

Royal Brunei Airlines Sdn Bhd v Tan [1995] UKPC 4

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Facts

- In 1986, Royal Brunei Airlines (**Royal Brunei**) appointed Borneo Leisure Travel Sdn Bhd (**Borneo**) to be its agent for booking passenger flights and cargo transport around Sabah and Sarawak in Malaysia.
- Mr Tan was Borneo's managing director and main shareholder.
- Borneo was receiving money for Royal Brunei, which was agreed to be held on trust in a separate account until passed over.
- But Borneo, with Mr Tan's full knowledge and assistance, paid this trust money into its current account and used it for its own business. Borneo travel failed to pay on time, the contract was terminated, and Borneo went insolvent.
- Royal Brunei claimed the trust money back from Mr Tan.

Issues

- Could Royal Brunei claim the trust money back from Mr Tan, due to his knowing assistance in a breach of trustee duties and the knowing receipt of trust property?

Held

- The Privy Council held that it was the dishonest assistant's state of mind which matters.
- Knowledge depends on a "gradually darkening spectrum".
- The test for being liable in assisting breach of trust must depend on dishonesty, which is objective.
- It is irrelevant what the primary trustee's state of mind is, if the assistant is himself dishonest.

Quotes

"Whatever may be the position in some criminal or other contexts (see, for instance, *R v Ghosh* [1982] QB 1053), in the context of the accessory liability principle acting dishonestly, or with a lack of probity, which is synonymous, **means simply not acting as an honest person would in the circumstances.** This is an objective standard. At first sight this may seem surprising. Honesty has a connotation of subjectivity, as distinct from the objectivity of negligence. **Honesty, indeed, does have a strong subjective element in that it is a description of a type of conduct assessed in the light of what a person actually knew at the time,** as distinct from what a reasonable person would have known or appreciated. Further, honesty and its counterpart dishonesty are mostly concerned with advertent conduct, not inadvertent conduct. Carelessness is not dishonesty. Thus for the most part dishonesty is to be equated with conscious impropriety. **However, these subjective characteristics of honesty do not mean that individuals are free to set their own standards of honesty in particular circumstances. The standard**

of what constitutes honest conduct is not subjective. Honesty is not an optional scale, with higher or lower values according to the moral standards of each individual. If a person knowingly appropriates another's property, he will not escape a finding of dishonesty simply because he sees nothing wrong in such behaviour."

(Lord Nicholls of Birkenhead)

Full Text

The full text is available here: <http://www.bailii.org/uk/cases/UKPC/1995/4.html>

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