Equity, IKEA and Elder Financial Abuse

When fairness arrives flat-packed

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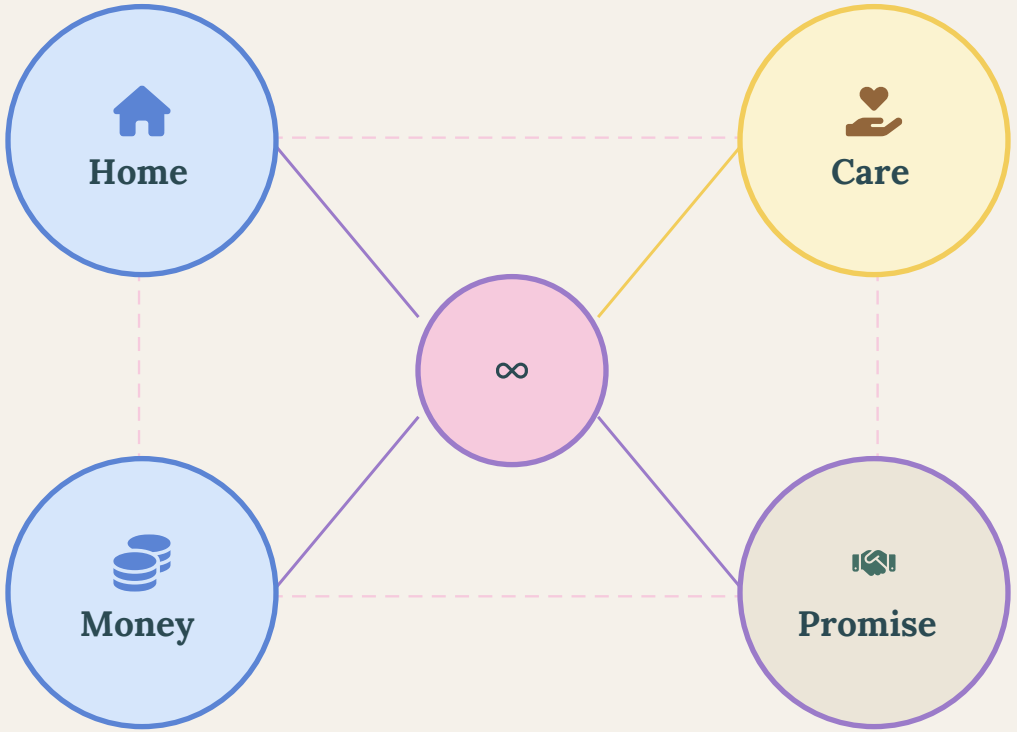
Today’s session

1. The family arrangement
2. Why equity should help
3. Why access is the problem
4. What reform could look like
5. What we can do differently

Written contract? What Written Contract?

The Family Arrangement

The arrangement is simple. The law is not.



Let’s test the instructions

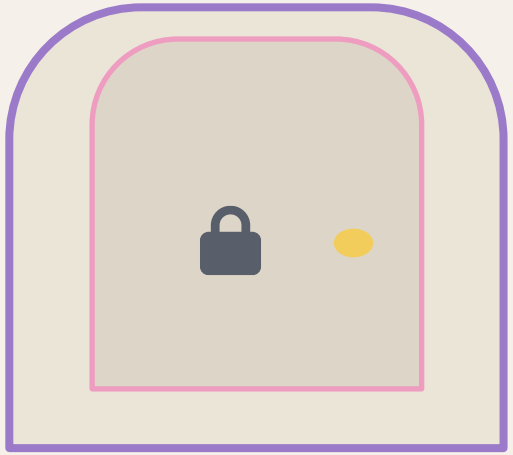
Mother sells her home.
Contributes $400,000.
Moves in with adult child.
Provides care and childcare.
Relationship breaks down.
She is told to leave.

“What would justice look like?”

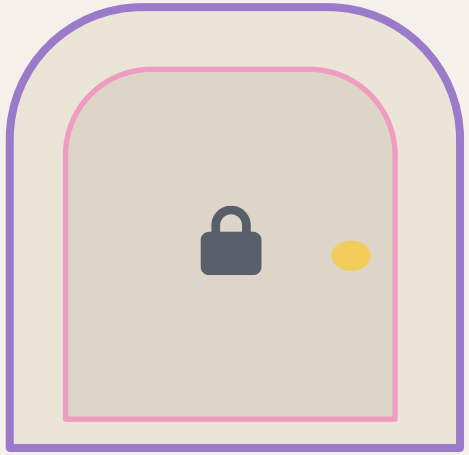
Compare Flourentzou v Spink [2019] NSWCA 315

So when I told my daughter,

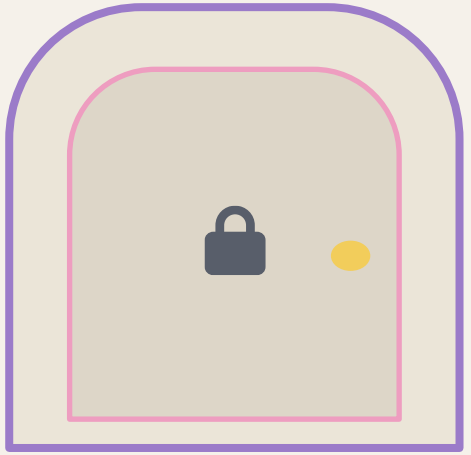
So Where Do People Go?



Not criminal



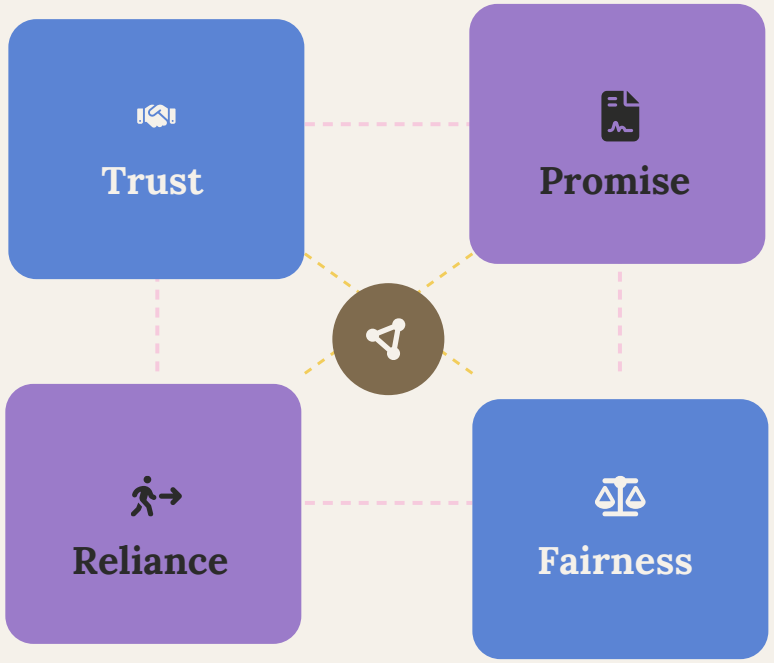
Not tenancy

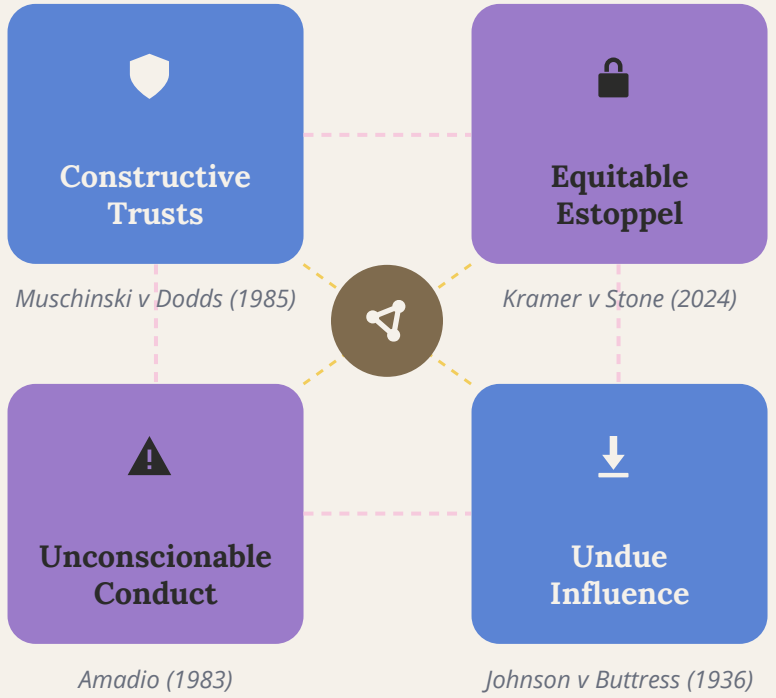


Not Minor Civil

Assembly Required (Allen key not included)

Equity should help





Source: [6]

Equity in plain English

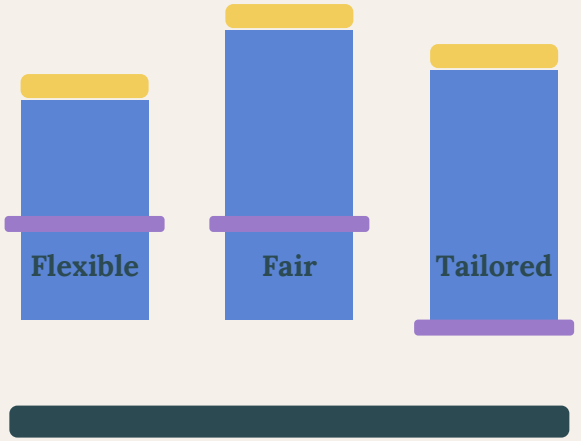
Equity asks:

- Was there trust?
- Was there a promise or expectation?
- Did someone rely on it?
- Did things become unfair?
- What remedy would restore fairness?

The plain English version of Muschinski v Dodds (1985) 160 CLR 583 and Kramer v Stone [2024] HCA 48

Equity's Promise

- Equity will not suffer a wrong to be without a remedy
- Equity follows the law
- Where there is equal equity, the law prevails
- He who seeks equity must do equity
- He who comes into equity must come with clean hands
- Equity aids the vigilant and not the indolent
- Equity is equality
- Equity looks to the intent rather than to the form
- Equity regards as done that which ought to be done
- Equity imputes an intention to fulfil an obligation
- Equity acts in personam



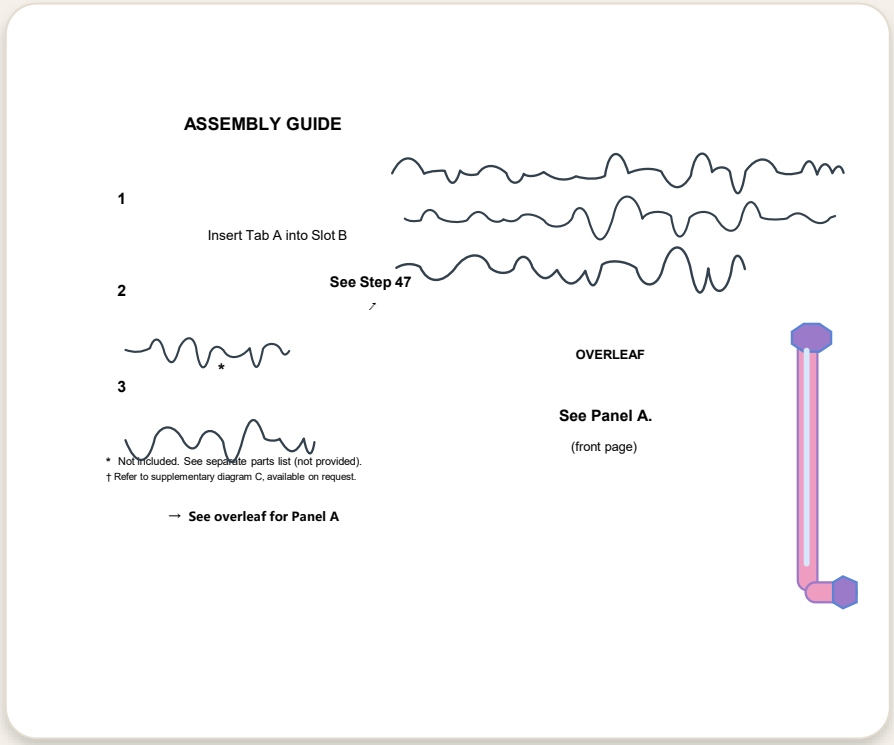
Equity's Foundation

The parts are sound. The question is assembly.

As seen in the catalogue.

I say, yes, my son.

The IKEA Problem



The parts exist.
The instructions don't work.

✓ Good principles

✓ Bad design

✓ Wrong user

→ what reform can fix

What Gets Lost?

Evidence

Missing pieces

Time

Too many steps

Money

Expensive upgrades required

Energy

This is exhausting!

Part B (should have been in the box)

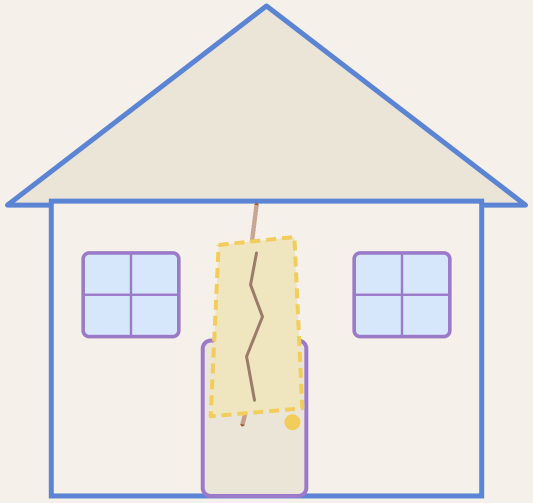
spare?

Morris v Morris [1982] NSWLR 61 · Wallis v Rudek [2020] NSWCA 207

[6]

because

Even Success Can Fail



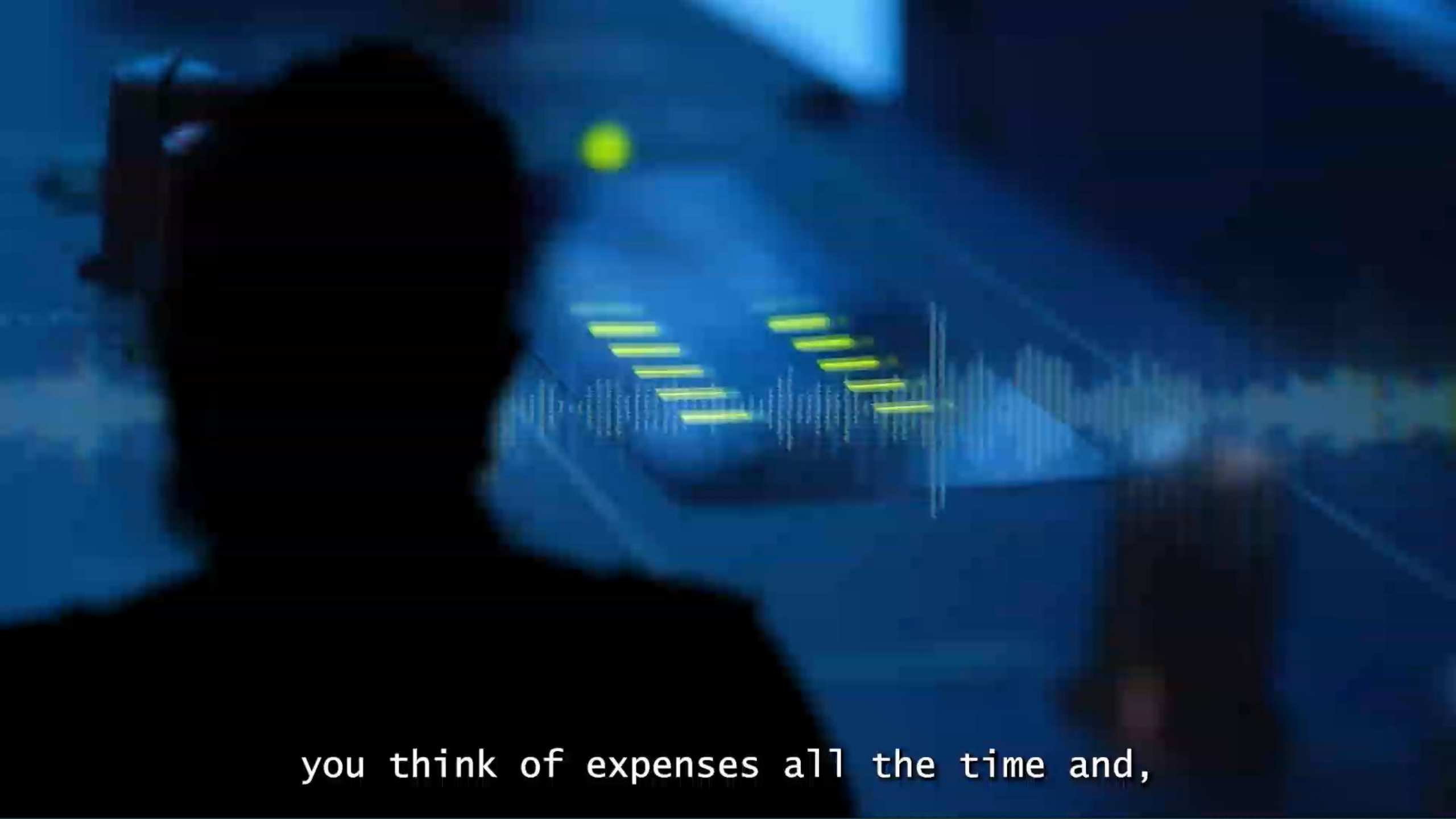
Thorne v Kennedy (2017) · Schwanke v Alexakis (2024)

> "A *remedy is not always repair.*"

Winning in court does not always mean getting your life back.

- **Late:** The judgment arrives after the damage is done.
- **Costly:** The "legal win"
- **Hard to enforce:** An order still requires money, process and energy to make real.
- **Not what was needed:** The person wanted safety, housing and stability.

> **Technically correct is not the same as usable.**


you think of expenses all the time and,

So what needs to change?

Not more fairness in theory.

More fairness in use.

What Should Justice Be Able To Do?

If we designed the system for the user, what would it look like?

Reform workshop

If you could change one thing tomorrow, what would it be?

Should these matters stay in superior courts?

What evidence should be enough?

What support should be built in?

Two practical reform directions

1

Move the assembly room

A lower-cost, specialist pathway.

2

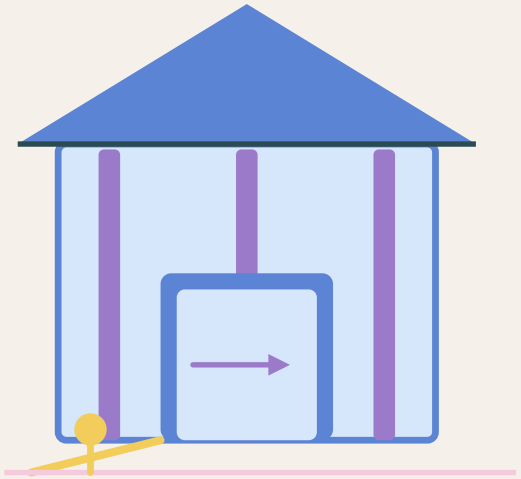
Rewrite the manual

Plain language principles that recognise, contribution, intention and unfair breakdown.

Reform Direction 1

Reform 1: Move the Assembly Room

A lower-cost, less formal forum could make equitable claims genuinely accessible.



An open door to justice

Specialist Tribunal
A dedicated forum with tailored procedures for elder financial abuse claims

Reduced Costs
Less adversarial formats and lower filing costs remove financial barriers

Support Persons Permitted
Advocates can accompany and assist older people through the process

Faster Decisions
Timely resolution that fits an older person's timeline, not the court's

Victoria's VCAT model offers a starting point worth examining seriously.

Reform Direction 2

Reform 2: Rewrite the Manual

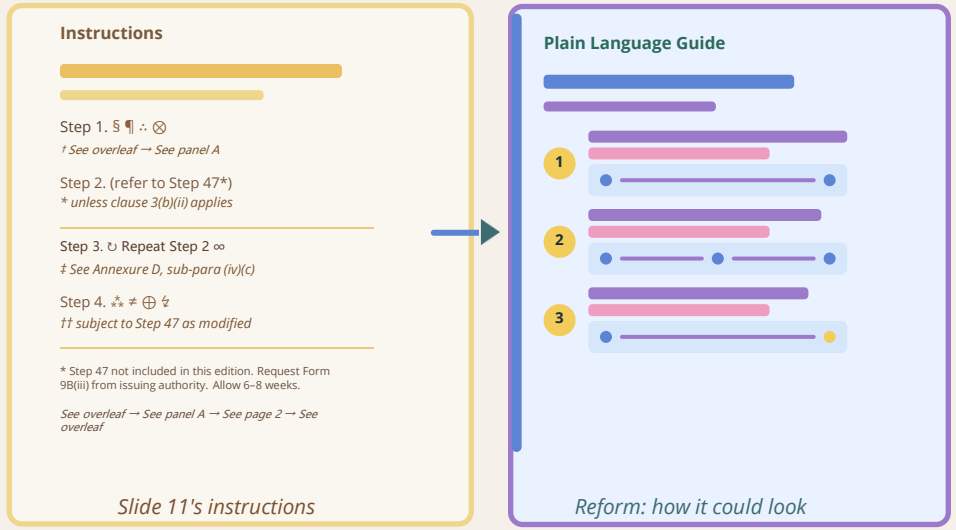
Codify key principles — turn decades of case law into a clear roadmap.

A BETTER QUESTION

Instead of ~~*"Can the person prove every element of an equitable claim?"*~~

Did the arrangement break down unfairly?

- **Codify key principles** — set out core equitable doctrines in plain-language legislation.
- **Presume undue influence** — a statutory presumption in parent / adult-child transactions.
- **Recognise care, not just cash** — treat caregiving as a genuine contribution.
- **Abolish the presumption of advancement** — treat transfers as resulting trusts unless a gift is genuinely proven.



Good principles need accessible pathways. Justice should not depend on mastering centuries of doctrine.

What I hope we take from this

- These arrangements often begin with trust.
- Breakdown can create serious injustice.
- Equity has useful tools.
- But tools are not enough if people cannot use them.

> **Fairness must be accessible.**

Closing

Justice should be usable.

The point of reform isn't to make equity less fair.
It's to make fairness usable.
The parts are already there.
We just need better instructions.

Accessible **Functional** **Built to last**