

# The impact of *Barlow Clowes v Eurotrust* on dishonest assistance

## Abstract

This essay is concerned with the effect which the decision of the Privy Council in *Barlow Clowes International Ltd (in liquidation) v Eurotrust International Ltd*<sup>1</sup> has had on the scope of personal liability for dishonest assistance in a breach of trust by a stranger to that trust. Briefly put, Lord Hoffmann delivered the only opinion on behalf of a unanimous Privy Council which approved the objective test for dishonesty in this context set out originally by Lord Nicholls in the Privy Council in *Royal Brunei Airlines v Tan*.<sup>2</sup> Lord Hoffmann rejected the notion that the Lords Hutton and Hoffmann in *Twinsectra v Yardley*<sup>3</sup> had intended to transform the test in *Royal Brunei Airlines v Tan* from a purely objective test into a hybrid subjective test. The position had been complicated further by the speech of Lord Nicholls in *Dubai Aluminium v Salaam*<sup>4</sup> which reasserted that his own purely objective test in *Royal Brunei Airlines v Tan* was the correct approach. This essay will consider how the decision in *Barlow Clowes v Eurotrust* affects the law on dishonest assistance, how that case resolves this debate about the meaning of “dishonesty”.<sup>5</sup>

## The doctrine of dishonest assistance in outline

### *The nature of dishonest assistance*

Someone who dishonestly assists in a breach of trust will be liable to account to the beneficiaries of a trust for any loss caused by that breach of trust.<sup>6</sup> Breach of trust in this

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<sup>1</sup> Privy Council Appeal No 38 of 2004. The judgment of the Privy Council was delivered on 10<sup>th</sup> October 2005.

<sup>2</sup> *Royal Brunei Airlines v Tan* [1995] 2 AC 378.

<sup>3</sup> [2002] 2 AC 164.

<sup>4</sup> *Dubai Aluminium v Salaam* [2002] 3 WLR 1913; [2003] 1 All ER 97.

<sup>5</sup> For a more detailed discussion of this area of law and of these cases see Thomas and Hudson *The Law of Trusts* (OUP: 2004) ch 30 “The Liability of Strangers to Account as Constructive Trustees”; Hudson, *Equity & Trusts* (London: Cavendish, 2005) ch 20. For other discussions of the law before all of these cases were decided see Hayton, *Underhill and Hayton on Trusts and Trustees* (London: Butterworths, 2002) ...; Lewin *on Trusts* (London: Sweet & Maxwell, 2000) ... .

<sup>6</sup> *Barnes v Addy* (1874) 9 Ch App 244; *Royal Brunei Airlines v Tan* [1995] 2 AC 378; *Smith New Court v Scrimgeour Vickers* [1997] AC 254; *Corporacion Nacional del Cobre De Chile v Sogemin Metals* [1997] 1 WLR 1396; *Fortex Group Ltd v MacIntosh* [1998] 3 NZLR 171; *Wolfgang Herbert Heintl v Jyske Bank* [1999] Lloyd’s Rep Bank 511; *Thomas v Pearce* [2000] FSR 718; *Grupo Toras v Al-Sabah* (2000) unreported, 2 November, CA; *Twinsectra v Yardley* [2002] 2 All ER 377; *Derksen v Pillar* [2002] All ER (D) 261; *Dubai Aluminium Company Ltd v Salaam* [2002] 3 WLR 1913, [2003] 1 All ER 97. Earlier cases on knowing assistance include *Fyler v Fyler* (1841) 3 Beav 550, 49 ER 1031; *Attorney-General v Leicester Corp* (1844) 7 Beav 176; (1844) 49 ER 1031; *Eaves v Hickman* (1861) 7 Beav 176; *Mara v*

context will include the breach of any fiduciary duty.<sup>7</sup> The liability for dishonest assistance in a breach of trust is imposed on people who are not trustees – a trustee would be held liable simply for breach of trust as set out by the House of Lords most recently in *Target Holdings v Redferns*.<sup>8</sup> People are not trustees were referred to originally by Lord Selborne as being “strangers” to the trust and that is the sense in which the term “stranger” is used in this essay. Liability for dishonest assistance attaches to any person who intermeddles with either a trust or any other fiduciary relationship. For example, if a managing director of a company dishonestly causes that company to breach its obligations as a trustee for one of its clients, then that managing director will be personally liable to the client as a dishonest assistant in relation to that breach of trust. Similarly, an investment advisor who dishonestly advises the trustees of a pension fund to make an investment in technical breach of trust which causes a loss, then that investment advisor would be liable for the loss as a dishonest assistant.

There are two elements to the defendant stranger’s liability: first, that the defendant have assisted in the breach of trust and, secondly, that that assistance was dishonest. The focus of two Privy Council<sup>9</sup> and two House of Lords decisions<sup>10</sup> in this area in the last decade have been on the meaning of “dishonesty” in this context. It is primarily this debate which we shall consider in this essay. In short, the question is whether a defendant will be taken to have been dishonest simply because the court considers that an objective, honest person would have considered the defendant to have been dishonest,<sup>11</sup> or whether the defendant must also have realised that such a objectively honest person would have considered him to have been dishonest.<sup>12</sup> The debate, therefore, has concerned the question whether the test for dishonesty is entirely objective or whether it should also involve a level of subjectivity.

### *The test for dishonesty in Royal Brunei Airlines v Tan*

In describing the nature of the test for dishonesty in this context in *Royal Brunei Airlines v Tan* Lord Nicholls held that:<sup>13</sup>

‘... acting dishonestly, or with a lack of probity, which is synonymous, means simply not acting as an honest person would in the circumstance. This is an objective standard.’

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*Browne* [1896] 1 Ch 199; and the comments of Ungood-Thomas J on the nature of the remedy in *Selangor v Cradock (No 3)* [1968] 1 WLR 1555, 1579.

<sup>7</sup> *Dubai Aluminium v Salaam* [2002] 3 WLR 1913; [2003] 1 All ER 97, para 9.

<sup>8</sup> [1996] 1 AC 421.

<sup>9</sup> *Royal Brunei Airlines v Tan* [1995] 2 AC 378; *Barlow Clowes v Eurotrust* (2005) ....

<sup>10</sup> *Twinsectra v Yardley* [2002] 2 AC 164; *Dubai Aluminium v Salaam* [2002] 3 WLR 1913; [2003] 1 All ER 97.

<sup>11</sup> *Royal Brunei Airlines v Tan* [1995] 2 AC 378; *Dubai Aluminium v Salaam* [2002] 3 WLR 1913; *Barlow Clowes v Eurotrust* (2005) ....

<sup>12</sup> *Twinsectra v Yardley* [2002] 2 AC 164.

<sup>13</sup> [1995] 2 AC 378, 386.

Therefore, the question which this test requires the court to ask is not what the defendant thought personally, but rather what an honest person would have done if they had been placed in the same circumstances as the defendant. From the remainder of this judgment it is clear that dishonesty in this context covers situations in which there has been either fraud, or a lack of probity or some reckless risk-taking which calls the defendant's honesty into question.

In this case, Tan was managing director of a travel agency company which sold the plaintiff airline's tickets to the public. The company was required to hold money received from the public for the sale of those tickets on trust for the airline until it accounted to the airline periodically for its receipts, less the company's commission. Tan moved money from the trust account held by the company and used the money to defray the company's own debts. There had been a breach of trust but the question arose whether or not the company had knowledge of the breach, given that all of the transactions had been procured by Tan. The company had gone into insolvency and therefore the airline proceeded against Tan personally to account for the loss occasioned by the breach of trust. Lord Nicholls held that it was not necessary that the trustee company was dishonest;<sup>14</sup> instead all that was required to make out liability for dishonest assistance in relation to Tan personally was that Tan, the dishonest assistant, was dishonest.<sup>15</sup> Prior to this decision, the doctrine had been "knowing assistance" because what was required was that the defendant stranger had had knowledge of the breach of trust. Lord Nicholls's approach, however, transformed the doctrine into "dishonest assistance" with the effect that the defendant would be liable if an objectively honest person would not have acted as the defendant acted.

In effect, therefore, the defendant lost the ability to argue that he had no subjective knowledge of the breach of trust. It is worth recognising, however, that the five categories of knowledge set out in *Baden v Societe Generale*<sup>16</sup> did contain the idea, *inter alia*, that a person would be deemed to have knowledge if he had failed to make the inquiries which an honest and reasonable person would have made. Thus there was an element of objectivity in that old test. However, the formalism bound up in deciding which inquiries an honest person would have made is displaced by Lord Nicholls's preference in *Royal Brunei Airlines v Tan* of asking in general terms what an honest person would have done (whether or not limited to the making of inquiries, and not limited to considering generally whether or not that person has knowledge<sup>17</sup> of any matter).

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<sup>14</sup> It is suggested that the company law doctrine of "the controlling mind" should have attributed Tan's knowledge and dishonesty to the company thus making it irrelevant whether or not the company needed to have been dishonest on these facts. However, the approach taken by Lord Nicholls renders this question unnecessary in relation to dishonest assistance.

<sup>15</sup> *Royal Brunei Airlines v Tan* [1995] 2 AC 378.

<sup>16</sup> [1993] 1 WLR 509.

<sup>17</sup> The difference between "knowledge" and "notice" in this context was significant in that the former concept does not have the notion of attributing knowledge of information in the way that the latter concept does.

*The mooted development of the combined test for “dishonesty”*

In *Twinsectra v Yardley*,<sup>18</sup> Lord Hutton suggested that it was not sufficient to hold a person liable for dishonest assistance to show that an objectively honest person would not have acted in the way that the stranger acted. Rather, his Lordship required that it would be necessary for the stranger to have understood subjectively that other people would have considered his behaviour to have been dishonest. Thus, a solicitor who assisted in the breach of a trust by sanctioning the payment of a lender’s money to his own client in breach of a solicitor’s undertaking to which he had become bound when becoming that client’s new solicitor, was held not to have been dishonest because the House of Lords did not consider either that he had been dishonest in general terms and furthermore because he had not understood that other people might have considered his actions to have been dishonest. While that decision of the majority purported *in toto* to approve the test in *Royal Brunei Airlines v Tan*, Lord Hutton did introduce this combined test. It was unclear, however, whether or not the remainder of their Lordships (including Lord Hoffmann), all of whom gave short speeches, intended to concur with this specific aspect of Lord Hutton’s speech or not. The explanation which is given of this aspect of Lord Hutton’s speech by Lord Hoffmann in *Barlow Clowes v Eurotrust* is considered below.

*The retreat from the combined test for “dishonesty”*

Latterly, Lord Nicholls has expressed liability for dishonest assistance as being the ‘equitable wrong of dishonest assistance in a breach of trust or fiduciary duty’.<sup>19</sup> In such circumstances, even though the stranger is not an express trustee of a trust, by virtue of dishonestly assisting a breach of trust the stranger is *construed* to be liable as though he was in fact a trustee. Consequently, the liability in this context is that of accounting to the beneficiaries for the loss caused by the breach of trust as a constructive trustee. Thus, the sort of personal liability ordinarily imposed on trustees to account in the event of a breach of trust is imposed on strangers who are construed to be liable as though trustees.<sup>20</sup> So, in *Dubai Aluminium v Salaam* the House of Lords considered the liability of the members of a partnership for the dishonest breach of duty of one of the partners: this required, *inter alia*, the consideration of the scope of liability for dishonest assistance. In that case Lord Nicholls described the liability for dishonest assistance as being that of a ‘constructive trustee’<sup>21</sup> whose ‘misconduct ... gives rise to a liability in equity to make good resulting loss’.<sup>22</sup> This analysis was predicated both on Lord Nicholls’ own decision in *Royal Brunei Airlines v Tan*<sup>23</sup> and on the older judgment in *Mara v Browne*,<sup>24</sup> where a partnership was held liable for a breach of fiduciary duty committed by one of the partners.<sup>25</sup> No mention was made in his Lordship’s speech of the approach taken in

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<sup>18</sup> [2002] 2 AC 164.

<sup>19</sup> *Dubai Aluminium v Salaam* [2002] 3 WLR 1913, [9].

<sup>20</sup> See *Target Holdings v Redfern* [1996] 1 AC 421.

<sup>21</sup> *Dubai Aluminium v Salaam* [2002] 3 WLR 1913, para 40.

<sup>22</sup> [2002] 3 WLR 1913, para 40.

<sup>23</sup> [1995] 2 AC 378.

<sup>24</sup> [1896] 1 Ch 199, 208, *per* Lord Herschell.

<sup>25</sup> Cf *In re Bell’s Indenture* [1980] 1 WLR 1217, 1230, *per* Vinelott J.

*Twinsectra v Yardley* which purported to introduce a subjective element to the objective notion of dishonesty in *Royal Brunei Airlines v Tan*.

### **The decision in *Barlow Clowes v Eurotrust***

#### *The facts in Barlow Clowes v Eurotrust*

This section considers the recent decision of the Privy Council in *Barlow Clowes v Eurotrust*<sup>26</sup> which will serve both as another illustration of how dishonest assistance functions in practice and also as a resolution of some of the key questions relating to the meaning of “dishonesty” in this context. The facts relate to the collapse of Barlow Clowes International Ltd (“Barlow Clowes”<sup>27</sup>) in relation to which Peter Clowes and his associate Cramer had dissipated investors’ money on personal business ventures and “extravagant living”.<sup>28</sup> This particular case related to funds which were paid through a company called International Trust Corporation (Isle of Man) Ltd (“ITC”) and to the liability of one of its directors, Henwood, as a dishonest assistant in Peter Clowes and Cramer’s breaches of duty. The focused on four sums paid from the Barlow Clowes organisation via ITC and on to Cramer and Peter Clowes: those sums were transferred between June and November 1987 and were in the amounts of £577,429, £6 million, £205,329, and £1,799,603 respectively. It was found that there was no other commercial purpose for these transactions.

The specific appeal brought before the Privy Council related to Henwood’s claim that he had not acted dishonestly. Henwood appealed against the Acting Deemster’s finding at first instance that he had dishonestly assisted Peter Clowes and Cramer on the basis that there was insufficient evidence to support such a finding.

The facts relating to Henwood’s involvement with the Barlow Clowes organisation are set out in summary form in Lord Hoffmann’s judgment: they can be understood as follows. Henwood and ITC were first involved with Cramer and payments from the Barlow Clowes organisation in May 1986. In the Spring of 1987, as Lord Hoffmann tells the tale, Henwood’s business relationship with Cramer and Peter Clowes grew close and the possibility arose that Henwood might go into a “virtual partnership” with these two men in relation to a reverse takeover of another company, JFH. We are told that it was at this stage that Henwood “began to take a lively interest in their business”.<sup>29</sup> It was in the summer of 1987 that the first of the relevant transactions took place by means of transfer from the Barlow Clowes organisation through ITC. Henwood approved the transfer of the money from ITC to Cramer so that Cramer could pursue personal business interests. The judge at first instance found that Henwood “knew enough about the origins of the money to have suspected misappropriation and that he acted dishonestly in assisting in its

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<sup>26</sup> (2005)

<sup>27</sup> We are not given specific information as to which company paid money to ITC and therefore I will simply refer to “the Barlow Clowes organisation” to represent the payer in these transactions.

<sup>28</sup> *Barlow Clowes v Eurotrust* [1].

<sup>29</sup> *Barlow Clowes v Eurotrust* [7].

disposal”.<sup>30</sup> The judge further found that after June 1987 Henwood “strongly suspected”<sup>31</sup> that the monies passing through ITC had come from private British investors. Consequently it was held that no honest person could have assisted Peter Clowes and Cramer if those suspicions were correct. Henwood, we are told, has “consciously decided not to make inquiries because he preferred in his own interest not to run the risk of discovering the truth”.<sup>32</sup>

*The decision of the Privy Council in Barlow Clowes v Eurotrust*

The argument advanced by Henwood’s counsel was that Lord Hutton in *Twinsectra v Yardley* had suggested that for a person to be dishonest, his actions must not only be considered to be dishonest by an objectively honest person but the defendant himself must also be aware that his actions would be considered dishonest by such a person.<sup>33</sup> Consequently, counsel for Henwood argued that Henwood had not appreciated that his actions would be considered to be dishonest and therefore that Henwood could not be a dishonest assistant.

The argument raised at first instance that Henwood lived by a different moral code and that by his own moral standards obeying instructions from his clients, Peter Clowes and Cramer, took priority in a way that excluded all other moral claims to his attention. In the words of the Acting Deemster (the judge at first instance), Henwood had an

“... exaggerated notion of dutiful service to clients, which produced a warped moral approach that it was not improper to treat carrying out clients’ instructions as being all important.<sup>34</sup> Mr Henwood may well have thought this to be an honest attitude, but, if so, he was wrong”.<sup>35</sup>

However, the court of appeal in the Isle of Man, the Staff of Government Division, considered that the Acting Deemster had drawn inferences of dishonesty from Henwood’s evidence and had based her judgment on those inferences. Consequently, it was said by the court of appeal that there was insufficient evidence to *prove* that Henwood was being dishonest, whereas instead (it was held) the Acting Deemster had simply inferred that dishonesty. The court of appeal considered that, just because Henwood knew the general nature of Cramer and Peter Clowes’ business, it did not follow that Henwood would necessarily have formed the view that the monies paid through ITC were necessarily taken from Barlow Clowes’s private investors.

The Privy Council overturned the decision of the court of appeal. As to the facts of the case, Lord Hoffmann considered that it was the Acting Deemster who had heard six days

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<sup>30</sup> *Barlow Clowes v Eurotrust* [8].

<sup>31</sup> *Barlow Clowes v Eurotrust* [11].

<sup>32</sup> *Barlow Clowes v Eurotrust* [11].

<sup>33</sup> [2002] 2 AC 164, 174.

<sup>34</sup> That is, Henwood argued that he considered his loyalty to Cramer and Clowes, his clients, as being more important than the rights or interests of any other person.

<sup>35</sup> *Barlow Clowes v Eurotrust* [12].

of evidence from Henwood and others and who was therefore in a good position to judge whether or not Henwood had acted dishonestly. His Lordship was unconvinced by the court of appeal's argument that a trial judge "drawing inferences from inferences" was likely to lead to injustice.

*Re-establishing the objective test for "dishonesty"; explaining *Twinsectra v Yardley**

As to the appropriate legal principles, there are three significant issues. First, Lord Hoffmann held that neither he nor Lord Hutton, when both gave judgment in *Twinsectra v Yardley*, had intended the test for dishonesty to be understood as having added a subjective requirement.<sup>36</sup> Instead, the purely objective test in *Royal Brunei Airlines v Tan* should be understood to be the governing test. Consequently, Henwood would not be able to rely on his own moral code to absolve him of liability and therefore he was held liable as a dishonest assistant.

Lord Hutton had held the following in *Twinsectra v Yardley* in purportedly (it had previously been thought) adding a subjective dimension to the test for "dishonesty":<sup>37</sup>

There is, in my opinion, a further consideration [*than deciding whether the test is one of knowledge or dishonesty as set out by Lord Nicholls*] which supports the view that for liability as an accessory to arise the defendant must himself appreciate that what he was doing was dishonest by the standards of honest and reasonable men. A finding by the judge that a defendant has been dishonest is a grave finding, and it is particularly grave against a professional man, such as a solicitor. Notwithstanding that the issue arises in equity law [*sic*] and not in a criminal context, I think that it would be less than just for the law to permit a finding that a defendant had been 'dishonest' in assisting in a breach of trust where he knew of the facts which created the trust and its breach but had not been aware that what he was doing would be regarded by honest men as being dishonest.

This form of the test, therefore, clearly added an important second, subjective element to the test of dishonesty. Significantly, though, the second limb of the test was whether or not the defendant realised that *other people* would have considered his actions to have been dishonest and not that *the defendant himself* thought that the action was dishonest. The key passage from Lord Hoffmann's judgment in *Barlow Clowes v Eurotrust* in this context is in paragraph [10], as follows:

'The judge stated the law in term largely derived from the advice of the Board given by Lord Nicholls of Birkenhead in *Royal Brunei Airlines v Tan*. In summary, she said that liability for dishonest assistance requires a dishonest state of mind on the part of the person who assists in a breach of trust. Such a state of mind may consist in knowledge that the transaction is one in which he cannot

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<sup>36</sup> *Barlow Clowes v Eurotrust* [15]-[16] and [18].

<sup>37</sup> *Twinsectra v Yardley* [2002] 2 All ER 377, 387. Italicised portions added for clarity.

honestly participate (for example, a misappropriation of other people's money), or it may consist in suspicion combined with a conscious decision not to make inquiries which might result in knowledge: see *Manifest Shipping Co Ltd v Unipolaris Insurance Co Ltd*<sup>38</sup>. Although a dishonest state of mind is a subjective mental state, the standard by which the law determines whether it is dishonest is objective. If by ordinary standards a defendant's mental state would be characterised as dishonest, it is irrelevant that the defendant judges by different standards. The Court of Appeal held this to be a correct state of the law and their Lordships agree.'

So, what results is a re-affirmation that the test is an objective test. However, whereas Lord Nicholls suggested considering what an honest person would have done and measuring the defendant's actions against the hypothetical actions of this honest person, Lord Hoffmann suggests that "ordinary standards" will be the standard against which the court will decide whether or not the defendant's subjective mental processes had been dishonest. It is suggested that asking what an honest person would have done is almost a counsel of perfection (but not in the pejorative sense which people often use that term). Asking what an honest person would have done means identifying an almost ideal course of conduct untainted by any moral impropriety. An objective set of standards may, however, permit some level of [moral equivalence] between things which are deemed "honest" and things which are deemed to be "dishonest".

Secondly, Lord Hoffmann explained that Lord Hutton should not have been interpreted as adding a level of subjectivity to the test. Rather, their Lordships in *Barlow Clowes v Eurotrust* took Lord Hutton in *Twinsectra v Yardley* to have meant that the defendant's "knowledge of the transaction had to be such as to render his participation contrary to normally acceptable standards of conduct. It did not require that he should have had reflections about what those normally acceptable standards were."<sup>39</sup> However, there are two problems with this attempt to "spin" Lord Hutton's dicta. The first problem is that Lord Nicholls's objective approach in *Royal Brunei Airlines v Tan* does not require that the defendant realise that his actions would be dishonest by ordinary standards: rather the court measures what an honest person would have done and then asks whether or not the defendant acted in that way. The second problem is that Lord Hutton is a criminal lawyer and criminal law's notion of dishonesty is subjective: it requires that the defendant know that his actions would be considered to be dishonest.<sup>40</sup> Thus it is perfectly probable that a criminal lawyer would have taken this attitude to questions of dishonesty.

Lord Hoffmann then gave an explanation of his own speech in *Twinsectra v Yardley*, which had expressed concurrence with Lord Hutton. Lord Hoffmann, however, made it clear that his comments in that case to the effect that the defendant must have exhibited "consciousness that one is transgressing ordinary standards of honest behaviour"<sup>41</sup> did

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<sup>38</sup> [2003] 1 AC 469.

<sup>39</sup> *Barlow Clowes v Eurotrust* [15].

<sup>40</sup> *R v Ghosh* [1982] 2 All ER 689; [1982] QB 1053; *R v Hicks* [2000] 4 All ER 833.

<sup>41</sup> *Twinsectra v Yardley* [2002] 2 AC 164, [20].



not require subjective reflection on what those standards are: rather, it was intended to be an objective requirement of dishonesty.

### *The trial judge's approach to the facts*

Thirdly, what emerges from Lord Hoffmann's opinion is that the judge at first instance was right to listen to the defendant's evidence and have regard to "the lies which Mr Henwood told in evidence".<sup>42</sup> The trial judge here considered that there may be a number of reasons why Henwood lied in evidence as to the time when he learned about the Barlow Clowes business – either to conceal his guilt or out of fear that he would not be believed – and was considered right by Lord Hoffmann, given that there is "no window into another mind", to draw inferences from the circumstances and what was said in evidence.<sup>43</sup> It is suggested that this approach reflects Scott LJ's *dicta* in *Polly Peck v Nadir (No 2)*<sup>44</sup> that no matter which test is used the question boils down to the trial judge asking himself "ought the defendant to have been suspicious [as to whether or not this property is derived from a breach of trust] in these circumstances".<sup>45</sup> So, we are told by Lord Hoffmann in *Barlow Clowes v Eurotrust*<sup>46</sup> that it is not necessary that the defendant have known that the monies came from a breach of trust but rather it would be sufficient that "he should have entertained a clear suspicion that this was the case".<sup>47</sup> On these facts, it was not necessary that Henwood know the detail of all of Peter Clowes and Cramers' transactions but rather it would be enough that he had "grounds to suspect"<sup>48</sup> that they were misappropriating the money. The *dicta* of Rimer J in *Brinks Ltd v Abu-Saleh*<sup>49</sup> to the effect that the defendant must know either of the existence of the trust or of the facts giving rise to the trust, were disapproved by Lord Hoffmann.<sup>50</sup>

The decision of the Acting Deemster was therefore restored on the basis that the Privy Council considered that there was sufficient evidence to support the Acting Deemster's findings.<sup>51</sup>

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<sup>42</sup> *Barlow Clowes v Eurotrust* [23].

<sup>43</sup> *Barlow Clowes v Eurotrust* [26].

<sup>44</sup> [1992] 3 All ER 769.

<sup>45</sup> See the discussion in Hudson, *Equity & Trusts* (London: Cavendish, 2005) ... .

<sup>46</sup> *Barlow Clowes v Eurotrust* [28].

<sup>47</sup> *Barlow Clowes v Eurotrust* [28].

<sup>48</sup> *Barlow Clowes v Eurotrust* [28].

<sup>49</sup> [1996] CLC 133, 151.

<sup>50</sup> *Barlow Clowes v Eurotrust* [28].

<sup>51</sup> *Barlow Clowes v Eurotrust* [29] and [32].

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