15. Constructive trusts – other models

1) Profits from unlawful killing

Reading: Hudson, para 12.4.2
In the estate of Crippen [1911] P 108

2) Profits from theft

Reading: Hudson, para 12.4.3
Westdeutsche Landesbank v Islington [1996] 1 AC 669
Cf. Att-Gen for Hong Kong v. Reid [1994] 1 All ER 1
Box, Brown & Jacobs v Barclays Bank [1998] Lloyd’s Rep Bank 185, 200, per Ferris J (thief does not ordinarily acquire property rights)
Shalson v Russo [2003] EWHC 1637, [110], per Rimer J (ditto)
Cf. Proceeds of Crime Act 2002, s.6 (Assets Recovery Agency)

3) Profits from fraud

Reading: Hudson, para 12.4.4

(a) Ordinarily property acquired by fraud will be held on constructive trust
Westdeutsche Landesbank v Islington [1996] 1 AC 669, 716, per Lord Browne-Wilkinson:
“when property is obtained by fraud, equity places a constructive trust on the fraudulent recipient”.
Paragon Finance v Thackerar [1999] 1 All ER 400, 408, per Millett LJ:
“Equity has always given relief against fraud by making any person sufficiently implicated in the fraud accountable in equity. In such a case he is traditionally though I think unfortunately described as a constructive trustee and said to be “liable to account as constructive trustee.”

(b) Property acquired by fraudulent misrepresentation not held on constructive trust
*Lonrho v Al Fayed (No 2) [1992] 1 WLR 1; [1991] 4 All ER 961, per Millett J:
‘A contract obtained by fraudulent misrepresentation is voidable, not void, even in equity. The representee may elect to avoid it, but until he does so, the representor is not a constructive trustee of the property transferred pursuant to the contract, and no fiduciary relationship exists between him and the representee. It may well be that if the representee elects to avoid the contract and set aside a transfer of property made pursuant to it, the beneficial interest in the property will be treated as having remained vested in him throughout, at least to the extent necessary to support any tracing claim.’

4) Is the doctrine of constructive trust coherent?

Consider the various competing forms of constructive trust we have encountered:
- Westdeutsche Landesbank v Islington – based on conscience
- Att-Gen Hong Kong v Reid – based on (i) equity looks upon as done that which ought to have been done (ii) the evil practice of accepting bribes and (iii) may lead to a personal liability over and above the proprietary liability
- Boardman v Phipps – avoidance of conflicts of interest
- Lloyds Bank v Rosset – common intention by agreement or by understanding
- Neville v Wilson / Jerome v Kelly – contract transfers equitable interest by constructive trust although nature of obligations take effect sub modo
- Rochefoucauld v Boustead – based on avoidance of fraud
- Royal Brunei Airlines v Tan – a personal liability to account (see next section)

Given that these forms of constructive trust arise on different bases, is the doctrine coherent? If not, does it matter?