have not executed it. That is but an example of the general rule of law which does*

not permit a party to approbate and reprobate the same transaction. A party cannot have the benefit of a deed while at the same time disavowing its obligations under the same deed."

51. It is therefore clear from the line authorities outlined above and wholeheartedly endorsed by the Irish Supreme Court that from a land and conveyancing law perspective a deed which is not signed by the transferee becomes effective once the transferee manifestly accepts the benefit under the deed.

52. In the circumstances of the present case, the Appellant adduced evidence to the effect that no benefit was accepted by them under the deeds until 26 October 2013 and at that stage they were accepted in a particular order. Therefore, the deeds were not affected until 26 October 2013. [******] [******] did not attend the offices of the solicitor but the evidence was given that he provided his PPS number for the purposes of the registration of the property in his name and it was at that stage that he affected his acceptance.

53. It was submitted on the basis of the above that the deeds did not become effective until such time as they were accepted by the Appellant. This is consistent with the evidence given by the experienced conveyancing solicitor [******]. No evidence to the contrary was provided by the Respondent. Therefore, this evidence stands unrebutted. It is submitted that the law is clear and therefore the deeds became effective on acceptance by the Appellant on 26 October in a particular order as testified to by the said [******] solicitor, with the agricultural land passing first and then the residential land thereafter. Even in the absence of this evidence they should be presumed to have been executed in particular order by him in accordance with presumption under the *Gartside* and *Kilnoore* line cases. For the reasons set out below here in it is well within the jurisdiction of the Tax Appeals Commission to have regard to these cases in order to resist in making decisions incidental to the charge to tax and quantum of tax in the assessment.

The Doctrine of Conversion

54. When a vendor and a purchaser enter into an agreement for the sale of any property (including land) there comes a point in time in the transaction that the ownership of the Property leaves the vendor and passes over to the purchaser. This is the doctrine of conversion.

55. There are 2 discrete legal systems in operation in the Irish Courts; law, which looks at what is actually done and equity, which looks at what should be done as a matter of

fairness. Irish law recognises the legal ownership of property (under the general law) as well as the beneficial and equitable ownership of property (under the law of Equity).

56. It is relatively clear that the legal ownership of the property will pass or transfer in law at the date when the transfer/conveyance of the property occurs in the case of land or in the case of the property such as goods/chattels the ownership can pass on its delivery. On the basis that the property in question in the present case is land, comments will be limited to the passing of the ownership of the land which from a legal perspective requires that there be a conveyance/transfer.

57. The equitable and/or beneficial ownership of property is also recognised, and this may pass at an earlier time in a sale of land transaction (as opposed to a gift) than the legal ownership. The point in time at which the equity treats property as moving from the vendor to the purchaser is the date of "*conversion*". From the date of conversion, the property is treated in equity as belonging to the purchaser despite the fact that it has not actually been formally transferred to the purchaser by the vendor. The doctrine of conversion from an Irish legal perspective determines the timing of the passing of the equitable/beneficial ownership of property from the vendor to the purchaser. The effect of conversion is that the vendor's interest/ownership in the property is treated as if it has been converted into something else (i.e. the right to be paid) and the purchaser's interest in his own purchase money passes over to the vendor and becomes an interest in the land itself. In effect therefore, once conversion has happened the vendor no longer owns the land as far as equity is concerned although he may continue to have the bare legal interest. On the other hand, the purchaser despite the fact that he has still not received an actual transfer of the land is treated as if he was the owner of the land in equity.

58. While there was historically (under Irish law) some uncertainty over how much of the beneficial interest would pass at the date of the contract (depending on the amount of the purchase price/deposit paid), since 1 December 2009 the position has been clarified and since then, from the date an enforceable contract for the sale of land has been entered into the entire beneficial interest in the land passes from the vendor to the purchaser (unless the parties specify otherwise). It is clear therefore that where there has been a contract entered into for the sale of land that from the point in time that contract becomes enforceable that there has been a conversion of the vendor's interest in the land into something else and therefore the vendor no longer owns an interest in the land.

59. It was repeatedly submitted during the course of the hearing that there was no contract for the sale of land in this case that any of the rules relating to contracts for the sale of land are irrelevant/a red herring. It is submitted therefore that the submissions made by the Respondent based on section 52 of the Land & Conveyancing Law Reform Act 2009 have no relevance the present proceedings.

60. Where there is a gift of land on the other hand there is no contract for sale (enforceable or otherwise) and as a result the beneficial interest does not pass under a contract or at the time of the contract. A gift must be fully completed as a gift or it fails. It is not a gift until such time as the gift is fully completed. It has always been the case that equity will not assist a volunteer (i.e. someone who is not paying value for property). It is also the case that equity will not turn a failed gift into a trust.

61. The entire concept/idea of conversion is an equitable concept. There is no doctrine of conversion relating to the legal interest in land and the essence of the operation of the doctrine of conversion is that it cannot apply in full such time as there has been the right to specific performance (i.e. that the Court of equity will be willing to enforce the contract). Irish law as it currently stands therefore with regard to the contract for the sale of land is clear - that it is only at the point in time when a contract becomes enforceable that the beneficial interest passes. Without a contract for sale, the transaction does not pass the interest until such time as it is fully completed. There is not contract in the circumstances of the present case and therefore we are not concerned with the doctrine of conversion in that regard. The submissions made by the Respondent in relation to Section 52 Land & Conveyancing Law Reform Act 2009 are therefore misconceived and inapplicable.

Ownership

62. In the circumstances of the present case it is understood that the Appellant had clearly and unequivocally instructed both solicitors involved on either side of the transaction that the agricultural property was to be transferred first and then subsequently at a time (2 weeks or so) the residential property would be transferred. It was therefore the manifest and clear and express intention of all parties that the ownership of the properties would pass in a particular order with the agricultural property passing first and then the residential properties subsequently.

63. Therefore, this would indicate that conversion of the ownership of the Appellant in the residential property would not and could not occur until such time as the gifts were perfected. The disponer would continue to be entitled to the ownership of the residential property until the gift of the residential property was perfected.

64. From a legal perspective therefore, it is necessary that the gift has actually been completed. From an equity perspective it is necessary that the beneficial interest has passed. As is clear from the case law of in order for the legal interest to pass it is necessary that the deed is properly executed, and this is not until such time as the deed has been delivered. The Supreme Court in Ireland has endorsed the position set out in the chain of case law as indicated in **Norton and Eaves** which requires that the recipient must have accepted the benefit of the property before the gift is perfect.

Jurisdiction of the tax appeal Commissioners – Kenny Lee Decision

65. While there have been numerous cases which consider the jurisdiction of the Tax Appeal Commissioners (TAC), the Court of Appeal recently considered its roll/functions jurisdiction in the decisions of *Kenny Lee v The Revenue Commissioners* Court of Appeal 28th January 2021. Because the TAC is a creature of statute, its functions are contained within the four walls of the Act and the TAC has no inherent powers nor any general jurisdiction to consider the validity of assessments etc. In this regard to use a football metaphor, the TAC must "*play the ball, not the man*". In other words, the TAC's role is confined to determining whether the Assessment is correct or whether there is a charge to tax and if so, the correct quantum. These functions are within the four corners of the assessment itself. The TAC cannot look at the general law (outside of the Act) to undermine the nature of the assessment by reliance on some contract/agreement between the Appellant and the Respondent or some principle of public law such as legitimate expectation or some aspects of private law such as estoppel. The TAC functions must be either set out in the Act or must arise by necessary implication from the Act as espoused from paragraph 20 of the *Kenny Lee* judgment:

> *"The issue is, first and foremost, one of statutory construction. The Appeal Commissioners are a creature of statute, their functions are limited to those conferred by the TCA, and they enjoy neither an inherent power of any kind, nor a general jurisdiction to enquire into the legal validity of any particular assessment. Insofar as they are said to enjoy any identified function, it must be either rooted in the express language of the TCA or must arise by necessary implication from the terms of that legislation."*

66. The TAC relates to appeals against the assessment and its functions/powers relate only to whether the Revenue have properly applied the statutory charge to tax and

the powers that the TAC has are to reduce, increase or confirm the assessment. If there were any other powers that would have to be spelled out in the Act.

67. The exercise of the TAC function is directed towards the quantification of the assessment determined upon the facts of the case. The TAC must in the course of doing this quantification exercise address and form opinions on "*various incidental questions of fact and law*". It is a part of the TAC function when quantifying the amounts of the assessment to make "*rulings on questions of law" where that will assist in determining the taxpayer's liability/amount*". The Court of Appeal in *Kenny Lee* set out that in the normal course of events the TAC "*may have to determine issues of fact or law*" in order to see if there is a liability to tax at all and in that regard the TAC has to "*decide questions of fact or law incidental to that issue*". The Court acknowledged that the "*questions of law*" that have to be determined may "*stray outside the direct interpretation of the tax code*" but this is within the TAC jurisdiction when it relates to the charge to tax or the quantification of the liability. The TAC jurisdiction therefore encompasses consideration of matters of law outside of the tax statute where they assist the TAC in determining the assessment and its amount.

68. The TAC jurisdiction does not extend to matters of public or private law and therefore the TAC has no jurisdiction to consider whether there is an element of public law (i.e. law governing the decision-making process itself or matters touching upon the validity of the assessment).

69. The TAC is not in a position to consider from a private law/contract law perspective whether the taxpayer has entered into an agreement or has otherwise embarked upon some form of arrangement with the Respondent which precludes the assessment progressing or being enforced etc. Those matters would be outside of the TAC's role, which is to determine whether the charge to tax arises and/or the quantum of the tax. It does not have powers to question the validity of the assessment itself. In fact, the jurisdiction of the TAC assumes by definition that the assessment is valid. If the Assessment was invalid for some reason, then the TAC would have no jurisdiction concerning it in any event. The jurisdiction is therefore an inward -looking jurisdiction and concerns the make-up of the charge to tax and the quantification of that tax rather than whether the assessment itself suffers from some defect or is for some other reason prevented from coming into being or being pursued. For this reason, the jurisdiction of the TAC does not include arguments under contract law, legitimate expectation, estoppel et cetera that might tend to prevent the Revenue from issuing, acting on or enforcing an assessment.

70. Ultimately the Court concluded that the TAC are empowered to inquire into and make findings relating to "*those issues of fact and law that are relevant to the statutory charge to tax*". The TAC is entitled to make "*findings of fact and law that are incidental to that inquiry*."

71. In the circumstances of the present case, the Appellant has not sought to have the TAC consider any matters outside of its jurisdiction. With respect to the matters referred to in the context of the *Gartside* and *Kilnoore* chain of decisions, it is submitted that these are matters of fact and law that the TAC can have regard to, must consider and must make rulings in relation to within the context of its jurisdiction to ascertain whether a charge to tax arises within the legislation and the quantification of that tax. The Appellant, in no way seeks to undermine the assessment itself or challenge the Respondents authority to issue such assessments. It is submitted that the presumptions arising from *Gartside et al* are there to assist the TAC in making decisions in relation to the charge to tax on the quantum of the tax. It is submitted in particular that in the context of the *Gartside* and *Kilnoore* decisions the existence in the authorities of a presumption that the transactions are to have occurred in the order manifest from the intention of the parties is well within the TAC jurisdiction and something the Commissioner is fully entitled to consider, determine and make a ruling upon in order to and as incidental to its decision-making process within its jurisdiction.

Farmhouse

72. From the maps provided in evidence, it can be seen that [******] was attached to the farmlands and served as the farmhouse.

73. It is clear therefore that the property was in any event and continues to be the farmhouse and the farmlands and therefore at all material times, agricultural property.

74. Section 89(1) establishes definitions of "agricultural property", " agricultural value" and "farmer":

> *"agricultural property " means - agricultural land, pasture and woodland situate in a Member State and crops, trees and underwood growing on such land and also includes such farm buildings, farm houses and mansion houses (together with the lands occupied with such farm buildings, farm houses and*

mansion houses) as are of a character appropriate to the property, and farm machinery, livestock and bloodstock on such property ...”

75. There is limited if any Irish authority in relation to what constitutes a farmhouse. However, there are a number of UK authorities which may potentially be of some assistance.

76. The Scottish authority *of Lindsay v CIR* [1953] 34 TC 289, Lord Carmont stated that what is important is that the building was “*used by the person running the farm as the farmhouse*”. The later Scottish decision in *CIR v Whitford* [1962] 40 TC 379 Lord President (Clyde) held that the “*proper criterion is the purpose of the occupation of the premises”* and that whether the property had been constructed “*upon some elaborate and expensive scale*” that would put it outside of the category of farmhouse/cottage is largely a question of degree/fact.

77. In the UK decision of *IRC v Korner*, Lord Up[******] felt that whether a property is a farmhouse is a matter of fact to be decided in the circumstances of each case and it should be determined “*in accordance with the ordinary ideas of what is appropriate in size, content and layout*” as well as the “*particular area of farmland being farmed*” and whether it is “*part of a rich man’s considerable residence*”.

78. In *Higginson’s Executors v IRC* [2002] STC SCD) 483 the Special Commissioner referred to the various dicta from earlier decisions to the effect that a farmhouse is agricultural property if it is “*proportionate in size and nature to the requirements of the farming activities conducted on the agricultural land or pasture in question*” including the above *dicta* in *IRC v Korner*. He also felt that the farmhouse and the land must comprise a unit which has been integral but that the unit must be an agricultural unit where the land predominates.

79. In *Dixon v IRC* [2002] STC (SCD) 53 Special Commissioner Brice referred to the textbook which addressed the question of whether the farm house is in keeping with the character of the agricultural land and extracting three tests:

    (a) the elephant test - although you cannot describe a farmhouse which satisfies the character test you will know one when you see it.
    (b) the man on the (rural) Clapham omnibus: would the educated rural layman regard the property as a house with land or a farm?
    (c) historical dimension: how long has the house in question been associated with the agricultural property and is there a history of agricultural production?

80. In *Rosser v IRC* [2003] STC (SCD) 311, the Special Commissioner opined that the ordinary and natural meaning of "*farmhouse*" was "*a dwelling for the farmer from which the farm is managed*". He made reference to various dictionary definitions when trying to ascertain whether a property was a farmhouse:

    (a) *'the chief dwelling house attached to a farm'*
    (b) *'a house attached to a farm especially the dwelling from which the farm is managed'*
    (c) *'the farmer's house attached to a farm'*

81. In relation to the question of whether the farm has had a "*character appropriate*" he made reference to the *Lloyds TSB (personal representatives of Antrobus) v IRC* [2002] STC (SDC) 468 decision as being the case in which the appropriate test was summed up as follows:

> *"55. The principles governing the 'character appropriate' test were summed up by the Special Commissioner in Lloyds TSE (personal representative of Antrobus, deed) v IRC [2002] STC (SCD) 468 at para 48:*
>
> > *'Thus the principles which have been established for deciding whether a farmhouse is of a character appropriate to the property may be summarised as: first, one should consider whether the house is appropriate by reference to its size, content and layout, with the farm buildings and the particular area of farmland being farmed (see IRC v Korner 1969 SC (HL) 13); secondly, one should consider whether the house is proportionate in size and nature to the requirements of the farming activities conducted on the agricultural land or pasture in question (see Starke v IRC [1994] STC 295, [1994] 1 WLR 888); thirdly, that although one cannot describe a farmhouse which satisfies the "character appropriate" test one knows one when one sees it (see Dixon v IRC [2002] STC (SCD) 53); fourthly, one should ask whether the educated rural layman would regard the property as a house with land or a farm (see Dixon); and, finally, one should consider the historical dimension and ask how long the house in question has been associated with the agricultural property and whether there was a history of agricultural production (see Dixon).'"*

82. Subsequently in the *Arnander and Others (Executors of McKenna)* 2006 decision, the Special Commissioner (whose decision was affirmed) set out the relevant legal principles based on the earlier authorities as follows:

    (a) A farmhouse was a dwelling for the farmer from which the farm was managed;

(b) the farmer of the land was the person who farmed it on a day-to-day basis rather than the person who was in overall control of the agricultural business conducted on the land;
(c) the proper criterion was the purpose of the occupation of the premises;
(d) if the premises were extravagantly large for the purpose for which they were used, or if they had been constructed upon some more elaborate and expensive scale, it might be that, notwithstanding the purpose of occupation, they should be treated as having been converted into something much more grand;
(e) the decision as to whether a building was a farmhouse was a matter of fact to be decided on the circumstances of each case and was to be judged in accordance with ordinary ideas of what was appropriate in size, content and layout, taken in conjunction with the farm buildings and the particular area of farm being farmed.

83. In *Revenue and Customs Commissioners v Atkinson* [2011] UKUT 506 (TCC) decision it was opined, *inter alia*, that where an active farmer occupies the main farmhouse on a farm it is "*almost certainly*" occupied "*for the purposes of agriculture*". In the *Arthur Frederick Golding (Ex. Dennis Golding Deceased*) [2011] UKFTT 351 decision was again emphasised that whether property is a farmhouse is a matter of fact and degree and no one factor is determinative and reiterated the factors outlined in *Antrobus*.

84. The *Hanson (trustee of William Hanson) (2013) UKUT 224 (TCC)* decision indicated that there was a historic focus on the house being on or close by an identifiable farm where the farmer responsible for the operation of the farm lived with his family and operated farming activities. The *Hanson* decision opined that in order to be a farmhouse, there must be a functional connection between the house and the farm and confirmed that there was no intention to depart from the description in earlier decisions.

85. The most recent decision in *Charnley v HMRC* [2019] UKFTT 06050 again at paragraph 93 reiterated the position in *Antrobus* and the importance of the *"functional nexus*" between the house and the lands.

86. As such, [******], the Farmhouse is "*used by the person running the farm as the farmhouse*" consistent with *Lindsay v CIR* and its purpose is to act as a farmhouse consistent with *CIR v Whitford*, which held that the "*proper criterion is the purpose of the occupation of the premises*". The scale of the Farmhouse is also not constructed "*upon some elaborate and expensive scale*" that would put it outside of the category of farmhouse again consistent with *CIR v Whitford*.

87. In the circumstances of the present case the Farmhouse is a simple house as can be seen from the photographs and is linked directly to the overall farm and is therefore "*in accordance with the ordinary ideas of what is appropriate in size, content and layout*". It is connected to and used in connection with the 46 acres of [******] Farm and is therefore in keeping with the "*particular area of farmland being farmed*" and is clearly not "*part of a rich man's considerable residence*" and is therefore in keeping with *IRC v Korner*.

88. In keeping with *Higginson's Executors v IRC* the Farmhouse is "*proportionate in size and nature to the requirements of the farming activities conducted on the agricultural land or pasture in question*" and it comprises a unit together with and is integral to the Farm in circumstances where the agricultural land predominates.

89. With respect to the *Dixon v IRC* tests:

(a) the elephant test - although you cannot describe a farmhouse which satisfies the character test you will know one when you see it. The farmhouse is clearly connected to and used as a farmhouse for the [******] Farm and meets the elephant test.
(b) the man on the (rural) Clapham omnibus: would the educated rural layman regard the property as a house with land or a farm? Likewise an ordinary man would be able to access the farm directly from the farmhouse and appreciate that it operates as a farmhouse for that farm and is not a rich man's considerable residence.
(c) historical dimension: how long has the house in question been associated with the agricultural property and is there a history of agricultural production? The farmhouse has at all times been used as a farmhouse historically.

90. In the *Atkinson* decision it was opined*, inter alia*, that where an active farmer occupies the main farmhouse on a farm it is "*almost certainly*" occupied "*for the purposes of agriculture*", which is the case in the present circumstances. In the *Arthur Frederick Golding* decision it was again emphasised that whether property is a farmhouse is a matter of fact and degree and no one factor is determinative and reiterated the factors outlined in *Antrobus*. There is no one factor out of place in the present case and it is therefore a farmhouse appropriate to the property/farmland.

91. The *Hanson* decision indicated that there was a historic focus on the house being on or close by an identifiable farm where the farmer responsible for the operation of the farm lived with his family and operated farming activities. The Farmhouse in this case is close by and attached to the overall farm and forms a unit with it. The *Hanson*

decision also opined that in order to be a farmhouse, there must be a functional connection between the house and the farm. That is clearly the case here also.

92. It is submitted that the farmhouse clearly falls within the definition of Agricultural Property which "*includes ...farm houses...(together with the lands occupied with such ...farm- houses...) as are of a character appropriate to the property*".

93. The farmhouse is therefore within the ordinary meaning of the words and meets the criteria set out in the legislation giving them their plain or ordinary meaning. The Appellant is therefore clearly entitled to the Agricultural Relief in accordance with CATCA, section 89.

94. It is submitted, therefore that the Appellant was a farmer on the valuation date after taking the Gift regardless of the timing or the order of the transfers.

Access to farm

95. As can be seen from the definition of agricultural property, there is no specific requirement in CATCA, section 89 that there must be any specific legal access between the farmhouse and the farmland. It is submitted that it would be inappropriate to apply a criterion which does not exist in the statute.

96. The evidence was that while there is no specific legal right of way over the Parents 29 acres to the 13 acres transferred to the Appellant and her siblings, the 43 acres are physically farmed by the Appellant's parents who:

    (a) have the right of residence at [******],
    (b) the ownership of the 29 acres and
    (c) they physically farm the full 43 acres together while residing in [******] as the farmhouse.

97. Therefore the Farmhouse and the 43 acres are operated in practice as a single unit by the Appellant's parents who physically farm the full 43 acres from the Farmhouse.

98. As outlined above, the *Hanson* decision indicated that there was a historic focus on the house being on or close by an identifiable farm where the farmer responsible for the operation the farm lived with his family and operated the farming activities. The *Hanson* decision opined that in order to be a farmhouse, there must be a functional connection between the house and the farm and confirmed that there was no intention to depart from the description in the earlier decisions.

99. Therefore, it is submitted that the necessary nexus between the house and the farm exists on a practical level, and as stated by the Appellant's father, the farm has always been operated as a family. There is no legal requirement for there to be a specific right of access between the farmhouse and the farm. The case law indicates that as long as the "*functional connection*" between the house and the farm exists as it does in the present circumstances that it is a farmhouse.

100. It is submitted therefore that the fact that there is no legal right of way or access from the Farmhouse at [******] over the 29 acres to the 13 acres makes no difference to the above analysis and the status of [******] as a farmhouse and this is therefore not a "game changer".

Interest in Land

101. As outlined, the Appellant's parents transferred [******] to the Appellant while retaining an exclusive life interest for themselves. The indications are that the creation of an exclusive right of residence in land creates a life estate for the grantor.

102. Therefore, the interest that a beneficiary would receive where a life interest is retained is in the nature of the future interests i.e., a remainder. The remainder is an estate which comes into possession at some point in the future once the prior existing estate ceases. Such a remainder is a future interest in land. A future interest in land for these purposes is any interest in land where the enjoyment of the land is put off or postponed into the future. It was therefore submitted that the Appellant has an interest in [******] in the nature of a future interest.

103. For CAT purposes, a gift arises when a person becomes beneficially entitled in possession to any benefit otherwise than for full consideration in money/money's worth. In the circumstances of the present case, the Appellant for gift tax purposes, on the basis that she did not become beneficially entitled in possession to [******] on the date of the transfer/grant, did not receive a gift for CAT purposes on the date of the transfer/grant. Therefore, strictly speaking tax liability arises above at such time as the Appellant's parents' interest in [******] ceases on their deaths.

104. Despite this position, when determining whether someone is a "*farmer*" for the purposes of Agricultural Relief, an individual is nonetheless deemed to be beneficially entitled in possession to any interest in expectancy for this limited purpose:

""farmer" in relation to a donee or successor, means an individual in respect of whom not less than 80% of the market value of the property to which the individual is beneficially entitled in possession is represented by the market value of property in a Member State which consists of agricultural property, and, for the purposes of this definition…

(c) an individual is deemed to be beneficially entitled in possession to –

(i) an interest in expectancy, notwithstanding the definition of "entitled in possession" in section 2"

105. Therefore, when it comes to determining whether the Appellant is entitled to Agricultural Relief, the Appellant is "*deemed to be beneficially entitled in possession to"* the remainder interest. In other words, therefore while no gift tax liability should arise on the Appellant in relation to [******] until the death of her Parents, it is nonetheless necessary to take into account in ascertaining whether the Appellant is a farmer for the purposes of Agricultural Relief.

New Evidence

106. While the Appellant did not give evidence in relation to the nature of [******] as being a farmhouse during the original hearing, as soon as it came to the attention of the Appellant's agents that the house at [******] is substantially connected to the 43 acres of farmland at [******] and is effectively used as a farmhouse by her parents this was brought to the attention of the TAC in the context of further written submissions that were requested by the TAC in the context of a conveyancing law matter that had arisen.

107. At the case management conference on 8 September 2021, the Respondent who had possession of the written submissions in this regard for a number of weeks at that stage argued that the evidence was not admissible because the hearing had concluded.

108. The Appellant argued that the hearing was still ongoing, that further submissions had been sought and under the provisions of TCA, section 949AC, the TAC is statutorily granted and permitted a very broad latitude in relation to the admission of evidence and in particular under TAC, section 949AC(b) the TAC is permitted to "*admit evidence whether or not the evidence would be admissible in proceedings in a Court*." The wording of TCA, section 949AC Evidence is as follows:

"The Appeal Commissioners may—

(a) *allow evidence to be given orally or in writing,*
(b) *admit evidence whether or not the evidence would be admissible in proceedings in a court in the State, or*
(c) *exclude evidence that would otherwise be admissible where—*
(i) the evidence was not provided within the time allowed by a direction,
(ii) the evidence was provided in a manner that did not comply with a direction, or
(iii) they consider that it would be unfair to admit the evidence."

109. The Appellant therefore distinguished certain authorities referred to by the TAC and the Respondent on the basis that while the TAC is a creature of statute, there is a specific statutory power and a very broad discretion permitted to the TAC in relation to the admission of evidence which is not the case in proceedings before a court not heard in the context of a tax appeal. The Commissioner ultimately made a determination that:

(a) it would be more prejudicial to the Appellant to exclude the evidence than it would be to the Respondents, and

(b) that the Appellant can give her evidence and that submissions would be made thereafter.

Grounds of Appeal

110. The Appellant's Grounds of Appeal are set out in Section 4 of the Appellant's Notice of Appeal dated 14 August 20[******] in the following terms:

"The Revenue assessment to CAT has been raised to disallow a claim for Agricultural Relief under section 89(2) CATCA 2003 on the alleged grounds that the appellant was not a farmer "on the valuation date and after taking the gift" of the agricultural property.

The contention of the appellant is that on the basis of the correct interpretation of the wording of the Section she only had to satisfy the Farmer test immediately after taking the gift of the agricultural property and not throughout the whole day on which the property was gifted to her.

Summary of the facts and of the appellant's reasons for disagreeing with the Revenue Commissioners assessment is as follows

On 26 October 2013 appellant was gifted property by way of three separate transactions in the following order i.e.

Gift 1 – agricultural property
Gift 2 – agricultural property
Gift 3 – nonagricultural property

2. Appellant's contention is that in accordance with the wording of section 89(2) ATCA 2003 she is entitled to Agricultural Relief because she was a farmer within the meaning of the legislation on the valuation date and after taking the gifts of the agricultural property and that this is not affected by the receipt of a separate gift of nonagricultural property later on the same day.

3. Revenue hold a different view but have not in the opinion of the appellant, satisfactorily demonstrated the legislative basis for same."

111. The Respondent argued that the Grounds of Appeal as set out in the Appellants Notice of Appeal constituted a single and indivisible ground of appeal which did not include any reference to the claim that [******] was a farmhouse and that the thrust of the allegedly single ground of appeal was that the house at [******] was non-agricultural property.

112. It was argued that the claim that [******] is a farmhouse amounts to a new Grounds of Appeal which was not included in the original Grounds of Appeal of the Notice of Appeal and therefore the Appellant should not be entitled to rely upon it as it was "*not specified in the notice of appeal*"

113. The Appellant was asked about her state of mind and understanding in relation to [******] at the time the Grounds of Appeal were prepared and whether she thought that [******] [******] was agricultural property at the time. While prefacing her comments to the effect that it was a long time ago and difficult to remember what she thought at the time, she gave evidence that at the time that the notice of appeal was drafted she personally was not aware of the definition of agricultural property and that it could include a farmhouse and that on that basis therefore did not understand/believe that it was agricultural property at that time. However subsequently on having conversations with her brother she became aware that it may be a farmhouse and that a farmhouse may come within the meaning of agricultural property for the purposes of the relief. She accepted she was advised at that time.

114. It was submitted that the Appellant's subjective state of mind or state of knowledge at the time is not relevant to the wording as expressed on the Notice of Appeal, what matters is the words used in the Notice of Appeal. If and to the extent that the document is not clear from the application of the normal or ordinary meaning of the words, only then is it necessary to consider assistance from interpretation principles.

115. Such interpretative principles do not include the parties' subjective state of mind. This this is not relevant to the interpretation of a contract or a will. The parliamentarians' subjective state of mind is not relevant when interpreting legislation. It is submitted that it is the objective intention as determined on the basis of the relevant factual matrix in the case of contracts or the armchair principal in the case of wills of the intent of parliament as determined from the Act that matters. There is no basis to apply a subjective approach to the interpretation of a Notice of Appeal.

116. The Appellant argued that the wording of the Grounds of Appeal was much broader than the very narrow interpretation that the Respondents ought to place upon it, and that the wording of the Notice of Appeal should not be given an unduly narrow interpretation.

117. The first thing addressed in the Grounds of Appeal is to set out what the Respondent's issue was with regard to the Appellant's claim for Agricultural Relief (i.e. this provides context by setting out the nature of the dispute between the parties):

> *"The Revenue assessment to CAT has been raised to disallow a claim for Agricultural Relief under section 89 (2) CATCA 2003 on the alleged grounds that the appellant was not farmer "on the valuation date and after taking the gift" of the agricultural property."*

118. Therefore, the dispute between the parties to the Appeal has always been that the Respondent does not accept that the Appellant was a farmer and was entitled to Agricultural Relief. The Grounds of Appeal therefore reflect this dispute accordingly.

119. Having set out the nature of the dispute, the "contentions" of the Appellant are set out with the first contention ("Contention 1") being expressed as follows:.

> *"The contention of the appellant is that on the basis of the correct interpretation of the wording of the Section she only had to satisfy the Farmer test immediately after taking the gift of the agricultural property and not throughout the whole day on which the property was gifted to her."*

120. In Contention 1 therefore, the Appellant has clearly identified this as a "contention" (i.e. ground of appeal). The thrust and wording of Contention 1 is that the Appellant is making a claim for Agricultural Relief on agricultural property. Contention 1 is further particularized to the effect that (contrary to the position taken by the Respondent) she was a farmer (as defined) after taking the gift of the agricultural property. It makes no reference to non-agricultural property. The new evidence is that [******] is a farmhouse and therefore also agricultural property. This is entirely consistent with Contention 1, that she was a farmer (as defined). In no way does it undermine the validity of the ground of appeal that the Appellant was a farmer and qualified for Agricultural Relief accordingly. The new evidence fits into Contention 1 that she was a farmer after receiving the gift of the agricultural property (including the farmhouse). The Appellant is therefore not seeking to add a new Ground of Appeal. As can be seen from Contention 1 it was always the Appellant's contention that she was entitled to Agricultural Relief on agricultural property as a farmer (as defined). If [******] is a farmhouse, it simply falls within Contention 1.

121. Following on from Contention 1, the Appellant provides a "*summary of facts and…reasons*" for disagreeing with the Respondents as follows:

"Summary of the facts and of the appellant's reasons for disagreeing with the Revenue Commissioners assessment is as follows

1. On 26 October 2013 appellant was gifted property by way of three separate transactions in the following order i.e.

Gift 1 – agricultural property
Gift 2 – agricultural property
Gift 3 – nonagricultural property"

122. It is important to note that while this is an aspect of the Grounds of Appeal, it is clearly expressed to be merely a "summary of facts and…reasons" for disagreeing with the Respondents.

123. The Appellant's Grounds of Appeal then go on to state the Appellant's further contention ("Contention 2") that :

"2. Appellant's contention is that in accordance with the wording of section 89 (2) CATCA 2003 she is entitled to Agricultural Relief because she was a farmer within the meaning of the legislation on the valuation date and after taking the gifts of the

agricultural property and that this is not affected by the receipt of a separate gift of nonagricultural property later on the same day."

124. Contention 2 seems to be largely a restatement or expansion upon the Contention 1 (i.e. that she was entitled to Agricultural Relief and she was a farmer (as defined)). However, Contention 2 includes an additional claim/feature to the effect that Contention 1 is "not affected" by a separate gift of non-agricultural property on the same day. This is merely a statement/observation that the claim for agricultural relief is not affected by a subsequent gift of non-agricultural property, should there be such a subsequent gift.

125. The new evidence (as opposed to new ground) is to the effect that [******] is a farmhouse and therefore falls within Contention 1. Contention 1 (unlike Contention 2) does not contain any reference at all to a gift of non-agricultural property. Contention 2 therefore is similar to Contention 1 except it contains the additional feature/statement joined to it by the conjunction "and", i.e. "*and that this is not affected by the receipt of a separate gift of non-agricultural property later on the same day."* This addition is a feature which the Appellant (in light of the new evidence) is irrelevant if [******] is a farmhouse. It is only if [******] is not a farmhouse then it has any relevance and only then does the Appellant need to rely upon it.

126. The Respondent has incorrectly seized upon the wording "*and that this is not affected by the receipt of a separate gift of non-agricultural property later on the same day*" and argues it is inseparable from the earlier wording and as a result the Grounds of Appeal cannot be read without that wording forming part of the ground and limiting its meaning, in the style of a tail wagging the dog. The Respondent conceded that this may not be the case if there was a full stop rather than a conjunction "and" between the two claims. The Appellant submits that this concession confirms the weakness of the Respondent's argument in this regard.

127. The details of the Grounds of Appeal simply indicate that they are a "summary of the facts and of the appellant's reasons for disagreeing with the revenue". While the details make reference to the Appellant being gifted property by way of three separate transactions (one of which is referred to as a gift of "non-agricultural property"). The Respondent speculates that this relates to [******], however this is not elaborated upon in any detail in the Notice of Appeal itself, and therefore on the face of the Grounds of Appeal themselves the reference to non-agricultural property is no more than another generic type ground and should be read as such.

128. It is submitted that both of the Appellant's contentions (Contention 1 and Contention 2) express that she is entitled to Agricultural Relief. The wording of Contention 1 is capable of encompassing (and does where the evidence supports it) the claim in respect of the farmhouse also. The wording of Contention 2 (which the Respondent alleges is limited by the wording after the conjunction "and") is more expansive and explains that "she was a farmer within the meaning of the legislation on the valuation date and after taking the gift of the agricultural property". It is again clear that Contention 2 is capable of encompassing the property at [******] as agricultural property. While this Contention 2 is followed by the conjunction "and" and followed by another claim that "this is not affected by the receipt of a separate gift of non-agricultural property later on the same day", this is clearly just an additional claim. It does not limit the claim that goes before it, it is in addition to it. It is joined by the conjunction "and" and is severable from it as being another claim/Ground of Appeal.

129. Counsel for the Respondent has submitted that this must be read entirely as one ground of appeal, that it must be very narrowly interpreted so that it is not possible to view this as a claim for Agricultural Relief simpliciter, but must be read very specifically as it was a claim on the basis that the property at [******] (which is not mentioned in the Grounds of Appeal at all) was non-agricultural property and that the claim to Agricultural Relief and to the farmer test simpliciter must be ignored. It is submitted that even if this was the case with respect to Contention 2 (which it is not) that line of reasoning has no application at all to Contention 1.

130. The reference to non-agricultural property does not include any detail in the Grounds of Appeal and the Respondents submissions in this regard are speculative. Further it is submitted that the Grounds of Appeal are necessarily quite summary in nature and the reference to *"this is not affected by the receipt of a separate gift of non-agricultural property*" is merely additional detail to the main ground which is a claim for Agricultural Relief, which although included in the Grounds of Appeal is not there to limit the Grounds of Appeal, but rather as an additional element.

131. It is also submitted that it is not the case that the Appellant wishes to add a new ground of appeal at this stage which was not included in the original Grounds of Appeal. It is submitted that at most what is occurring is that the Appellant does not wish to pursue an element of the Grounds of Appeal which was included in the notice of appeal. In other words it was not the addition of a new Ground of Appeal, but rather the non-reliance on one of the aspects of the Grounds of Appeal which were included.

132. It is therefore submitted that the submissions on the part of the Respondent in this regard are erroneous, they require an unduly restrictive interpretation of the Grounds of Appeal, that the Grounds of Appeal are sufficiently broad to encompass the claim in respect of the farmhouse and that the Appellant is entitled to not rely on a ground of appeal or element of a ground appeal should she choose to do so.

133. It is therefore submitted that the Appellant is not seeking to rely on a new Grounds of Appeal and therefore the Respondents argument in this regard is erroneous/misconceived and that the Appellant should be entitled to rely upon and make it in respect of the evidence that [******] is a farmhouse.

Separate Contentions – Contentions 1 & 2

134. It is submitted on behalf of the Appellant that the Notice of Appeal encompassed a number of Grounds of Appeal, not just one.

135. The Appellant's main ground of appeal (Contention 1) is that she qualified for Agricultural Relief under Section 89 CATCA 2003, as follows:

> "*The contention of the appellant is that on the basis of the correct interpretation of the wording of the Section she only had to satisfy the Farmer test immediately after taking the gift of the agricultural property and not throughout the whole day on which the property was gifted to her.*"

136. It is submitted that Contention 1:

(a) sets out the grounds in relation a claim for Agricultural Relief in sufficient detail for the Commissioner to understand it as a ground,
(b) clearly encompasses a claim for Agricultural Relief in respect of all gifts of agricultural property,
(c) includes a claim that she was a farmer,
(d) makes no reference to non-agricultural property whatsoever in Contention 1,

137. The Appellant's other ground of appeal (Contention 2) is that she qualified for Agricultural Relief under Section 89 CATCA 2003, as follows:

> "*Appellant's contention is that in accordance with the wording of section 89(2) CATCA 2003 she is entitled to Agricultural Relief because she was a farmer within the meaning of the legislation on the valuation date and after taking the gifts of the*

agricultural property and that this is not affected by the receipt of a separate gift of non-agricultural property later on the same day."

138. It is submitted that Contention 2:

(a) includes a claim that she is entitled to Agricultural Relief in sufficient detail for the Commissioner to understand it as a ground,
(b) clearly encompasses a claim for Agricultural Relief in respect of all gifts of agricultural property,
(c) sets out that she was a farmer (as defined)
(d) while there is a reference to non-agricultural property in Contention 2:
  (i) this is an additional and severable ground,
  (ii) that the reference to there being non-agricultural property is irrelevant should it transpire that there is no non-agricultural property,
  (iii) that to the extent that non-agricultural property is included in the grounds, the Appellant does not need to rely on that if the farmhouse is agricultural property,
  (iv) that if the appellant does not wish to rely on a ground set out in the Notice of Appeal that this is not prevented, prohibited or even addressed in CATCA, section 949I(6)
  (v) there is no statutory prohibition on not relying on a ground, only a prohibition from relying on a ground not stated,

139. Therefore

(i) the evidence concerning the farmhouse is admissible under CATCA, section 949AC (as already determined),
(ii) the Appellant is therefore not seeking to add a new ground of appeal and CATCA, section 949I(6) has no application.

Respondent's submissions

Burden of proof

140. In the context of tax appeals, the burden of proof to show that an entitlement to the relief claimed falls on the taxpayer. This accords with the general law in civil cases that the burden of proof falls on he who asserts. This onus may be justified on the basis that only the taxpayer has access to the full facts relating to his personal tax situation. In *Menolly Homes Ltd. v Appeal Commissioners & Revenue Commissioners*, Charleton J. stated:

> *"This reversal of the burden of proof onto the taxpayer is common to all forms of taxation appeals in Ireland"*
>
> and
>
> *"The burden of proof in this appeal process, is as in all taxation appeals, on the taxpayer. This is not a plenary civil hearing. It is an enquiry by the Appeal Commissioners as to whether the taxpayer has shown that the relevant tax is not payable"*

141. In cases involving tax reliefs or exemptions, it is incumbent on the taxpayer to demonstrate that the taxpayer falls within the relief. The Supreme Court considered the rules of interpretation for such a provision in *Revenue Commissioners v Doorley* [1933] I.R. 750:

> *"If it is clear that a tax is imposed by the Act under consideration, then exemption from that tax must be given expressly and in clear and unambiguous terms, within the letter of the statute as interpreted with the assistance of the ordinary canons for the interpretation of statutes. This arises from the nature of the subject-matter under consideration and is complementary to what I have already said in its regard. The Court is not, by greater indulgence in delimiting the area of exemptions, to enlarge their operation beyond what the statute, clearly and without doubt and in express terms, except for some good reason from the burden of a tax thereby imposed generally on that description of subject-matter. As the imposition of, so the exemption from, the tax must be brought within the letter of the taxing Act as interpreted by the established canons of construction so far as applicable."*

142. Furthermore, the Appellant had an obligation to maintain appropriate books and records to support her claim. CATCA, section 45A(2) states that "*an accountable person*

shall retain, or cause to be retained on his or her behalf, records of the type referred to in subsection (1) as are required to enable -

(i) a true return, additional return, or statement to be made for the purposes of this Act, or

(ii) a claim to a relief or an exemption under any provision of this Act to be substantiated"

143. Without prejudice to the Respondent's position that the Appellant's interpretation of the provision is incorrect, there is no evidence that the transfers occurred in the order the Appellant now says they did, and the Appellant bears the burden of proving that. It is further noted that while the Appellant's agent initially suggested that the properties were transferred on 25 and 26 October 2013 and were merely stamped with the same day of execution due to the volume of the transfers, the tenor of the submissions was that they were in fact transferred on the same day.

144. Given the importance of such sequencing, according to the Appellant's own submission, to the availability of the relief, one would expect to see the exact time the deeds of transfers were being executed expressly noted on the deeds or, at least, evidenced in a contemporaneous written attendance by Appellant's solicitor noted as being [******]. No such documentary evidence has been forthcoming.

145. Even if it had, however, the Respondent's submission remains the same and the Appellant is not entitled to the relief by reason of the transfer of agricultural and non-agricultural property transferring to her on the same day.

The interpretative provisions to apply

146. In the recent Court of Appeal decision in *Bookfinders v Revenue Commissioners* [2019] IECA 100 the Court outlined the starting point in interpreting a legislative provision, namely, looking to the words used in the Act:

"The starting point is the dicta of Denham J. in D. B. v. Minister for Health and Blayney J. in Howard v. Commissioners of Public Works, where he cited with approval the following passage from S. G. G. Edgar, Craies on Statute Law (7th ed, Sweet & Maxwell, 1971):

'The cardinal rule for the construction of Acts of Parliament is that they should be construed according to the intention expressed in the Acts

> *themselves. If the words of the statute are themselves precise and unambiguous then no more can be necessary that [sic] to expound those words in their ordinary and natural sense'."*

There is no basis at law for an approach to the interpretation of revenue statutes that differs from that of statutory interpretation generally. This is clear from the Supreme Court in Revenue Commissioners v. O'Flynn Construction, which expressly considered the issue of statutory interpretation of general tax avoidance provisions.

…

I accept the argument of the respondent that, much like McGrath v. McDermott, many of the cases which are cited as authority for the 'strict' approach actually take an approach to statutory interpretation analogous to that contained in s. 5 of the Interpretation Act 2005 and this can be seen in many of the cases relied upon by the appellant. The passage from Inspector of Taxes v. Kiernan which is generally used to support a 'strict' reading of taxation statutes reads as follows:

> *'Secondly if a word or expression is used in a statute creating a penal or taxation liability and there is looseness or ambiguity attaching to it, the word should be construed strictly so as to prevent a fresh imposition of liability from being created unfairly by the use of oblique or slack language'.*

'Strict' in this instance can be interpreted as precision in the consideration of the ordinary meaning of words used in order to avoid a liability to tax arising in unclear circumstances, and not as a method by which a narrow construction is to be preferred.

On the topic of the interpretation of taxation statutes, Dodd, in Statutory Interpretation in Ireland (1st ed, Tottel, 2008) also states, at para. 6.51:

> *'In respect of such statutes, what is typically valued is certainty and allowing those affected to rely on the ordinary and plain meaning.'*

As stated with admirable clarity by Blayney J. in Howard v. Commissioners of Public Works in citing with approval from Craies on Statute Law, p. 71:

> *'If the words of the statute are themselves precise and unambiguous, then no more can be necessary than to expound those words in their ordinary and*

natural sense. The words themselves alone do in such cases best declare the intention of the lawgiver.'

I adopt this approach and accordingly, the starting point in the analysis must be the plain language of the Act."

147. The Court further explained when it is necessary to engage the principle against doubtful penalisation:

"Statutes which concern an individual's liberty or property have been construed strictly by the courts so that a person should not be penalised as a result of a provision which is unclear. In the context of a criminal statute that imposes a penal sanction, the words in the statute must be plain and unambiguous in order that the conduct in issue is identified as an offence. However, it is important to note that the principle against doubtful penalisation applies only insofar as the provision in an enactment is ambiguous and such ambiguity remains after other canons of interpretation have failed to resolve it.

The principle against doubtful penalisation therefore comes into play only after other tools of interpretation have failed."

148. The Supreme Court delivered its Judgment in *Dunnes Stores v Revenue Commissioners* Unreported, Supreme Court, 4 June 2019 shortly after the Court of Appeal in *Bookfinders*. The case concerned the application of the plastic bag levy. The relevant legislation provided that the levy applied "… *in respect of the supply to customers, at the point of sale to them of goods or products to be placed in the bags, or otherwise of plastic bags in or at any shop, supermarket, service station or other sales outlet*." The Appellant submitted that the "or otherwise" referred to bags provided at the point of sale only and the Respondent contended that it included where goods were placed in a bag at the point of sale or anywhere else.

149. The High Court referred to the legislation as "*somewhat awkwardly worded*" and the Supreme Court as "difficult to construe". The Supreme Court held:

"[As these are taxation measures] one would have thought and one is entitled to expect that the imposing measures should be drafted with due precision and in a manner which gives direct and clear effect to the underlying purpose of the legislative scheme. That can scarcely be said in this case. That being so, the various imposing measures must be looked at critically. If, however, having carried out that exercise, and notwithstanding the difficulty of interpretation involved, those

provisions when construed and interpreted appropriately, are still capable of giving risk to the liability sought, then they should be so declared."

150. As such, the Supreme Court favoured an interpretation that would give effect to legislative intent i.e. to apply the levy to all plastic bags provided in a shop. McKechnie J reviewed the applicable principles, stating:

"As has been said time and again, the focus of all interpretative exercises is to find out what the legislature meant: or as it is put, the will of Parliament. If the words used are plain and their meaning self-evident, then save for compelling reasons to be found in the instrument as a whole, the ordinary basic and nature meaning of those words should prevail. 'The words themselves alone do in such cases best declare the intention of the law maker" (Craise on Statutory Interpretation (7the Ed. Sweet & Maxwell, 1971 at 71)

…

Where, however, the meaning is not clear, but rather is imprecise or ambiguous, further rules of construction come into play… [T]he aim, even when invoking secondary aids to interpretation, remains exactly the same as that with the more direct approach, which is, insofar as possible, to identify the will and intention of parliament.

When recourse to the literal approach is not sufficient it is clear that regard to a purposeful interpretation is permissible… However, it is abundantly clear that a court cannot speculate as to meaning, and cannot import words that are not found in the statute, either expressly or by necessary inference…" "Even in the context of a taxation provision however, and notwithstanding the requirement for a strict construction, it has been held that where a literal interpretation, although technically available, would lead to an absurdity in the sense of failing to reflect what otherwise is the true intention of the legislation apparent from the Act as a whole, then such will be rejected."

151. Ultimately, the Court considered the purpose of the legislation and concluded that:

"It would make very little sense for the Oireachtas, in the knowledge of what it was attempting to do, to put in place legislation which exempted from the levy every and any bag unless such bag was sold at the point of sale. This would have the effect that those in charge of any and all outlets could place such bags anywhere other than the

point of sale, and by doing so would disapply the levy. Unless absolutely compelled to adopt such an interpretation, I would have to reject it."

152. This dicta of McKechnie J was followed by the Supreme Court in *Bookfinders* and the current position in relation to statutory interpretation has been neatly summarised by McDonald J in *Perrigo Pharma DAC v McNamara & Ors* [2020] IEHC 552 as follows:

"The principles to be applied in interpreting any statutory provision are well settled. They were described in some detail by McKechnie J. in the Supreme Court in Dunnes Stores v. The Revenue Commissioners[2019] IESC 50 at paras. 63 to 72and were reaffirmed recently in Bookfinders Ltd v. The Revenue Commissioner [2020] IESC 60. Based on the judgment of McKechnie J., the relevant principles can be summarised as follows:

(a) If the words of the statutory provision are plain and their meaning is self-evident, then, save for compelling reasons to be found within the Act as a whole, the ordinary, basic and natural meaning of the words should prevail;

(b) Nonetheless, even with this approach, the meaning of the words used in the statutory provision must be seen in context. McKechnie J. (at para. 63) said that: "... context is critical: both immediate and proximate, certainly within the Act as a whole, but in some circumstances perhaps even further than that";

(c) Where the meaning is not clear but is imprecise or ambiguous, further rules of construction come into play. In such circumstances, a purposive interpretation is permissible;

(d) Whatever approach is taken, each word or phrase used in the statute should be given a meaning as it is presumed that the Oireachtas did not intend to use surplusage or to use words or phrases without meaning.

(e) In the case of taxation statutes, if there is ambiguity in a statutory provision, the word should be construed strictly so as to prevent a fresh imposition of liability from being created unfairly by the use of oblique or slack language;

(f) Nonetheless, even in the case of a taxation statute, if a literal interpretation of the provision would lead to an absurdity (in the sense of failing to reflect what otherwise is the true intention of the legislature apparent from the Act as a whole) then a literal interpretation will be rejected.

(g) *Although the issue did not arise in Dunnes Stores v. The Revenue Commissioners, there is one further principle which must be borne in mind in the context of taxation statute. That relates to provisions which provide for relief or exemption from taxation. This was addressed by the Supreme Court in Revenue Commissioners v. Doorley [1933] I.R. 750 where Kennedy C.J. said at p. 766:*

> *'Now the exemption from tax, with which we are immediately concerned, is governed by the same considerations. If it is clear that a tax is imposed by the Act under consideration, then exemption from that tax must be given expressly and in clear and unambiguous terms, within the letter of the statute as interpreted with the assistance of the ordinary canons for the interpretation of statutes. This arises from the nature of the subject-matter under consideration and is complementary to what I have already said in its regard. The Court is not, by greater indulgence in delimiting the area of exemptions, to enlarge their operation beyond what the statute, clearly and without doubt and in express terms, except for some good reason from the burden of a tax thereby imposed generally on that description of subject-matter. As the imposition of, so the exemption from, the tax must be brought within the letter of the taxing Act as interpreted by the established canons of construction so far as possible'.*

153. In the present case, the Appellant is seeking to obtain the benefit of a relief where there would otherwise be a charge to tax and so must come within the letter of the relief.

What did the legislature mean?

154. The purpose of the agricultural relief from within the Act itself is to grant relief from capital acquisitions tax to those who become farmers by reason of receiving a gift or inheritance of agricultural property (and not necessarily confined to those who were farmers already).

155. CATCA, section 89(2) is in essence a two part-test which requires:

(a) a gift or inheritance of agricultural property at the date of the gift and at the valuation date; and

(b) the gift must be taken by a donee or successor who is, on the valuation date and after taking the gift or inheritance, a farmer.

156. The terms "*date of the gift*" and "*valuation date*" refer to 24-hour periods and that everything that occurs on that date must be looked at as a whole. If the legislature had wished for the gift or inheritance to be considered at a particular point in time, it would have expressly said so.

157. In the TAC determination 10TACD20[******], Commissioner Gallagher considered the meaning of "*at the date of the inheritance*" and stated:

> *"I am satisfied that there is no inherent ambiguity in the expression 'at the date of the inheritance' and thus a literal interpretation is the appropriate means by which to proceed. As a result, the words are to be afforded their ordinary and natural meaning. All parties are agreed that the date of the inheritance in this case is 27 October 2010. I determine that the expression 'at the date of the inheritance' per s.86(3)(b) means, at any time on the date of the inheritance i.e. at any time during the 24-hour period of 27 October 2010."*

158. In order to ascertain what the legislature meant, it is useful to look at CATCA, section 89 without the term "*and after taking the gift or inheritance*":

> *"Except where provided in subsection (6), in so far as any gift or inheritance consists of agricultural property -*
>
> (a) *at the date of the gift or at the date of the inheritance, and*
> (b) *at the valuation date,*
>
> *and is taken by a donee or successor who is, on the valuation date ~~and after taking the gift or inheritance,~~ a farmer, section 28 (other than subsection (7)(b) of that section) shall apply in relation to agricultural property as it applies in relation to other property…"*

159. If the provision was worded in this way, and applying the Appellant's own analogy, it would be open to the Respondent to arbitrarily pick a point of time during the 24 hour period of the valuation date to apply the farmer test, for example, before the agricultural assets actually transferred, which would ensure that the donee or successor was not a farmer for the purposes of the relief. This would have the effect of restricting the relief only to those who were farmers prior to the gift or the inheritance which was clearly not the legislative intent and it is submitted that it was for this reason that this particular wording was included.

160. As such, the Respondent submits that the effect of the term "*and after taking the gift or inheritance*" is to deem the inheritance or gift to have been taken for the purpose of applying the farmer test, so there can be no doubt or no attempt to deprive a beneficiary who becomes a farmer of the relief by reason only of the gift of the inheritance.

161. Moreover, in ascertaining the purpose of this term, the Appellant fails to address the effect of the statutory interpretation she espouses on those who receive agricultural assets by way of an inheritance. The suggestion seems to be that a person who receives staggered gifts of both agricultural and non-agricultural assets during the course of the 24 hour valuation date should be in a better position to avail of the relief than a person who receives agricultural and non-agricultural assets simultaneously on a death. As such, the Appellant seems to suggest that the legislature intended that gifts and inheritance of both agricultural and non-agricultural assets would be treated differently because inheritances can only happen at one point of time, whereas gifts can be staggered during the course of the 24 hour date of valuation. This cannot have been the legislative intent as it is a plain absurdity.

162. On this basis, the Appellant is not entitled to agricultural relief by reason of not being a farmer for the purposes of CATCA, section 89 on the valuation date.

163. Furthermore, the Appellant received the gift of property from her parents (as Transferors) on 9 October 2013 when the Transferors delivered the deeds of transfer in respect of the properties. The Transferors unequivocally effected delivery when the Appellant's solicitor, [******], acting on her behalf, took possession of the deeds of transfer for each of the properties.

164. A deed transferring the interest in a property is valid once it is signed and delivered by the Transferors in accordance with section 64 of the Land and Conveyancing Law Reform Act 2009 (the LCLRA).

165. [******]'s evidence was that he took possession of these deeds from the Transferors' solicitor on 9 October 2013 on behalf of his clients "*in no particular order or structure".* As the deeds did not become valid in any particular order, there is no evidence of the transfer of the properties occurring in any particular order and so the question as to whether the Appellant is entitled to agricultural relief under CATCA, section 89(2) on her purported interpretation of that provision, is moot.

The transfer of an interest in land is effected by deed

166. Section 62 LCLRA sets out the formalities to be met for a deed to be valid and states that subject to section 63, "*a legal estate or interest in land may only be created or conveyed by a deed*". Section 62(2)states:

> *"A deed executed after the commencement of this Chapter is fully effective for such purposes without the need for any conveyance to uses and passes possession or the right to possession of the land, without actual entry, unless subject to some prior right to possession."*

167. Section 63 LCLRA provides certain exceptions to when a deed is required which do not apply here. Section 64 LCRA provides for the formalities required for a valid deed and subsection (2) states:

> *"An instrument executed after the commencement of this Chapter is a deed if it is—*
>
> *(a) described at its head by words such as "Assignment", "Conveyance", "Charge", "Deed", "Indenture", "Lease", "Mortgage", "Surrender" or other heading appropriate to the deed in question, or it is otherwise made clear on its face that it is intended by the person making it, or the parties to it, to be a deed, by expressing it to be executed or signed as a deed,*
>
> *(b) executed in the following manner:*
>
> *(i) if made by an individual—*
>
> *(I) it is signed by the individual in the presence of a witness who attests the signature, or*
> *(II) ….*
> *(III) the individual's signature is acknowledged by him or her in the presence of a witness who attests the signature;*
>
> *… And*
>
> *(c) delivered as a deed by the person executing it or by a person authorised to do so on that person's behalf."*

168. Accordingly, a deed transferring an interest in land will be fully effective where it is:

(a) Described as such (each of the deeds here are described as a transfer);

(b) Signed by the transferor in the presence of a witness who attests the signature ([******] and [******] signed each of the deeds of transfer in the presence of an attesting witness); and

(c) Is delivered by the transferor or his agent acting on his behalf ([******] delivered the deeds to [******] on behalf of the transferors).

169. Therefore, is not necessary for the transferee of the interest in land, the Appellant, to sign the deed for it to be effective.

170. The Supreme Court in *Camiveo Ltd v Dunnes Stores* [2015] 2 IR 698 confirmed the principle that a deed does not have to be executed by the transferee in order for the transferor's interest to pass to the transferee:

> *"[17] The legal position is, in my judgment, well settled and is simply and authoritatively stated in the leading text book, Norton, A Treatise on Deeds (2nd ed., Sweet & Maxwell, 1928) at p. 26, where the author says that '[t]hough execution of a deed is necessary to bind the grantor, yet a party who takes the benefit of a deed is bound by it though he does not execute it'.*
>
> *[18] For the purposes of this case, there seems to me to be two important aspects to that clear principle. First, in the ordinary way, a deed does not have to be executed by the grantee in order that it take effect in the grantee's favour. A deed executed by the grantor (the vendor in the case of an ordinary purchase transaction) will transfer the interest of that party once it is executed by the party concerned and irrespective of whether it has been executed by the party to whom that interest is to be transferred.*
>
> *…*
>
> *[20] However, it is in that context that the second aspect of the principle identified in Norton, A Treatise on Deeds (2nd ed., Sweet & Maxwell, 1928) seems to me to be conclusive. It is clear that a party who purports to take the benefit under a deed will be bound by the terms of that deed even if they have not executed it. That is but an example of the general rule of law which does not permit a party to approbate and reprobate the same transaction. A party cannot have the benefit of a deed while at the same time disavowing its obligations under the same deed."*

171. The Appellant's submission is a misunderstanding of the *dicta* in this decision. The position is not that the transferee must accept the benefit under the deed, rather, if the transferor executes the deed and the transferee takes it, then it will be irrelevant whether they have expressly accepted it or not. It is not necessary for a transferee to make a positive act to accept a deed, rather a transferee must simply not refuse it.

172. In any event, here, there was a positive act of acceptance here by the Appellant when her solicitor acting on her behalf, took delivery of the deeds.

173. The Appellant asserts by way of submission (but notably not by way of actual evidence) that she did not take delivery of the deeds.

174. **Wylie and Woods, Irish Conveyancing Law**, (4th ed.) at 18.120 states in relation to the delivery of a deed:

> *"The essential purpose of delivery is to indicate an intention that the deed should become operative, and it is clear that such an intention may be shown in a number of ways. One obvious way is to deliver the deed in the popular sense of the word, ie, to hand it over physically to the appropriate person, eg, the other party to the transaction. But this was not necessary, for as Sullivan MR said again in Evans v Grey:*
>
> > *'It is clear ... that the mere fact of the grantor retaining a deed in his possession does not contradict the idea that the grantor intended the deed to be operative.'*
>
> *Thus a statement made in reference to the deed, eg, by pointing to it or holding it, so that it was delivered as the speaker's deed was sufficient, even if made unilaterally with no one else present. Furthermore, delivery could be presumed from the actions of the parties, eg, their acts of signing and sealing the deed. Thus, Sullivan MR said in Evans v Grey:*
>
> > *'When a man signs and seals a deed, and the attestation clause states that it was signed, sealed and delivered, the attestation clause is prima facie evidence that he delivered the deed.'*

175. Here, each of the attestation clauses in the deeds signed by the Transferors clearly provide that the deeds were delivered and these clauses formed part of the deeds when the deeds were signed by the Transferors. There was no evidence ever given that the Transferors did not intend the deeds to become operative when they signed them.

176. **Norton, A Treatise of Deeds** (2nd ed) at p13 states that physical delivery of the deed is not even necessary:

> *"Delivery may be effected by words alone, or without words by the acts or conduct of the party, from which it can be inferred that he intended to deliver the deed as an instrument binding on him: Co. Litt. 36 a and 49 b; Shep. Touch. 57; Thoroughgood's Case (1612) 9 Rep. 136a.*
>
> > *'No particular technical words or acts is necessary to render an instrument the deed of the party sealing it. The mere affixing of the seal does not render it a deed; but as soon as there are acts or words sufficient to show that it is intended by the party to be executed as his deed presently binding on him it is sufficient…Any words or acts that sufficiently show that it was intended to be final or executed will do'"*

177. **Norton** states at p16:

> *"It is not necessary that a deed be physically delivered to the grantee or other party to the deed …nor that it should be physically delivered to any person or pass out of the maker's control."*

178. **Halsbury's Laws of England** states (and which Norton agrees at p17) that a voluntary settlement which is never communicated to the beneficiary but duly executed and delivered as such it will take effect unless disclaimed by the beneficiary upon their learning of it. (Halsbury's Laws of England/Deeds and other Instruments (Volume 32 (2019))/1. Deeds/(4) Effect of a Deed/265. Concealment of fact of execution)

179. There is no evidence of a disclaimer. In regard to the disclaimer of a gift (or, to put it another way, the suggested requirement that a gift must be accepted), Bohan and McCarthy: Capital Acquisitions Tax (4th ed.) describes a disclaimer at 4.19 as:

> *"A disclaimer is the extinguishment of a right before it comes into possession. Re Stratton's Disclaimer, Stratton v CIR [1958] 1 Ch 42 confirmed that a disclaimer is not a conveyance or transfer of an interest. This case also held that the interest remains in existence up to the date of the disclaimer.*
> *…*
> *A disclaimer may be made formally by deed, by writing only, or may be implied from conduct (Re Birchall [1889] 40 QBD 436).*
> *…*

In Cook (executors of Watkins deceased) v IRC (2002) STC (SCD) 318 it was decided that following the death of the deceased her husband took an interest in possession in their home even though he did not continue to live there and his absence was not a disclaimer by conduct. Disclaimers can be by formal or informal acts but, if informal, a disclaimer would not be readily presumed if it were to the advantage of the beneficiary to retain the gift. As a disclaimer is not a conveyance but operates by way of avoidance of the benefit, it need not be in writing (Re Paradise Motor Co [1968] 2 All ER 625) although, for practical purposes, it is advisable to execute a formal deed of disclaimer under seal."

180. Bohan further states at 4.29:

"CAT legislation makes no provision for the disclaimer of a gift (other than a gift arising under a settlement). General law allows such disclaimers and, although a disclaimer is the extinguishment of a right before it comes into possession, the right (ie the benefit) exists up to the disclaimer."

181. There is no evidence of the Appellant disclaiming the gifts from her parents. Rather, she took delivery of the deeds (through her agent) on 9 October 2013 and as such, came into possession of the properties.

182. It is also clear that there was never any suggestion here that the deeds were to be somehow held in escrow. **Wylie and Woods** describe escrow as follows at 18.121:

"The requirement of delivery to render the deed effective has significance in respect of one particular point of practice and that is the concept of an "escrow," ie, delivery subject to a condition precedent which must be performed before the deed becomes operative. The classic example is where the vendor executes the deed some days before the closing date and gives it to his solicitor for handing over on completion in return for the balance of the purchase money. The condition of the escrow is, of course, that the balance of the purchase money must be so handed over and the deed will not operate, even though in fact handed over, so long as any of this remains outstanding."

183. There is no evidence of the parties agreeing any condition precedent which was to be agreed before the deed became effective. It may be the Appellant's own case that she intended to sign the deeds in a certain way but this was not in any way a condition precedent imposed on her parents, as the transferors of the various interests to her.

184. Finally, **Norton, A Treatise of Deeds** (2nd ed) at p189 states in relation to the date of effect of the deed:

> *"…the date written on a deed is not of much importance for a deed takes effect from delivery, not from its date."*

185. As the Appellant's signature was irrelevant for the effectiveness of the deed to pass the interest in the lands to her, it is the Respondent's submission that the date the Appellant's agent appears to have dated the deeds is irrelevant.

The evidence of delivery of the deeds

186. [******] gave evidence on the first day of the hearing that the documents were delivered to him by [******] in his office on 9th October in *"no particular order or structure*". In this regard he referred to [******]'s note of 9th October.

187. This evidence was repeated under cross-examination whereby he stated that he received the deeds as executed by the Appellant's parents on 9 October. [******] was specifically asked under cross-examination:

> *"Q. [You] took into possession on behalf of your clients on 9th October, all of these deeds of transfers which were signed by their parents?*
> *A. Yes."*

188. He stated that the purpose of the meeting was the "*handing over [of] the transfer deeds*". [******]'s evidence as to the delivery of the deeds on 9 October 2013 could not have been clearer.

189. [******] accepted that the execution of the deeds was not required by the transferees in order to render the transfer of the property effective. [******] was asked why the Appellant's brother, [******] [******] had not signed the deeds (and in fact never did so) and answered:

> *"I wasn't concerned about that from an administrative point of view because the Land Registry will accept transfers without the transferee executing where there is freehold title passing, so I wasn't overly concerned, I wasn't expecting him to come from America for this purpose."*

190. The land registry will accept a transfer without the transferee executing where there is freehold title because section 64 LCLRA states that there is an effective deed once it is

executed by the transferor and delivered to the transferee. On [******]'s evidence, this occurred on 9 October 2013 and [******] had no concern about the non-execution of the deeds by a transferee. Accordingly, [******]'s own evidence clearly accepts that there was a valid delivery of the deeds on 9 October 2013 without any of the transferees executing the deeds because he did not believe [******] [******]'s signature to be even necessary. [******] expressly stated when asked:

"Through a conveyancing perspective the transferee need not execute."

191. [******] answered:

"My instructions were that all documents were to be executed on 26th October and I took that as similar instructions from [******] as to the execution on that date."

192. It seems that [******] was only concerned about the execution of the documents by the transferees and not the valid execution of the deeds for the purpose of section 64 of the LCLRA such as to pass the legal interest in the properties. It is the date the legal interest in the properties pass which is the date the Appellant became entitled in possession to the properties and as such, deemed to have taken a gift of the property.

193. If it is the case that [******]'s misinterpreted his instructions (or [******] did) this does not change the fact that the deeds became effective on 9 October 2013 in accordance with section 64 LCLRA by reason of their being signed and delivered by the Transferors. As such, it is not possible to somehow subsequently "*countermand*" a valid execution of the deeds which has been made in accordance with section 64 as suggested by the Appellant.

194. [******] later confirmed that a transferee could have been registered as owner from the date the transferors executed the deed of transfer. Therefore, it is the Respondent's submission that as and from the effective execution of the deed on its signing and delivery on 9 October 2013, the Appellant was entitled in possession to the property.

195. Mr [******]'s evidence as the transferor was as set out in his diary entry of 10 October 2013 where he stated that as far and he and his wife were concerned, everything was signed.

196. [******]'s letter of 25 October 2013 to the Appellant's agents confirmed that the "*transfers to your children of the properties have completed*". The Appellant's

submission asserted that she did not accept the transfers until 26 October 2013. This is not the evidence the Appellant gave in the course of the hearing.

197. It was the Appellant's evidence that the transfers were to take place in a particular order, it was not her evidence that the gifts had to be accepted by her in a particular order. The Appellant may claim she signed the deeds in a particular order but this is irrelevant, a fact the Appellant herself admitted in evidence. The Appellant gave evidence that she had been advised by [******] that "*as a recipient you do -- to receive a gift that you don't actually need to sign to receive it, so I understood that those transactions could be completed and stamped without our attending to sign…*"

198. She further stated:

> *"So I was of the view when I went to sign on 26th October that the documents had, the properties had been transferred and done in the sequence that I requested, and as I mentioned, I had raised the query because of my brother [******] being in America and not being able to sign and [******] advised that –*
>
> *Q. Sorry, Ms [******], so when you presented yourself at the offices of [******] on 26th October, as far as you are concerned all transactions had taken place and you were just conforming with formalities?*
>
> *A. Exactly, it was kind of 'good file keeping', I think he said at the time, yes.*
> *Q. So tell me what exactly he said?*
>
> *A. It was more just to have a good - 'good for file keeping' that there are signatures, even though they weren't legally necessary, so there wasn't any – it wasn't necessary for [******] to travel back from the States to sign, so it was nice to have, is what I understood from it, to have the documents signed, but, yeah."*

199. It is quite clear that as far as the Appellant was concerned, the transfers had already taken place when she attended [******]'s office on 26 October. She was not, on her own evidence, attending [******]'s office to accept any benefit, because it was her evidence that [******] had already informed her that to receive a gift she did not have "*to sign to receive it*". Therefore, it must follow that as far as the Appellant was concerned, she had already received the gift before 26 October and all she was doing on 26 October was signing the deeds for "good file keeping".

200. Accordingly, the Appellant's own evidence is inconsistent with the submissions now made on her behalf in written submissions. The Appellant did not give evidence, as is

suggested, that "*no benefit was accepted by [her] under the deeds until 26 October 2013 and at that stage they were accepted in a particular order.*"

201. Moreover, no evidence was given by either [******] [******] or [******] [******] at all.

202. It is without any doubt that the Appellant's solicitor accepted delivery of the deeds of transfer on 9 October 2013 on her behalf. No evidence was given either by [******] or the Appellant to the contrary. It is not for the Respondent to adduce evidence that the deeds were valid for the purpose of section 64 LCLRA on 9 October 2013 but equally it is quite clear that the Appellant has not discharged her onus of proof that they were not so valid on that date.

The date of the gift for CAT

203. It is the Respondent's submission that the CATCA is clear as to when a gift is deemed to be taken.

204. Section 5 CATCA provides that a gift is deemed to be taken where "*under or in consequence of any disposition, a person becomes beneficially entitled in possession, otherwise than on a death, to any benefit (whether or not the person becoming so entitled already has any interest in the property in which such person takes such benefit), otherwise than for full consideration in money or money's worth paid by such person*"

205. Section 2 defines "*entitled in possession" as "having a present right to the enjoyment of property as opposed to having a future such right, and without prejudice to the generality of the foregoing a person is also, for the purposes of this Act, deemed to be entitled in possession to an interest or share in a partnership, joint tenancy or estate of a deceased person, in which that person is a partner, joint tenant or beneficiary, as the case may be, but that person is not deemed to be entitled in possession to an interest in expectancy until an event happens whereby this interest ceases to be an interest in expectancy;*"

206. It is the Respondent's submission that once the Appellant's solicitor took possession of the deeds which had been signed by the Transferors, on 9 October 2013, the Appellant was "*entitled in possession*" to the property. It is entirely irrelevant that the Appellant chose not to herself sign the deeds until 26 October 2013. Once the deed was signed and delivered by the Transferors and not refused by the Appellant, the interest in the land passed and the Appellant became entitled in possession to the property.

The applicability of Gartside and other English case law

207. The Appellant seeks to rely on the English decisions of *Gartside* which was decided by the English High Court in 1882. It is important to note that the Appellant has not made any submission to the effect that the propositions established by *Gartside*, as a matter of English common law, have been accepted in Ireland as a matter of Irish law.

208. The authors of Kelly: The Irish Constitution (2018) at 8.2.107-8.2.114 suggest that it is for the Irish Courts to decide whether or not pre-1922 decisions of the House of Lords and the old Irish Court of Appeal continue to be binding as a matter of Irish law. Moreover, there is no authority to support the proposition that English High Court cases decided before 1922 could in any way apply in Ireland given that there existed an Irish High Court at that time by reason of the Supreme Court of Judicature Act 1873. Also at that time, the Judicial Committee of the House of Lords remained the ultimate court of appeal for Ireland which is why a question remains over the application of decisions made by the House of Lords pre-1922. There is no authority for the proposition the Appellant now seems to be making that decisions made by the English High Court in 1882 could be binding as a matter of Irish law on the Appeal Commissioner.

209. If the Appellant cannot establish that the propositions established by *Gartside*, as a matter of English common law, have also been accepted here as a matter of Irish law, it is not open to the Commissioner to apply this English common law. This equally applies to the decisions of *Michaels v Harley House (Marylebone) Ltd* and *Re Kilnoore (in liquidation),* especially as these are post-1922 English High Court decisions. There is no evidence of any of the propositions established in England as a matter of English law as having been accepted here as a matter of Irish law.

210. The Court of Appeal decision in *Lee v The Revenue Commissioners* [2021] IECA 18 clearly summarised the parameters of the of the Appeal Commissioner's jurisdiction as follows at paragraph 31:

> *"In construing similar provisions in Aspin Estill [1987] STC 723, Donaldson MR(at p. 725) described the functions of the Special Commissioners in that case as being 'to look at the facts and statutes and see whether the assessment has been properly prepared in accordance with those statutes.' Everything in the TCA from the definition of the appeal ('against an assessment'), through to the grounds of appeal ('amount or matter in the assessment ... with which the chargeable person is aggrieved'), the focus of the Appeal Commissioners on an appeal ('overcharged by*

any assessment'), the orders they can make on an appeal ('abate or reduce the assessment') and the powers of compulsion conferred upon them ('evidence as respects an assessment') points to their jurisdiction being confined in precisely this way. Read together the provisions strongly suggest what is envisaged bys.933 and the supporting legislative scheme is an appeal against an assessment alone directed solely to whether the Inspector has properly reflected the statutory charge to tax in the assessment itself, with the Appeal Commissioners abating, reducing, letting stand or indeed increasing the assessment as appropriate in the light of the facts and law found relevant to that inquiry. It is in my view impossible to avoid the conclusion that had the Oireachtas envisaged that the Commissioners would have a jurisdiction extending outside these parameters and capturing the enforceability of arrangements collateral to the assessment, these powers would have been crafted and defined quite differently."

211. In summary, the Appeal Commissioner does not have the jurisdiction to create Irish law so as to apply common law made by the English High Court.

212. The Appellant is not entitled to agricultural relief by reason of not being a farmer for the purposes of CATCA, section 89 on the valuation date, namely, 9 October 2013 when the Transferors validly transferred their interests in the properties to the Appellant in accordance with section 64 LCLRA.

New ground of appeal

213. While the assessment in this case was raised on [******] July 20[******], the parties had engaged on the issue from August 2015, when the Respondents first indicated to the Appellant that she had failed to file a CAT return for the period 1 September 2013 to 31 August 2013. Therefore the first time the Appellant suggested that the property at [******] was agricultural property was almost six years later, in her submission of 9 July 2021.

214. The Appellant was at all material times advised by competent tax and legal advisors. It was the Appellant's own evidence that at the time of the transfer itself on 9 October 2013, she had been advised by [******] and [******], a CAT specialist.

215. The Respondents have repeatedly pointed out that the advice given by [******] in particular has never been provided in evidence and that [******] was not called by the Appellant to give evidence at the hearing of this appeal as to what precisely his advice to the Appellant was.

216. The Appellant's Notice of Appeal made on 14 August 20[******] expressly states that she received "non-agricultural property" comprised in Gift 3. The Appellant's Statement of Case dated 21 December 20[******] repeats that the Appellant received "non-agricultural property" comprised in Gift 3.

217. This Appellant first filed submissions on 23 December 2019, which again referred to a gift of "non-agricultural property". No mention was made in these submissions of [******] being "*agricultural property*". The Appellant filed updated submissions on 7 April 2021 and no mention was made of [******] being "*agricultural property*".

218. The hearing proceeded on 16 April 2021 (having been adjourned on 15 April) and resumed on 18 May 2021.

219. The entire tenor of the Appellant's submissions from her Notice of Appeal on 14 August 20[******], Statement of Case on 21 December 20[******], Outline of Argument on 23 December 2019 and 7 April 2021, her evidence on 18 May 2021 and the oral submissions made on her behalf on 16 April and 18 May was that she was gifted agricultural assets by her parents before she was gifted non-agricultural assets (a submission which in any event was not borne out in evidence) and that the test for agricultural relief under CATCA, section 89(2) was required to be satisfied only at a particular point in time, namely, after the receipt of the agricultural assets but before the receipt of the non-agricultural asset.

220. It was not until the Appellant's written submissions on 9 July 2021 that she asserted for the first time that [******] was in fact an agricultural asset.

221. The Appellant's witness statement stated that the submission that [******] was an "*agricultural asset*" arose following research by her brother in recent months. The Appellant's witness statement stated that "*it had not come to the attention of our previous advisors that this was our farmhouse*". This is a curious statement for the Appellant to make given that she was herself actively instructing her advisers prior to the transfer on 9 October 2013. The Appellant stated in her oral evidence that "*it never came up for discussion before, being honest, with any of our advisors*".

222. The Appellant never addressed how her advisors came to the conclusion that [******] was a non-agricultural asset in the absence of any such "discussion" on the issue or how the fact that [******] was a non- agricultural asset was an essential tenet of her case up to 9 July 2021.

223. It was clear from the Appellant's oral evidence in the course of the appeal that the transfer of the properties from her parents to her and her siblings was considered very carefully and so it is difficult to understand how [******] itself was not considered in detail by the Appellant and her advisors at the time. In this regard, there is a stark absence of evidence as to what the Appellant's advisers required and the Appellant has only presented her version of events.

224. As the Commissioner highlighted on 28 October 2021:

> *"As Ms. Duggan has already said, it is the responsibility of her advisors to have told her and they didn't and she would seem to be well able and capably advised at that time with the leading light [******] who I am aware of, I have never met the man, but I am aware of as a specific CAT specialist."*

225. In the absence of the advices received from [******] having been submitted to the Commissioner or [******] having given any evidence, his own view as to whether [******] was in fact an agricultural asset or not is unknown. It must be fairly assumed in the absence of such evidence that [******]'s view was that [******] was not an agricultural asset i.e. not a farmhouse.

226. The Commissioner also formed this view on 28 October 2021 where he stated:

> *"…so obviously whoever drafted this Notice of Appeal, they were obviously of the view that the farmhouse was not agricultural property?"*

227. The Appellant's ground of appeal is framed as one ground of appeal and that is how she presented her case up to July 2021.

228. The Appellant sets out only one ground of appeal in her Notice of Appeal as follows:

> *"The contention of the appellant is that on the basis of the correct interpretation of the wording of the Section she only had to satisfy the said farmer test immediately after taking the gift of the agricultural property and not throughout the whole day on which the property was gifted to her."*

229. The Notice of Appeal clearly then goes on to expand upon that ground of appeal by setting out a "*summary of the facts and the reasons for disagreeing with the Revenue Commissioners' assessment*".

230. In setting out the facts, the Appellant lists three gifts of property as follows:

"*Gift 1 – agricultural property*

Gift 2 – agricultural property

Gift 3 – non-agricultural property"

231. These are the facts upon which the Appellant's one ground of appeal is premised. At no point in the Appellant's Notice of Appeal does she state that she is entitled to the relief because she received only agricultural property. The Appellant's Notice of Appeal expressly says that she received two gifts of agricultural property and one gift of non-agricultural property.

232. The second paragraph of the "*facts and the reasons for disagreeing with the Revenue Commissioners' assessment*" at item no. 2 summarises what was the entire premise of the Appellant's case prior to July 2021, namely that (in the Appellant's submission), the taking of non-agricultural property after the taking of agricultural property meant she still met the 'farmer test' for the purposes of the relief at CATCA, section 89(2).

233. She confirmed as such in her oral evidence on 28 October:

"COMMISSIONER KENNEDY: And that is a very fair, Ms. [******], and I do appreciate your candour on that. So at the time you were drafting this document, you were firmly of the view that [******] was non-agricultural and your argument was a timing issue?

MS. [******]: Correct, yes."

234. Contrary to the Appellant's own evidence, it is now submitted that the Appellant was making a number of different "*contentions*" in her Notice of Appeal. It is difficult to follow these various *"contentions*" that are now being proposed, most especially in light of what was actually argued by the Appellant prior to July 2021.

235. In the first instance, even though the Appellant accepts that the three paragraphs after 'Contention 1' are described as the facts and reasons underlying her dispute of the assessment, she seeks to carve out the second of those facts and reasons as a discreet ground of appeal of its own, contrary to the natural way of reading of the statement itself.

236. The Respondent submits that 'Contention 2' is not a separate ground of appeal and the Appellant is now seeking to place a meaning on that sentence that was never there and a meaning that on her very own evidence she never intended.

237. Fundamentally, in addressing what the Appellant is now referring to as her separate contentions in her Notice of Appeal, the Appellant has failed to address what non-agricultural property she is in fact referring to as being comprised in Gift 3 or why she made any reference to it at all?

238. The Appellant's suggestion that the statement after "and" in her "Contention 2", namely "*and that this is not affected by the receipt of a separate gift of nonagricultural property later on the same da*y" is merely an "*additional claim/feature to the effect that Contention 1 is 'not affected' by a separate gift of non-agricultural property on the same day. This is merely a statement/observation that the claim for agricultural relief is not affected by a subsequent gift of non-agricultural property, should there be such a subsequent gift*."

239. What the Appellant appears to be submitting by this statement is that she was in effect, merely offering up her personal view as the provisions of the relief which apply to non-agricultural property, but which did not actually apply to her. This is quite an astonishing submission to now make and is wholly out of kilter with the case actually made by the Appellant herself prior to July 2021.

240. The Appellant made no concession as to the structure of this sentence, as is suggested in her submissions, but merely highlighted that there may have been some sympathy for the Appellant and the position she now finds herself in that had there actually been a 'full stop' instead of an 'and' in paragraph 2 but as this was not the case, it in no way assists the argument the Appellant was trying to make and correctly records the submission made as follows:

> *"I don't agree that 2 can now be carved up and looked at in isolation without referring to paragraph 1. Mr. Power is not at all addressing paragraph 1. If you were to come to this Notice of Appeal cold, you would look at it and say, there is one Ground of Appeal here she received. She says she is receiving two gifts of agricultural property, and one gift of non-agricultural property, and she is saying that it should not matter that she received non-agricultural property later on in the same day. If there was a full stop before the second and, I might have some sympathy for Mr. Power's argument, but there isn't. It is the one sentence. It is the one, it is all the one ground and two follows from one and cannot be looked at in isolation…"*

241. In particular, the Appellant's submissions now seek to distance herself from the clear wording of the Notice of Appeal whereby she states she received a gift of non-agricultural property. The Appellant's submissions state that [******] is "*not mentioned in the Grounds of Appeal at all*". This is an astonishing contention by the

Appellant. What then was she referring to when she referred to Gift 3 as being non-agricultural property?

242. The Appellant makes a further astonishing suggestion when stating:

> *"The reference to non-agricultural property does not include any detail in the Grounds of Appeal and the Respondents submissions in this regard are speculative."*

243. The Appellant appears to in effect to be criticising the Respondents for somehow missing the point when the entire case the Appellant made prior to July 2021 supports the Respondents' position, namely, that [******] was a farmhouse was never a ground of appeal. Moreover, the oral evidence given by the Appellant herself as to what she believed to have been stated in the grounds of appeal supports the Respondents' position. In the absence of the Appellant stating what non- agricultural property was comprised in Gift 3, it can only be taken to be [******].

244. It is also very difficult to marry the assertion by the Appellant in her submissions that she was making a number of contentions in her grounds of appeal when it was made on 14 August 20[******] with her submission that each of these new 'contentions' were consistent with the "*new evidence…that [******] is a farmhouse…*" . If the evidence that [******] is a farmhouse is new evidence, how then could it ever have been stated in the Appellant's Notice of Appeal in August 20[******]?

245. Whether or not a ground of appeal has in fact been stated in a Notice of Appeal is not some abstract question of interpreting the provisions of a contract and any such submissions by the Appellant are, in Revenue's submission, irrelevant. In particular, the Respondent's reliance on Analog Devices in this regard is misplaced. Here, there are not two commercial parties seeking to achieve different meanings from the one clause but one individual who has made an appeal and has given evidence as to what she believed as her one grounds of appeal.

246. The Appellant's efforts to also seek to apply the 'armchair principle', a principle which applies in seeking to interpret the terms of a will, is also misplaced. Such an approach is necessary when seeking to interpret a will because the person who drafted the will is deceased. That is clearly not the case here and the Appellant herself has given evidence as to what she says her one ground of appeal was. The Appellant is quite clear in her evidence that neither she, her family or her professional advisors considered [******] to be a farmhouse when making the appeal in 20[******] and that this approach only came to light in recent months.

247. Accordingly, it is the Respondent's position, as supported by the oral evidence of the Appellant herself, that *there is only one ground of appeal specified in the Appellant's Notice of Appeal, namely "that on the basis of the correct interpretation of the wording of the Section she only had to satisfy the said farmer test immediately after taking the gift of the agricultural property and not throughout the whole day on which the property was gifted to her".*

248. Section 949I(6) states:

> "*A party shall not be entitled to rely, during the proceedings, on any ground of appeal that is not specified in the notice of appeal unless the Appeal Commissioners are satisfied that the ground could not reasonably have been stated in the notice."*

249. Therefore, it follows that in order to admit the ground of appeal, the Commissioner must be satisfied that whether [******] was a farmhouse was something that could not "*reasonably have been stated in the notice*."

250. In considering whether or not it was reasonable to omit the ground of appeal, there is no restriction on the Commissioner considering the Appellant's state of mind at the time she prepared (with the help of her professional advisors) the Notice of Appeal. As has already been submitted on the Appellant's behalf, s949AC permits such a flexible approach by the Commissioner. While the parameters of s949I may be narrow, in that if a ground of appeal is not stated it cannot be subsequently relief upon, the Commissioner is entitled to satisfy himself whether such ground *"could not reasonably have been stated in the notice*" and there is no restriction placed on the manner such an inquiry should take.

251. It is clear at the time the Notice of Appeal was made that the Appellant did not believe that [******] was agricultural property and her ground of appeal was framed against that background. Moreover, the entirety of the Appellant's case was premised on the fact that the Appellant was gifted [******] which was non-agricultural property. The Appellant is now seeking to retrospectively interpret the grounds of appeal and should not be permitted to do so.

252. However, given what the Appellant is now terming her "new evidence", which is not in fact new evidence at all, it is clear that the submission the Appellant now wishes to make, that [******] was agricultural property, could have been included in her ground of appeal. The Appellant has given no sufficient reason as to why it was not so included and in circumstances where she was ably and comprehensively advised.

Is [******] a farmhouse?

253. Without prejudice to the Respondent's position that this is not an admissible ground of appeal, it is the Respondent's submission that the [******] is not a "*farm house of a character appropriate to the property*".

254. The definition of "agricultural property" in CATCA, section 89(1) stated at the time:

> *"agricultural land, pasture and woodland situate in a Member State and crops, trees and underwood growing on such land and also includes such farm buildings, farm houses and mansion houses (together with the lands occupied with such farm buildings, farm houses and mansion houses) as are of a character appropriate to the property, and farm machinery, livestock and bloodstock on such property."*

255. The term is not defined and there does not appear to be any Irish case law of assistance to the Commissioner.

256. The ordinary meaning of the word suggests that it is a house attached to the farm land (or at least, that can be accessed directly from the farm land) farmed by a farmer. That the house should be attached to the farm was stated by the Special Commissioner in *Rosser v IRC* [2003] STC (SCD) 311 wherein the dictionary definitions of 'farmhouse' were stated to be:

(a) 'the chief dwelling house attached to a farm'
(b) a house attached to a farm especially the dwelling from which the farm is managed'
(c) 'the farmer's house attached to a farm'" (Emphasis added)

257. It is not sufficient for the house at [******] to be merely attached to any farm, as seems to be suggested by the Appellant. It is not sufficient that it is attached to the farmlands owned by the Appellant's father, it must be attached to the Appellant's farmland.

258. The following factors support the contention that [******] is not a farmhouse and is therefore, non-agricultural property:

(a) The Appellant's lands are land locked ;

(b) The Appellant's only right of access to her lands is from the bungalow and not from [******]. A person who has access to her land does not have permission to access [******];

(c) The Appellant cannot access her lands from [******] and so it is difficult to see how the house at [******] could be determined to be the farmhouse to the "*particular area of farmland being farmed*", *IRC v Korner*.

(d) [******] was farmed by a legal entity being a partnership from June 2005 and a limited liability company from 2012 or 2013. The Appellant is not a farmer and had no involvement in the partnership or limited liability company.

(e) The effect of this is that the land the Appellant received in 2013 was farmed by a company. Very little information has been provided by the Appellant in relation to this company and moreover, the company itself seems to have no legal right to farm the Appellant's lands. Nor does the Appellant appear to receive any of the farm profits;

(f) The extent of the farming which is actually carried out on the Appellant's lands is not clear. The evidence of the Appellant's father seems to be that he only carries on part-time farming activities from May-November (6 months) when he holds approximately 100 heifer calves:

> *"Like you have to understand that we are people in our late 70's and we are slow to change, and we won't be changing, I suppose, so it is what we are doing all our lives, but it definitely in much a smaller scale, because there isn't much happening around our farm now since the cows left."*

(g) The earlier evidence of the Appellant's father was that the cows left in 2005 when they moved to [******];

(h) The Appellant agreed that [******] was in a housing estate which is not a house in keeping with the character of agricultural lands *(Dixon v IRC*);

(i) The various maps of [******] and those in Folio [******] show [******] to be in an urban area in the outskirts of [******] town;

(j) No evidence was given that the planning permission for [******] includes agricultural use or agricultural access. It certainly seems as though the residents of [******] would not tolerate such an arrangement. When asked by the

Commissioner whether, if [******] was ever sold, a builder could access the site from [******], the Appellant's father stated:

> *"Q. Okay, so if the family were ever going to sell [******], the access for a builder would be through [******] and through the bungalow, is that the only access points?*
>
> *A. Well you couldn't go through [******], the bungalow would be your only hope,*
> *because we have no access, we wouldn't get access out by the side of the road, number one, it wouldn't be wide enough, there is only 4m there.*
>
> *Q. Yes.*
>
> *A. And you would have the residents on top of your back anyway, but, no, there wouldn't be a hope of going out there. Our only hope at this point in time is to come out by the bungalow.*

(k) The Appellant's own evidence is that no one, including the Appellant, thought [******] was a farmhouse;

259. Accordingly, in the circumstances, it is difficult to see how "*the man on the (rural) Clapham omnibus*" who, as a matter of fact would have had to have been travelling on an urban bus through a housing estate in [******], would consider [******] to be a farmhouse. It is also difficult to see how the '*elephant*' test would be met when [******] is situated in a housing estate in urban [******].

260. Moreover, it is difficult for the Appellant to meet the test proposed in *Dixon v IRC* [2002] STC (SCD) 53 and described in *Lloyds TSB (personal representative of Antrobus*) [2002] STC (SDC)), namely that, "*one knows one when one sees it*" when neither [******], a CAT specialist, the Appellant, her family or Mr [******] recognised [******] as a farmhouse. Even if one looks at a picture of the house or takes a virtual walk outside of the house on google maps, there is no evidence at all of it being a farmhouse.

261. The Appellant seeks to rely on a number of different English cases none of which address the particular circumstances here whereby:

(a) the Appellant has a parcel of land which is landlocked;

(b) the Appellant's land is farmed (to the extent that it is farmed) by a legal entity which has no legal right to farm the land. At best, a legal entity "runs" the farm operated on the Appellant's land, the farm is not run by the occupants of [******]. Therefore, *Lindsay v CIR* is of no assistance;

(c) the legal entity has no right of residence in [******];

(d) the Appellant has no entitlement to the profit from the farming of the land;

(e) the Appellant has a remainder interest in a house in a housing estate on the outskirts of [******] town.

262. Therefore, it is difficult to see how the man on the rural Clapham bus would recognise [******] as a farmhouse when the Appellant, her family and her advisors themselves failed to recognise it as such.

Conclusion

263. The Appellant is therefore not entitled to agricultural relief by reason of not being a farmer for the purposes of CATCA, section 89 on the valuation date, namely, 9 October 2013 when the Transferors validly transferred their interests in the properties to the Appellant.

Analysis

264. The issues to be resolved in this appeal are:

Date of Gifts

(a) the date on which the Appellant took the gift of agricultural and residential properties from her parents and in what particular order;

Farmer Test

(b) whether the gift of properties taken by the Appellant on the Valuation Date are to be considered collectively at the end of the day or in isolation at the particular point in time on the taking of each gift for the purposes of determining the entitlement to agricultural relief pursuant to CATCA, section 89;

Grounds of Appeal

(c) whether the Appellant could rely on the notice of appeal dated 14th August 20[******] to argue that the property at [******] was a farmhouse and therefore agricultural property, and

Agricultural Property

(d) whether the property at [******] was a "*farmhouse*" and therefore "*agricultural property*".

Date of Gifts

265. There was an inconsistency in the evidence relating to the date on which the Appellant took the gifts of agricultural land and residential property. The Appellant's father gave evidence that on 10th October 2013 he had prepared the transfers with his solicitor [******] and signed the documents as presented by [******] but was unable to recollect in what particular order. Unfortunately the solicitor representing the Appellant's parents, [******], has since passed away and no representative from the firm of [******] Solicitors gave evidence.

266. The Respondent asserted that the date of the gift was 9th October 2013, the date the Appellant's solicitor, [******], collected the signed deeds of transfer from [******]. The Appellant's accountant, [******] stated in correspondence to the Respondent

dated 4th July 2016 that the date of the gifts were the 25th and 26th of October 2013. Furthermore, the Appellant's solicitor, [******] gave evidence that the date of the gifts was the 26th October 2013.

267. If the date of transfer of the agricultural and residential properties was 26th October 2013, I am accepting the uncontradicted evidence of the Appellant and her solicitor, [******], that the deeds transferring the agricultural land were signed by the Appellant in priority to the deeds for the residential property and for reasons outlined below, the Appellant would be entitled to agricultural relief pursuant to CATCA, section 89. However before confirming my interpretation of CATCA, section 89, it is necessary to consider the Respondent's submission that the date of the gift of agricultural and residential properties was the 9th October 2013, the date the deeds were signed by the Appellant's parents and collected by the Appellant's solicitor. The Respondent also submitted that as there was no evidence that those deeds were signed in the prescribed order, the Appellant has failed to discharge the burden of proof and as a consequence, not entitled to agricultural relief.

268. There is no dispute between the parties that the Appellant gave instructions to [******], the solicitor representing her parents, on 9th August 2013 to the effect that a period of time should elapse between the date of transfer of the agricultural properties and the transfer of residential properties. However for whatever reason, those instructions were not followed and no explanation was furnished at the hearing.

269. The Appellant submitted that it was clear that the deeds were to be executed in a particular order so there is a clear/manifest countermanding of there being a delivery of the deeds on 9 October 2013 and that the deeds did not become effective until such time as they were accepted by the Appellant which was when she signed the deeds in [******]'s office on 26th October 2013.

270. The Respondent argued that the Appellant received the gifts from her parents on 9th October 2013 when the Appellant's solicitor, [******], took possession of the deeds and therefore all of the requirements of section 64 LCLRA had been satisfied. The Respondent also relied on the judgment of Clarke J. in *Camiveo* and an assortment of academic commentaries in support of the assertion that the transfer took place on 9th October 2013.

271. The evidence of the Appellant's solicitor is relevant to the extent that he confirmed that from an "*administrative point of view because the Land Registry will accept transfers without the transferee executing where there is freehold title passing, so I*

wasn't overly concerned" and again when stating that from "*a conveyancing perspective the transferee need not execute.*"

272. The Appellant also confirmed that she was advised by [******] that she did not have "*to sign to receive"* the gifts and that the attendance at [******]'s offices on 26th October was to conform with formalities as it was for "*'good for file keeping' that there are signatures, even though they weren't legally necessary … so it was nice to have, is what I understood from it, to have the documents signed."*

273. Having considered the evidence, I agree with the Respondent's submission to the effect that the Appellant's solicitor accepted delivery of the deeds of transfer on 9 October 2013 on her behalf and the act of taking delivery of such documents confirmed the acceptance of the gifts and as a consequence all of the requirements of section 64 LCLRA had been satisfied. Contrary to the Appellant's submissions, there was no evidence that the Appellant had in some way countermanded a delivery of the deeds on 9 October 2013 to the extent that the deeds did not become effective until such time as they were accepted by the Appellant when she signed the deeds in [******]'s office on 26th October 2013.

274. Furthermore and contrary to the Appellant's submissions, I cannot accept that [******] could consciously override the specific advice of the tax expert and assume that there was no risk of an exposure to tax if the gifts of agricultural and residential property were taken within minutes of each other. Furthermore, not only did the application of the 'Farmer' test invoke significant divergent submissions of the experienced tax counsel, I spent a considerable amount of time deliberating on the issue. As such, I am of the view that while [******] may have executed the more valuable agricultural property in priority to the residential property, there was no evidence of any impediment or any reluctance of the Appellant to accept the gifts taken by her parents on 9th October 2013, the date [******] collected the signed deed from the offices of [******]. In fact and as noted above, the Appellant had accepted the gift and the purpose of signing the deeds was for "*good for file keeping".*

275. It is also relevant that once [******] took possession of the signed deeds on 9 October 2013, the Appellant was deemed to have become "*entitled in possession*" to the property and therefore within the charge to tax pursuant to CATCA, section 5. While it is entirely irrelevant that the Appellant chose not to sign the deeds until 26 October 2013, once the deeds were signed and delivered by the Appellant's parents and not disclaimed by the Appellant, the interest in the land passed and the Appellant became entitled in possession to the property.

276. Notwithstanding the absence of evidence that the deeds were signed by the Appellant's parents in the offices of [******], Solicitors, in the order that would entitle her to the Agricultural Relief, the Appellant sought to rely on a number of English authorities, specifically *Gartside*, in support of her assertion that I possess the jurisdiction to presume that the deeds were executed on 9th October 2013 in the order to give effect to the intentions of the Appellant and her parents.

277. However the Appellant's reliance on the *Gartside* judgement can be distinguished as in that case, a company issued 150 debentures of £100 each on the same day. They were issued in two lots, one lot being numbered 501–600 and the second lot 601–650. Each of the debentures contained a provision that it was to rank *pari passu* with the others, but the first group referred to the amount of £10,000 and the second to £5,000, this being the only difference in the respective provisions. Nevertheless, this suggested that they were independent issues. In determining that the debentures for £10,000 ranked in priority to those for £5,000, Fry J. at 768 page, was satisfied that:

> *"The debentures themselves do shew an evident intention that the £10,000 shall form one block and the £5000 another block, an intention, therefore, that the whole £15,000 shall not rank together. It only remains, therefore, to inquire whether the £10,000 is to come before the £5000, or the £5000 before the £10,000. But the debentures for the £10,000 were sealed before those for the £5000, and they bear the earlier numbers, and this, in my judgment, is evidence of an intention that the debentures for the £10,000 are to come before those for the £5000."*

278. As such in *Gartside*, the evidence of the company secretary and the debenture documents themselves numbered in consecutive order was sufficient to satisfy the Court that the debentures for £10,000 should rank in priority to those for £5,000. However in this appeal there was no evidence on the face of the deeds to indicate that the deeds should be executed in a particular order.

279. It is also clear that the instructions given to [******] on 9th August 2013 was that once the interest in the Appellant's interest in a "*bungalow*" was transferred to her parents:

> *"then transfer of [******] to all 4 children is to be undertaken. The transfer of the lands in, [******], [******] and the [******] can also be undertaken at this time.*
>
> *Once all the lands in [******], [******] and the [******] are completed and stamped, the transfer of the houses ([******]) can be undertaken."*

280. However and notwithstanding the advices from the tax advisor to transfer the agricultural property and residential property on different days, the Appellant's parents signed the deeds of transfer on the same day "*in no particular order*". As a consequence, the Respondent has determined that the Appellant did not qualify for Agricultural Relief and raised assessments for the collection of tax. It is also relevant that the Appellant in her evidence confirmed that legal proceedings have been initiated against her and her parent's solicitors for what I can only assume is her unexpected exposure to tax.

281. Therefore and as highlighted by the Respondent, the failure of the solicitors to act according to instructions cannot usurp factual circumstances and that the appropriate remedy for the Appellant and her family is to sue those solicitors for professional negligence. In the view espoused by Lord Esher, in *Heaven v Pender* [1883] 11 Q.B.D. 503, an exposure to such litigation arises:

> "*whenever one person is by circumstances placed in such a position with regard to another, that everyone of ordinary sense would at once recognise that if he did not use ordinary care and skill in his own conduct with regard to those circumstances he would cause danger or injury to the person or property of the other, a duty arises to use ordinary care and skill to avoid such danger*."

282. It is also relevant that the statutory functions of Tax Appeals Commission in relation to the conduct of an appeal by way of hearing pursuant to TCA, 949AH, is to adjudicate by way of examining the appellant and thereafter to consider the evidence in accordance with TCA, section 949AC. Thereafter the Appeal Commissioner, pursuant to TCA, section 949AK, is required to determine whether the assessment should be:

(a) reduced,
(b) increased, or
(c) where neither paragraph (a) nor (b) applies, determine that the assessment stand.

283. As such, the role of an Appeal Commissioner is to engage in a process of fact finding and thereafter apply the law to the facts. Furthermore in *Kenny Lee*, Murray J. concluded at paragraph 76 that the role of the Appeal Commissioners is to inquire into and make findings as to "*those issues of fact and law that are relevant to the statutory charge to tax*". Therefore I am satisfied that the Tax Appeals Commission is a fact finding tribunal with no statutory authority to make assumptions as to facts specifically when those facts are in dispute. Furthermore to engage in a process of assumption making could undermine the fundamental process of an adversarial hearing where an

opposing party is unable to test the veracity of events that had purportedly taken place. As such the Tax Appeals Commission is not a tribunal of equity but a statutory body responsible for the establishment of facts and applying the law to those facts.

284. It is of course unfortunate that the solicitor representing the Appellant's parents has passed away and therefore the Appellant's task of adducing evidence has been compromised. However no representative from the deceased solicitor's firm gave evidence.

285. Furthermore, tribunals are required to observe natural justice as espoused by Henchy J. in *Kiely v Minister for Social Welfare* (No. 2), [1977] IR 267.In that case, the Supreme Court held that an appeals officer in a social welfare tribunal was wrong to accept the hearsay evidence of a doctor, in the form of a written opinion, in rebuttal of the oral testimony of two other doctors when considering a claim for a death benefit under the Social Welfare Acts. In delivering judgment, Henchy J. said at pg 281:

> *"Where essential facts are in controversy, a hearing which is required to be oral and confrontational for one side but which is allowed to be based on written and, therefore, effectively unquestionable evidence on the other side has neither the semblance nor the substance of a fair hearing. It is contrary to natural justice."*

286. It is also relevant that tax legislation is highly prescriptive and imposes significant obligations on those seeking to invoke its provisions. This point is all the more relevant as the Appellant, in her submissions, impressed upon me the importance of such prescriptive interpretation in determining that statutory "*Farmer*" test in CATCA, section 89 is time specific.

287. In this regard and after having considered the parties submissions on this matter and for reasons outlined below, I agree with the Appellant that an individual's status as a *"farmer*" requires a consideration of the individual's property holding at the specific time during the day when each gift is taken.

288. However in seeking to rely on prescriptive legislation, the Appellant has not satisfied me that on 9th October 2013, the agricultural lands were transferred to the Appellant before the transfer of residential property. Therefore as the Respondent correctly submits, in the absence of evidence that the Appellant received gifts in a specific order, the Appellant is precluded from availing of the agricultural relief afforded by CATCA, section 89.

289. However if I am incorrect in my finding that the date of the gifts was 9th October 2013 or in the absence of evidence that the authority in *Gartside* entitles me to assume that the gifts of agricultural property were taken before the gift of the residential property, it is necessary to consider, the facts and law relating to the taking of the gifts on 26th October 2013 and whether the Appellant is entitled to relief pursuant to CATCA, section 89.

Farmer Test

290. As concluded above and in the absence of evidence to the contrary, I am accepting the evidence of Appellant and [******] that on the 26th October 2013, the first deeds signed by the Appellant were the agricultural property and thereafter she signed the deed in respect of the residential property on the basis that [******]'s normal practice was to transfer the more valuable properties first. As such, the issue to determine is whether the Appellant was a "*farmer*" on the "*valuation date … after taking the gift*".

291. There is no dispute between the parties that if there was a day between the gift of agricultural property and the gift of residential property, the Appellant would have been entitled to the CATA, section 89 relief. However as the Appellant received the gifts of the agricultural and residential properties on the same day, her entitlement to the relief was denied as the Respondent asserted that the gifts must be viewed collectively as opposed to a specific point in time and that at the end of the day, 80% of the Appellant's assets did not constitute agricultural property.

292. As such it is necessary to consider the specific wording of CATCA, section 89(2), as it applied in 2013 which was:

> *"Except where provided in subsection (6), in so far as any gift or inheritance consists of agricultural property -*
>
> *(a) at the date of the gift or at the date of the inheritance, and*
>
> *(b) at the valuation date,*
>
> *and is taken by a donee or successor who is, on the valuation date and after taking the gift or inheritance, a farmer,…"*

293. The definition of "*farmer*" is contained in CATCA, section 89(1) as "*an individual in respect of whom not less than 80 per cent of the market value of the property to which*

the individual is beneficially entitled in possession is represented by the market value of property in a Member State which consists of agricultural property".

294. Therefore, agricultural relief applies*, inter alia*, to "*any gift*" which consists of agricultural property taken by an individual *"who is, on the valuation date and after taking the gift …., a farmer".* The Appellant argued that that wording is time specific because the actual wording used in the Act provides for a specific time coordinate i.e. that time on the Valuation Date immediately after the gift has been taken.

295. The Respondent argued that if the term "*on the valuation date*" is to be interpreted as time specific, one could envisage difficulties where an assortment of qualifying and non-qualifying gifts are taken at different times during the same day as a donee's status as a farmer could change each time a gift is received. However for the Respondent's argument to succeed, the prescriptive wording "*and after taking the gift*" must be ignored. Such an argument contravenes the rules of statutory interpretation as clarified recently by McDonald J. in *Perrigo* when confirming at paragraph 74 that "*each word or phrase used in the statute should be given a meaning as it is presumed that the Oireachtas did not intend to use surplusage or to use words or phrases without meaning".*

296. I therefore agree with the Appellant that the wording used in the CATCA, section 89 provides for a specific time coordinate i.e. that time on the Valuation Date immediately after the gift has been taken. The wording expressly states that the timing for the application of the test is "*after the taking of the gift*" and this prescriptive wording qualifies the requirement to be a farmer "*on the valuation date*" to the point in time on the valuation date after the time when the gift has been taken. Furthermore, there is no wording in the legislation which adds the additional criterion that all benefits received on the valuation date should be considered collectively.

297. Furthermore the presence of the adjective "*any"* to describe the "*gift*", singular, can only refer to a specific gift. Therefore the combined effect of "*any gift*" taken by an individual "*after taking the gift*" fortifies my view that the statutory test in determining an individual's status as a *"farmer*" requires a consideration of the individual's property holding at the specific time during the day when each gift is taken.

298. In this regard and after having considered the parties submissions, I agree with the Appellant that an individual's status as a *"farmer*" requires a consideration of the individual's property holding at the specific time during the day when each gift is taken and agricultural relief would necessarily follow.

Grounds of Appeal

299. The Appellant became aware that [******], a property in which the Appellant was gifted an interest in expectancy, could be considered a "*farmhouse*" and therefore "*agricultural property*". As such, Counsel for the Appellant, on the 4th day of hearing, argued that the appeal is now irrelevant as all of the gifts received by the Appellant were "*agricultural property"* and therefore it was no longer necessary to consider the timeline of the Appellant's gifts. The Respondent countered that such an argument was a new ground of appeal and therefore pursuant to TCA, section 949I(6), the Appellant failed to identify this issue in her notice of appeal and therefore she should be precluded from relying on such a ground.

300. As such, it is necessary to consider the restriction imposed on the introduction of a new ground of appeal governed by TCA, section 949I(6) which states:

> *"A party shall not be entitled to rely, during the proceedings, on any ground of appeal that is not specified in the notice of appeal unless the Appeal Commissioners are satisfied that the ground could not reasonably have been stated in the notice."*

301. Notwithstanding the Respondent's objections, I determined that it was necessary to hear the Appellant's substantial arguments as to why the grounds of appeal were drafted sufficiently wide enough to permit the consideration of the [******] as "*agricultural property*" before I could determine the matter.

302. Therefore I permitted the Appellant and her father to give evidence on 18th October 2021 at which they described the property and the purposes for which it was used. Thereafter both the Appellant and the Respondent made detailed submissions at the hearing on 16th December 2021 on the meaning of a "*farmhouse*".

303. The Appellant argued that no new Ground of Appeal was introduced but rather the non-reliance on one ground. Therefore the Notice of Appeal encompassed a number of grounds, not just one and the grounds in relation claim for Agricultural Relief were set out in sufficient detail for the Commissioner to understand which clearly encompassed a claim for Agricultural Relief in respect of all gifts of agricultural property.

304. The Appellant also submitted that the wording of the Grounds of Appeal were much broader than the Respondent's very narrow interpretation and its wording should not be given an unduly narrow interpretation. The Notice explained that "*she was a farmer within the meaning of the legislation on the valuation date and after taking the gift of*

the agricultural property" and therefore such wording was capable of encompassing the property at [******] as agricultural property.

305. The Respondent argued that at no point in the Appellant's Notice of Appeal does she state that she is entitled to the relief because she received only agricultural property. The Appellant's Notice of Appeal expressly says that she received two gifts of agricultural property first and one gift of non-agricultural property thereafter. As such and contrary to the Appellant's own evidence, it is now submitted that the Appellant was making a number of different "*contentions*" in her Notice of Appeal.

306. In light of such I submissions, I reviewed the Appellant's ground of appeal as set out in the opening 2 paragraphs of her Notice of Appeal dated 14th August 20[******] which states:

> *"The Revenue assessment to CAT has been raised to disallow a claim for Agricultural Relief under section 89 (2) CATCA 2003 on the alleged grounds that the appellant was not a farmer "on the valuation date and after taking the gift" of the agricultural property.*
>
> *The contention of the appellant is that on the basis of the correct interpretation of the wording of the Section she only had to satisfy the Farmer test immediately after taking the gift of the agricultural property and not throughout the whole day on which the property was gifted to her."*

307. The remaining part of the Appellant's Notice proceeded to elaborate on the timing of the gifts of agricultural and non-agricultural property in support of her argument that she received the agricultural property before receiving the non-agricultural property and therefore she was a "*farmer*" and entitled to the "*agricultural relief*".

308. Therefore in order to admit the ground of appeal, I must be satisfied that whether [******] was a "*farm house"*, a matter that could not "*reasonably have been stated in the notice.*" Therefore I agree with the Respondent that at the time the Notice of Appeal was made, the Appellant did not believe that [******] was agricultural property and her ground of appeal was framed against that background. Moreover, the Appellant's original submissions were premised on the fact that the Appellant was gifted [******] which was non-agricultural property. As such, the Appellant is now seeking to retrospectively interpret the grounds of appeal. It is also relevant that neither I nor the Respondent were aware of any challenge to the classification of the Appellant's interest in expectancy as constituting "*agricultural property*" until the Appellant's most recent submission. My view is fortified by the Appellant's evidence on

28th October 2021, when she confirmed that she, her family and her professional advisors had not considered [******] to be a farmhouse when making the appeal in 20[******] and that this approach only came to light in recent months.

309. Finally from an objective reading of the Appellant's grounds of appeal, it is not possible to discern even a remote inference that the Appellant was challenging the Respondent's interpretation of "*agricultural property*". Furthermore the Appellant's substantial submissions clearly demonstrated that the Appellant had an arguable case to have [******] designated as "*agricultural property*" which could have been reasonably stated in the notice. Therefore pursuant to TCA, section 949I(6), there is a possibility that I am statutorily constrained from permitting the Appellant to rely on the "*farmhouse"* argument as a ground of appeal.

310. Notwithstanding the above and as ventilated at the hearing, it would appear that CATCA, section 89 provides an automatic entitlement to agricultural relief where the property is "*agricultural property*". As such while the Appellant failed to include the interest in expectancy as "*agricultural property"* in the grounds of appeal, it appears that no formal claim had to be made for "*agricultural relief*" notwithstanding the obligation to report the entitlement of the relief to the Respondent. The matter would be entirely different if the relief was denied in the notice of assessment issued by the Respondent if that assessment was not appealed within the statutorily prescribed 30 day period thereby rendering the assessment final and conclusive. As such as the Appellant appealed the notice of assessment within time and the relief automatically applied, it would be contrary to fair procedures to deny the Appellant the opportunity to make submissions on whether [******] was a "*farm house*" and "*agricultural property*".

Farm House Analysis

311. CATCA, section 89 defines "*agricultural property*" to include *"farm houses and mansion houses (together with the lands occupied with such farm buildings, farm houses and mansion houses) as are of a character appropriate to the property*". However as agreed by the parties there is no statutory definition of a "*farm house*" or judicial interpretation of that term by the Irish Superior Courts. Therefore recourse can be made to the jurisprudence from the United Kingdom.

312. The most recent decision that considered the characteristics appropriate to a *"farm house*" is *Charnley v HMRC* [2019] UKFTT 06050, in which the First Tier Tribunal undertook a comprehensive review of jurisprudence at paragraph 93 of the decision as follows:

"the principles encapsulated by Dr Brice in Lloyds TSB Bank Plc (Antrobus Deceased) v Inland Revenue [2002] UKSC SPC00336] October 2002):

> *"Thus the principles which have been established for deciding whether a farmhouse is of a character appropriate to the property may be summarised as: first, one should consider whether the house is appropriate by reference to its size, content and layout, with the farm buildings and the particular area of farmland being farmed (Korner); secondly, one should consider whether the house is proportionate in size and nature to the requirements of the farming activities conducted on the agricultural land or pasture in question (Starke); thirdly that although one cannot describe a farmhouse which satisfies the "character appropriate" test one knows one when one sees it (Dixon); fourthly, one should ask whether the educated rural layman would regard the property as a house with land or a farm (Dixon); and, finally, one should consider the historical dimension and ask how long the house in question has been associated with the agricultural property and whether there was a history of agricultural production (Dixon)."*

313. Therefore based on the evidence of the Appellant and her father, I am satisfied that [******], a property comprising 4 bedrooms, kitchen, washroom and office is indicative of a typical farm house notwithstanding that it does not resemble the sort of farm house in a James Herriot novel. It is therefore irrelevant that it has the appearance of a detached house in a suburban residential area as the distinguishing characteristics of [******] was that it was occupied by the Appellant's parents in which there was a utility room for the storage of wellington boots, outerwear and farming equipment, and a hand basin to wash hands before entering the kitchen. Within that property, the Appellant's parents stored work wear, animal medicine and some farming tools in the house and had an office downstairs where diaries, files and all relevant documents regarding the farm were maintained. Furthermore there was the access to the lands from the backdoor of [******] together with the wide vehicular access that connected the front of the house to the farm behind. I am also satisfied an *"educated rural layman*" would be satisfied that [******] was a dwelling occupied by a farmer and therefore a "*farm house*".

314. However as submitted by the Respondent, the ordinary meaning of the terms "*land occupied with such…. farm houses*" suggests that the house attached to the farm land or at least, that can be accessed directly from the farm land farmed by a farmer. This was confirmed in *Rosser v IRC* [2003] STC (SCD) 311 wherein the dictionary definitions of '*farmhouse*' were stated to be:

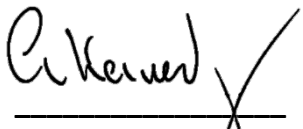
(a) the chief dwelling house attached to a farm
(b) a house attached to a farm especially the dwelling from which the farm is managed
(c) the farmer's house attached to a farm

315. As such the reference to *'together with the lands occupied with such …. farm houses*" extends the definition of agricultural property so as to embrace the land upon which it stands and therefore connotes going with the farm house. Therefore while I am satisfied that while [******] is a farmhouse, it is not "*agricultural property*" in accordance with CATCA, section 89 as the Appellant has no access to her lands from [******] and also she has no entitlement to occupy that property after taking the gift notwithstanding that she possess the remainder interest in the property.

316. It is also relevant that for CAT purposes, a gift arises when a person becomes beneficially entitled in possession to any benefit otherwise than for full consideration in money/money's worth. In the circumstances of the present case, the Appellant did not become beneficially entitled in possession to [******] on the date of the transfer/grant and therefore did not receive a gift for CAT purposes on the date of the transfer/grant. Therefore, the tax liability arises on taking the property when the Appellant's parents' interest in [******] ceases on their deaths.

Determination

317. The Appellant received the gift of agricultural property and residential property on 9th October 2013 however was unable to provide evidence to satisfy the prescriptive provisions of CATCA, section 89 that the agricultural property was received before the gift of residential property. As such the Appellant is not entitled to avail of agricultural relief afforded by CATCA, section 89.Therefore in accordance with TCA, section 949AK, the notice of assessment dated [******]th July 20[******] in the amount of €30,921 plus surcharge shall stand.



Conor Kennedy
Appeal Commissioner
25th February 2022

No request was made to state and sign a case for the opinion of the High Court in respect of this determination.