

Voidable Transactions

The Logic & Philosophy



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The Logic of the Voidable Transaction Regime

There has been a lot of media attention recently about the voidable transactions regime and a lot of misinformation concerning the risks creditor's face when dealing with insolvent companies.

This purpose of this booklet is not to justify the voidable transactions, but to explain it.

The only way to truly explain the regime, and to understand how to protect yourself from being caught by it, is to understand the background and logic behind it.

This booklet goes back to the historical origins of the voidable transaction regime and looks at some of the recent controversies surrounding it.

For some readers this will be too much information so feel free to skip to page (22) and read the current definition of how to calculate a voidable transaction and the defences available to a creditor on the receiving end of a liquidator's demand.



A Brief History; Statute 13 of Elizabeth

The history of voidable transactions, as with almost all of New Zealand's commercial insolvency laws and customs, lies in English personal bankruptcy.

But even before we get there let's bounce back to Queen Elizabeth the First.

Prior to and for several centuries after her reign there were sanctuaries that the Royal Writ did not extend. This included church land but was not limited to it. It was common for debtors to enter into ethically dubious but legally correct contracts to secure their own assets and then retreat to these sanctuaries, safe from the reach of their aggrieved creditors and the perils of debtors prison.

A typical such contract would be for the debtor to sell his assets to the church for some nominal amount in return for the church agreeing to pay him a pension as he lived in seclusion on their property, or worse, France.

The property was therefore no longer in the possession of the debtor and safe from any legal action by his creditors yet he retained the effective use of it and derived a benefit from it.

In response Elizabeth's parliament passed what was known at the time as Statute 13 of Elizabeth but is known to us today as the Fraudulent Conveyances Act 1571.

This awkwardly worded piece of legislation, which was not repealed until 1953 in New Zealand when its clauses were incorporated into clause 60 of the Property Law Act, declared that dishonest contracts could be set aside. Thus, debtors who engaged in absurd contracts clearly designed to defeat their creditors could find those contracts set aside.

From this logic was evolved the law surrounding voidable transactions.



Statute 13 of Elizabeth Passed in the year of our Lorde 1571

For the avoiding of feigned, covinous and fraudulent feoffments, gifts, grants, alienations, bonds, suits, judgments and executions, as well of lands and in tenements, as of goods and chattels, more commonly used and practised in these days than hath been seen or heard of heretofore; which feoffments, gifts, grants etc have been and are devised and contrived of malice, fraud, covin, collusion or guile to the end, purpose and intent to delay, hinder or defraud creditors and others of their just and lawful actions, suits, debts, etc; not only to the let or hindrance of the due course and execution of law and justice, but also to the overthrow of all true and plain dealing, bargaining and chevisance between man and man, without the which no commonwealth or civil society can be maintained or continued.

Be it therefore declared, ordained and enacted, that all and every feoffment, gift, grant, alienation, bargain and conveyance of lands, tenements, hereditaments, goods and chattels, or any of them, by writing or otherwise, and all and every bond, suit, judgment and execution at any time had or made to or for any intent or purpose before declared and expressed, shall be from henceforth deemed and taken, only as against that person or persons, his or their heirs, successors, executors, administrators and signs of every of them, whose actions, suits, debts, etc; by such guileful, covinous or fraudulent devices and practices, as is aforesaid, are, shall or might be in anywise disturbed, hindered, delayed or defrauded, to be clearly and utterly void, frustrate, and of none effect, any pretence, color feigned consideration, expressing of use or any other matter or thing to the contrary notwithstanding.

Provided that this act or anything therein contained shall not extend to any estate or interest in land, tenements, hereditaments, leases, rents, commons, profits, goods or chattels, had, made, conveyed or assured, or hereafter to be had, made, conveyed or assured, which estate or interest is or shall be, upon good consideration and bona fide, lawfully conveyed or assured to any person or persons, or bodies politic or corporate, not having at the time of such conveyance or assurance to them made any manner of notice or knowledge of such covin, fraud or collusion as is aforesaid.

Property Law Act 1952

Section 60 Alienation with intent to defraud creditors

- (1) Save as provided by this section, every alienation of property with intent to defraud creditors shall be voidable at the instance of the person thereby prejudiced.
- (2) This section does not affect the law of bankruptcy for the time being in force
- (3) This section does not extend to any estate or interest in property alienated to a purchaser in good faith not having, at the time of the alienation, notice of the intention to defraud creditors

Property Law Act 2007

Subpart 6—Setting aside of dispositions that prejudice creditors

344 Purpose of this subpart

The purpose of this subpart is to enable a court to order that property acquired or received under or through certain prejudicial dispositions made by a debtor (or its value) be restored for the benefit of creditors (but without the order having effect so as to increase the value of securities held by creditors over the debtor's property).
(See sections 344 through to 350)

The First Voidable Transaction?

The first known actual voidable transaction involved a farmer in Hampshire, a Mr Pierce, and was heard in 1601 in the final years of Elizabeth's reign.

Pierce had a flock of sheep worth £300. He was indebted to Twyne for £400 and another creditor for £200. The second creditor went to the Sherriff to obtain a writ to seize the sheep. Once the Sherriff arrived he found Pierce in possession of the sheep but claiming that the sheep were no longer his.

Pierce had sold the sheep by deed to Twyne in return for Twyne forgiving his £400 debt. Pierce, however, remained in possession of the sheep and continued to shear them and maintained his branding on them.

Twyne claimed before the court that he was a bona fide purchaser for value and not for inadequate consideration, which would have been captured by the Fraudulent Conveyances Act.



Star Chamber Chief Justice Sir John Popham presided over the Twyne case

The Star Chamber disagreed.

Headed up by Chief Justice Sir John Popham the Chamber decided that the contract was subject to the Fraudulent Conveyances Act for six reasons:

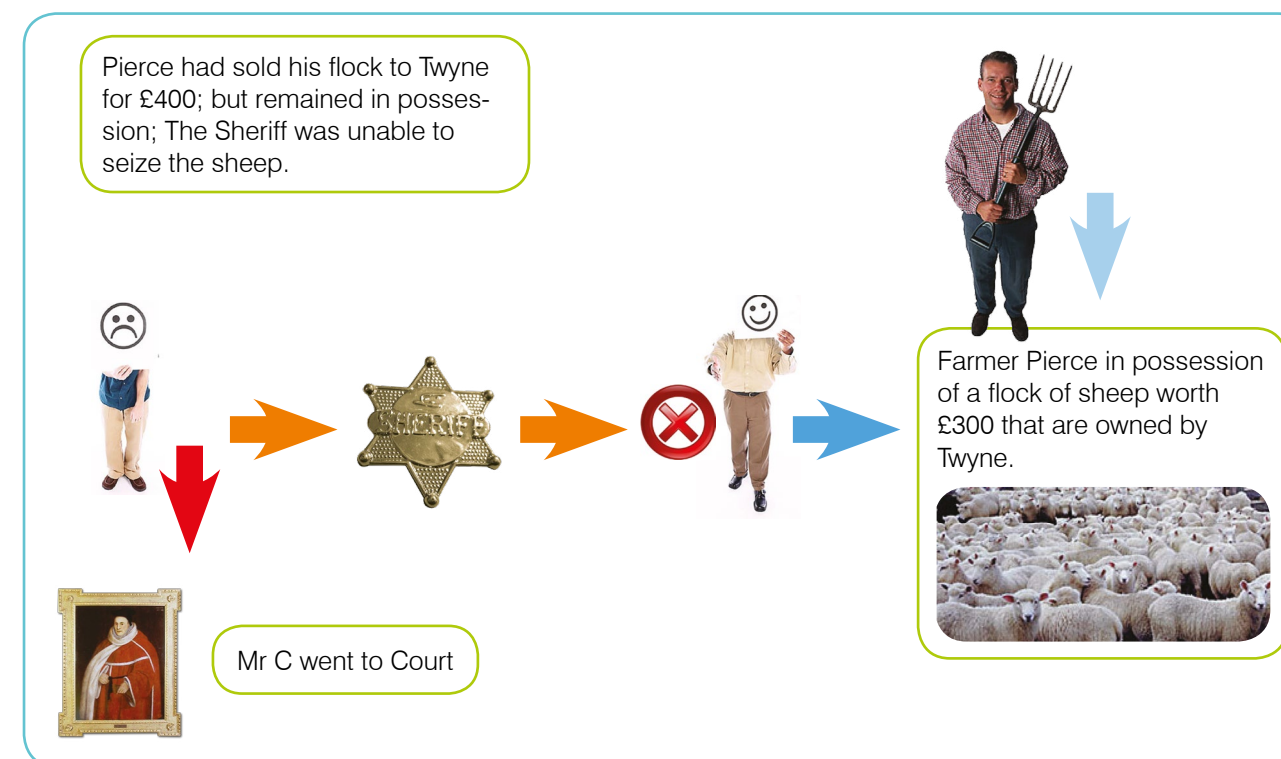
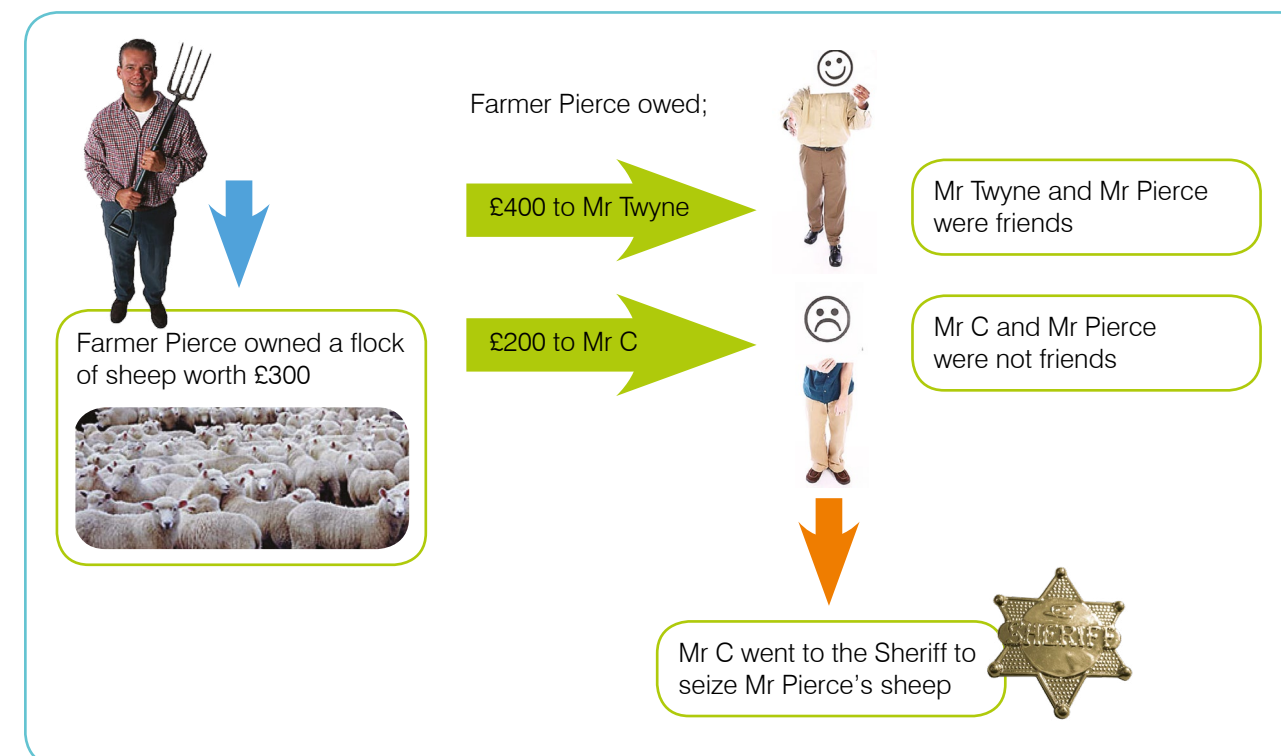
- The transaction had the signs and marks of fraud
- Pierce remained in possession of the sheep and used them as his own
- The transaction was made in secret
- It was made pending the writ by the second creditor
- There was a trust between Twyne and Pierce and this trust was the cover for a fraud
- The deed stated that the trade was made honestly, yet such a clause lends itself to suspicion.

If this contract was to be relied on to defeat the second creditor, it must be for valuable consideration. The forgiving of old debt in this fashion was not considered sufficiently valuable to allow for the defeat of the second creditor's interest.

The contract was set aside. Sadly, history does not record what transpired after this decision, but four hundred years on the case still resonates.

The legacy of the Twyne case is that courts seek to look for markers of fraudulent contracts; some of the more obvious ones are;

- Cash payments being made
- Assets remaining with the debtor after the sale; this is especially the case with trusts
- The debtor retaining some benefit in the asset after the transaction
- Assets transferred to someone not considered arms-length from the debtor
- The contract being done in secret or in haste
- The debtor being left with few or no assets after the transaction(s)
- Inadequate consideration
- Inadequate or no documentation
- The transaction occurring in the face of litigation or looming insolvency



Being Just Before Being Generous 1868

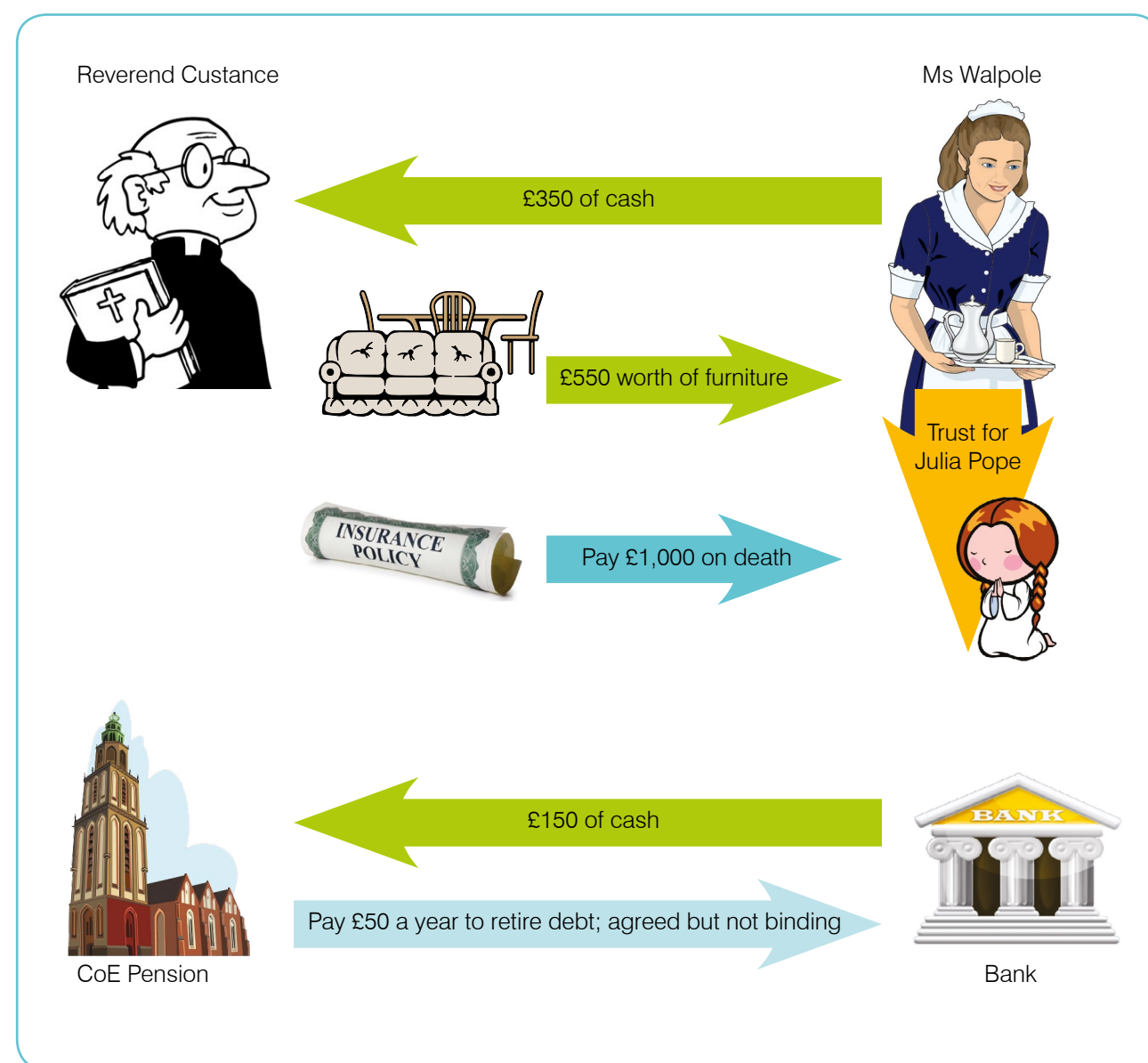
The curious case of Reverend Custance and his accommodating housekeeper added to the body of case law.

On the 3rd of March 1863 Reverend Custance, then 73, held the following assets:

	Asset Value
Household furniture	£ 550
Life Insurance Policy	£1,000

He also was entitled to a benefice, or pension, from the Church of England and a life-annuity; together totalling £1,000 per annum. A nice little sum for a retired clergyman but not enough to settle his immediate debts which included an overdraft of £339 to his bank.

The good Reverend was asset rich, cash poor, and his maker was becoming impatient. Faced with these problems, Custance did a deal with his housekeeper.



Custance was forced to borrow £350 from his housekeeper Ms Walpole, who in turn took ownership of the household assets, turning the loan into a transaction.

In addition, Ms Walpole established a trust for her daughter, Julia Pope, and the good Reverend gifted to the trust his life insurance policy.

Rev Custance also borrowed £150 from his bank, in return for his lawyer taking £50 from the benefice per annum to pay down the debt.

The Reverend died in 1868 and a tradesman, Freeman, who had supplied him services after the settlement in 1863 challenged the disposition of both the furniture and the life insurance policy.

Freeman was successful.

The court determined that even if the transaction was not fraudulent it was covered by the Fraudulent Conveyances Act and could be set aside if the debtor's creditors were no longer able to be paid once the transfer was completed.

To quote from the judgement:

If a person owing debts makes a settlement which subtracts from the property which is the proper fund for the payment of those debts, an amount without which the debts cannot be paid, then, since it is the necessary consequence of the settlement (supposing it effectual) that some creditors must remain unpaid, ... the jury ... must infer the intent of the settlor to ... defeat or delay his creditors, and that the case is within the statute.

But the best line from Freeman v Pope, which is still quoted in New Zealand case law today;

The principle on which the statute of 13 Elizabeth proceeds is this, that persons must be just before they are generous, and that debts must be paid before gifts can be made.

Fraudulent Conveyances to Insolvent Transactions; From Intention to Effect

The rise of the terminology insolvent transaction and voidable transaction has been relatively recent, arising only in the last fifty years, but the change of emphasis was driven by the Freeman and Pope case.

The courts did not feel that Custance had been fraudulent or acted with an intention to defraud his creditors, but that the effect of his actions achieved exactly that.

At the time of completing his transaction he was insolvent and even though Freeman was not a creditor at the time of the transition he was disenfranchised as a result of Custance gifting away his assets.

The solvency of Custance at the time of the gifting was the deciding factor. Had, after the gifting, Custance been solvent, then the transactions would not have been set aside. Because he was not, he was deemed to have been generous when he was not in a position to be.

Freeman v Pope changed the landscape away from fraudulent transactions and swung the focus to merely insolvent ones, of which fraudulent transactions are a subset. The language did not change for nearly a century but judicial thinking had.

The Philosophy of the Voidable Transaction Regime

The initial legislation and court decisions were reactions to the activities of unscrupulous actors in the commercial world; but as the case law and legislation developed a philosophy evolved. This was largely unconscious and not always consistent, as can be seen in the clash between the pari passu and the preference regime, but let's take a look at what has been driving the thinking of both the courts and legislators.

The Pari Passu Principle

At the heart of Anglo-Saxon insolvency law is the Pari Passu principle; often translated as Equal Step, it means that all creditors should share equally in the distribution of the failed creditor's estate.

This is easy to understand when we are looking at a bankrupt individual or a failed company; creditors are treated equally and the assets distributed evenly.

Ensuring equality between creditors is a driving motivation behind the insolvent transaction regime.

Secured creditors are considered to be outside the scope of an insolvency regime; they have their own rights and are able to recover their position separately from the bankrupt's estate.

The Corruption of Pari Passu by Preferential Creditors

Happening alongside the development of insolvent transaction case law was an entirely separate body of thought surrounding how the assets of a bankrupt should be dealt with.

The courts and parliament developed a theory of preference, whereby certain creditors should be paid ahead of others; the different classes of creditors.

At the head of the class of classes were staff for unpaid wages, thereafter was Her Majesty's Customs and Revenue followed by unsecured creditors.

In reaction some secured creditors took a debenture over the entire company; meaning when it failed they were able to take everything that the company owned, leaving nothing for any other creditor.

Parliament responded by mandating that certain assets; specifically stock and debtors, were reserved for preferential creditors, being staff and some types of taxes. The courts also took the view that the recovery of a insolvent transaction was not an asset of the secured creditor, but was something that could be recovered by the liquidator to benefit the preferential and unsecured creditors.

However, this left the unsecured creditors out in the cold, because liquidators would unwind an insolvent transaction and use the money to pay preferential creditors, meaning that the unsecured creditors were cut out of any Pari Passu distribution if the value of the preferential creditors were greater than any recovery.

Insolvency Happens Before Bankruptcy or Liquidation

There is little legislative difference in New Zealand between a bankrupt individual or a liquidated company when it comes to insolvent transactions. The idea and concepts behind either have the same historical origins and the case law precedents are mostly interchangeable.

The Pari Passu principle applies from the point of insolvency, not liquidation. So, if a company falls into liquidation and its assets have been stripped out prior to the liquidator arriving, then the liquidator can look back to the point of when the company became insolvent.

A CRITICAL RULE TO REMEMBER:

A solvent company cannot make an insolvent transaction

The Anti-deprivation Rule

A debtor may not, when insolvent, deprive themselves of assets which ought to be made available for their creditors. This can be seen clearly in the thinking of the courts in both the *Twyne* and *Freeman v Pope* cases and will be evident in the *Lightbody* decision we will discuss shortly.

This rule gives rise to a wide number of liquidator remedies, not merely insolvent transactions.

Not acting in the interests of the company, trading recklessly, entering into a contract that cannot be performed, are all remedies that a liquidator may take against a director who has breached this fundamental principle.

However, the rule is not limited to imposing liability upon the directors and it can be applied to creditors

who have benefitted by the director acting in breach of the anti-deprivation rule.

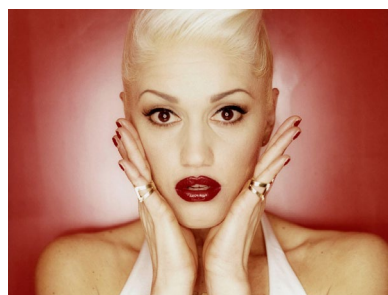
The anti-deprivation rule is not focused on unfair preference per-se; it is focused on things that reduce the size of assets in the business available for the creditor's pool.

Actions that on the surface may look like they are giving one creditor a preference but actually increase the level of assets available upon liquidation are therefore not voidable and this is reflected in the running-account defence recently introduced into New Zealand and common now in most Commonwealth jurisdictions.

The Relation-back Period

The pari passu principle applies from the date of insolvency and not the date of liquidation so the relation-back period looks back from the date of liquidation to the point of insolvency.

This is an inexact science, clearly, which is why parliament has created some rules to assist liquidators and the courts in determining how far back they can go and under what circumstances.



Not a Relation-back girl

In New Zealand the two rules are as follows:

Six Months

The company is deemed to be insolvent in the six months before it went into liquidation. For a court liquidation the six months starts from the date the liquidation application was filed with the court, not the actual date of liquidation. During this period the creditor must prove that the company was solvent.

24 Months

Here the burden of proving that the company was insolvent rests with the liquidator. Again, for a court liquidation the six months starts from the date the liquidation application was filed with the court, not the actual date of liquidation.

The Race of Diligence vs the Pari Passu; Creditor Deterrence

The early bird catches the worm is a well understood saying and it applies in business as in much of life. Creditors who seek early repayment of their debt gain at the expense of those who do not.

This regime favours the diligent over the tardy and it is a simple principle that is known to every credit controller worth their salary.

This regime is in conflict with the pari passu principle when the debtor becomes impaired; especially if the creditor understands the financial distress of the debtor. They have an incentive to get their money out at all costs, including the collapse of the debtor; getting paid becomes an imperative and often contributes the financial collapse of a distressed debtor.

Although there is no dishonesty or fraudulent intent in a creditor who knows that a debtor is distressed

when others do not seeking early repayment of their debt it does create an unfair advantage for that creditor.

The philosophy of creditor deterrence is to influence the behaviour of creditors who are aware of the insolvency of the firm to act cautiously and judiciously in order to assist the firm preserve its fragile financial position which may be for the benefit of the wider pool of creditors.

Those creditors who are aware of the firm's insolvency have an advantage over those who do not and these are often related or aligned creditors who have what could be considered inside information about the state of the company's affairs.

Denying the Debtors' Preference

Historically the intention of the debtor was important, but as we have seen in Freeman v Pope, the intention of the debtor ceased to be as important as the effect of his actions.

However, an underlying justification of the Insolvent Transaction regime is to provide a deterrent to a debtor who is contemplating transferring their assets out to friendly parties in the face of looming liquidation.

We are dealing primarily here with insolvent companies and there is a large body of case law dealing with when and how a director can become personally liable for the losses a company suffers during his tenure.

Until the formal act of liquidation a director retains complete power over the company's assets and is therefore free to select amongst his favourites.

Despite this, there is a desire his election should not be determinative, and that is what would happen in the absence of a voidable transaction regime.

The matter arose in another case, Worseley and De Mattos (1758), where the insolvent Mr Richard Slader contrived to transfer all of his assets to his preferred creditor, Mr De Mattos, immediately prior to his bankruptcy. The courts declared;

If a bankrupt may, just before he orders himself to be denied, convey all, to pay the debts of favourites; the worst and most dangerous priority would prevail, depending merely upon the unjust or corrupt partiality of the bankrupt.

The courts did not want the insolvent to decide who would gain the benefits of his estate; it was the for the trustee of the estate to make this election.

A Nice Lightbody

One of the most important recent cases involving fraudulent conveyances was the 2008 case of Mr Lightbody and his aggrieved creditor, Regal Castings.

Mr Lightbody and his lovely wife owned a property, the family home. Mr Lightbody was also the director of a company, Capro, that traded with Regal Castings. Mr Lightbody had personally guaranteed Capro's debt to Regal Castings.

In 1998 Mr and Mrs Lightbody transferred the property to a trust, established for the sole purpose of owing the property in consideration for \$230,000, which was not due to be paid by the trust to Mr and Mrs Lightbody until 2005.

The Lightbody's gifted the balance of the debt progressively until there was no debt left.

Capro went into liquidation in 2003 and Regal Castings were owed \$149,000. They bankrupted Mr Lightbody under their personal guarantee but were unable to seize the property as it was owned by the trust.

The Supreme Court looked at this contract and Section 60 of the Property Law Act 1952 and said:

Section 60 is derived from an Elizabethan model, 13 Eliz. c. 5 (1571), which applied in New Zealand until the Property Law Act came into effect...The meaning of "intent to defraud" has been held to include the purpose of delaying as well as defeating creditors, as the Elizabethan statute had expressly provided. The question of intent to defraud is one of fact. It must be determined at the time of alienation, but the intended prejudice may be to future creditors rather than creditors existing at the date of the alienation. Absence of full value obtained for an asset transferred is evidence from which an inference of intent to defraud may be taken.

Mr Lightbody's share of the house was stripped from the trust and handed to the Official Assignee for the benefit of Mr Lightbody's creditors.

Even today;
Queen Elizabeth 1st still reigns.

Modern New Zealand Law

New Zealand legislation on insolvent transactions was updated in 2008. The previous law said an insolvent transaction could not be set aside if it was in the 'ordinary course of business'.

Unhelpfully, Parliament did not outline what the ordinary course of business was, resulting in the felling of huge forests to feed legal submissions.

In 2008 a new test was introduced, called the run-

ning account, and this defined what was an insolvent transaction.

Unhelpfully, Parliament did not outline what a running account was, resulting in the felling of a new set of forests to feed legal submissions.

The law can be divided into two parts; both of which form part of a creditor's defence to an insolvent transaction claim by a liquidator.

Trees that died in the 'ordinary course of business'



Defining an Insolvent Transaction

The first part of the law, Section 292 of the Companies Act, defines what an insolvent transaction is. This can be broken into three parts;

When

An insolvent transaction occurs when the company is insolvent. A solvent company cannot enter into an insolvent transaction.

This is limited, however, to the last two years of a company's life before liquidation. In the case of a court ordered liquidation, the two years start from the date the liquidation application was filed with the court.

If the transaction happened in the last six months, the company is assumed to be insolvent; but if it happened between six and twenty four months before liquidation, the liquidator must prove that the company was insolvent.

What

The law proscribed that the liquidator must look at not just a single event, but the entire nature of the relationship between the insolvent company and the creditor. This is the running account definition.

Preference

The transaction must have allowed one creditor to gain an advantage over other creditors. If there is no preference created by the transaction, then the transaction is not insolvent. For practical purposes, this means if there was a debt to the IRD, then the IRD would have received the money in a liquidation, not the unsecured creditor who was paid, giving the creditor who received the payment a preference.

Section 292; The Critical Legislation

292 Insolvent transaction voidable

- (1) A transaction by a company is voidable by the liquidator if it—
 - (a) is an insolvent transaction; and
 - (b) is entered into within the specified period.
- (2) An insolvent transaction is a transaction by a company that—
 - (a) is entered into at a time when the company is unable to pay its due debts; and
 - (b) enables another person to receive more towards satisfaction of a debt owed by the company than the person would receive, or would be likely to receive, in the company's liquidation.

A transaction that is entered into within the restricted period is presumed, unless the contrary is proved, to be entered into at a time when the company is unable to pay its due debts.

- (4B) Where—
- (a) a transaction is, for commercial purposes, an integral part of a continuing business relationship (for example, a running account) between a company and a creditor of the company (including a relationship to which other persons are parties); and
 - (b) in the course of the relationship, the level of the company's net indebtedness to the creditor is increased and reduced from time to time as the result of a series of transactions forming part of the relationship;

Defining a Transaction; The Running Account

A transaction is defined very broadly, being the entire nature of the relationship between the insolvent company by and its creditor. In some cases this will be a single transaction, such as we have seen in the historical cases above, but it can also mean looking at all of the transactions between the company and its creditor.

Taking an Australian Example; *Airservices Australia v Ferrier in 1996*

Compass Airlines used the services of Airservices Australia. Compass therefore paid money to Airservices and Airservices provided services in response.

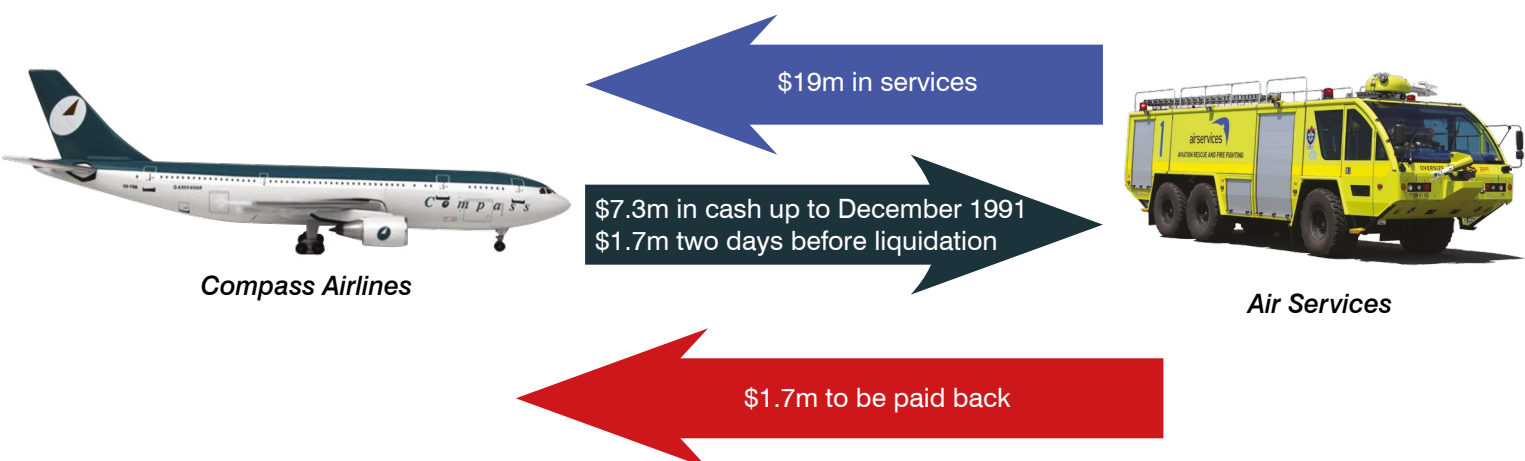
Compass Airlines had paid \$9m to Airservices Australia during the insolvent period, but received \$19m of services in return. The liquidators sought to recover the \$9m but the court declined, saying that if a payment had been made to induce further supply then, even if the payment was for an old debt, it could not be clawed back. However, the court did claw back the final payment made, because that payment was made solely to reduce debt and not to induce further supply.

Compass Airlines paid Airservices Australia \$9m but Airservices did \$19m of work. The Australian courts ran the Running Account principle and decided that Airservices could keep most of the money.

The final payment of \$1.7m was paid on the 18th of December 1991, two days before liquidation. This payment was part of a debt-repayment plan between Compass and Airservices and the Court found that this last payment was not intended to induce further supply; it was merely to repay debt and Airservices was forced to repay the \$1.7m but could keep the \$7.3m.

The case went to the highest court in Australia, the Federal High Court, and the ruling was upheld and two key points reinforced;

1. If money was paid for the purpose of inducing further supply than this money could not be clawed back; except that if the money paid was more than the goods and services received, then the difference was voidable.
2. If money was paid for the sole effect of reducing debt, then this money could be clawed back.



The Point of Peak Indebtedness

The peak of peak indebtedness enjoyed a brief period of judicial acceptance. It has since been discarded by the Court of Appeal.

If you look at the full nature of a commercial relationship between an insolvent company and a creditor, going right back to the start of the relationship, then in almost all cases the company providing the goods and services will have provided as much or more in goods and services as they will have received in payment.

If you take the start of the commercial relationship as the beginning of the running account, there will never be any voidable transactions. As a result, liquidators must choose a point from which to measure the start of the running account.

There are two obvious beginning points;

The point at which the debt between the creditor and the insolvent company reached its maximum point; the point of peak indebtedness.

At the start of the statutory proscribed period of two years; which may be reduced if the company

was not insolvent for the entire two years prior to its liquidation.

As an example. On the 26/1/2009 is the point of Peak Indebtedness, when Waiouru Sand Castles Limited owed Sand Supplies Limited \$11,100. The final amount owing at the point of liquidation is \$7,400, so the voidable according to the Point of Peak Indebtedness is:


Total Payments	\$5,700
Less Invoices	(\$2,000)
Running Account	\$3,700

However, if you take the entire commercial relationship back to the first invoice, then there has been no preference, because the creditor provided \$7,400 more in sand than they received in payments.

If you take the Airservices case, then the last payment of \$1,000 is clearly voidable, but what about the four payments of \$1,000 between the 25/2/2009 to the 26/5/2009?

Activity Statement for;

Waiouru Sand Castles Limited
Central Camp
Waiouru



Sand Suppliers Limited
125 Desert Road
Waiouru

		Date	Debit	Credit	Balance
Invoice 230		1/06/2008	5000		5000
	Payment	22/06/2008		3000	2,000
Invoice 234		25/06/2008	2500		4,500
Invoice 239		2/07/2008	2300		6,800
Invoice 240		17/07/2008	3700		10,500
	Payment	13/01/2009		4000	6,500
Invoice 249		23/01/2009	2100		8,600
Invoice 251		26/01/2009	2500		11,100
	Payment	25/02/2009		1000	10,100
	Payment	27/03/2009		1000	9,100
Invoice		28/03/2009	1300		10,400
	Payment	26/04/2009		1000	9,400
	Payment	26/05/2009		1000	8,400
Invoice 261		5/06/2009	700		9,100
	Payment	5/06/2009		700	8,400
	Payment	5/07/2009		1000	7,400
Balance Owing					7400

Point of Peak Indebtedness
McEntee

←

Payment only retires debt
Shephard Applies

←

Taking a New Zealand Example; McEntee Hire

The New Zealand courts have taken two different approaches to the running account concept. Below are two judgements from two different judges giving two different opinions.

The McEntee hire case was the first time in New Zealand the 2008 legislation was tested. The first issue that the judge considered was defining a transaction.

The company in liquidation was Taupo Paving and More Limited. They leased equipment from McEntee Hire. In January 2008 McEntee Hire placed Taupo Paving and More on Stop Credit and sent them to the debt collectors.

Between that date and the appointment of the liquidators in December 2008 McEntee received \$21,000 in payments and provided no services in return.

This was similar to the facts in the Compass case, where the payments made after services ceased were considered voidable. However, the judge in McEntee went further.

The lawyers for McEntee said that the judge should look at the entire relationship, going back to the first transaction between McEntee and Taupo Paving and More.

The Judge disagreed. The liquidator could choose the point of Peak Indebtedness and take all of the payments from that date, deducting the value of any invoices raised, and the balance was voidable, as in the example above.

Under the McEntee judgement, the voidable in the above example would be the entire movement in the running account: \$3,700.

However, a different judge in another case took a different approach.

Taking a different New Zealand Example; Shephard and Steel Building

This case involved two New Plymouth firms. Metalcraft was the firm that went into liquidation and Steel Building Products was their creditor.

The two firms had traded for several years and the liquidators, on the running account basis, calculated that the running account balance was \$35,188. This included a payment of \$12,500 paid on the day before liquidation.

Relying on the earlier decision in McEntee the liquidators were feeling confident; but the court had a surprise.

The New Plymouth Court decided that the purpose of the payment was important and it was clear, given that there was a series of payments and invoices

between Metalcraft and Steel Building through the period, that intention of the payments that were made were to induce further supply, and further the judge interpreted the running account legislation as meaning that he was entitled to look back to the very start of the relationship, which he did.

The entire relationship between Metalcraft and Steel Building, starting from the first invoice, was looked at as one transaction, which showed no net advantage to the insolvent company.

However, the last payment of \$12,500 was declared voidable because the intention of this payment was not for the purpose of inducing additional supply but merely to retire debt.

Gaining a Preference

A central plank of the insolvent transaction regime is that no creditor who received money should gain a preference over what they would have received in the liquidation. This brings us back to the pari passu concept; all creditors should share equally in the distribution from a failed company. If one creditor gains an advantage then this needs to be unwound.

If the payment did not create a preference then the payment was not an insolvent transaction.

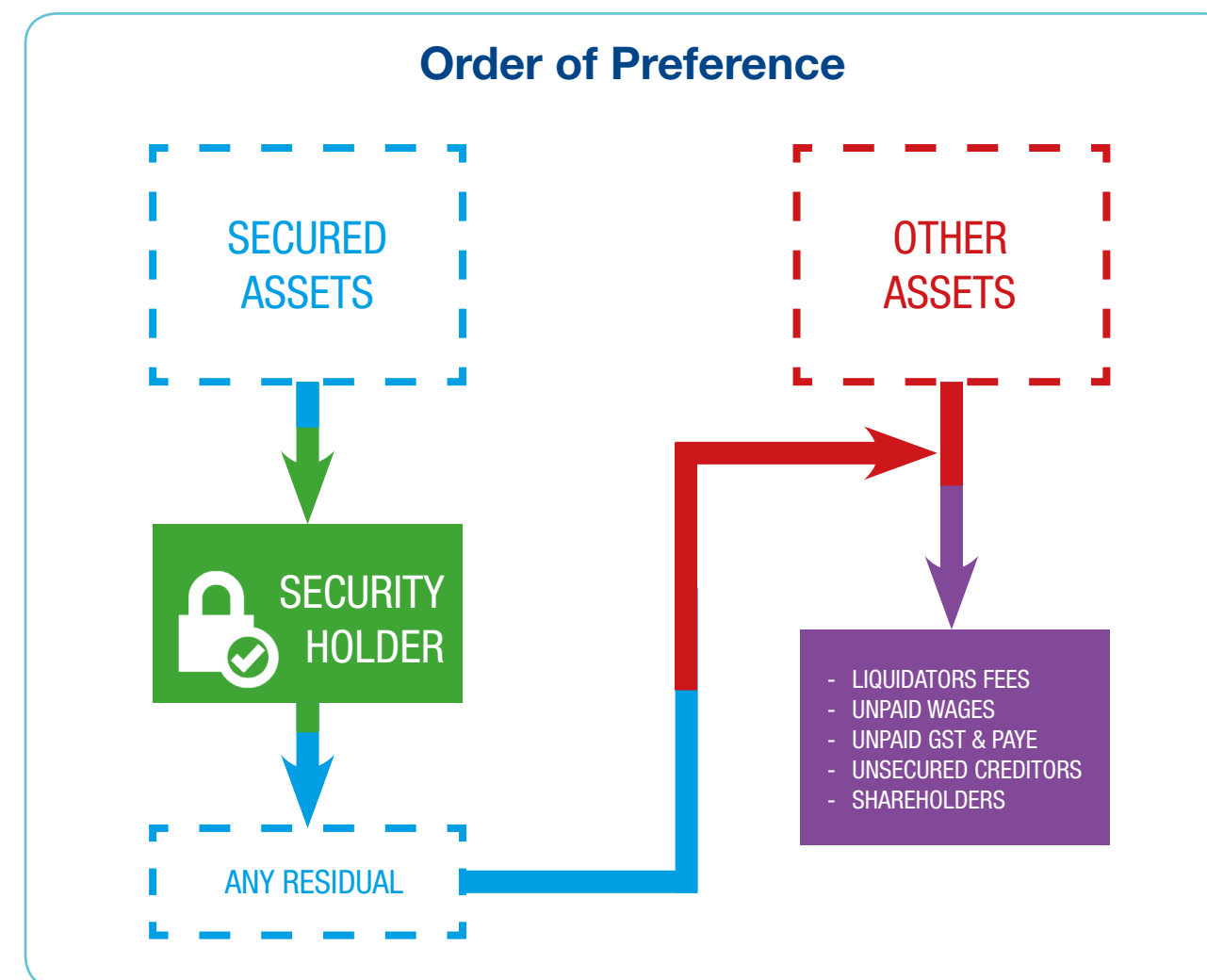
The pari passu concept has been a little corrupted by the introduction of preferential creditors, so the real test in most insolvencies in New Zealand is what was the level of the preferential creditors, namely staff and the IRD?

To appreciate the importance of the preference rules,

it helps to understand how assets in liquidation are distributed; after liquidator fees.

If an unsecured creditor was able to gain a preference as the company was failing then this money would have been distributed to either staff wages or the IRD under their statutory preference. If there was no preferential creditors, then the calculation of a preference becomes more complex.

If a creditor gains a thousand dollar preference in a liquidation where there was only \$2,000 in creditors, the creditor could argue that they were entitled to receive some of their own funds back if the full payment was paid to the liquidator; and seek to limit any preference claim on that basis.



The Running Account Defined

The issue was resolved by the Court of Appeal in the *Timberworld* case. This went to the Court of Appeal and the decision of Associate Judge Abbot was upheld.

Timberworld was a creditor of a firm called Northside Construction, a Beach Haven based building contractor that was placed into liquidation by the IRD on the 15th of July 2011. The specified period began on the 24th of May 2009, at which point the debt owing by Northside to Timberworld was \$77,095.46.

The trading relationship between the parties ended on the 15th of April 2010, at which time the debt owing by Northside to Timberworld was \$47,605.60.

This was the running account and it included not only payments but also debts being for interest and late payment penalties.

All of the debts and credits from the start of the specified period until the end of the trading relationship were included in the *running account*.

Once the trading relationship had ended all payments made after that date were also declared insolvent. The important distinction is that the interest and late payment penalties that accrued once the trading relationship had ended were not considered part of the running account.

The voidable transaction can then be worked out as follows:

A = The start of the specified period or when the company become insolvent, whichever is the latter

B = The date at which the trading relationship ends

C = The date of liquidation

The opening balance of the account at A minus the closing balance of the account at B

Plus: All payments made between B and C

But; if the value of A – B is negative, then all payments from B to C are still voidable.

The key difference between the period A to B and B to C is that in the former interest and debt collection costs count and therefore come off the total amount potentially voided.

Some further terms.

The **Specified Period** is two years from:

The date of liquidation if the company went into liquidation by shareholder's resolution

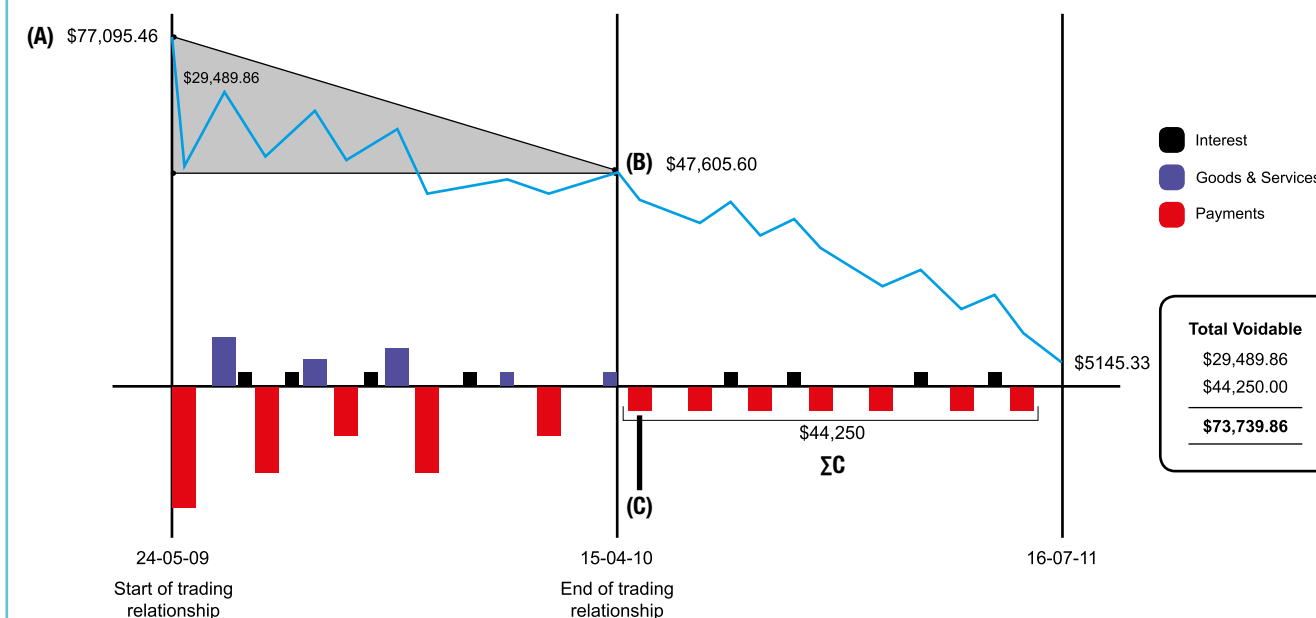
The date that a liquidation application as filed in court for a court appointed liquidator

The **Trading Relationship** ends:

When the supplier is no longer willing to supply the debtor. Usually this is taken to be from the date of the last supply. However, it can and has been argued that even though no further goods or services were supplied they could have been and therefore the trading relationship did not end until the decision was made by the creditor to cease supply.

Debt at the start of the specified period:	\$77,095.46
Debt at the end of the trading relationship:	\$47,605.60
The insolvent transaction;	\$29,490.46
<i>Plus</i>	
All payments made past the trading relationship:	\$44,250.00
Total Voidable:	\$73,740.46

Timberworld and Northside (In Liquidation)



How to calculate a Voidable:

If **A - B** is greater than zero, the voidable is:

$$A - B + \Sigma C$$

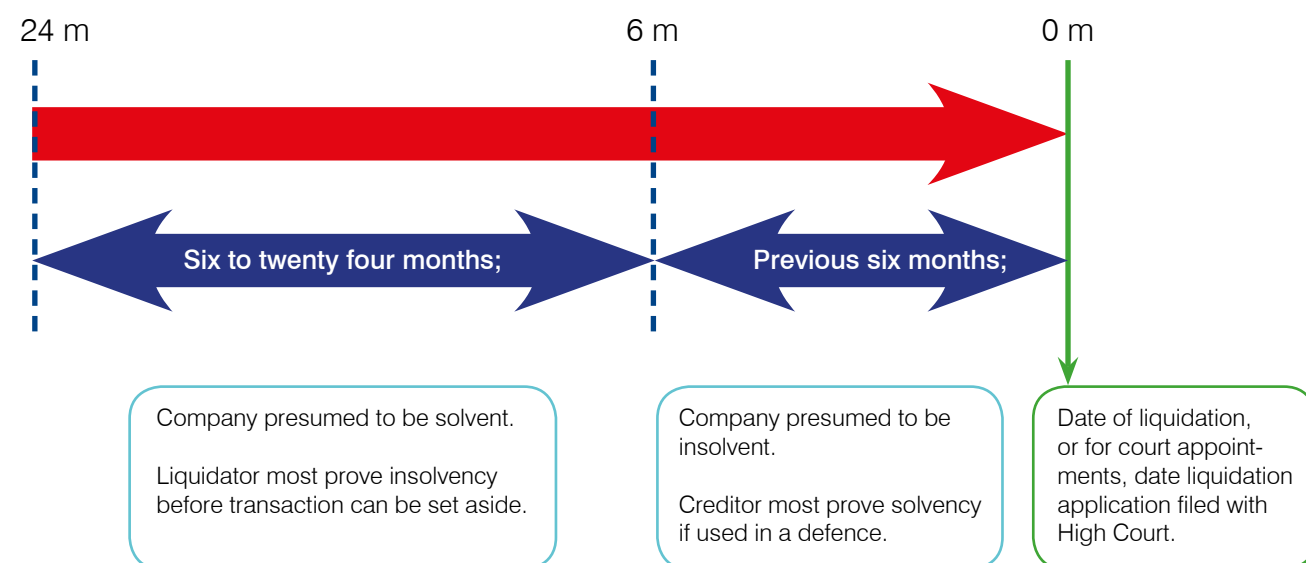
If **A - B** is less than zero, the voidable is:

$$\Sigma C$$

- A: Debt two years prior to liquidation
- B: Debt at the end of the trading relationship
- C: Payment made after the end of the trading relationship
- ΣC: Sum of all payments made after the end of the trading relationship

Timing is Everything

An insolvent transaction can only occur when a company is insolvent or within the last two years of the companies life.



If insolvency can only be shown to have arisen at a date after the start of the specified period this will be the start of the running account; although that is yet to be confirmed by a court ruling.

Looking Beyond the Transaction: The 296 Defences

Section 296: The Legislation

A court must not order the recovery of property of a company (or its equivalent value) by a liquidator, whether under this Act, any other enactment, or in law or in equity, if the person from whom recovery is sought (A) proves that when A received the property-

(a) A acted in good faith;
and

(b) a reasonable person in A's position would not have suspected, and A did not have reasonable grounds for suspecting, that the company was, or would become, insolvent;
and

(c) A gave value for the property or altered A's position in the reasonably held belief that the transfer of the property to A was valid and would not be set aside.

Defending a Voidable

So far we have been looking a transaction or a series of transactions to see if they can be defined as voidable. We have been stuck in Section 292 of the Companies Act that defines what a voidable transaction is. Now we move to Section 296, which outlines a defence to a liquidator's demand that the money be paid back.

A creditor who has gained an advantage is not automatically bound to repay the money. They have a series of defences under the Act.

In order to defeat a liquidator's clawback the creditor must show;

- That they acted in good faith; and
- That they did not suspect insolvency (and a reasonable person in their position would not have done so); and
- Gave value for the property, or, altered their position

Collectively these are often referred to as the 296 defences. The burden of proof for these defences rests with the creditor resisting a liquidator's claim.

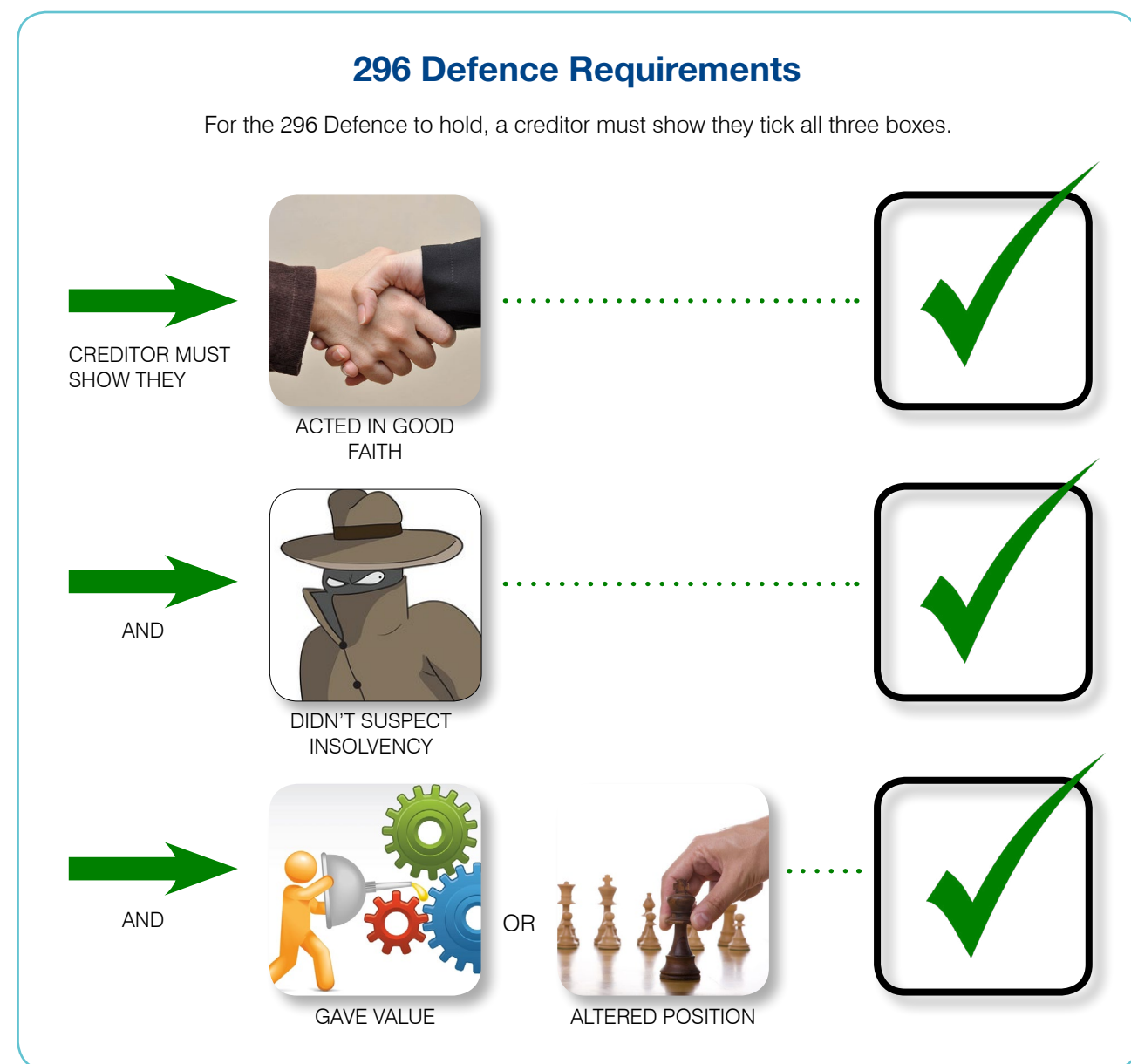
Although a transaction may be declared insolvent, this does not mean the court will order it be returned, the creditor can raise a defence, but it is difficult.



The 296 Defences

Once the court has found that an amount is voidable a creditor must show they:

- Acted in good faith; and
- Didn't suspect insolvency; and
- Gave value or altered their position



Good Faith

Good faith, like pornography, is hard to describe but we know it when we see it; or more importantly we recognise activity that was not in good faith. As a consequence it is perhaps easier to look at what constitutes Bad Faith in terms of Section 296.

There is little judicial writing on this topic but the main case dates from 1989 from the Court of Appeal; Orbit Electronics Auckland and Gerry Rea. Here the Court of Appeal defined that good faith...

"...must at least require that the recipient of the property or monies be shown to have honestly believed that the transaction would not involve any element of undue preference either of him self or any guarantor"

This is a subjective assessment as to the intention of the creditor who received the payment. If they did so in the knowledge that they would be getting a preference over other creditors then they didn't act in good faith.

Under Section 296 the burden of proof lies with the creditor but this is a very simple hurdle for the creditor to overcome. The courts accept affidavits on their face value, even when it is obvious that the person swearing it is lying, unless concrete evidence can be presented to demonstrate the falsehood.

There is a general assumption of good faith on behalf of the creditor in most voidable transaction cases. Although the burden of proof sits with the creditor all that is usually required for their good faith bona-fides to be established is an affidavit from the creditor saying that they had no knowledge of insolvency.

For a liquidator to prevail here, in the face of denials by the creditor, tangible evidence is needed to prove the intention to receive a preference or at least the knowledge that by receipting the payment a preference would be created.

In the Orbit case there was explicit communication between the company and the creditor where the debtor company advised their creditor that they were going to go into liquidation and a telex was sent; stating

"While I could allocate funds to immediately credit your acct, a company liquidator may over

turn such a payment and make demand to recall such payments. Please advise on your policy re above."

In this case the good faith test failed, but in another recent case, Shephard v Steel Building Products, the creditor prevailed.

The facts are stark,

The company in liquidation, Hightower, and the creditor, Steel Building, both operated in New Plymouth and the directors worked closely together. On the 18th of August 2010 the IRD advertised liquidation proceedings in the local paper in New Plymouth. The last sale between the parties occurred the following day.

The liquidation date was the 14th of September. On the 13th of September Steel Building was direct credited \$12,500 along with a \$25 special clearance fee.

The liquidators claimed that the creditor did not act in good faith on the circumstantial evidence that they knew Hightower was in trouble.

The director of Steel Building claimed;

Neither he nor anyone in his staff saw the ad in the local paper

No one in his firm had any knowledge of Hightower's financial troubles

There was no pressure on Hightower for the last payment nor the special clearance

Clearly, this is about as plausible as Scientology but the court said this;

"It is difficult to see what more Mr Maharey or Metalcraft could have said to support the honesty of their belief. Ultimately it comes down to direct evidence as against an inference to be drawn from the last minute payment (as the most cogent evidence that something was amiss). I have no reason to reject the evidence of Mr Maharey."

For a creditor wanting to prove they acted in good faith all that is needed is an affidavit. The police rarely

pursue perjurers and the courts don't seem to mind folks lying on the stand so the effective burden of proof falls back onto the liquidator.



A picture of the author and Barack Obama. I swear, on oath, that this is the case.

No Suspicion of Insolvency

Linked to the good faith test; the suspicion of insolvency implies that if the creditor knew that the debtor was insolvent, they would have acted pre-emptively to recover their debt.

The suspicion extends beyond just knowing. If a reasonable person in the creditor's position would have known then the creditor would fail this test.

There have been several attempts to define the test of suspicion of insolvency but the most quoted was an Australian case involving Queensland Bacon:

A suspicion that something exists is more than a mere idle wondering whether it exists or not; it is a sufficient evidence consequently, a reason to suspect that a fact exists or not; it is a positive feeling of actual apprehension or mistrust amounting to 'a slight opinion, but without sufficient evidence'... consequently, a reason to suspect that a fact exists is more than a reason to consider or look at the possibility of its existence.

In order to rely on this defence the creditor must pass both elements of this test. So, if a reasonable person would not have suspected insolvency but the creditor did suspect anyway, then they would fail. Likewise, if a reasonable person would have suspected insolvency but the creditor didn't, then again they would fail this test.

Suspicion of insolvency is like a pig who suspects there maybe truffles. Just a whiff that gives rise to go looking is enough.



What is a reasonable person?

An Australian court case referred to a man on a Bondi bus but never having been on a Bondi bus that gives no frame of reference. Several New Zealand cases have made the distinction between a reasonable business person as opposed to a sophisticated financial analyst, when it comes to making an assessment to the insolvency of the debtor company.

This is a cumulative assessment; so if a creditor should have known but did not, then they will fail this test.

This is going to be the subject of a lot of litigation in the years to come so let's have a look at a few examples.

The suspicion is also creditor specific. So, if the creditor was a bank or a supplier that had a close working relationship with the company the courts are going to be more willing to assume that they should have known, than if the creditor was an arms-length supplier that the company traded with only intermittingly.

Knowledge of insolvency is a two part test;

Would a reasonable person have suspected insolvency?

And

The creditor did not suspect insolvency?

Farrell v Hooker

Gary Hooker was a friend of Lawrence Stevens and lent \$22k to his company, L Stevens Builders Limited, in late 2010 to fund litigation that the company proceeded to lose. Mr Stevens then advised Mr Hooker that he needed to sell down assets and they agreed that Mr Hooker would purchase some land and buildings for \$290,000 less the 22k already owing.

It was established that this was a transaction under value to the tune of \$34,000. The issue of Section 296 then came into play as this section is a defence to both a transaction under value as well as a voidable transaction.

The court looked at what Gary Hooker knew when the transaction occurred;

- 1)The company had been involved in court proceedings
- 2)The director had asked if he could borrow money to fund the court proceedings
- 3)It lost those proceedings
- 4)The company's accountants had been advised to sell assets to pay debts

The court found;

The Objective (Reasonable Person) Test

A reasonable business person would have believed, based on that information, that L Stevens Builders Limited was insolvent

At this point Gary Hooker was defeated because the Court had decided that a reasonable person would have suspected insolvency. However the issue went further because the investigations of the liquidator were used to throw light on what Mr Hooker actually did know.

The liquidator, Mr Farrell, had discussed the issue with Mr Hooker and in conversations with him Mr Hooker conceded that he had loaned money to the company because it was struggling to keep afloat and that the business was selling not just its land but also assets.

These conversations were used in evidence and Mr Hooker was cross examined.

The Subjective (Gary Hooker) Test

Based on the conversations recorded with the liquidators the Court was satisfied that Gary Hooker knew the company was insolvent at the time of the transaction in question.

Grant v Shears and Mac

This was a similar case with a different result. The company in liquidation had been a Coffee Club Franchise in Hastings; Blundell Limited. Shears and Mac (now itself in liquidation) did substantial interior work for the business. The decision hinged on a payment of \$8,750.

The court found that the payment was voidable. At issue were the defences raised under Section 296.

The facts are these;

- Blundell asked for time to pay and were given it
- Blundell then needed to adjust that time payment
- Blundell was late in making its payments
- Shears and Mac sent an email threatening a statutory demand if payment wasn't made
- A statutory demand was made and payment was then forthcoming

The court considered two of the 296 defences;

- Did Shears and Mac act in good faith?
- Did Shears and Mac suspect insolvency?

Good Faith and Preferential Payment

To establish it acted in Good Faith all Shears and Mac had to do was claim that no other Coffee Club franchises had gone into liquidation, that they had a tough debt collection policy and issued a statutory demand because they said that they would. On this basis they couldn't have known that they were receiving a preference.

The court agreed. Good faith is such a low threshold a crippled mouse could get over it.



Knowledge of Insolvency

1) *The Objective Test; Should a reasonable person in Shears and Mac's position suspect insolvency?*

The liquidators pointed to the following;

- Delays in making payments
- Requests for payment plans and renegotiated payment plans
- An email sent by Shears and Mac to Blundell stating:

2 Invoices now overdue

I spoke to Mike Blundell regarding Invoice 16081 which has been explained/reconciled with him. Despite requests for a repayment proposal, he has not been forthcoming. I spoke to him again on the phone on Wednesday and he advised you had details of a repayment proposal. I left you messages after trying to contact you which you have not returned.

Please provide details of exactly when we can expect to receive the payments to avoid further proceedings.

- A Statutory Demand issued after this email

Shears and Mac responded;

- Delays in making payments are normal
- For them a statutory demand is a standard debt recovery tool
- The email was sent the very next day after re-scheduled payment was due

The court found that a reasonable business person in the position of Shears and Mac would not have suspected insolvency.

2) *The Subjective Test; Did Shears and Mac's position suspect insolvency?*

The same set of facts were entered into this assessment, along with the added assurance by the director of Shears and Mac that he didn't suspect insolvency and the fact that the liquidator's didn't have smoking gun, as was the case with Orbit, to prove knowledge.

The liquidators failed to prove knowledge of insolvency.

Alteration of Position

An extremely difficult test to pass, the alteration of position defence requires the creditor to have taken, or not taken, a deliberate course that they would not have done had they not received the payment.

This is a two step defence;

- 1) Have altered their position
and
- 2) Done so believing that the transaction was valid and not subject to being set aside

A secured creditor who released their security would qualify, but the following actions have been dismissed by the courts over the years:

- Accepting Payment: Being paid is not, in itself, an alteration of position

- Declining to sue
- Spending the cash received on debts already incurred
- Failing to perfect a security interest not in place when then payment was received

Paying an existing debt is not altering your position. Incurring a new debt might be considered an alteration. An example of a successful alteration might be making an investment such as buying a business, property or incurring some expense that can be definitively demonstrated would not have been incurred otherwise.

Many creditors point to their paying down a debt as an example of an altered position but this is unambiguously not the case.

Provision of Value

What defines the provision of value has been contested in the courts and was resolved by the Supreme Court in the case known as Allied Concrete. This case was a combination of multiple of cases with similar facts.

One creditor, Fences and Kerbs, had provided value historically by supplying goods and services to the debtor, Contract Engineering Limited, who subsequently went into liquidation.

At the heart of this issue is the competing interests of the creditor who received payment and the rest of the creditors who didn't get a payment. When creditors who received a voidable transaction are successful in retaining it the pari passu, equal step, regime is over ridden.

The Supreme Court resolved that the creditor can have provided value at any time and that it is not necessary that the giving of value needs to have been near the time of the payment.

So, even if the goods and services were many years in the past, the creditor can claim that they provided value.

The liquidators argued that the provision of value needed to happen at the same time as the payments were made in order for this defence to be made out. Fences and Kerbs responded by claiming that the provision of value could be at any time and did not need to be contemporaneous with the payments.

In the case of a simple debtor/creditor relationship this matter is straight forward. It would be more complex is the payment was for something less tangible; such as a restraint of trade, for pain and suffering, or something inherently intangible.

The Supreme Court quoted an English case on the matter;

The creditor must have given some consideration that has a real and substantial value and not one which is merely nominal or trivial or colourable.

FENCES & KERBS					
<i>Activity Statement for;</i>					
Contract Engineering Limited Taupo					
		Date	Debit	Credit	Balance
Invoice 34		21/06/2010	56,256		56,256
	Payment	4/08/2010		15,000	41,256
	Payment	7/08/2010		15,000	26,256
	Payment	14/08/2010		1,500	24,756
Invoice 39		28/09/2010	1,725		26,481
	Payment	29/09/2010		1,725	24,756
	Payment	29/09/2010		5,000	19,756
	Payment	30/09/2010		19,756	0
Balance Owing					0

Voidable Transaction's Little friends; Equity and The Property Law Act

It is common for liquidators seeking to recover funds received from an insolvent company to include a Property Law Act cause of action and in rare cases a demand for recovery under Equity.



The Property Law Act has several provisions, (sections 344 through to 350) that cover the setting aside of dispositions of property where the person who has disposed of the property has done so with the intention to defeat creditors.

The Property Law Act (PLA) applies to all legal entities, including people, and its application is not limited to companies in liquidation which is the case with the Voidable Transaction provisions the Companies Act. It applies to cases where assets have been dispossessed for the purpose of defeating all creditors; so if the disposition favoured one creditor over another then the PLA will not apply.

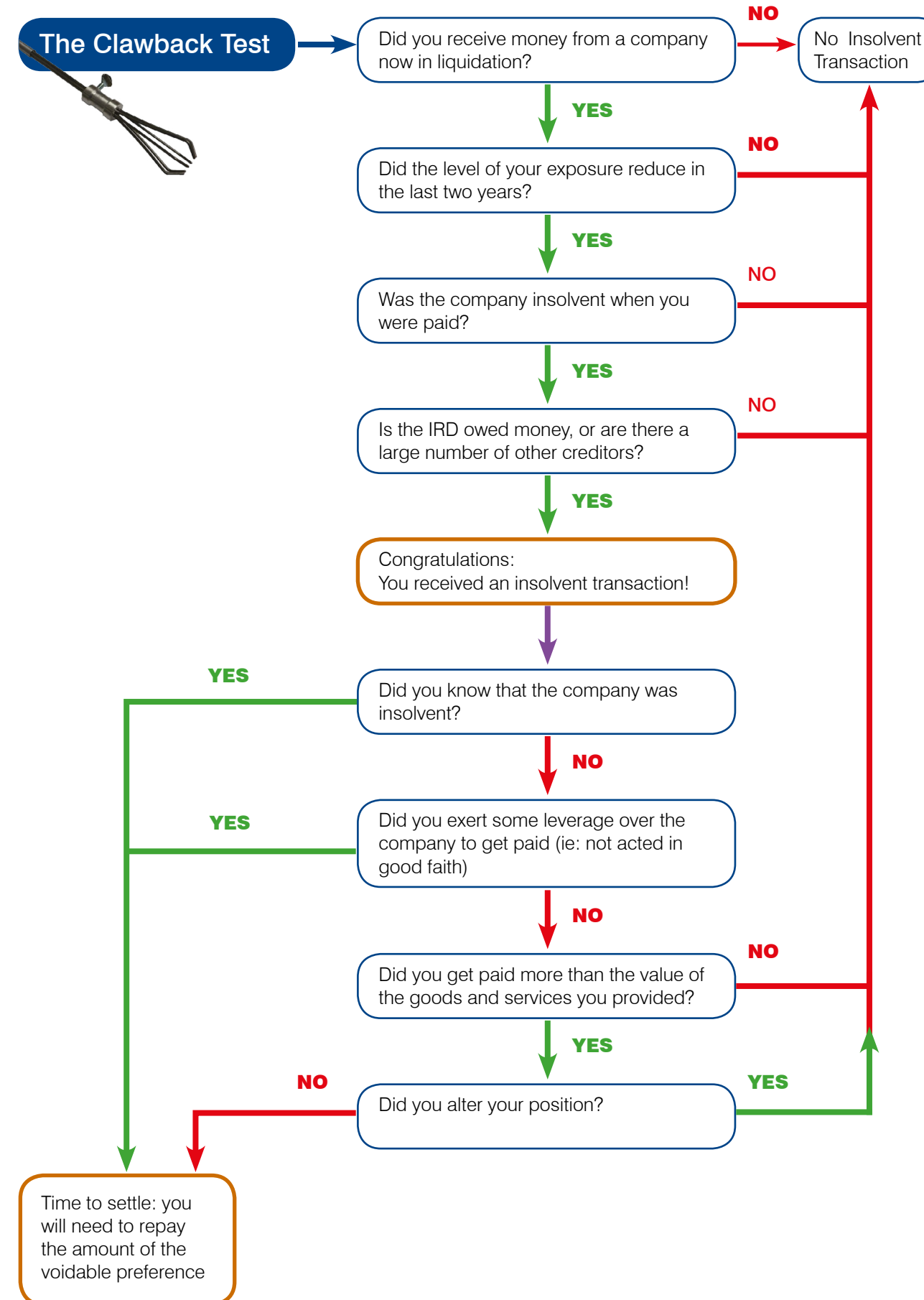
The PLA applies to all property, not just land. It applies to debtors who are, or become insolvent when they dispose of their assets. It can also apply to a person or company who gives away their assets in anticipation of incurring obligations or taking business risks.

However, like the Companies Act, there are defences for a person who paid a fair price for the property and acted in good faith and without knowledge that the transaction would result in the debtor becoming or being insolvent.

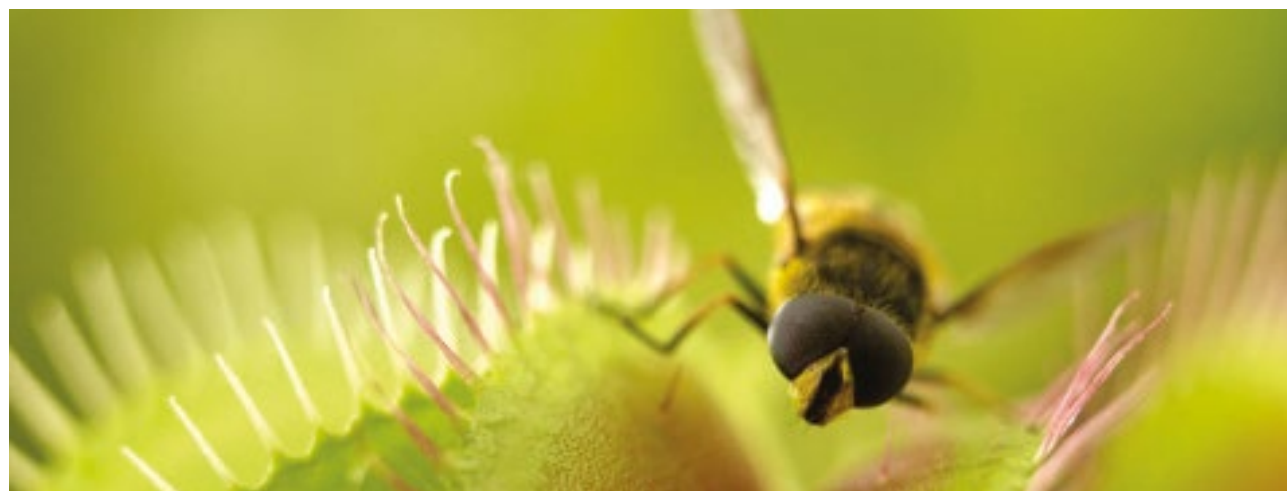
Equity is a very old and specialist area of law that is a vast topic in itself but its historical origins can be summarised as an appeal to the King to right an injustice. In England there used to be separate courts for common law and equity but in New Zealand they were merged and the status of equity was preserved in the Judicature Act. Defences to a claim for a recovery under equity are especially limited. The person receiving the money must have acted in good faith and altered their position. There is no provision of value or other test.

A claim for the recovery of assets under equity would be exceptional but the defences of all these are contrasted here for completeness.

Property Law Act s 349	Companies Act s 296	Equity
Acted in good faith	Acted in good faith	Acted in good faith
And	And	And
Without knowledge that someone else was prejudiced by the transaction	Had no knowledge of insolvency of debtor	Altered position
And	And	
Acquired property for valuable consideration	Gave value or Altered position	



Don't get Caught: Preventing the Voidable Conundrum



Recognising the Traps

One theme that will be apparent at this stage is the nature of voidable transactions. A supplier has continued to supply to their client well past what would be considered normal trading terms. Once the debtor gets into trouble repaying this growing debt, the creditor ceases to supply and enters into a repayment plan.

The liquidator notices that new invoices cease and there is a series of repayments, often for the same amount, and proceeds to issue a voidable transaction notice.

If your client cannot pay their invoices on normal trading terms, if you continue to extend them credit, you are placing yourself in harm's way. This does not mean that, when faced with a client in a difficult situation you should demand payment and walk away, but it does mean that if you are entering into a trading relationship with a troubled company you need to have confidence that by supporting the business by extending credit that the business will succeed.

Of course, it may still fail, but understating the risks helps you make an informed decision.

Trade Credit Insurance

Relatively uncommon in New Zealand, Trade Credit Insurance is popular with our friends in Australia. Trade Credit insures your debtors in the event of a non-payment and most policies include cover for a claim by a liquidator for a voidable transaction.

Having trade credit insurance also forces a level of discipline on firms that may prevent getting caught by a large debtor exposure.

Getting the Director to Personally Pay

A common assumption by creditors who are seeking to get paid is to get a payment from the director, in the mistaken belief that such a payment will be safe from a liquidator.

They are wrong.

If a payment was made by a director the courts will look at that payment as being one made by the director on behalf of the company. This issue was canvassed directly in the last year of the last century.

Pony Express Limited's account with the National Bank was overdrawn and the bank had a personal guarantee against the shareholders. In the weeks before liquidation the directors deposited \$22,000 of their own money to reduce the overdraft.

The liquidator sought to claw it back.



The liquidators for Pony Express raided the National Bank

The Bank claimed that this was the shareholder's money, not that of the company. The Court disagreed, saying:

I have no doubt but for the intervention of liquidation, the advance would have been recorded as such in the books of the company with a corresponding increase in the current accounts.

The court went further, considering that the position of the company had not been improved, because it had swapped a debt to the bank to one to the shareholders, and ordered the \$22,000 be paid to the liquidators.

Taking a Security

Perhaps the most successful approach, for firms that supply goods, is to take a security. This should be done in the form of a registered security that is updated on the Personal Property Security Register, see www.ppsr.govt.nz.

A security entitles the secured party to recover not only any goods that they have supplied, but to also gain access to the proceeds of those goods.

This means, taking the example of a piano wholesaler and their retailer; if the store has a stock of the supplier's pianos in their store, and the supplier has a PPSR security, then the supplier is entitled to the proceeds of the pianos when they are sold. If they cease supply but continue to receive funds from the

store over several months as the stock is sold, those transactions will be much more difficult for a liquidator to claw back because the supplier was receiving the proceeds of its security, which is outside the scope of the liquidation.

The challenge is in most cases the supplier will be only a small portion of their client's total sales and identifying where the money comes from and how it is applied can become messy.

Critically; if the sales are deposited into an overdrawn bank account and the company uses this overdrawn account to pay the supplier, then the courts will view these funds as new money introduced by the bank and not the proceeds of the secured creditor stock.

Personal Guarantees

A personal guarantee is more valuable as a signalling mechanism than as a debt recovery tool. If the director of your client is not willing to provide a personal guarantee for their company you would need to ask yourself why you should be willing to take a risk on their business if they are not?

Once a company fails it is common for the director to have invested all of their personal wealth into

propping up their enterprise. However, this is not always the case but when drafting your guarantee it needs to be crafted sufficiently widely to ensure that if you have a payment from the company clawed back that your personal guarantee will extend to allow you to recoup this debt from the director.

Get Paid for Work Done

At its most basic; if the company is insolvent and you trade with that company on a cash basis then payments you receive for the work done will not be clawed back.

If you provide goods or services to an insolvent company and you are paid in a timely fashion or paid up front, there is no preference.

You Know the Odds; Now Beat Them

Things to remember;

There are around 500,000 companies registered in New Zealand and less than four thousand go into liquidation per annum.

For you to get caught by a voidable transaction the following need to happen;

- A) A client you extend credit to fails to pay on time and you extend further credit
- B) Once the debt becomes unmanageable you enter into a payment arrangement or, after some pressure, the debtor pays you late
- C) The company goes into liquidation two years after this payment was received
- D) The liquidator notices and the amount is worth them pursuing
- E) They actually proceed to chase you for the money.

The actual risks of being caught are very small. Although we have no actual data, the total levels of voidable transactions from unrelated third party creditors are probably less than ten million, in a total economy of two hundred billion.

There is no punitive element to a decision by the courts in ordering a voidable transaction, so from a basic economic perspective, a creditor should never hesitate in taking money from a company that they suspect is insolvent because they are afraid of a voidable preference being given.

There is nothing unethical, illegal or immoral about receiving a voidable preference and there is every chance that the company shall survive, most companies in financial trouble trade back to health.



Waterstone is an Auckland based Insolvency Practice. We undertake liquidation, receivership and Voluntary Administration appointments for firms, and Personal Compromises assignments for individuals. We also have a specialist debt recovery and negotiation team to deal with large and complex debt issues. By the nature of what we do, we have a very deep understanding of a very narrow area of New Zealand's commercial life. If you need assistance, information or guidance in that area, we would like to hear from you.

Waterstone Insolvency: 0800 CLOSED
0800 256 733

Waterstone Recovery: 0800 UNPAID
0800 867 243

Fax: 0800 329 974

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Shortland Street
Auckland 1010

Physical Address: 16 Piermark Drive
Albany 0632
North Shore City

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www.waterstonerecovery.co.nz



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INSOLVENCY