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Trusts and credit risk: the *Quistclose* trust and lenders' risks in loan finance

Lloyd Brown*

Abstract

The article evaluates the case of *Barclays Bank Ltd v Quistclose Investments Ltd* (1970) in the light of the lenders' risks when providing loan finance to their commercial customers. A "risk profile" is established which identifies the main risks that may occur during the lending process. Significantly, the article shows that the trust identified by Lord Wilberforce in *Quistclose* is most important for managing and mitigating the "credit" risk that can often occur on a loan because of the borrower's default. *Quistclose* changes the usual "at arm's length" nature of lending and provides obligations that are of a fiduciary character.

Introduction

The case of *Barclays Bank Ltd v Quistclose Investments Ltd* (1970)[1] (hereafter, "*Quistclose*") is well engrained into the minds of the practitioners, academics, and students of trusts law. Indeed, the nature of the commercial transaction that arose between Quistclose Investments Ltd and Rolls Razor Ltd has been thoroughly investigated and debated since the judgment was first delivered some fifty years ago.

Adding to the already voluminous literature basis on this subject, this article takes a multidisciplinary approach. The *raison d'etre* of this article is to evaluate *Quistclose* through the lens of lending risk management, to better understand the case's significance from the perspective of bank lenders specifically. An overview of the literature in the research area demonstrates that much time and effort have been afforded by contributors to classifying the exact "nature" of *Quistclose*, in both a trust and a fiduciary context.[2] However, the author of the present article believes that placing the *Quistclose* trust within the risk profile of lenders successfully adds to this somewhat fully subscribed area of trusts law.

The article's adopted approach has not been done before, and thus, this article importantly fills a gap in the research area. Although *Quistclose* is not commonly seen in loan financing, it is argued here that the existence of this type of resulting trust is to be favoured by lenders. In particular, this article shows that the trust in *Quistclose* is significant for its ability to reduce lenders' "credit risk" when undertaking loan financing. Given this article's central thesis, it is necessary to discuss the main risks that can arise during loan finance. The different risks are set into, what may be called, a "risk profile." For this article, the risk profile includes the following types of lending risk:

- Direct liability
- Credit risk

*Lloyd Brown, HRC School of Law, Swansea University, Wales, UK, E-mail: lloyd.a.brown@swansea.ac.uk

1. *Barclays Bank Ltd v Quistclose Investments Ltd* [1968] UKHL 4; [1970] AC 567.

2. See, for example: R Chambers, *Resulting Trusts* (OUP 1997); J Glister, 'The nature of Quistclose trusts: classification and reconciliation' (2004) 63 CLJ 632; J Prassl, 'In search of coherent answers: towards a valid theory underlying Quistclose trusts' (2007) 3(1) Cambridge Student Law Review 51–55; BD Chan, 'The enigma of the Quistclose trust' (2013) 2(1) UCL Journal of Law and Jurisprudence 1–39; T Hughes-Davies, 'Redefining the Quistclose trust' (2015) 1 Conv 26–46.

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- Security risk
- Reputational risk

While credit risk is set within the above lending risk profile at a later point, it is essential to define this key concept at the beginning of the article. Credit risk occurs indirectly at the instance of the borrower's default.[3] It can therefore be defined as "the potential loss arising from a bank borrower or counterparty failing to meet its obligations in accordance with the agreed terms."[4]

Quistclose is a significant trusts concept for lenders because it actively seeks to reduce the prospective credit risk that they may incur while providing loans for specific purposes. It can, therefore, be viewed as a particular form of risk management. Ultimately, it is well-known that the lender–borrower relationship does not usually give rise to trust and fiduciary obligations.[5] In fact, it is commonly acknowledged that loan finance is generally conducted in a relationship that is "at arm's length".[6] *Quistclose* is equity's way of bridging the gap between the lender and the borrower, by using a specific commercial trust to protect lenders in loan financing.

Furthermore, the imposition of a *Quistclose* trust is important because it demonstrates that equity will bestow proprietary rights (*in rem*) for the lender where certain conditions are met.[7] The loan in essence becomes the trust's property, and thereafter it is cloaked by the laws governing trusts and trustees; this increases the rights of the lender.[8] Without a right *in rem* the lender, in the usual lender–borrower relationship, would only have a right *in personam*, and the latter right operates to make the lender entitled merely *pari passu*.[9] Hence, the importance of *Quistclose* in defeating credit risk can be explained by its ability for a lender to create a right *in rem*. More broadly still, the *Quistclose* trust is said to create a fiduciary relationship, which makes the borrower bound by the duty of loyalty to their lender-fiduciary.[10]

The fiduciary law point in *Quistclose* has clearly been discussed in the research area. Lord Wilberforce, who gave the leading judgment in the case, acknowledged the "fiduciary character" of the relationship that emerged between the parties in the case.[11] Moreover, Glister's article, which provides an excellent overview of the classification of *Quistclose's* nature, expands on the fiduciary elements within the *Quistclose* trust.[12] The focus of Glister's article was on identifying the possible nature of *Quistclose*, and providing reconciliation for its existence.[13] This article looks a little more broadly, by focusing specifically on the lender–borrower relationship and how this decision obviates risk to lenders in commercial loan finance arrangements.

As stated above, in providing an exegesis of the *Quistclose* case, the commentary has tended to focus on trying to explain the nature of the commercial lending transaction that took place between Quistclose Investments Ltd and its borrower Rolls Razor Ltd. The seminal judgment of Lord Wilberforce in that case is somewhat ambiguous. At present it is clear that the most commonly held viewpoint in the analysis is that *Quistclose* gave rise to a resulting trust.[14] That conceptualisation of *Quistclose* is adopted in this article. It is noteworthy that the resulting trust theory is not without its flaws and is not unanimously accepted.[15] However the *Quistclose* trust is classified, the effect is largely the same when viewed from the lender–borrower relationship. For this article, what is important is that

3. 'Credit risk' (Council of Europe Development Bank) <https://coebank.org/en/investor-relations/risk-management/credit-risk/> accessed 12 March 2023.
4. Ibid.
5. *Bank of Scotland v A Ltd* [2001] EWCA Civ 52.
6. P Hood, *Lender Liability* (OUP 2012) 233.
7. *Quistclose* [1970] 580(C) (Lord Wilberforce).
8. *Twinsectra Ltd v Yardley and others* [2002] UKHL 12; [2002] AC 164, 191 (Lord Millett).
9. n 1, 582.
10. Ibid.
11. Ibid.
12. JA Glister, 'The Nature of Quistclose Trusts: Classification and Reconciliation' (2004) 63(3) The Cambridge Law Journal 632, 636.
13. Ibid.
14. *Bellis v Challinor* [2015] EWCA Civ 59 (Briggs LJ).
15. *Swiss Bank Corporation v Lloyd Bank Ltd.* [1982] AC 584; *Carreras Rothmans Ltd. v Freeman Mathews Treasure Ltd.* [1985] Ch 207 (Peter Gibson J).

Quistclose creates a trust, and that operates to reduce credit risk for lenders.

The article begins by outlining the facts and judgment of *Quistclose*. In doing so, the reasoning of Lord Wilberforce in that case is evaluated. Together with *Quistclose*, some of other important cases that set out the nature of the *Quistclose* trust are analysed, including Lord Millett's dissenting judgment in *Twinsectra Ltd v Yardley* [2002].[16] This is followed by a section on lending risk, i.e., the risks that lenders must consider when providing loan finance. The importance of this section is in its demonstration of *Quistclose's* existence within the lenders' risk profile. The work then includes a section which further expands on the significance of *Quistclose* within a lending context, prior to concluding with a summary of the article's main points.

Barclays Bank Ltd v Quistclose Investments Ltd

As mentioned in the introduction above, the case of *Quistclose* is well known. Nevertheless, it is necessary, for the purposes of this article, to restate the facts and judgment. It is noteworthy that the *Quistclose* trust defines a specific type of commercial arrangement, and therefore its ability to be extracted widely is limited by both the context and facts within which it arose.

Facts

The appellants, Barclays Bank Ltd., brought an action for a sum of £209,719 8 s. 6d., which had been paid by the respondents, Quistclose Investments Ltd., to "a special dividend account in the name of Rolls Razor Ltd."[17] Lord Wilberforce suggested in his judgment that, "On June 4, 1964, its [Rolls Razor's] overdraft with the appellant bank was £485,000, against a limit of £250,000."[18] In 1964, Rolls Razor Ltd (hereafter, "Rolls Razor") entered into voluntary liquidation because, according to the facts, it had encountered "serious financial difficulties."[19] Rolls Razor sought to obtain a £1,000,000 loan but, before it could do this, it was required to raise the sum of £209,719 8 s. 6d., so that it could pay the ordinary share dividend that it had declared in July 1964.[20] The dividend was approved in the company's Annual General Meeting, and the company thereafter became a debtor to the shareholders.[21] The respondents, Quistclose, agreed to provide this loan to the company. In relation to the loan granted by Quistclose, the case states the following:

> The loan was made on the condition "that it is used to pay the forthcoming dividend due on July 24 next," and the appellants agreed to open a special account (No. 4 ordinary dividend account) into which the money to be provided was to be paid. A letter from Rolls Razor to the bank enclosing the respondents' cheque for £209,719 8s. 6d. showed that it was agreed between Rolls Razor and the appellants [Barclays Bank] that the No. 4 account would "only be used to meet the dividend due on July 24, 1964." The cheque was paid into the No. 4 account and cleared. On August 27, the dividend not having been paid, Rolls Razor went into voluntary liquidation.[22]

Since Rolls Razor went into liquidation, the specific purpose attached to Quistclose's loan had failed. The respondents took an action against Rolls Razor for the sum of the loan, arguing that the money should be returned as it was held for them on a resulting trust in consequence of the trust's failure.[23] Furthermore, Quistclose believed that Barclays Bank held the money as a constructive trustee. Barclays had received notice of the specific purpose of the loan, and the money was

16. n 8.
17. n 1, 569(A).
18. Ibid, 578(E)–(F). *Brackets added.*
19. Ibid, 569(B).
20. Ibid, 569(C).
21. Ibid, 578(G)–(H) (Lord Wilberforce).
22. Ibid, 569(C)–(E).
23. Ibid, 569(E).

paid into a separate bank account. That said, Barclays Bank also required the money in the account to be used to pay the overdraft that had been left outstanding on the other account that Rolls Razor had opened with it.

In the court of first instance, Plowman J. dismissed the action. He did not think that a resulting trust should arise for the respondents simply because the specific purpose had failed, even if an obligation of a fiduciary character had arisen, i.e.: "there was no reason to impute an intention that the money should be repayable pursuant to some equitable obligation additional to the legal one."[24] The Court of Appeal reversed Plowman J.'s decision and stated that the specific purpose created the necessary circumstances to allow the respondents, Quistclose, to have the sum that was loaned to the company returned.[25] The case was appealed to the House of Lords for determination.

Judgment

In the appeal from the Court of Appeal, the House of Lords had to determine whether a loan granted with a specific condition attached "gave rise to a relationship of a fiduciary character or trust."[26] The lead judgment in the case was made by Lord Wilberforce, with whom the other Law Lords agreed. His Lordship found for Quistclose, stating the following:

> That arrangements of this character for the payment of a person's creditors by a third person, give rise to a relationship of a fiduciary character or trust, in favour, as a primary trust, of the creditors, and secondarily, if the primary trust fails, of the third person, has been recognised in a series of cases over some 150 years.[27]

Lord Wilberforce cited, *inter alia*, the case of *Toovey v Milne* (1819),[28] where Abbott CJ held that a loan advanced for a specified purpose would not form part of the bankrupt's estate.[29] Lord Wilberforce's reasoning in the above extract is controversial for the reason that he does not fully define what type of trust he was describing in *Quistclose*. Without using a specific legal lexicon to explain the nature of this trust, Lord Wilberforce simply suggested that, in this situation, a "primary" trust is created, and operates, when the loan is made between the lender and borrower.

However, Lord Wilberforce believed that where it transpired that this primary trust failed because the purpose is not carried out, a secondary trust thereafter arises to return the property back to the lender. From the lenders' position, which is the principal concern of this article, it does not matter why the property is deemed to be returnable. Indeed, the primary concern of the lender in this scenario is to manage and mitigate credit risk when providing loans with specific conditions attached to them.

Once his Lordship had dealt with whether a fiduciary obligation or trust had arisen in the case, he then went on to look at the second question before the court, that of notice.[30] Lord Wilberforce, in agreeing with the reasoning of the Court of Appeal, believed that "it is necessary to show that the bank [Barclays Bank] had notice of the trust or the circumstances giving rise to the trust, at the time when they received the money, viz., on July 15, 1964."[31] He did not feel that simply putting money in a separate account was sufficient to constitute notice.[32] Something more was required. In this case, Rolls Razor attached a covering letter to the cheque that was paid to Barclays Bank;[33] this letter fully explained the nature of the loan that was advanced.[34]

24. Ibid, 569(F).
25. Ibid, 569(G).
26. n 1, 568(B)–(C).
27. Ibid, 580(C)–(D) (Lord Wilberforce).
28. *Toovey v Milne* (1819) 2 B & A 683.
29. n 1, 580(D)–(F) (Lord Wilberforce).
30. Ibid, 582(B) (Lord Wilberforce).
31. Ibid, 582(C) (Lord Wilberforce). Brackets added.
32. Ibid.
33. Ibid, 582(D) (Lord Wilberforce).
34. Ibid.

Further to this, the facts show that a telephone conversation had occurred between a Mr. Goldbart and a Mr. GH Parker of Rolls Razor and Barclays Bank, respectively.[35] Therefore, Lord Wilberforce opines that:

> From these there is no doubt that the bank was told that the money had been provided on loan by a third person and was to be used only for the purpose of paying the dividend. This was sufficient to give them notice that it was trust money and not assets of Rolls Razor Ltd.: the fact, if it be so, that they were unaware of the lender's identity (though the respondent's name as drawer was on the cheque) is of no significance.[36]

On that basis Lord Wilberforce thought that the Court of Appeal's decision was "correct on all points", and so dismissed the appeal.[37]

Post-Quistclose

As discussed above, the exact nature of the *Quistclose* trust has been debated in subsequent cases, extra-judicial writings, and academic commentaries. The most accepted analysis is that the *Quistclose* trust is a type of implied trust known as an "orthodox resulting trust".[38] This resulting trust theory was advocated, extra-judicially, by Lord Millett (writing as Peter Millett) in 1985.[39] In a dissenting judgment delivered in the case of *Twinsectra Ltd v Yardley* [2002][40], a case on dishonest assistance, Lord Millett was able to put the theory that he had espoused in his earlier *Law Quarterly Review* article to the test. He stated the following in his judgment in *Twinsectra*:

> When the money is advanced, the lender acquires a right, enforceable in equity, to see that it is applied for the stated purpose, or more accurately to prevent its application for any other purpose. This prevents the borrower from obtaining any beneficial interest in the money, at least while the designated purpose is still capable of being carried out. Once the purpose has been carried out, the lender has his normal remedy in debt. If for any reason the purpose cannot be carried out, the question arises whether the money falls within the general fund of the borrower's assets, in which case it passes to his trustee in bankruptcy in the event of his insolvency and the lender is merely a loan creditor; or whether it is held on a resulting trust for the lender. This depends on the intention of the parties collected from the terms of the arrangement and the circumstances of the case.[41]

Following this, Lord Millett engaged with the nature of the *Quistclose* trust a little further. In particular, he was concerned with "the location of the beneficial interest" in the *Quistclose* case.[42] Interestingly, he suggested "that the beneficial interest remained throughout in the lender."[43] This concept of the beneficial interest remaining with the lender is not without its support, most notably by Gummow J in *In re Australian Elizabethan Theatre Trust (1991)*.[44] In citing this case Lord Millett suggested that "Gummow J saw nothing special in the Quistclose trust, regarding it as essentially a security device to protect the lender against other creditors of the borrower pending the application of the money for the sated [sic] purpose."[45] Here, there is a clear acknowledgement by both Lord Millett and Gummow J of the effective use of the *Quistclose*-type mechanism to manage credit risk.

However, the idea of the beneficial interest never leaving the lender, as advocated by Lord Millett, is conceptually problematic and has received criticism. For

35. Ibid.
36. Ibid, 582(D)-(E) (Lord Wilberforce).
37. Ibid, 582(F) (Lord Wilberforce)
38. n 8, 192 (Lord Millett).
39. PJ Millett, 'The Quistclose Trust: Who can enforce it?' (1985) 101 LQR 269.
40. n 8, 180 (Lord Millett).
41. Ibid, para. 69 (Lord Millett).
42. Ibid, para. 77.
43. Ibid, para. 80.
44. *In re Australian Elizabethan Theatre Trust* (1991) 102 ALR 681.
45. *Twinsectra*, para. 80.

instance, Lord Wilberforce, who was a proponent of the "common intention" theory of resulting trusts, stated that discussion of the bank retaining an equitable interest is "meaningless" and "fallacious", given the need to separate title for trust creation.[46]

It is important to note that the trust in *Quistclose* has been applied more broadly by later cases than the simple paying of a debt or dividends. Indeed, a good example of the extension of the principle in *Quistclose* can be seen in *Re EVTR* [1987] whereby the lender provided money for the specific purpose of buying equipment.[47] This purpose was never carried out and the loan money returned back to the lender.[48]

Quistclose and lending risks during loan finance

With respect to loan finance, this article argues that there are four main "risks" that may arise during the provision of loan finance. These risks include: (i) direct liability; (ii) credit risk; (iii) security risk; and (iv) reputational risk. It is necessary to briefly outline these risks, which make up this article's risk profile.

Direct liability

Direct liability (also known as "lender liability" or "regulatory risk") describes any liability that "arises out of the banker-customer relationship."[49] Thus, the ways in which lender liability can arise are legion. For instance, lenders can face liability as a fiduciary,[50] or for negligence,[51] or for a breach of contract,[52] or for a dishonest assistance,[53] or as a constructive trustee.[54] However, the most well-known example, perhaps, is the liability of the secured lender following a foreclosure event.[55] If a lender faces the situation where its borrower is in default, it may exercise any security interest that it has to repossess the borrower's property.[56] When the lender forecloses property, it thereafter becomes the "owner/occupier" of the land, and can be held to account, *caveat emptor*, for any liabilities attached to that land.[57] In modern lending, such liability is particularly significant in the environmental context.[58] The *Quistclose* trust can do little to remedy direct liability risk, as this is dependent on the various laws governing the lender's relationship with its borrowers.

Credit risk

Credit risk has already been defined in the introduction of this work. As noted throughout, this risk is the most important for this article, since *Quistclose* directly relates to the lender's ability to recover its loan in the case of the borrower's default. As happened in *Quistclose*, this becomes especially important in an insolvency scenario, given that the finding of a trust provides the lender with a right *in rem*. Credit risk describes any losses that can be incurred by a lender in the situation where the borrower is unable to meet its loan obligations.[59] It is argued here that the *Quistclose* trust is an important method by which a lender can more appropriately manage its credit risk on a given loan. It has already been established that *Quistclose* allows the lender to retain a beneficial entitlement to the loan money. This ultimately ensures that credit risk is managed and mitigated in a default situation (e.g.,

46. *Westdeustche Landesbank Girozentrale v Islington London Borough Council* [1996] AC 669, 899.
47. *Re EVTR* [1987] BCLC 646.
48. Ibid.
49. n 6, 1.
50. Ibid, 233–282.
51. Ibid, 283–334.
52. Ibid, 485–523.
53. Ibid, 335–383.
54. Ibid, 384–467.
55. Ibid, 525.
56. Ibid.
57. Ibid, 563
58. Ibid.
59. 'Credit risk' https://coebank.org/en/investor-relations/risk-management/credit-risk/

because of borrowers' insolvencies), or where the loan is used for a purpose that is other than that expressed by the lender.

Security risk

Loans are often secured against property, but this creates a risk for lenders.[60] As with credit risk, this risk is also "indirect" in the sense that it does not create direct liability for the lender. A security risk simply denotes the situation where the value of the lender's secured interest under the loan reduces in value.[61] For instance, if a loan is secured against property by the lender, a loss could be made if the borrower defaults on their loan repayments and the security is worth less at this point than the lender's initial valuation of the security.[62] The value of the property could be worth less for any number of reasons, including fluctuations in the market. *Quistclose* can be used instead of secured charges on property to grant the lender a proprietary claim under a trust. Thus, the *Quistclose* trust can be seen as an alternative risk management technique to secured lending; however, that said, *Quisclose's* very specific circumstances must be acknowledged as these affect the range of its use.

Reputational risk

A lender may incur reputational risks by lending to certain people, businesses, or industries.[63] This risk can affect all lenders but is most significant for large commercial lenders. For instance, large commercial lenders may provide a loan for the building of an oil pipeline or assist in funding an armaments company. Providing loan finance to such causes is contentious and can attract public criticism and ignominy. Reputational risk is particularly significant today, because of the rise of ESG considerations and socially responsible investment practices. Again, the case of *Quistclose* does not have a direct bearing on lenders' reputational risk.

How is Quistclose significant in assisting lenders with risk management?

To understand *Quistclose's* significance in assisting lenders in managing loan risks, it is necessary to turn, once again, to Lord Millett's judgment in *Twinsectra Ltd v Yardley* [2002]. At paragraph 68 his Lordship states, in no uncertain terms, that, "Money advanced by way of loan normally becomes the property of the borrower. He is free to apply the money as he chooses, and save to the extent to which he may have taken security for repayment the lender takes the risk of the borrower's insolvency."[64] Here, Lord Millett acknowledges that the borrower's insolvency creates a credit risk for lenders when their borrower has fallen into insolvency.

Moreover, he introduces an important point about the lender–borrower relationship. Under the law it is generally acknowledged that lenders do not gain any beneficial entitlement to a normal loan. In short, no fiduciary relationship exists between the parties to a loan. The reason for this is well explained by Hood in his writing on lender liability:

> Ordinarily, a lender, when dealing with a customer, is required to be honest, reasonably careful and discreet (in relation to the details of the customer's account), but, apart from when it is acting as an agent for the customer, such as when paying or collecting cheques, it does not have to subordinate its interests to those of its customer. This is because the relationship is a commercial one, founded in contract, ie it is an arm's length relationship.[65]

60. n 6, 525.
61. Ibid.
62. Ibid.
63. D Adeabah, C Andoh, S Asongu and A Gemegah, 'Reputational risks in banks: A review of research themes, frameworks, methods, and future research directions' (2022) Journal of Economic Surveys 1–30.
64. n 8, para. 68.
65. n 6, 233.

However, *Quistclose* acts to change the nature of this purely commercial relationship, allowing the lender to retain a beneficial interest in the property. This is a very important consideration for lenders during the making and bestowing of loans onto their customers. It should therefore be seen as a part of the lenders' risk management. Again, Lord Millett emphasises this point in his dissenting judgment in *Twinsectra*:

> But it is well established that a loan to a borrower for a specific purpose where the borrower is not free to apply the money for any other purpose gives rise to fiduciary obligations on the part of the borrower which a court of equity will enforce. In the earlier cases the purpose was to enable the borrower to pay his creditor or some of them, but the principle is not limited to such cases.[66]

Given that Lord Millett suggested that the *Quistclose* principle is not limited to cases of paying a debtor, the natural question arises as to how far can this concept be extended by lenders to mitigate for credit risks? What specific purposes can form the essence of a *Quistclose* trust? Can, for instance, *Quistclose* assist banks in achieving their environmental–social-governance (ESG) considerations and responsible lending practices during their lending to commercial customers?

In light of the above question, it may well be the case that *Quistclose* could go further than simply reducing credit risk during loan finance. Indeed, providing loans with specific conditions could be used to assist lenders in influencing the behaviour of their borrowers. For example, a lender could utilise *Quistclose* as a risk management technique to provide a loan with a condition that the borrower does not use the money for projects that would be deemed harmful to climate change. If the borrower breaches this specific purpose, the lender will have the right to recover the loan under a resulting trust; the existence of *Quistclose* means that the relationship is no longer simply commercial and at arm's length. Whilst speculative, it is nevertheless interesting to examine the extent to which the *Quistclose* trust can be stretched in the future to improve the risk management processes of lenders.

Conclusion

In summary, this article has attempted to analyse the importance of the seminal case of *Barclays Bank v Quistclose* through the eyes of bank lenders and their risk management functions. In doing so, the article has created a risk profile which outlines the main risks that affect lenders during their loan finance provision. It is acknowledged by the author that there are many risks that can arise during lending, but the article has reduced the risks to four main categories of risk, including: (i) direct liability; (ii) credit risk; (iii) security risk; and (iv) reputational risk. The article has shown that the *Quistclose* trust most affects credit risk, as it allows the lender to recover its loan money during a borrower's insolvency. Importantly, the lender with a *Quistclose* trust would not be in a commercial relationship and would be allowed to recover before other creditors as it has a right *in rem*. The article has also examined the extent to which the *Quistclose* trust may be significant for lenders, speculating whether it could be used to improve socially responsible lending and borrowers' behaviour. In short, the underlying and central thesis of this article is that *Quistclose* should not only be viewed as a resulting trust but an important risk management technique for lenders to incorporate into their loan financing.

***Lloyd Brown** is the module director of the Equity and Trusts modules at the HRC School of Law, Swansea University. E-mail: lloyd.a.brown@swansea.ac.uk*

66. n 8, para. 68.