30. Knowing receipt

1. Knowing receipt

Reading: *Hudson, section 20.3*

a). What type of knowledge?

*Baden v. Societe Generale* (1983) [1993] 1 W.L.R. 509 *per* Peter Gibson J, the five types of knowledge:

1. actual knowledge;
2. wilfully shutting one’s eyes to the obvious;
3. wilfully and recklessly failing to make inquiries which an honest person would have made;
4. knowledge of circumstances which would indicate the facts to an honest and reasonable man;
5. knowledge of circumstances which would put an honest and reasonable man on inquiry.

**Re Montagu’s Settlements** [1987] Ch 264 (only first three categories of knowledge; forgetfulness)


*El Ajou v. Dollar Land Holdings* [1994] 2 All ER 685


b). Changing the test (i): dishonesty


*Ali v Al-Basri* [2004] EWHC 2608, [195] (dishonesty is likely to suggest knowledge and so attract liability)

*Cf. Niru Battery Manufacturing Co v Milestone Trading Ltd* [2004] 2 WLR 1415, [188], *per* Sedley LJ (dishonesty not a requirement of liability)

c). Changing the test (ii): unconscionability

*Houghton v. Fayers* [2000] 1 BCLC 571

*BCCI v Akindele* [2000] 4 All ER 221

*Criterion Properties plc v Stratford UK Properties LLC* [2003] 2 BCLC 129, [38] (expresses preference for flexibility of a test of conscionability)

*Niru Battery Manufacturing Co v Milestone Trading Ltd* [2004] 2 WLR 1415, [188], *per* Sedley LJ


*Cf. Crown Dilmun v Sutton* [2004] EWHC 52 (Ch), [23] (criticises looseness of conscionability test)

2. Liability to account in corporate contexts.

Reading: *Hudson, section 20.5*
If an individual is dishonest or has knowledge, then the claimant can claim against that individual. However, if that individual is employed by a company, then there is a question as to whether or not that company can also be said to have been dishonest or to have had knowledge so that the claimant could claim against the company instead.

a) **Controlling mind test**
   - *El Ajou v Dollar Land Holdings* [1994]
   - *Crown Dilmun v Sutton* [2004] EWHC 52 (Ch), [23] (controlling mind test)

b) **Risk in commercial transactions**
   - "All investment involves risk. Imprudence is not dishonesty, although imprudence may be carried recklessly to lengths which call into question the honesty of the person making the decision. This is especially so if the transaction serves another purpose in which that person has an interest of his own. … [Where a person] takes a risk that a clearly unauthorised transaction will not cause loss … If the risk materialises and causes loss, those who knowingly took the risk will be accountable accordingly."

c) **Standard commercial conduct in the context in that market**
   - *Cowan de Groot Properties Ltd v Eagle Trust plc* [1992] 4 All ER 700, 761, per Knox J (a person guilty of "commercial unacceptable conduct in the particular context" is likely to be held to have been dishonest)
   - *Polly Peck v Nadir (No 2)* [1992] 4 All ER 769 (liability of financial advisors dependent on context and whether they ought to have been suspicious)
   - *Heinl v Jyske Bank (Gibraltar) Ltd* [1999] Lloyd’s Rep Bank 511, at 535, per Colman J (contravention of financial regulation)
   - *Tayeb v HSBC Bank plc* [2004] 4 All ER 1024 (contravention of financial regulation)
   - *Manolakaki v Constantinides* [2004] EWHC 749 (clear dishonesty where contravention of financial regulation, backdating of documents and including untrue statements in documents; absence of personal profit would militate against finding of dishonesty)