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Undue Influence and Property Charges
Waller-Edwards v One Savings Bank Plc [2025] UKSC 22

Rebekah Batt

The issue:

What test should be applied to decide whether the bank (or other creditor) is put **on inquiry** *by a 'hybrid' transaction?*

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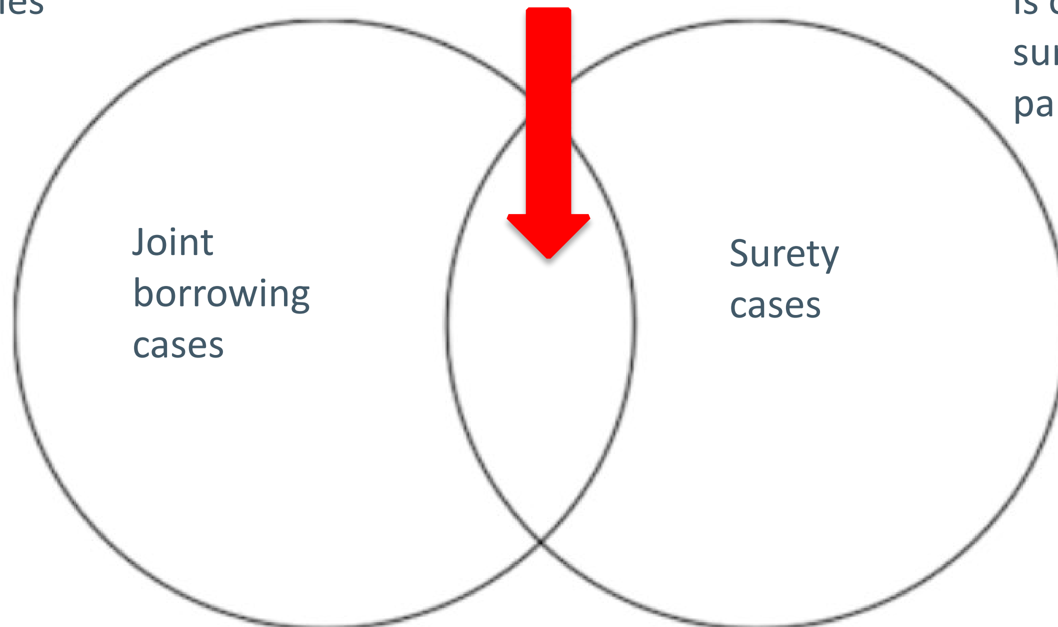
What is a hybrid transaction?

Hybrid transactions = the middle ground
Where the loan is partly for their joint benefit and partly for either party's sole benefit and therefore *apparently* to the disadvantage of the other

Loans or credit which are for both parties' joint benefit

The vulnerable partner is offering to stand surety for the other party's debts



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The Basics

- Why is there a distinction between surety cases and joint borrowing cases anyway?
- What is the lender required to do once ‘on inquiry’?
- What happens if the lender does not meet that obligation?

The Case Law

- *O'Brien & Pitt*
  - Lord Browne-Wilkinson recognising some development in the law was necessary in order to protect vulnerable parties;
  - *O'Brien:* bank on inquiry vs *Pitt:* bank not on inquiry;
- *Etridge No 2*
  - Lord Nicholls of Birkenhead:

'a bank is put on inquiry whenever a wife offers to stand surety for her husband's debts'

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The Facts (briefly)

- Appellant ('A') and Mr Bishop ('Mr B') in a relationship from 2011 to 2014;
- In 2011, A was emotionally vulnerable but financially secure;
- Mr B was a builder and developer;
- Mr B persuaded A to 'invest' savings and equity from her property into Mr B's development (a property known as 'Spectrum');
- The Bank (Respondent) lent funds jointly to A and Mr B secured against Spectrum;
- A and Mr B separated, the mortgage fell into arrears.

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The Competing Arguments

The Appellant Mrs Waller-Edwards ‘The Bright Line Test’	The Respondent The Bank ‘The Fact and Degree Approach’

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First Instance

- Findings of undue influence – not challenged;
- Bank knew that the relationship was a non-commercial one;
- Bank also knew that £39,500 of the loan would be used to repay Mr B's existing debts;
- The decision:

'The question in the end is whether the fact that the remortgage was, to a minor extent, in part to repay Mr B's credit debts should have put the Bank on inquiry. This is a matter of ***fact and degree*** *but in the end, I do not accept that the fact that just over 10% of the total borrowing was to go to Mr B's credit debts, tips this case into one akin to a surety case'*

First Appeal

- Considered that the *O'Brien* principle encompassed a partial surety case.

Court of Appeal

- Dismissed the appeal;
- Held nothing in *Etridge No 2* implies a third test for hybrid cases;
- Bright line test would introduce further arguments re non-trivial;
- Not easy for banks to know true benefit of debts;
- Bright line test was unduly onerous.

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The Court's Decision

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The Court's Decision

- Bright line test;
- The need for certainty;
- The level of risk;
- Not a question of benefit;
- Not a third test;
- Simplicity of operation;
- Supported by academic analysis.

What does this mean?

- A creditor is put on inquiry in any non-commercial hybrid transaction where, on the face of the transaction, there is a ***more than de minimis element of borrowing which serves to discharge the debts of one of the borrowers and so might not be to the financial advantage of the other***.
- Transaction must be viewed from the bank's perspective;
- It should then be treated as surety transaction and creditor placed on inquiry.

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What does this mean in practice?

- Obligations on lenders will increase;
- Costs will increase;
- Historic transactions to be reviewed and will be open to challenge.

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Thank you.

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