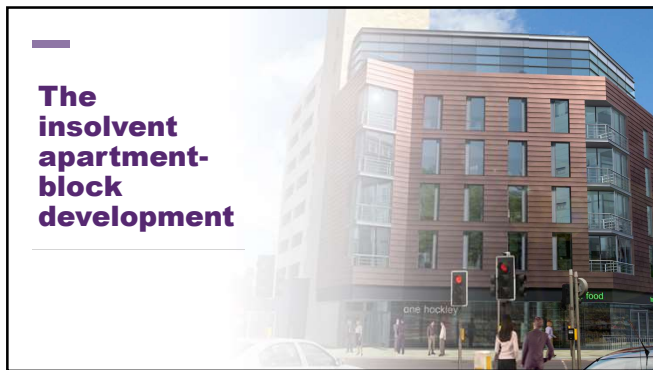




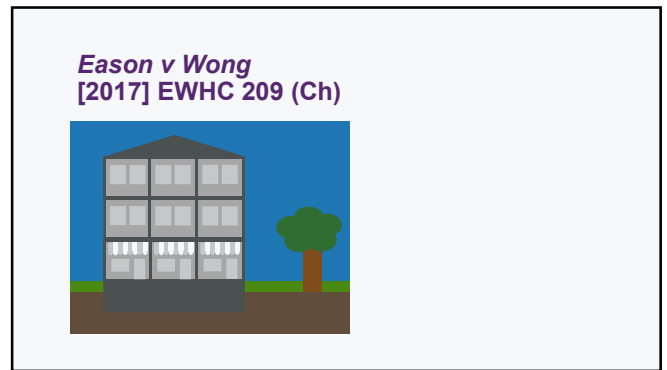
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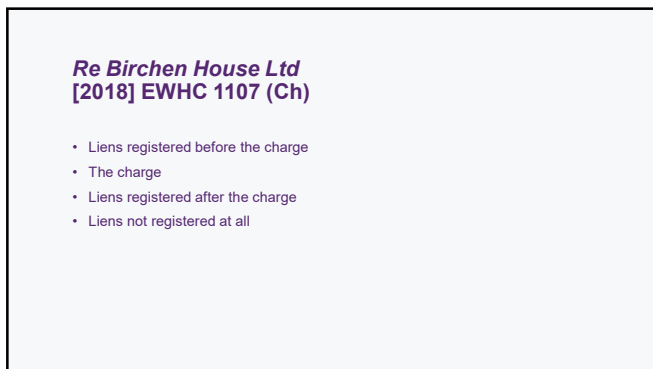
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### Equitable Accounting

"Equitable accounting is the process by which the financial burdens and benefits of land shared by co-owners are adjusted between them, often but not always by way of the division of the proceeds of sale. The process is **distinct** from an enquiry as to the extent of the parties' respective beneficial interests in the property."

Snell's Equity (34<sup>th</sup> ed.)

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### 1. The bankrupt's mortgage

- Mortgage in joint names
- Property in joint names
- Beneficially held 50/50

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"The payment of instalments due under the mortgage operates to relieve the property from the charge and gives rise to an equitable right of contribution by the co-owner who has not paid his due proportion of the instalments."

(*In re Gorman (A Bankrupt)* [1990] 1 WLR 616)

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### 2. The bankrupt's mortgage

- Mortgage in joint names
- Property in **bankrupt's** name
- Beneficially held 50/50

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"Questions of equitable accounting only arise once the extent of the parties' beneficial interests has been determined, since the requirement to account (where it exists) is a reflection of and derives from those beneficial interest" (*Wilcox v Tait* [2006] EWCA Civ 1867)

*Soloman v McCarthy* (CC) (2020) (unreported) – sole name case in which there was a deed of trust - claim for equitable account on basis of improvements failed for lack of evidence

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### 3. The bankrupt's mortgage

- Mortgage in joint names
- Property in **bankrupt's** name
- Beneficially held by **bankrupt**

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### Mortgage subrogation

- "(a) Has the defendant been benefited, in the sense of being enriched?
- (b) Was the enrichment at the claimant's expense?
- (c) Was the enrichment unjust?
- (d) Are there any defences?"

*Investment Trust Companies v Revenue & Customs Commissioners* [2017] UKSC 29; [2017] 2 WLR 1200 at [24].

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### 4. The bankrupt's mortgage

- Mortgage in **bankrupt's** name
- Property in **bankrupt's** name
- Beneficially held by **bankrupt**

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### The segregated fund



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### Quistclose trusts

"A trust may arise where one person, A, advances money to another, B, on the understanding that B is not to have the free disposal of the money and that it may only be applied for the purpose stated by A."

Snell's Equity (34<sup>th</sup> ed.)

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### *Deluxe Property Holdings Ltd v SCL Construction Ltd* [2020] EWHC 3354 (TCC)

- Deluxe engaged SCL to carry out building work
- SCL charged 20% VAT
- SCL accounted to HMRC for the VAT

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### *Deluxe Property Holdings Ltd v SCL Construction Ltd* [2020] EWHC 3354 (TCC)

- VAT should not have been charged
- SCL applied for a refund
- SCL undertook to refund its customers and not to "use the credit for any other purpose"

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***Deluxe Property Holdings Ltd v SCL Construction Ltd***  
**[2020] EWHC 3354 (TCC)**

- Quistclose trust?

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***Deluxe Property Holdings Ltd v SCL Construction Ltd***  
**[2020] EWHC 3354 (TCC)**

"a payment made by HMRC for the sole and express purpose of allowing SCL to reimburse the mistakenly charged VAT to Deluxe and was clearly intended to restrict SCL's freedom of disposal so that the credit was to be exclusively used for the stated purpose without set-off"

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***Re BBY Limited***  
**[2022] NSWSC 29**

- Ficema lent BBY \$3m
- No written agreement
- Purpose was to deal with a "problem" with a trade
- No promise not to use the money for any other purpose

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***Re BBY Limited***  
**[2022] NSWSC 29**

- Quistclose trust?

22

***Re BBY Limited***  
**[2022] NSWSC 29**

- Quistclose trust?

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**The disclaimed property**



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### Basic principles...

- Disclaimer of onerous property by a liquidator under s 178 IA
- When a company is dissolved its property is deemed to be bona vacantia and vests in the Crown: s 1012 CA 06

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### Vesting orders

- Where liquidator has disclaimed under s 178, it is possible to apply for a vesting order under s 181 IA
- Where property has been disclaimed under s 1013, it is possible to apply for a vesting order under s 1017 CA

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### Property held on trust

- Expressly excluded from scope of 1012
- The legal estate is not determined.
- Beneficiaries may apply for a vesting order under s 44 of the Trustee Act 1925 joining the Attorney General as the Defendant: see Re Strathblaine Estates Ltd [1948] Ch 228

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### Options & foreign companies

- UBS Global Asset Management (UK) Ltd v Crown Estate Commissioners [2011] EWHC 3368 (Ch)
- Claimant sought to exercise an option to purchase a freehold granted by a BVI company, but discovered it had been struck off the register and dissolved.
- Solution: s 181 Law of Property Act 25

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Law of Property Act 1925, s 181(1):  
Where, by reason of the dissolution of a corporation either before or after the commencement of this Act, a legal estate in any property has determined, the court may by order create a corresponding estate and vest the same in the person who would have been entitled to the estate which determined had it remained a subsisting estate.

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