

JERSEY / JUDGMENT

AG -v- Bhojwani [2008] JCA 188 (06 November 2008)

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COURT OF APPEAL 6th November 2008 Before : Dame Heather Steel, DBE, President; J. W. McNeill, Esq., Q. C., and; J. Martin, Esq., Q. C.. The Attorney General -v- Raj Arjandas Bhojwani Advocate M. T. Jowitt for the Attorney General. Advocate J. D. Kelleher and Advocate N. M. Langlois for the Defendant.

JUDGMENT

steel Ja: 1. On 6th and 7th October, 2008, we heard applications for leave to appeal and appeals arising out of two judgments, both dated 15th August, 2008, by Commissioner J. A. Clyde-Smith. One, to which we shall refer as 'the First Judgment', was given after a preparatory hearing in response to applications made to the Commissioner in respect of alleged abuse of process and non-justiciability. The other, to which we shall refer as 'the Second Judgment', was given after a preparatory hearing during which the Royal Court had heard applications on certain issues of law described under the headings "the predicate conduct application"; "the purpose application" and "the particularisation application". On 8th October, we announced our decisions and gave a short summary of our reasoning. This is the full Judgment of the Court. The Circumstances alleged 2. The defendant faces an indictment, comprising two counts of converting the proceeds of criminal conduct contrary to Article 34(1)(b) of the Proceeds of Crime (Jersey) Law 1999 and one count of removing the proceeds of criminal conduct from the jurisdiction of Jersey contrary to the same statutory provision. In this judgment that statute will be referred to as "the 1999 Law". The defendant's trial is due to commence on 26th January, 2009. 3. The salient allegations relate to two contracts said to have been negotiated in 1996 and 1997 between the defendant and officials of the military dictatorship of General Sani Abacha, who was at that time the President of the Federal Republic of Nigeria ("the Federal Republic"). These contracts were for the supply of vehicles to the Federal Republic and the Attorney General alleges that the contracts were at significantly inflated prices. It is contended that an illegal surplus of some US\$130M came into the defendant's accounts at Bank of India in Jersey. It is said that they were transferred by the defendant to bank accounts in other countries linked to the Abacha regime. It is said that the conversion involved some six banker's drafts and took place in October and November 2000. The Prosecution Case Statement runs to some 30 pages in which the case is set out in great detail together with various propositions of law and consequences. The Indictment 4. The three counts in the indictment are in similar terms and may be illustrated by reference to the terms of count 1

which are as follows:- "Statement of Offence Converting the proceeds of criminal conduct, contrary to Article 34(1)(b) of the Proceeds of Crime (Jersey) Law 1999. Particulars of Offence RAJ ARJANDAS BHOJWANI, between the 1 st October, 2000 and 30 th October, 2000 converted the proceeds of criminal conduct, namely ... for the purpose of avoiding prosecution for an offence listed in Schedule 1 to the said Law or the making or enforcement of a confiscation order against him" Or, as set out in the amended indictment:- "... criminal conduct, namely: (a) the dishonest inflation of true prices for motor vehicles sold by him to Nigeria; ... (conduct which, if it occurred in Jersey, would have constituted offences of fraud, conspiracy to commit fraud, fraudulent conversion, conspiracy to commit fraudulent conversion, and bribery), ..." The Law 5. Article 34(1) of the 1999 Law provides:- "(1) A person is guilty of an offence if the person - (a) conceals or disguises any property that in whole or in part represents the person's proceeds of criminal conduct; or (b) converts or transfers that property or removes it from the jurisdiction, for the purpose of avoiding prosecution for an offence specified in Schedule 1 or the making or enforcement in the person's case of a confiscation order". 6. Article 1 of the 1999 Law defines "criminal conduct" as:- "... conduct, whether occurring before or after Article 3 comes into force, that - (a) Constitutes an offence specified in Schedule 1; or (b) If it occurs or has occurred outside Jersey, would have constituted such an offence if occurring in Jersey". 7. Schedule 1 provides, among other matters, as follows:- "OFFENCES FOR WHICH CONFISCATION ORDERS MAY BE MADE Any offence in Jersey to which a person is liable on conviction to imprisonment for a term of one or more years (whether or not the person is also liable to any other penalty), but not being - (a) any drug trafficking offence; or (b) an offence under any of Articles 15 to 18 of the Terrorism (Jersey) Law 2002 ". The contentions 8. The contention in the Prosecution Case Statement before the Learned Commissioner was that the alleged criminal conduct which gave rise to the proceeds (referred to variously as the "predicate offence" or the "predicate conduct") was constituted through an alleged offence of misconduct in public office. On 15 th August, 2008, the learned Commissioner found, among other matters, (a) that the offence of misconduct in public office was not known to Jersey customary law and (b) that the indictment was deficient in that it contained no particulars of the predicate conduct and did not identify the Jersey offence or offences which the prosecution asserted the conduct constituted. Following that decision, the Attorney General served an amended indictment and served an addendum to the Case Statement showing a basis of the predicate conduct as:- (i) Fraud, in accordance with the elements of the offence as set out in this jurisdiction in Foster

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[1992] JLR 6 , 26 (commonly referred to in this jurisdiction as "Foster fraud"); (ii) Conspiracy to commit fraud; (iii) Fraudulent conversion; (iv) Conspiracy to commit fraudulent conversion; and (v) Bribery. 9. Given that the Attorney General challenges the Commissioner's finding in respect of misconduct in public office, the defendant also faces a case where misconduct in public office is the Predicate Offence contended for. In this judgment we deal with the various applications and appeals before us in the following order:- (i) the Attorney General's Appeal against the Commissioner's finding that Misconduct in a Public Office was not an offence known to Jersey Law; (ii) the Defendant's

Appeal against the Commissioner's ruling that there is no burden on the prosecution under the 1999 Law to prove that the Defendant had committed an offence for which he was seeking to avoid prosecution; (iii) the Defendant's appeal against the Commissioner's ruling that the issues raised in the indictment were non-justiciable; (iv) the Defendant's application for leave to appeal against the Commissioner's ruling in respect of the Larceny Act; (v) the Defendant's application for leave to appeal against the Commissioner's ruling that the Appellant was not entitled to orders in respect of failure of disclosure on the part of the Crown; and (vi) the Defendant's application for leave to appeal against the Commissioner's ruling that the Prosecution must particularise in the Indictment the equivalent conduct offences. DISCUSSION OF ISSUES I Whether Misconduct in a Public Office is an offence known to Jersey Law 10. The Attorney General appealed, with leave, the ruling made in the Second Judgment that Misconduct in a Public Office is not an offence known to Jersey customary law. 11. In the English authority of *R v Montila*

- [2004] UKHL 50 the House of Lords held that, in a prosecution under s 93C(2) of the Criminal Justice Act 1988 or under s 49 (2) of the Drug Trafficking Act 1994, it was necessary for the Crown to prove that the property being converted was, in the case of the 1988 Act the proceeds of crime, and, in the case of the 1994 Act, the proceeds of drug trafficking. This principle applies to Article 34 of the 1999 Law in Jersey. 12. The Prosecution Case Statement, which was served on 4th April, 2007, sets out the facts and law on which they rely. The predicate criminal conduct alleged was said to constitute the offence of misconduct in a public office ("the generic offence"). Paragraph 15 of the Statement reads:- 'In legal terms, General Abacha and/or Colonel Marwa were guilty of what Jersey law would call the crime of misconduct in a public office and Mr Bhojwani was not only a willing and necessary participant, he personally made a substantial amount of money on the deals.' Paragraph 84 reads: 'The Jersey offence would be committed where (a) a public officer acting as such,
- (b) wilfully neglects to perform his duty and/or wilfully misconducts himself, and (c) to such a degree as to amount to an abuse of the public's trust in the office holder.' Paragraph 85 reads: 'This is clearly proved in the case of Colonel Marwa and General Abacha. Mr Bhojwani was clearly aiding and abetting those offences.'" 13. The Defence Statement, at paragraph 28.2, reads:- "Jersey's customary law does not recognise an offence of misconduct in public office and therefore any such conduct does not amount to criminal conduct within the meaning of [the 1999 Law]'. 14. In April and May 2008, the Crown gave written notice to the defence that other offences arose on the same facts and specified those offences. The decision of the Commissioner 15. With the benefit of extensive oral and written submission, the Learned Commissioner ruled that the offence of misconduct in a public office is not an offence known to Jersey customary law. The judgment is lengthy and carefully considered. We refer to it fully as the Appellant's submissions relate not to the Commissioner's sources, but to his interpretation and conclusion. 16. At paragraph 10 the Commissioner sets out the issue as he saw it as follows:- "The criminal conduct alleged by the prosecution occurred in Nigeria, and to come within the definition of criminal conduct for the purposes of the 1999 Law, the

prosecution must show that, if the conduct had occurred in Jersey, it would have constituted an offence in Jersey, specified in Schedule 1, at the time at which the conduct in fact occurred, namely an offence for which a person is liable on conviction to imprisonment for a term of one or more years. The prosecution assert that the offence in Jersey the alleged conduct would have constituted is the customary law offence of aiding and abetting another person to misconduct himself in a public office, the substantive offence being one that is recognised under English common law (as well as other common law jurisdictions) and which it says (following in part the decision of the English Court of Appeal in Attorney General's Reference No 3 of 2003

[2005] QB 73) is committed where:- (i) a public officer acting as such, (ii) wilfully neglected to perform his duty and/or wilfully misconducted himself, and (iii) to such a degree as to amount to an abuse of the public's trust in the office holder. The defence say there is no such substantive offence known to Jersey customary law. The onus of establishing that a particular category of crime is known to Jersey customary law rests firmly on the prosecution, see AG v Thwaites

(1978) JJ 179." 17. The Commissioner sets out the history of the offence which originated under English common law and which is summarised in the decision of the Supreme Court of Canada in R v Boulanger

[2006] 2 SCR 49; 2006 SCC 32. That case considered the elements of that part of the offence of misconduct in public office (misfeasance) which had been codified under Canadian law. 18. As the Commissioner records, the first mention of the offence dates back to 1704:- "Every public officer is indictable for misbehaviour." "Per Curiam. If a man be made an officer by Act of Parliament, and misbehaves himself in his office, he is indictable for it at common law and any public officer is indictable for misbehaviour in his office." (Anonymous (1704), 6 Mod. 96; 87 E. R. 853 (K. B.)) 19. The Commissioner went on to refer to the English case of R v Bembridge (1783) 3 Dougl. 327; 99 ER 679 (K. B.) and the principles there set out by Lord Mansfield in support of the existence of the offence. The first is " that a man accepting an office of trust concerning the public, especially if attended with profit, is answerable to the King for misbehaviour in his office. The second is that 'where there is a breach of trust, fraud, or imposition, in a matter concerning the public, though as between individuals it would only be actionable, yet as between the King and his subject it is indictable.'" 20. In 1887 Sir James F Stephen, in his Digest to the Criminal Law, described two distinct offences:- "Article 121 Frauds and breaches of trust by officers Every public officer commits a misdemeanor who, in the discharge of the duties of his office commits any fraud or breach of trust affecting the public, whether such fraud or breach of trust would have been criminal or not if committed against a private person Article 122 Neglect of Official Duty Every public officer commits a misdemeanor who wilfully neglects to perform any duty which he is bound either by common law or by statute to perform, provided that the discharge of such duty is not attended with greater danger than a man of ordinary firmness and activity may be expected to encounter." 21.

The Commissioner then cited the two English cases of *R v Llewellyn-Jones*

(1967) 51 Cr App R 204, and *R v Dytham*

(1979) 69 Cr App R 387 CA, together with *Shum Kwok Sher v HKSAR*

[2002] 5 HKCFAR 381 . He considered the confusion which had arisen over the elements of each when these two offences (of fraud and neglect) had been treated as one and which had led to the reference directed to the English Court of Appeal (Criminal Division) to seek clarification of the elements of the offence of misconduct in public office, (Attorney General's Reference No 3 of 2003, cited above). There the Court of Appeal held that misconduct in public office required a breach of duty by the officers consisting either in an act of commission or of omission, but in either case must be wilful. Wilful misconduct was held to mean deliberately doing something which is wrong, knowing it to be wrong or being recklessly indifferent as to whether it was wrong or not. The misconduct must be serious misconduct. 22. Further, the Commissioner referred to the Australian authority of *Question of Law Reserved (Number No2 of 1996)* (1996) 67 SASR 63, where the Full Bench of the Supreme Court of South Australia considered a number of questions in relation to the common law offence of misconduct in public office and, in particular, whether the common law recognised a generic offence or only a number of specific types of misconduct. That Court found:- (i) that there was, at common law, both a generally described offence based upon misconduct or misbehaviour and a number of specific offences which might be regarded as specific instances of the general offence or as additional to it; and (ii) that the Statutes Repeal (Public Offences) Act 1992 had abolished a large number of specific common law offences and enacted a comprehensive code. 23. The Full Bench concluded that the combined effect of the statute and the abolition of a number of specific common law offences did indicate an intention to abolish the generic offence. It held that the law in the matter had been correctly stated by Dr Finn in his article *Official Misconduct*

(1978) 2 Crim L. J. 307, and from which the Commissioner quoted the following extracts:- "By at least the middle of the 18 th century the common law had evolved a general, though ill defined offence variously described as 'official misconduct, breach of official trust or misbehaviour in a public office.' To this day the precise metes and bounds of this offence remain uncertain' 'As a general offence it is, none the less, still recognised and applied as part of the common law of England.'" 24. Dr Finn had gone on to deal with the principal applications of the offence with reference to Lord Mansfield's first principle (official misconduct). He accepted that it was perhaps unwise to attempt an exhaustive definition of what it covers; but thought that it could none the less be said that its principal applications encompass at least certain separate examples. 25. The Learned Commissioner drew two conclusions from this summary. The first was the very wide range of conduct covered by the generic offence as described by Dr Finn and the second that the common law recognised specific offences within that range which might be regarded as specific instances of the generic offence. 26. At paragraph 23 the Commissioner then said

"The question before me is whether what I will now describe as the generic offence of misconduct in office is known to Jersey customary law. It is clear that I must form my opinion upon proper evidence of the law and custom of Jersey without being influenced by considerations of convenience or by analogies derived from the laws and customs of other countries (see *La Cloche v La Cloche* (1870) 4 Moo. P. C. C. N. S. 383; 16 ER)." 27. The defence had submitted that a form of offence of misconduct in public office had only recently been created by the Corruption (Jersey) Law 2006 ("the 2006 Law") which came into force on 6 th March, 2007; which postdates and does not impact upon the issue here considered. The Law sets out at Article 7:- "(1) It shall be an offence for a public official to do or not to do any act in relation to the official's position, office or employment, for the purpose of corruptly obtaining any advantage, whether for his or her own benefit or for the benefit of any other person.

- (2) A person guilty of an offence under this Article shall be liable to imprisonment for a term of 10 years and to a fine." 28. The Commissioner noted that the Projet for the 2006 Law in respect of Article 7 is silent as to any existing common law offence of misconduct in public office; in contrast to other offences referred to in the Project and repealed by the Law. He noted also that no reported cases were found in which the specific offence of misconduct in public office has been charged in Jersey. At paragraph 27 he went on to consider 'peculat' and 'concussion ' as referred to by Le Geyt in 1847 under the section *Traites des Crimes* of his work 'Constitution, Les Lois et Les Usages de Jersey'. It was not submitted that either of those offences constituted the wide ranging generic offence. 29. The Commissioner had been referred to the 1847 Report of the Commissioners on the state of the Criminal Law in the Channel Islands ("the 1847 Report") and the fact that the generic offence was not one of those listed in the Statement of Messrs Pipon and Durell referred to in that Report. A number of exchanges quoted in the 1847 Report refer to misconduct in an officer and the procedure by which that misconduct was dealt with before the court. It is the prosecution submission that the underlying premise to those exchanges must be that the offence existed in Jersey at that time. The premise had been accepted without demur by the three witnesses; and one of these had been prosecuted for the offence and acquitted. The Report states at page xxvi:- "Other offences are cognizable under a power, which the Court seems to assume, of punishing generally whatever appears to be in its nature offensive or criminal. To this, it seems, we are to refer the law on coining, (which has been punished here since it ceased to be treason in England), sedition, misconduct of officers, returning from transportation or banishment, provoking a breach of the peace, nuisances, brothel keeping, indecency, unchasteness, solicitation of chastity. For these the Court imposes punishments in its discretion, varying from transportation to imprisonment or fine." 30. The following exchanges took place with John Hammond (senior advocate), J . W. Dupre (Avocat General) and Mr F. Godfray (Greffier):- "2921 How is misconduct in an officer punished? - It is laid before the Court. In the case of bribing an officer? - The court would take cognizance of all those offences. Do you mean, as a contempt of justice? - No: the Queen's Procureur General will prosecute them. He prosecutes in all cases? - Yes; it would be a public action on the part

of the Procureur General against the party who was a delinquent. Tried by enditement, or decided by the Court? - Before the Court generally. There are some cases in which it would be tried by the enditement. (To Mr Dupre). Within your own practice, have you any instance of any officer of the Court being tried for misconduct in the discharge of his duty or for accepting a bribe? - For misconduct, I have; not for receiving a bribe. Would it be tried before the enditement, or before the Court? - Bribery would be tried before the enditement, I should think. A simple case of misconduct in a public officer would be tried, I should think, before the Court, without the enditement. How would a case of that sort originate?

- A case before the enditement usually commences in the constable's report. It would depend on the manner in which the information was laid? - If it were laid by the constable, it would come upon his report. If the information was laid to the Attorney General directly, it would be done by a process which we call a representation. Mr F Godfray (Advocate). There was a case in point; the Lieutenant Governor prosecuted me as constable. For alleged misconduct as a constable? - Yes, and for writing a letter which he thought contemptuous. That was tried before the Court merely, though I tried to have it sent to a jury. Was it tried at the simple instance of the Procureur General? - Yes. The Lieut Governor wrote to the Procureur General; and he made a representation to the Court. I should say that I was acquitted. There was also the case of Mr Nicolle; he was dismissed from office. Was that at the representation of the Procureur General? - Yes: he was constable; and he had presided at a meeting which the Court declared to be illegal; that was under the law of 1797. Was that also tried before the Court? - Yes. The Vicompte. I have here a prosecution of the date of 1770, in which a vingtenier was discharged and punished for seditious language. The same was read as follows; - A la Cour Royale de l'Ile de Jersey. L'an 1770, le 13me jour d'Aout, sur l'action du Pro' Gen' du Roi vers Mr Jean Robichon jun., un des vingteniers de la paroisse de St Martin, saisi de fait et presente en justice par le Depute Vicompte en vertu de l'Acte de la Cour de l'an 1770, le 11me du courant, pour subir ce que justice trouvera propre, pour s'etre servi de propos seditieux et menacans a l'assemblee de la ladite paroisse, tenue le 9me de ce mois, ayant declare, en parlant de l'Ordonnance recemment faite pour les chemins, que cela occasioneroit une seconde revolte, et en outre, que cet ordre la etoit un bougre d'ordre. Apres l'aveu du dit Robicjon, et sa soumission a la Cour, oui le Pro' Gen' en ses conclusions, il demeure decharge de la place de vintenier et d'officier du constable, condamne a l'amende de deux cents livres d'ordre, applicable tiers au Roi, tiers a la reparation de la cohue royale, et l'autre tiers a l'Hopital Gen' et a demander pardon a Dieu au Roi, a Mons. le Commandant et Chef, et a la justice, ce qu'il a presentement effectue, et a donner caution de son bon et paisible comport, et envoie en prison au pain & a l'eau pour espace de quinze jours, etant defendu au geolier de lui administrer d'autres alimens; en suite de quol a produit Mr Jean Carter sen., pour sa caution, lequel y est demeure accordamment.' 31. The Commissioner concluded from these and other exchanges that it was not possible to form any conclusions as to the existence of the generic offence. He went on to say that there could be no doubt that the Royal Court, which assumed to itself the jurisdiction to punish anything which appeared offensive or criminal to it, punished public officers, but that the exchanges were

entirely about procedural matters and threw no light on the issue of whether Jersey customary law recognised the generic as opposed to, or in addition to, specific offences. 32. He then referred to the judgment in *Foster v The Attorney General*

[1992] JLR 6 , and quoted, from p. 16, line 33:- "There is, however, a stronger reason for not placing upon these old materials, whether local or French, more reliance than they can easily bear. It is that from the end of the 18 th century there are available Jersey records which provide a much firmer ground for the solution of the present problem." 33. The Commissioner also described the Jersey records in the *Pursuites Criminelles*, which have been recorded separately from other proceedings since 1797, and which provide a summary of the behaviour of the particular defendant which was alleged to be criminal and, either preceeding or following this summary, a characterisation of the behaviour in legal terms. 34. The prosecution had referred the Commisioner to four cases from the second half of the 19 th century in which Jersey public officers were charged with "malversation" among other matters. It was submitted that this was the generic offence of misconduct in public office. The 1847 Report does not refer to malversation. The Learned Commissioner considered the word malversation, and, at paragraph 37, said: 'Malversation is derived from the latin "male" meaning badly and "versare" meaning behaving. Nineteenth century English judges used the term malversation when describing misconduct in public office. (see *Booth v Arnold*

[1895] 1 QB 571 and *Alexander v Jenkins*

[1892] 1 QB 797). Jowett's Dictionary of English Law defines it as misbehaviour in an office, employment or commission, as breach of trust, extortion etc.' 35. He then considered the four cases of *A G v Le Quesne*

(1849) PC 276, *AG v De St Croix*

(1858) PC 261, *AG v Gosset* (1886)PC 122 and *AG v Nicolle*

(1896) PC 276. Each contained a charge of "malversation", which the Commissioner concluded was the specific offence of fraud in office or fraud by a public officer. He did not consider that the four cases supported the prosecution submission that malversation is the wide ranging generic offence of misconduct in public office. 36. At paragraph 44 of the Second Judgment the Commissioner wrote "Malversation in these four cases is not an adjunct but an independent crime as it is specially referred to as the crime of malversation. In my view malversation here is the specific offence of fraud by a public officer.' His conclusion was based on the facts of each case. He drew support for this view from the *Dictionnaire Generale de Jurisprudence*, 1835, '(a surer guide to the expression as used in Jersey in the 19th century than Jowitt's Dictionary of English Law) which defines malversation as 'Faute grave, commise par cupidite, dans l'execution d'un mandat.....en partic. Detournement, a son profit, des fonds publics' thus linking it to financial crime. There is nothing in these four cases to support the prosecution's submission that malversation is the wide ranging generic offence of misconduct in public office." 37. The Commissioner continued by

noting that there are a number of cases in the *Pursuites Criminelles* evidencing the existence of an offence of dereliction of duty or neglect in public office. The Court was referred to *Le Maistre* in 1816, *Petevin* in 1817, *Nicolle* in 1823, *Forley* in 1817, *Chevalier* in 1820, *Arthur* in 1824 and an unnamed case in 1819. 38. The learned Commissioner had been referred to certain 20th century cases by the prosecution, namely *AG v Urgate*

(1920) PC 154, *AG v Langtry*

(1945) PC 249 and *AG v Dumond and Others* (1945) PC 191. These were rejected by him as not assisting on the question of whether Jersey customary law ever recognised the generic offence as opposed to, or in addition to, specific offences. He acknowledged the need for such an offence and accepted that the law of Jersey recognises the tort of misfeasance in public office; but noted that it was not asserted by the prosecution that, in recognising the tort, Jersey law had by implication recognised the offence. 39. The Commissioner then referred to the words of the learned Bailiff in *In re Yaheeb Trust*

[2003] JLR 92 "bribery, corruption and misuse of public office for gain are offences equally under the law of Qatar as under the law of Jersey." but concluded that in making what he referred to as 'these clearly obiter statements' the Bailiff was not asserting the existence of the specific offences. 40. The Commissioner's conclusion was that while there is evidence that Jersey customary law has recognised the specific offences of *peculat*, *concussion*, *malversation* and *dereliction of duty* there is no evidence that it has ever recognised the wide ranging generic offence of misconduct in public office, and that misconduct in public office is not an offence known to Jersey customary law. The submissions for the Attorney General 41. The Appellant, the Attorney General, submitted that this conclusion is not supported by the historical background and that the Commissioner was in error. Before we heard the Appeal we had read and considered all the written submissions made on behalf of the Attorney General and Mr Bhojwani the Respondent in relation to this aspect of the case. We also had considered the 11 grounds of appeal set out on behalf of the Attorney General. 42. At the hearing Crown Advocate Jowitt reminded the Court of the historical context of the offence of misconduct in public office. In his submission the offence has been known for centuries in Jersey and England. He submitted, after reference to the Ancient Customs of Normandy, and to authorities from the second half of the 19th century, that Royal Court practice sought to supplement its jurisprudence, where necessary, with reference to the laws of other jurisdictions, namely the criminal law of England and Wales. There was little statutory law, and no comprehensive body of Jersey precedent or comprehensive court reporting. The *Pursuites Criminelles* were closely written pages of French text with no precise record of the offences charged, only the conduct committed by the defendant and the result. The advent of court reporting dates from 1950 with the Jersey Judgment series, and it was not until 1972, when the Indictment Rules were introduced that offences were defined and charged. 43. He submitted that the learned Commissioner had erred in law in concluding that, although wilful neglect in public office was a criminal offence, there was no generic offence of wilful misconduct in

public office. 44. He referred the Court to the conclusion of the 1847 Report that the Court punished the offence of misconduct in officers under the power of punishing for 'whatever appears to be in its nature offensive or criminal'. He referred to the increasing influence of English criminal law from the early 19th century, and the fact that the Commission was set up to inquire into the criminal law of an emerging modern society seeking clarification of that law. Ten of the thirteen who gave evidence to the Commission confirmed that English models were discerned and used. He submitted that the Commissioner was wrong to give very little weight to the 1847 Report. In his submission the Report was extremely valuable evidence; being the only detailed review of Jersey customary law since the early 18th century when Pipon and Durell had reported regarding the right to trial by jury. By 1847, the Report showed, the English influence had begun to take effect. The Report had been undertaken on the order of the Crown and was based on the evidence of the most eminent lawyers of the time, including the majority of Jurats. 45. The Report, the Crown submitted, reveals that both nonfeasance and misfeasance were known to Jersey law and were prosecuted. For the procedure to be discussed there must have been a presumption that the offence existed. Nowhere is it stated that the only offence is one of neglect. There was no reason in logic to conclude that misconduct was not equally offensive or criminal. Advocate Jowitt described nonfeasance and misfeasance as making one sphere. He further submitted that for one to exist without the other would be jurisprudentially remarkable and if that were the case clear evidence from the evidence to the Commission would have emerged. It was submitted that the value of the Report is greater because of the absence of legal precedent. 46. The Crown submitted that the Commissioner erred in principle in beginning his reasoning by reference to the inheritance case *La Cloche v La Cloche*, cited above. Jersey inheritance law is founded on the Norman Coutume. Jersey criminal law looks to the English common law for guidance in clarifying the common law of Jersey and has done for many centuries, particularly since the early 19th century. The Court of Appeal in *Foster*, cited above, described that in the second half of the 19th century, English categories and English terms translated into French were used, and that in the 20th century English categories and English terms were used almost to the exclusion of any other mode of proceeding. Jersey used the French language, but not French criminal law. It was not until after the Second World War that English became the language of Jersey. Until the 1960s French was the language of the *Pursuites Criminelles* and the English influences were translated into French. The Commissioner erred in seeking guidance from the law of France. 47. For these reasons, the Commissioner erred by preferring the 1835 'Dictionnaire Generale de Jurisprudence' definition to that set out in Jowett's Dictionary of English Law. The French definition is silent as to the breach of trust element which features centrally in English law. He accordingly erred in law in defining the offence of malversation as 'fraud in office or fraud by a public officer' and therefore erred in concluding that the Jersey malversation cases did not show that misconduct in public office was an offence in its own right. 48. Had the Commissioner not looked to the law of France, he would have concluded that malversation was misconduct in public office and

the latter was, therefore, known to Jersey law. Malversation was both an English and French term and was appropriate for the misconduct alleged in the four quoted cases. In any event, the Crown submitted, the French definition is not limited to financial crime, but states that malversation relates 'in particular' to financial crime. 49. Advocate Jowitt specifically drew our attention to the four cases from the late 19th century where malversation had been charged. In the case of Nicolle, malversation was the only charge, whereas in the three other cases malversation was charged in addition to other offences. The Crown submitted that this was likely to have been because malversation was directed at a mischief not covered by the other offences, and that the difference was the abuse of public trust. In Nicolle malversation was charged because it involved a breach of public trust over and above detournement or embezzlement which may be committed by a clerk or servant. Advocate Jowitt submitted that all these cases have the elements of the English offence of misconduct in public office. 50. The Crown submitted also that the Commissioner erred in dismissing the relevance of other cases. Those of *AG v Langtry* and *AG v Ugarte* concerned incitement to misconduct in a public office and insulting a public officer. In each it is the status of the public officer rather than the defendant which defines the offences. The Commissioner had failed to make any finding about the relevance of the case of *AG v Dumond and Others* where the defendants were charged with "whilst exercising their duties as police officers, illegally entering premises and stealing". This was properly an offence of wilful misconduct in public office, although not charged specifically as such. 51. Further, the Commissioner was wrong to draw assistance from the *Projet* for the draft of the 2006 Law in discerning the common law of Jersey. It was submitted that the fact that the draftsman failed to mention peculat, concussion or malversation or the Bailiff's judgment in *In the Matter of the Yaheeb Trust* is good evidence that the draftsman did not consider the law in this area in any detail. 52. In England the offence of misconduct in public office is very old and was regarded as essential to the survival of the nation. It was submitted that, having regard to the growing closeness between England and Jersey and the growing influence of English criminal law on the criminal law of the Island, it would be a curious anomaly if Jersey only considered neglect to be an offence and not misconduct. Advocate Jowitt accepted that, although there was a stated need for the offence in England, it was rarely prosecuted there; but submitted that uncommon prosecution was no argument for non existence, nor could an offence cease to exist from a failure to charge. According to Advocate Jowitt, if it be correct that neglect was an offence but not misconduct this would be unique in the common law world. 53. Finally Advocate Jowitt posed the question where non feaſance ended and misfeaſance began. An example might be the actions of a politically motivated police officer. It was important for there to be offences both of neglect and of misconduct. The submissions for the Defendant 54. In reply Advocate Kelleher submitted that the Commissioner should not be criticised for preferring the French definition of malversation. The early writers drew heavily on French law and beyond Normandy for its sources. The 1847 Report, unusually, was in English and the Commissioner's finding that it was not possible to draw any conclusion from the Report was justified. 55. Advocate

Kelleher submitted that there is no principle that necessity requires a court to create an offence. This we accept. The case of Bembridge does not apply to the jurisdiction of Jersey and Boulanger only applies to Canada. He relied on the absence of any authority showing the generic offence. He submitted that Foster, in referring to Jersey sources was a much firmer ground for determining the law of Jersey than the 1847 Report, which is uncertain, unclear and too imprecise to give rise to any conclusion. He accepted that nonfeasance cases did exist, and conceded that a duty can embrace both commission and omission. 56. Advocate Kelleher too referred the Court to the cases cited above and drew the attention of the Court to the fact that in the 19th century cases malversation was not charged, and that there is no modern instance of the use of that word. Prosecutors have chosen specific offences because the generic offence does not exist. He also addressed the Court on peculat and detournement. Discussion 57. We have considered all the submissions with care and are satisfied, for the reasons set out by the Appellant, that the learned Commissioner did fall into error in his conclusion that the offence of misconduct in a public office was not known to Jersey law. 58. It seems to us that, upon a proper reading, the 1847 Report is evidence of the existence of a specific offence which had by then been prosecuted. Thereafter we consider that the authorities put before us indicate that the offence was recognized, even if not prosecuted specifically as misconduct in public office. In these circumstances we are of the opinion that the offence continues to exist as an offence known to Jersey customary law. We are satisfied that nonfeasance and misfeasance are two sides of the same coin and that to find that one exists without the other cannot be justified, either in logic or on the evidence. Accordingly this appeal is allowed. II Whether there is a burden on the Crown, in a prosecution under the 1999 Law, to prove that the Defendant had committed an offence for which he was seeking to avoid prosecution 59. Mr Bhojwani appealed, with leave, the Commissioner's ruling, in the Second Judgment, that there was no burden on the prosecution to prove that the defendant had committed an offence for which he was seeking to avoid prosecution. This had been referred to, colloquially, as 'the Purpose issue'. The Second Judgment concerned the issues of predicate conduct, purpose, and particularisation applications following preparatory hearings. 60. The purpose issue, as with the others, was fully rehearsed before and carefully considered by the learned Commissioner. We are grateful to the Advocates for their written and oral submissions, which we have taken into account. The Law 61. For convenience, we again set out Article 34 (1), which provides:- "A person is guilty of an offence if the person - (a) conceals or disguises any property that is or in whole or in part represents the person's proceeds of criminal conduct; or

- (b) converts or transfers that property or removes it from the jurisdiction, for the purpose of avoiding prosecution for an offence specified in Schedule 1 or the making or enforcement in the person's case of a confiscation order." The decision of the Commissioner 62. In the Second Judgment the Commissioner, at paragraph 59, stated:- "It is accepted by the prosecution that the purpose element of the offences created by Article 34(1) refers to a Jersey prosecution and a Jersey confiscation order. It is also clear that any offence which the

defendant is alleged to have had the purpose of avoiding prosecution for must predate the commission of the offences charged in the indictment. Thus, submit the defence, the offence for which the defendant was avoiding prosecution cannot have been the predicate conduct in Nigeria, as that was not an offence in Jersey, and there is no offence in Jersey that he could have been avoiding. Furthermore, under Article 3 (2) of the 1999 Law a Jersey confiscation order can only be made following sentence for an offence committed on or after 1 st July 1999. The defence further contends that the prosecution are required to prove that the defendant had committed an independent and pre-existing offence prior to the alleged conversion and/or removal from the jurisdiction, prosecution for which he was seeking to avoid. In correspondence the prosecution suggested that the defendant could have been prosecuted for receiving, contrary to section 33(4) of the Larceny Act 1916 which is, of course, a continuing offence. Section 33(4) of the Larceny Act is directed to receiving goods stolen outside the island, and is not, the defence submit an offence known to Jersey law." 63. In parenthesis we observe that this Court has now considered and rejected an application by Mr Bhojwani for leave to appeal the Commissioner's ruling that Section 33(4) is an offence known to Jersey law. However, these contentions raise the issue of whether the purpose element of Article 34(1) is subjective or objective. 64. The Commissioner noted that in *R v Saik*

[2007] 1 AC 18 both the House of Lords and the Court of Appeal were clear that the purpose requirement was subjective. That case concerned a conspiracy to commit an offence under Section 93C(2) of the Criminal Justice Act 1988 . The relevant point of law which was certified as being of general public importance was:- "Is the objective requirement that a defendant can be convicted of an offence under Section 93C(2) of the Criminal Justice Act 1988 if he had reasonable grounds to suspect that the property converted etc. was the proceeds of crime (without having actual knowledge or suspicion) incompatible with the subjective requirement that the activity of the defendant must be for the specified purpose of assisting another to avoid prosecution for a criminal offence or avoiding the making or enforcement of a confiscation order." 65. The Commissioner referred to the speech of Lord Hope of Craighead (with whom Lord Brown of Eaton-under-Heywood agreed) where, at paragraph 54, his Lordship said:- "The second requirement, as to what the purpose was, is where the essence of the mens rea of the offence is to be found. It must be proved that the defendant's purpose was to launder the proceeds of another person's criminal conduct. If he knows the criminal origin of the property, his knowledge is linked to his purpose in engaging in the activity. If he had reasonable grounds to suspect that it had a criminal origin, his suspicion is linked to his purpose in the same way. Proof of what his purpose was will usually have to be found by drawing inferences. Evidence that the defendant knew or had reasonable grounds to suspect will usually be sufficient to show what his purpose was when, knowing or suspecting what the origin of the property was, he actually engaged in the prescribed activity." 66. The Commissioner quoted also from paragraphs 107 and 109 in the speech of Lord Brown of Eaton-under-Heywood and, at paragraph 66, concluded: "This reasoning in relation to the Jersey equivalent Article 34(2)

is equally applicable to Article 34(1) and constitutes the clearest authority that the purpose element is subjective." He accepted the prosecution's submission that there is no requirement for the prosecution to prove that there was an offence in Jersey or a confiscation order which the defendant sought to avoid. The offence is committed if the defendant apprehended a risk that he might be prosecuted or a confiscation order imposed and therefore converted/removed his proceeds of crime to avoid the same. 67. The Commissioner concluded that it is what is in the defendant's mind that is relevant. Did he think that he might be prosecuted or the funds confiscated and converted/transferred the funds to avoid that? He ruled that it is irrelevant that as a matter of objective fact there may have been no offence for which he could have been prosecuted or even if there was, some legal impediment existed to the bringing of such a prosecution. The prosecution do not have to prove therefore that there was such an offence for which the defendant could have been prosecuted or a confiscation order that could have been made. 68. In paragraph 68 the Commissioner referred to the defence submission that the legislature could not have intended to create such a draconian offence which would result in a finding of guilt if a person tried to avoid prosecution and/or the making of a confiscation order for an offence he has not committed, and went on to write "However, the offence here is not avoiding a prosecution or confiscation order. The offence is the conversion/transfer of the defendant's proceeds of criminal conduct for the purpose of avoiding prosecution/confiscation. The purpose is one element in that offence and I see nothing extraordinary or draconian in that purpose being subjective, as clearly intended by the legislature." 69. He accepted the prosecution analogy, from *R v Brown* (Vincent John)

[2004] EWCA Crim 744, of the English offence of attempting to pervert the course of justice which can be committed where no actual perversion of the course of justice could take place. He continued, in paragraph 69:- "Furthermore, it cannot be argued in my view that the reference to avoiding prosecution for an offence specified in Schedule 1 means it must be proved by the prosecution that the defendant had in mind a specified offence. As the prosecution point out that would mean that the offence could only be committed by a person versed in Jersey criminal law. I agree with the prosecution's submissions that the confining of the purpose to offences in Schedule 1 is only to make it consistent with the statutory scheme which is (a) not concerned with minor matters and (b) not concerned with matters dealt with in other statutes. It also maintains the link with the types of predicate conduct which can be dealt with under the 1999 Law." 70. The Commissioner concluded his ruling in paragraph 70 with the words:- "I would intend directing the Jurats in relation to the purpose element upon the following lines:- (1)The test is subjective, i.e. they are concerned with what was in the defendant's mind, not with whether as an objective fact there was an offence in Jersey for which the defendant could have been prosecuted or whether, in fact, a Jersey confiscation order could have been made or enforced. (2)The issue for them is whether they are sure that one of the purposes of the conversion and/or transfer of the funds was the avoidance of a prosecution in Jersey for a

serious offence (i.e. an offence for which he would have been liable on conviction to imprisonment for a term of one or more years) or the making or enforcement of a Jersey confiscation order or both." 71. It is pertinent to note that, in a separate judgment from the two under consideration in these applications and appeals, and which concerned transposition, purpose element and admissibility applications the Commissioner expanded on the proposed direction (2) and the need for the prosecution to prove that one of the purposes for the conversion and /or transfer of the funds is the avoidance of prosecution or the making or enforcement of a confiscation order. The submissions for the Appellant 72. The Appellant's submissions were advanced by Advocate Langlois, and we refer in summary to Advocate Kelleher's detailed written submissions. 73. The Appellant did not accept as correct the proposition, accepted by the Commissioner, that it is not necessary for the prosecution to prove that the defendant had actually committed the offence for which he was trying to avoid prosecution and/or the making of a confiscation order. It was submitted that the legislature cannot have intended that a person could be found guilty of an offence which carries a sentence of imprisonment of up to 14 years for attempting to avoid prosecution for an offence that had not, in fact, been committed. 74. The Appellant submitted that in order to prove an offence under Article 34(1)(b), the prosecution must not only prove that the defendant has committed the predicate offence but must also prove that he has committed a Schedule 1 offence where the predicate offence does not, itself, fall into this category because the predicate conduct occurred outside Jersey. 75. It was submitted in addition that not only must the prosecution be required to provide particulars of the type of offence the defendant is alleged to have committed, it must also provide full particulars of it. This is not only so that the defendant can know the case he has to meet (the requirement of elementary fairness) but also so that the court can reach a conclusion as to whether the conduct relied on does indeed constitute an offence of the type which falls within Schedule 1 of the 1999 Law. 76. Further, questions were posed as to whether what were described as the predicate and the purpose offence must be the same or could be different; bearing in mind that the alleged predicate conduct took place in Nigeria. The Court was invited to construe Article 34(1) to mean that the criminal conduct which constituted the predicate offence, crime A, should be the same crime for which a defendant sought to avoid prosecution and/or the making or enforcement of a confiscation order when he converted/transferred his proceeds of crime. 77. We were referred to the cases of *R v Montila*

[2004] 1 WLR 3141 and *R v Saik* in support of the proposition that the predicate offence and the purpose offence should be the same. It was submitted that Article 34(1) should not be construed to allow prosecution of the movement of the proceeds of crime A for the purpose of avoiding prosecution for crime B. However, the Appellant's contentions do not depend on the Court of Appeal accepting that construction. It was submitted that the Appellant's arguments are equally consistent with the possibility that Article 34(1) allows for the construction that the criminal conduct and the Schedule 1 offence may, or in this case must, be different. 78. It was submitted that where the predicate offence and the

purpose offence are the same offence the prosecution is required to prove the purpose offence because it is obliged to prove the predicate offence. Only where the two offences are potentially different does the present issue arise. In a case such as the present, the Appellant submitted, the relevant state of mind of the defendant must be linked to the purpose offence, which in this case must be different (and which must be alleged, particularised and proved). 79. It was submitted that the Commissioner had misapplied the decision in *R v Saik*, cited above; and if the proper reasoning in *Saik* is read across to the present case, then logically the prosecution ought to be required to prove that the defendant knew he had committed the purpose offence since knowledge is the only possible relevant state of mind. Alternatively the Royal Court wrongly conflated "apprehension of the risk of prosecution" with "reasonable grounds to suspect." 80. It was further submitted that the Commissioner was wrong to conclude that "apprehension of the risk of prosecution is a wholly subjective concept". If there is to be imported into Article 34(1) a requirement that the defendant apprehended the risk of prosecution then such a requirement must have both a subjective element (i.e. actual apprehension of the risk of prosecution) and an objective element (i.e. reasonable grounds for such an apprehension). Therefore, the prosecution must at the very least be able to prove that there was an offence for which the defendant could have been prosecuted. If there is not, there can be no reasonable grounds for the defendant's apprehension that he is at risk of being prosecuted. 81. It was submitted that the Commissioner was wrong to dismiss the objective element and to conclude that there is no requirement as a matter of law for the prosecution to prove the purpose offence. We were referred to *R v Montila*, cited above, in support of the proposition that the existence of the predicate offence had to be proved, and invited to accept that similar reasoning meant that Article 34(1) should not be construed in such a way as to result in a defendant being convicted of having the purpose of avoiding a prosecution for an offence which had not in fact been committed. 82. The Appellant submitted that the decision of the House of Lords in *Montila* cannot be reconciled with the prosecution submission that there is nothing 'strange or wrong in principle' in convicting a person for an offence under Article 34(1) on the basis of a mere suspicion that a crime might have been committed, even if it subsequently transpires that this suspicion was wrong. 83. On behalf of the Appellant the point was made that, so far as the Advocates are aware, there has never been any prosecution whether in Jersey or in England where the predicate offence and the purpose offence have been different. 84. The Appellant submitted, both in writing and to us by Advocate Langlois, with reference to *R v Montila*, that the prosecution must prove that the defendant converted/transferred his proceeds of his own criminal conduct for the purpose of avoiding prosecution or the making or enforcement of a confiscation order. We were referred to Paragraph 24 of the Opinion of the Appellate Committee of the House of Lords:- "In that Paragraph the Appellate Committee recorded the views expressed by the Court of Appeal regarding the construction of sub-ss(1) and (2) of s 93C of the Criminal Justice Act 1988 and s49 of the Drug Trafficking Act 1994. The House recorded the decision of the Court of Appeal with the words 'It was beyond argument that the Crown had to prove the source of the

laundered money in subsection (1), as the property had to be the proceeds of the defendant's own drug trafficking or criminal activity. But subsection (2) was phrased in an entirely different way. There was no such requirement, and compelling reasons would be required to imply an additional element into the offence. " Although the House of Lords disagreed with the conclusion drawn by the Court of Appeal from the contrast between the subsections, it did not dissent from the proposition that in subsection (1) the property had to be the proceeds of the defendant's own crime. Indeed, paragraph 43 of the House's opinion includes the words: "Proof that the origin of the property was of the kind which the subsection describes is, after all, a necessary element of the offence in subsection (1). The coincidence does not need to be proved, because the allegation in a count under subsection (1) is that the defendant is dealing with his own property . But the origin must be proved, and the evidence which goes to prove knowledge or reasonable grounds to suspect for the purposes of subsection (2) will often be sufficient to justify the inference that the origin of the property was coincident with that state of mind" (emphasis added).

85. The Appellant further contended that the purpose offence must also be proved against the defendant, and if there is no offence in Jersey for which he could be prosecuted then he cannot be convicted. It was also submitted that the prosecution should elect which of the alternative purposes was alleged and particularise the indictment accordingly. Crown Advocate Jowitt made the point, which we accept, that the Crown do not need to elect which of the alternative purposes are alleged. We refer to paragraph 94 of the Commissioner's judgment. Having ruled that the purpose element is subjective, and that the prosecution do not have to prove that the defendant has actually committed an offence in Jersey for which he was seeking to avoid prosecution, he went on to state that he did not see how the prosecution can properly or fairly be required to provide further particulars of the defendant's state of mind. The Jurats must be sure that one of his purposes, subjectively, was the avoidance of a prosecution or the imposition of a confiscation order or both.

86. We were reminded of the words of the offence charged which is directed not at criminal offences committed in Nigeria but at money laundering in Jersey. It was submitted that it was not for the prosecution to prove that the defendant had committed a purpose offence, only that the defendant apprehended a risk that he might be prosecuted or a confiscation order imposed and therefore converted /removed his proceeds of criminal conduct to avoid the same. Advocate Jowitt submitted that the essence of the offence is moving criminal money with the requisite purpose, not the actual avoiding of a prosecution or confiscation order.

87. The Crown submitted that the Appellant's approach to the decision in *Saik* is fundamentally misconceived. It was submitted that the Appellant erred in reading the statutory mental state regarding the criminal character of the property across into the purpose element. Knowledge and reasonable grounds to suspect are the statutory requirements for the criminal character of the property and they cannot be imported into the purpose element. The decision in *Saik* supports the Commissioner's conclusion that the purpose element was purely subjective.

88. The Appellant had criticised the prosecution for the alleged circularity of the proposition that the purpose element is satisfied if the prosecution prove that the

defendant had the requisite purpose. In the submission of the prosecution the Appellant's argument was merely an attempt to complicate what is a simple test. 89. The Respondent asserted that the submissions regarding the decision in Montila are also fundamentally misconceived, and the decision misrepresented. The House of Lords in that case did not consider the purpose element in detail at all. The question there considered was an entirely different question from the question before this Court. The relevance of Montila is solely in relation to the need to prove the source of the proceeds. Discussion 90. We accept the Commissioner's reasoning, following Saik, that the purpose element is purely subjective and the submission of Advocate Jowitt set out in paragraph 87 that the statutory requirements for the criminal character of the property cannot be imported into the purpose element in this case. We note that both the cases of Montila and Saik were primarily concerned with the application of sub section

- (2) of the relevant statutes where the property converted/transferred was the property of another, and the attention of the House had been directed to the words 'knowing or having reasonable grounds to suspect' in those offences. The House considered the contrasts between that sub section and sub section (1), as we have set out in paragraph 84 above, and we consider the difference to be significant. The Crown therefore need only prove that the defendant, when he converted/ transferred his proceeds of criminal conduct, had the requisite subjective purpose to avoid prosecution for an offence specified in Schedule 1, that is, a serious offence in Jersey, or the making or enforcement of a confiscation order. The Crown need not prove that he had actually committed an offence in Jersey for which he could have been prosecuted or in respect of which a confiscation order could be made. 91. Having regard to the wording of Article 34(1) - "for the purpose of avoiding prosecution for an offence specified in schedule 1"
- we accept the finding of the Commissioner that, if the defendant apprehended a risk that he might be prosecuted or have a confiscation order imposed and therefore converted/removed his proceeds of criminal conduct, the offence is committed. We also accept that the defendant's state of mind must relate to a prosecution or confiscation order following a serious offence in Jersey to satisfy the Schedule 1 element. We accept that there is no requirement that the criminal conduct and the conduct which the defendant believes may put him at risk of prosecution must be one and the same. 92. The Appellant's state of mind will be a matter for the Jurats to determine on the evidence before them and in the light of inferences properly open to them on the facts that they accept. 93. We do not support, however, the Commissioner's ruling, in the Second Judgment, in relation to proof of predicate conduct and his conclusion that the prosecution do not have to prove that the defendant himself is guilty of such conduct, merely that it has taken place and that the property represents his proceeds from it. Our conclusion is that Paragraph 24 of the Montila judgment, which relates to the sub section

(1) offences, should be applied to Article 34 (1) and , on the facts of this case, we find that the prosecution must prove that the defendant's proceeds are the proceeds of his own criminal conduct. Although the defendant cannot be convicted in Jersey of an offence in relation to the predicate conduct, the Jurats should be directed to consider first whether the Crown has proved that the defendant is guilty of the criminal conduct alleged. Only then, and if they are so satisfied, and satisfied also that the conduct would have constituted an offence as described in Article 1 (in that if it occurred outside Jersey it would have constituted a Schedule 1 offence if it had occurred in Jersey) , do they go on to consider whether the property converted/transferred is proved to be the proceeds of his own criminal conduct. It would then be open to the Jurats to consider those facts, if established, in relation to the defendant's purpose when the property was converted/transferred. 94. This appeal is dismissed. III Whether the issues raised in the indictment were non-justiciable The decision of the Commissioner 95. Following the decision of the Royal Court in *In Re Yaheeb Trust* , cited above, the learned Commissioner accepted that Jersey courts would decline to adjudicate on issues falling under a "wider principle" to which he referred as "the principle of judicial restraint", of which he considered the doctrines of "act of State" and "non-justiciability" to form part. He took the definitive statements on this wider principle from the decisions in *Buttes Gas & Oil Co. v. Hammer* [1982] AC 888, as qualified by the subsequent decision of their Lordships' House in *Kuwait Airways Corporation v. Iraq Airways Corporation* (Nos. 4 and 5)

[2002] 2 AC 883 . The Attorney General had made an independent submission that the principle of judicial restraint did not apply where a contrary statutory intention existed and argued that this was the case by reason of the 1999 Law. The learned Commissioner agreed with the defence that the language of the 1999 Law was not sufficient to displace the principle of judicial restraint. He went on to accept that the matrix of facts in cases that might come before the court under the 1999 Law was very wide and that the principle of judicial restraint might have a role to play: see paragraph 72. 96. In considering the principle of judicial restraint and its application to the circumstances before him, the learned Commissioner considered that there were, in this case, two questions to be addressed namely:- (i) Will the Court be asked to adjudicate on the transactions of foreign sovereign States? And (ii) Will it find itself in a judicial no man's land with no judicial or manageable standards by which to judge those issues? He answered both queries in the negative: see paragraphs 55, 61 and 73 in the judgment below. 97. In reaching his views on those two queries, the learned Commissioner took the view that, having regard to the provisions of Article 1 of the 1999 Law, the Attorney General would have to satisfy the Court, to the criminal standard, that the conduct alleged to have taken place in Nigeria did in fact take place and that such an exercise would involve findings as to whether the actions of General Abacha and Colonel Marwa occurred: see paragraph 57 of the judgment. 98. However, the learned Commissioner expressed the opinion that there would be no adjudication (in the sense of judicial award or determination) on those findings of fact and no finding of guilt or otherwise on the part of those two individuals whether under

Nigerian, International or Jersey law: see paragraph 57. He considered also that there would be no adjudication on the two contracts for two reasons. In the first place, the requirement of the 1999 Law was that the conduct (but not the parties to it) was brought, hypothetically, into Jersey. In the second place, the determination would be whether the conduct would, as a matter of Jersey law, be an offence under Jersey law if it had occurred in Jersey: paragraph 57. In the learned Commissioner's view this whole exercise would be carried out applying Jersey law exclusively: paragraph 57. He therefore considered that there would be no interference in the affairs of the Republic, no disrespect to the independence of the Republic, no sitting in judgment on anything done in Nigeria and no breach of international comity: paragraph 58. On the contrary, he stated, under international conventions and standards Jersey was expected to prosecute money laundering in its jurisdiction. He referred also to a letter of 6 May 2004 from M. Monfrini, a Swiss lawyer engaged by the Federal Republic of Nigeria, to President Obasanjo, and to a subsequent State Visit to Jersey made by President Obasanjo in early July 2004, both of which, in the Commissioner's view, made it clear that there was no embarrassment in foreign relations between Jersey and Nigeria in the bringing of the prosecution.

Submissions and discussion in this Court 99. The arguments for the Appellant were expressed in various forms both in the written skeleton and in oral submission and we are grateful to Advocate Kelleher for the clarity of his presentation. The essence of the argument was that the learned Commissioner was wrong in his characterisation (at paragraph 57) that the requirement of the 1999 Law is that the conduct (but not the parties to it) be brought hypothetically into Jersey. The Appellant submits that the 1999 Law in fact requires the "transposition" of actual conduct to Jersey. The conduct is not and cannot be hypothetical. The Appellant suggests that the Commissioner's reasoning fails to recognise (a) the extent to which the court is required to make both findings of fact and law based on actual (but transposed) conduct, and (b) the role of transposition in defining the scope of the matters on which, in consequence, the court's adjudication is required.

100. On behalf of the Appellant it is accepted, as the learned Commissioner found, that there will be no adjudication (in the sense of no strict finding of innocence or guilt) on the part of anyone other than the defendant; but it is contended that the conclusion that there is no adjudication required which can properly allow the application of the principle of judicial restraint looks to form rather than substance. Mr Kelleher posited the possibility of the Royal Court finding (i) that the then General Abacha and the then Colonel Marwa (a) were involved in the making of the contracts in the knowledge that the prices were inflated (b) did so knowing that large parts of the contract payments were to find their way to themselves and (ii) that such conduct, if taking place in Jersey, would constitute a criminal offence. In his submission, if such findings were made there would be adjudication on the then General Abacha and the then Colonel Marwa and such a result would be precluded by the doctrine or principle of judicial restraint as set out principally in *Buttes Gas & Oil Co. v. Hammer*, cited above.

101. In Advocate Kelleher's submission, where there is the possibility that a Court will require to decide on matters which relate to the acts of some officer of a foreign State or relate to a transaction entered into by a

foreign State, the Courts of a State such as Jersey, applying the doctrine of judicial restraint, would find such a matter non-justiciable. 102. Whilst we agree with the learned Commissioner that, in accordance with the decision in *In Re Yaheeb Trust*

[2003] JLR 92, the Jersey Courts will decline, in appropriate circumstances, to adjudicate on issues falling under a principle of judicial restraint, we do not agree that this principle, as set out in *Buttes Gas & Oil Co. v. Hammer*, cited above, and considered in other cases, can be expressed as loosely as suggested on behalf of the Appellant. 103. In the first place it is important to bear in mind what the learned Bailiff said in *In Re Yaheeb*. The principal passage is in the following terms:- "

18. In *A Ltd. v. B Bank*, the question was whether the English court should hear an action for breach of patent in relation to the banknotes of a foreign country which had been printed on security paper which was subject to the patent and disposed of by an English bank. No claim was made against the foreign State, but its central bank intervened to argue that to interfere with the circulation of its currency in the United Kingdom would be to adjudicate upon the transactions of a foreign State. It was held by the Court of Appeal that, when considering the non-justiciability of acts done by foreign States, it was necessary to consider the nature of the relevant act which formed the basis of the claim. Such acts had to be acts of a foreign State as a State rather than commercial acts, and had to occur within the territory of that State. Leggatt, L. J. Stated ([1997] F. S. R. at 170)- ". . . [T]hat certain acts of foreign sovereigns are non-justiciable is not disputed. As Lord Wilberforce expressed it in *Buttes Gas and Oil Co. v. Hammer* (No. 3),

[1982] A. C. 888 at p.932E, 'the Courts in England will not adjudicate upon acts done abroad by virtue of sovereign authority.' All the authorities in England and the United States emphasise that to be non-justiciable acts must be those of another government done within its own territory: see for example *Underhill v. Hernandez* (1897), 168 U. S.

250. This theme is constantly reiterated. The principle depends on the nature of the issues rather than the identity of the parties."

19. Having adopted those principles as expressive of the law of Jersey, I turn to apply them to the facts of this case." 104. We note also that in *Durant Intl Corp v AG*

[2006] JLR 31, the Attorney General's submissions prayed in aid "the doctrine of Act of State, whereby the courts of one country will not generally adjudicate upon the validity of the acts of a foreign government carried out in its territory" under reference to the decisions in *Buttes Gas & Oil Co. v. Hammer* and *In re Yaheeb Trust*: see para 47. 105. While the adoption by the learned Bailiff referred to in paragraph 18 above might at first glance seem restricted, we consider, for the avoidance of doubt, that the various expressions of principle set out by Lord Wilberforce in *Buttes Gas & Oil Co. v. Hammer* should be accepted as part of the law of Jersey. 106. We think it perhaps helpful to start by recollecting certain salient passages from *Buttes Gas & Oil Co.*. As Lord Wilberforce, who gave the only reasoned speech, records at p.925, the appellants, *Buttes* and *Mr. Boretta*, in

support of their contention that the proceedings necessarily involved non-justiciable issues, relied upon a number of distinct arguments. First, they contended that the English courts would not try an action which would require them to pronounce, directly or indirectly, on rights in immovable property situated abroad. Second, they invoked the doctrine of sovereign immunity, in so far as this excludes actions concerning property which is in the ownership, possession or control of a foreign sovereign State, or in which a foreign State claims an interest. Third, they argued that the English courts would not entertain actions either (a) requiring the interpretation of, or the ascertainment of the precise nature of obligations arising under, transactions between foreign sovereign States or (b) questioning the validity or effectiveness of foreign legislation; or (c) examining the validity of or motives for, acts of foreign sovereign States in their international relations; or (d) challenging the legality of acts of Her Majesty's Government outside the United Kingdom and not relating to British subjects. We pause to note that neither in the subject matter in *Buttes Gas & Oil Co*, nor in the submissions for the Appellants as recorded, was there a contention for restraint in respect of ordinary commercial transactions in which one party happened to be a State. 107. Lord Wilberforce considered that the doctrine of sovereign immunity did not apply as there was no attack, direct or indirect, upon any property of any of the relevant sovereigns, nor were any of them impleaded directly or indirectly: see p 926. His Lordship also agreed that, while the *Moçambique* rule was not of itself decisive of this case, he had still to consider whether a wider principle of judicial abstention has to be applied. As his Lordship said, the *Moçambique* rule had been enunciated by Lord Herschell in the following terms (

[1893] AC 602, 626): "It is quite true that in the exercise of the undoubted jurisdiction of the courts it may become necessary incidentally to investigate and determine the title to foreign lands; ..." It is Lord Wilberforce's response to the third line of argument which is of importance in the circumstances of the present case. 108. At page 931 his Lordship said:- "..... the essential question is whether, apart from such particular rules as I have discussed, there exists in English law a more general principle that the courts will not adjudicate upon the transactions of foreign sovereign States. Though I would prefer to avoid argument on terminology, it seems desirable to consider this principle, if existing, not as a variety of "act of State" but one for judicial restraint or abstention. The respondents' argument was that although there may have been traces of such a general principle, it has now been crystallised into particular rules (such as those I have mentioned) within one of which the appellants must bring the case - or fail. In my opinion there is, and for long has been, such a general principle, starting in English law, adopted and generalised in the law of the United States of America which is effective and compelling in English courts. This principle is not one of discretion, but is inherent in the very nature of the judicial process." 109. Lord Wilberforce, in considering the jurisprudence in England and the United States, noted that "act of State" in the normal meaning was action taken by a foreign sovereign State within its own territory (p.934). He noted also (at p. 934) that United States' courts had moved towards a "flexible" use of the doctrine on a case to case basis. He therefore

considered that there was "room for a principle, in suitable cases, of judicial restraint or abstention." In proceeding to analyse how the courts in the United States had dealt with this more flexible approach, he particularly noted (at p 936) that, in a case of great similarity to the one before the House in Buttes, the Fifth Circuit Court of Appeals in the United States, in dismissing the appeal before it, had stated:- "The issue of sovereignty is political not only for its impact on the executive branch, but also because judicial or manageable standards are lacking for its determination. To decide the ownership of the concession area it would be necessary to decide (1) the sovereignty of Abu Musa, (2) the proper territorial water limit and (3) the proper allocation of continental shelf. A judicial resolution of the dispute over Abu Musa between Iran and Sharjah is clearly impossible." 110. Lord Wilberforce continued (at p. 936):- "The constitutional position and the relationship between the executive and the judiciary in the United States is neither identical with our own nor in itself constant. Moreover, the passages which I have cited lay emphasis upon the "foreign relations" aspect of the matter which appeared important to the United States at the time. These matters I have no wish to overlook or minimise. I appreciate also Mr. Littman's argument that no indication has been given that Her Majesty's Government would be embarrassed by the court entering upon these issues. But, the ultimate question what issues are capable, and what are incapable, of judicial determination must be answered in closely similar terms in whatever country they arise, depending, as they must, upon an appreciation of the nature and limits of the judicial function. This has clearly received the consideration of the United States courts. When the judicial approach to an identical problem between the same parties has been spelt out with such articulation in a country, one not only so closely akin to ours in legal approach, the fabric of whose legal doctrine in this area is so closely interwoven with ours, but that to which all the parties before us belong, spelt out moreover in convincing language and reasoning, we should be unwise not to take the benefit of it." 111. His Lordship then observed (at p.937) that the proceedings in the matter on appeal to the House, if they were to go on, inevitably would involve determination of certain issues which he identified. He continued (at p. 938):- "It would not be difficult to elaborate on these considerations, or to perceive other important inter-State issues and/or issues of international law which would face the court. They have only to be stated to compel the conclusion that these are not issues upon which a municipal court can pass. Leaving aside all possibility of embarrassment in our foreign relations (which it can be said not to have been drawn to the attention of the court by the executive) there are - to follow the Fifth Circuit Court of Appeals - no judicial or manageable standards by which to judge these issues, or to adopt another phrase (from a passage not quoted), the court would be in a judicial no-man's land: the court would be asked to review transactions in which four sovereign States were involved, which they had brought to a precarious settlement, after diplomacy and the use of force, and to say that at least part of these were "unlawful" under international law." 112. It seems to us that Lord Wilberforce's observations will not bear the conclusions which Advocate Kelleher seeks to draw from them. Whilst his Lordship was prepared to identify a principle of judicial restraint, it was in respect of matters which were outwith the

ordinary realms of municipal courts, their judicial and manageable standards. Again, that lack of what we might call ordinary competence was observed by Lord Wilberforce and the courts of the United States not just in respect of any transaction, or juristic act, in which the State engaged outwith its territory; for example, a contract with a private individual. Rather it was in respect of inter-State transactions: see pp 936 and 937. 113. In the present case, the Royal Court will not be asked to rule on the efficacy or otherwise of a sovereign act or to exercise its judicial function without access to judicial and manageable standards. It will, in brief, be asked to make certain findings in fact, namely whether certain contracts were entered into, by whom and whether at inflated prices. Such matters are within its ordinary competence. Thereafter, and all as part of the prosecution of the defendant, it will be asked whether, had those matters occurred in Jersey they would have constituted an offence under Schedule 1 of the 1999 Act. The ultimate adjudication will be on the defendant and not on any other person or on a State. 114. In these circumstances, we cannot find that the matters which the Royal Court will be asked to adjudicate upon in the present prosecution are of such a nature that the non-discretionary principle of judicial restraint set out by Lord Wilberforce in *Buttes Gas & Oil Co* is engaged. 115. We must add that Advocate Kelleher also submitted that, in paragraph 59 of the judgment, the learned Commissioner was wrong to draw support for the contention that the principle of judicial restraint had no application in the present case from the decision in *Kirkpatrick & Co. Inc. v. Environment Tectonics Corporation International* 110 SCT 701 (1990), as cited by Lord Nichols of Birkenhead in *R. v. Bow Street Magistrates Court ex parte Pinochet* (No. 1)

[1998] 3WLR 1456 and in *Yaheeb*, cited above. In that case civil proceedings had been brought in the United States, against a contractor awarded a military procurement contract and a Nigerian official, under the Racketeer Influence and Corrupt Organisations Act. The proceedings had been brought by a commercial competitor who alleged that the contract had been awarded after bribery. The court there held that, while a finding in the United States that there had been bribery might have an effect on the validity of the Nigerian contract, such was not sufficient to lead to the "act of State" doctrine stopping the proceedings; the United States court would not be deciding directly whether the contract was valid. 116. For the present Appellant it was contended that the case of *Kirkpatrick* concerned exclusively the "act of State" doctrine as applied by the courts of the United States where the "act of State" doctrine covers both the principle of non-justiciability and the "act of State" doctrine properly so called. It was contended that the learned Commissioner erred in failing to recognise the distinction between that application and the "act of State" doctrine as applied in England. 117. We disagree. In the first place, consideration of an authority such as this, given its facts and circumstances, would come within the general approach of Lord Wilberforce in *Buttes*, quoted at paragraph 25 above. Further, we consider that this submission ascribes to the learned Commissioner's reference to the case of *Kirkpatrick* a weight greater than his Judgment bears. The Commissioner, having properly considered the authority as one referred to in other

authorities before him, merely found an example of the proper characterisation, as he saw it, of the substance of the issues which would be before the Royal Court. 118. Having given citations from the decision in Kirkpatrick, the learned Commissioner merely said, in paragraph 60, that in the present case, there would be no findings by the Royal Court as to the legality of the two contracts and that the Court would not be adjudicating on the actions of General Abacha and/or Colonel Marwa. It would be determining only whether they occurred. Paragraph 61 merely expresses, in a slightly different way, what had already been said in paragraphs 57 and 58. There is no indication that any reliance on the Kirkpatrick decision, without drawing any distinction between the doctrine as espoused in the United States and the doctrine as espoused in England, had a material bearing upon the view set out by the learned Commissioner. Nor in our own view would it do so for the reasons summarised at paragraph 113 above. 119. In our view there is, however, a much more fundamental answer to this issue raised on behalf of the Appellant. In his very cogent submissions, Advocate Kelleher contended that the learned Commissioner had erred in law in characterising the necessarily transposed conduct as hypothetical; and finding, in consequence, that the court would not be sitting in judgment on anything done in Nigeria. 120. The Appellant's submission on this matter commences by suggesting that the 1999 Law extends the jurisdiction of the Royal Court as to criminalised conduct (and in consequence the benefit of the conduct) in requiring consideration of the question "If the conduct in question occurred in Jersey would it constitute an offence specified in Schedule 1 to the 1999 Law?". In particular the contention for the Appellant is that, as a matter of real substance, the issues on which the Court must base its relevant findings require the Court to adjudicate on and in relation to the negotiation of the two contracts entered into by the Federal Republic of Nigeria in 1996 and 1997 by reference to events and matters of exclusively Nigerian interest including the role played by the Head of State, the role of Colonel Marwa in the negotiation of the contracts, the allegedly improper conduct in public office of General Abacha and or Colonel Marwa and the alleged deception of the Federal Republic as to the pricing of the vehicles supplied under the contracts. 121. On behalf of the Appellant it is noted that in the Second Judgment the Commissioner held that the prosecution must not only prove the conduct but also that it is "criminal" as defined: see paragraph 90. It is submitted that this, on its face, is inconsistent with the learned Commissioner's finding that the Court would not be adjudicating on the actions of General Abacha and/or Colonel Marwa but simply determining whether they occurred: paragraph 60 of the First Judgment. It is submitted that the prosecution must establish the actual existence of criminality and that the fact that "criminal" under Article 34(1)(b) of the 1999 Law means according to the law of Jersey, rather than the law of Nigeria, is irrelevant. 122. The point is made for the Appellant that in the Kuwait Airways Corporation case, cited above, the UN Security Council had made an unequivocal finding that Iraq was in flagrant breach of the UN Charter by invading Kuwait, and that it was the existence of that finding which enabled Lord Nichols to say that the standard being applied was clear and manageable and the outcome not in doubt. As to the present case it is said that the outcome is very much in doubt and that there is no judgment of a Nigerian court in

relation to the predicate conduct in question. Thus the Jersey Court must rule upon the acts of foreign officials itself as a matter of first impression. 123. In our view this submission cannot stand once it is accepted, as it is for the Appellant, that "criminal" under Article 34(1)(b) means criminal according to the law of Jersey rather than the law of Nigeria. One of the principal planks of Article 34(1)(b), read together with Article 1 of the 1999 Law, is that the criminality of the conduct which has given rise to the proceeds is to be appraised as a matter of Jersey law. It matters not, therefore, that the conduct which occurred outside Jersey did not carry a criminal taint in the State or States where it in fact occurred. Once that is understood, the existence of criminality emerges as a result of the application of the law of the jurisdiction with which those carrying out the conduct had no concern at the time when the conduct took place. The Jersey Court is, therefore, in no sense passing judgment as to whether those who carried out the acts were acting in a morally reprehensible way having regard to the laws of the State or States where the acts occurred. There is, therefore, no ascription to the actual conduct of a determination that the carrying out of that conduct itself carried a criminal taint. When "criminal conduct" requires to be proven for the purposes of the 1999 Law, it is proven by showing, according to the usual standard of proof, that the conduct would have constituted a Schedule 1 offence if it had occurred in Jersey. It is a single criminality test. 124. We have noted that the learned Commissioner was inclined to accept that the matrix of facts in cases that might come before the Court under the 1999 Law is very wide and that the principle of judicial restraint might have a role to play. Whilst at one stage we considered that a decision on this view may not be necessary for the purposes of the grounds of appeal presented to us in this case, we consider ourselves bound to differ from the learned Commissioner. In our opinion, once the single criminality test is accepted, there is no scope for engagement of the principle of judicial restraint. The offences identified in Schedule 1 of the 1999 Law are offences according to the law of Jersey. There is no adjudication on any person other than the defendant. Accordingly we cannot support the learned Commissioner on this point. 125. We would add that, in our view, nothing in the other authorities specifically drawn to our attention by Advocate Kelleher is of direct assistance. The advice of the Judicial Committee of the Privy Council in *Civil Air Transport Incorporated v Central Air Transport Corporation*

[1953] AC 70 dealt with a sale of aircraft by a foreign government and a claim to ownership by a successor government. It was essential to the case to determine whether property in the aircraft had passed and it was against that background that Viscount Simon, delivering the reasons for the advice, stated (at p. 91) 'A government's policy in buying or selling chattels which it owns is not subject to the review of foreign tribunals'. There will be no such review in the present case. 126. In *Fayed v Al-Tajir*

[1988] QB 712 sovereign immunity and diplomatic immunity were directly engaged in respect of an internal memorandum prepared and received in an Embassy. Mustill, L. J. (as he then was) makes this quite clear when he said "The document in suit here is not just a 'foreign official document' but an embassy document"; it was upon that basis that he considered

the issue to be "whether the litigation was of the kind upon which the English court should engage itself at all": see p. 730. 127. Further, the relevant sections of the speech of Lord Templeman in *Williams & Humbert Ltd v Rumasa SA*

[1986] AC 368 merely emphasise that English Courts will recognise, where appropriate, the compulsory acquisition law of a foreign state and the consequent changes in title: see p. 431. 128. Advocate Kelleher, in conclusion, dealt with the issue of risk of embarrassment between Jersey and Nigeria. Advocate Kelleher's skeleton and submissions considered not only the learned Commissioner's reliance on the letter of 6 May 2004 and the visit of the then President of the Federal Republic to Jersey in 2004, both referred to in paragraph 98 above, but also the learned Commissioner's reliance on perceived treaty or other international obligations. This latter point does appear to us to be the principal thrust of the learned Commissioner's reasoning in paragraph 58. 129. In the Appellant's submissions, although it is considered correct to see Jersey's anti money-laundering legislation as a whole properly as directed to its compliance with international standards, it is suggested that those standards are not a basis for a conclusion that the application of the principle of judicial restraint is displaced. It is submitted that the exceptional nature of the extra-territorial jurisdiction is a compelling argument for the application of the principle. 130. It appears to us that the submission is based upon the characterisation of the extra-territorial jurisdiction as being one which is "used to criminalise conduct in another jurisdiction where it was not at the relevant time criminal in that jurisdiction". For the reasons given above, that characterisation cannot be accepted. There is no extra-territorial jurisdiction. The jurisdiction is over the person subject to the Jersey courts. Neither does the 1999 Law make the relevant conduct criminal in the State or States where it took place. The 1999 Law merely identifies that, where the conduct in question would have constituted an offence if occurring in Jersey, it is treated as "criminal conduct" for the purposes of the 1999 Law. 131. As to potential embarrassment, whilst we agree that little of any significance is to be taken from the letter and the visit, the issue for the Jersey Courts here is not as to whether there is the potential for the prosecution to embarrass Nigeria or certain important personages there. Rather it is whether the States of Jersey would be embarrassed in its relationship with Nigeria: see Lord Wilberforce in *Buttes*, as quoted at paragraph 25 above. In a civil litigation between private individuals, the State of the forum might intervene to seek to protect its diplomatic and commercial interests with a foreign power: see, for example, Lord Wilberforce's quotation from the amicus brief filed by the United States in the appeal by *Occidental* to the Fifth Circuit Court of Appeals and, in particular, the letter from the Legal Adviser to the Department of State to the Attorney General which, as quoted by his Lordship, was in the following terms:- "It is our understanding that the disposition of this case would require a determination of the disputed boundary between Umm al Qaiwain on the one hand and Sharjah and Iran on the other at the time Umm al Qaiwain granted the concession in issue to *Occidental*. It is our view that it would be contrary to the foreign relations interests of the United States if our domestic courts were to adjudicate boundary controversies between third countries and in

particular that controversy involved here." 132. Put simply, such an issue does not arise here as we have before us a criminal prosecution at the instance of the Attorney General who, we must assume, will have had in mind, among other matters, any potential question of embarrassment in foreign relations. Indeed, if at any time in the near future the Attorney General considered that such potential issues ought to be given greater weight, the Attorney General, as master of the instance, could decide not to proceed further with the prosecution.

Conclusion

133. For all these reasons, the appeal against the finding on non-justiciability fails. IV Whether the offence of receiving goods stolen outside the Island, contrary to section 33(4) of the (English) Larceny Act 1916, is an offence known to Jersey law. The decision of the Commissioner 134. In the course of the Second Judgment, the Commissioner considered whether the prosecution could (if it were necessary to do so in order to make out an offence under Article 34(1) of the 1999 Law) identify a Jersey offence for which the defendant had the purpose of avoiding prosecution, or for which he could at least have been prosecuted. He accepted that the offence suggested by the prosecution, an offence of receiving goods stolen outside the Island contrary to section 33(4) of the (English) Larceny Act 1916, was an offence known to Jersey law. 135. The defendant sought leave to appeal against this ruling. The Commissioner refused leave on the ground that the proposed appeal had no prospect of success. The defendant has renewed his application before this Court. 136. As a result of our decision that it is not necessary for the prosecution to define what offence the defendant is said to have had the purpose of avoiding prosecution for, this application is academic. We consider in any event that it has no merit, and refuse leave. Our reasons are as follows. The Law 137. So far as relevant, section 33(4) of the 1916 Act is in the following terms:- "Every person who, without lawful excuse, knowing the same to have been stolen or obtained in any way whatsoever under such circumstances that if the act had been committed in the United Kingdom the person committing it would have been guilty of felony or misdemeanour, receives or has in his possession any property so stolen or obtained outside the United Kingdom, shall be guilty of an offence ...". A provision to similar effect appeared for the first time in England in the Larceny Act 1896 . 138. These provisions were enacted to reverse the effect of a series of decisions starting with *R v Debruiel*

(1861) 11 Cox CC 207, in which it was held that no offence of receiving stolen goods was committed where the stealing occurred outside the United Kingdom because the law of England "does not recognise a stealing in a foreign country as a crime which it will punish". The defendant asserted that a similar rule applied in Jersey common law, and that it could not be changed by an English statute. Discussion 139. As the Commissioner found, the complete answer to this point is supplied by the decision of this Court in *Foster v Attorney General* , cited above, which, as we have noted, examined the development and extent of the Jersey common law offence of fraud. The Court's Judgment (delivered by Le Quesne JA) referred to a process of clarification and formalisation of the offence "known by so

comprehensive a term as "fraude" (p21), and in particular to the increasing use from the second half of the nineteenth century of English categories and terms. The Court then said this (p22):- "After the enactment in England of the Larceny Act 1916, the use of the categories and the definitions of that Act became more and more widespread here. The position now reached is that cases falling within the scope of that Act are prosecuted here, so far as concerns pleading and the identity of the essential elements of the offence charged, exactly as they would be in England " (our emphasis). 140. The Court then considered what legal justification there might be for this practice. It identified the power exercised by the Royal Court up to the middle of the nineteenth century to adapt and develop the criminal law in the course of dealing with individual cases (p23) - a power recognised by the Privy Council in *Renouf v Attorney General*

[1936] AC 445 , in which Lord Maugham referred both to "a long established practice in Jersey which has apparently permitted the Royal Court to introduce alterations in regard to the criminal law and its punishment" and to the modern practice of the Royal Court, on which the criminal law "rests almost entirely", of using English legal works and precedents as authorities as part of an increasing tendency to imitate English models. As the Court of Appeal pointed out, however, this development, and in particular the practice of charging offences in terms of the English Larceny Act, did not supplant the common law or preclude an enlargement of the range of possible crimes; and it continued as follows (pp24-5):- "The criminal character of conduct covered by the Larceny Act is derived in Jersey from the common law. The development of the practice has not changed this derivation of criminality. It means only that conduct which is both criminal by the common law and also within the ambit of the Larceny Act may be prosecuted according to the provisions of that Act. This is convenient for both prosecution and defence, for it substitutes the relatively clear requirements of the Act for the boundaries, hitherto vague and ill defined, of the common law offence. It is no less clear that the development of the practice has not restricted the range of punishable crimes. Conduct criminal at common law but not falling under the terms of the Larceny Act might still, in spite of the development of the practice, be prosecuted at common law. ... We have seen that the comprehensive ambit of the offence of "fraude" made some measure of definition and particularity desirable in the interests both of the Crown and of the individual. The court achieved this by accepting the use of English terms and the definitions and interpretations put upon those terms in England. To put it metaphorically, the offence of "fraude" covers a large area imperfectly defined. By resorting to the categories of the Larceny Act, the Royal Court has staked out more precisely a number of plots within that area. There still remain parts of the area outside the defined plots. The court has thus modified the law to this extent; that it became - and remains - lawful to charge offences according to the categories of the Larceny Act 1916, and to prove them by establishing the elements required by that Act as interpreted and applied in England . The criminality of conduct within the scope of "fraude" but outside that of the Larceny Act has not been affected" (our emphasis). 141. Although the context of these remarks is an examination of the offence of "fraude", they do

not seem to us to be confined to that context. They give unequivocal approval to the practice of refining the wide generic categories of crime in Jersey common law by reference to the statutory offences set out in the 1916 Act. As this Court said in *Manning v Attorney General*

- [2000] JLR 32, "the Larceny Act was a codifying statute whose sections proved to be of use and relevance in this jurisdiction in so far as they defined criminal conduct". The adoption of offences such as those in section 33(4) of the 1916 Act does not involve, as the defendant suggested it did, a change in the law so as to make criminal actions which were not previously regarded as criminal; by contrast, it represents a beneficial process of clarification of a position under which, as late as the mid nineteenth century, crime in this Island was largely a collection of poorly defined generic offences supplemented by a power in the Royal Court to treat as criminal anything it regarded as such. 142. Accordingly, we agree with the Commissioner that the offence whose elements are defined in section 33(4) of the 1916 Act is an offence known to Jersey law and refuse the application. V. The Defendant's application for leave to appeal against the Commissioner's ruling that the Appellant was not entitled to orders in respect of failure of disclosure on the part of the Crown. 143. In the First Judgment, the Commissioner considered and dismissed a substantive application by the defence to stay the prosecution as an abuse of process. In paragraph 48 of that judgment he described the relief sought by the defence as "at the highest a stay based on the evidence it has adduced or at the least an order for the disclosure sought in the earlier disclosure application in order for it to be able to develop its substantive arguments"; and in paragraph 49 he declined to order the disclosure sought in the earlier disclosure application. The "earlier disclosure application" had been considered at a pre-trial hearing and had been dismissed by the Commissioner in a judgment dated 11 April 2008. 144. The defendant applied for leave to appeal against the Commissioner's refusal in the First Judgment, not in the judgment of 11 April 2008
- to make an order that the prosecution disclose material relevant to the issue of abuse. The Commissioner refused leave on the ground that the Court of Appeal had no jurisdiction to entertain the appeal. The defendant has renewed his application to this Court. 145. We consider that the Commissioner was right to refuse leave on the ground that we had no jurisdiction, and we too refuse leave on that ground. If we had had jurisdiction to entertain the appeal, we would in any event have held that leave should not be granted as the Commissioner was right to refuse to order disclosure. Our reasons are as follows:- 146. The general rule in criminal cases is that an appeal against an order or ruling of a judge cannot be made until the trial is over. There is, however, an exception in the case of preparatory hearings within Part 10 of the Police Procedures and Criminal Evidence (Jersey) Law ("PPCE"). Under Article 84 of PPCE the Bailiff may direct that a preparatory hearing be held in complex or long cases for the purpose of identifying and assisting comprehension of the issues, expediting the proceedings or assisting the management of the trial; and Article 86 defines the powers of the Court at a preparatory hearing, including the power (under Article 86(3)) to make a ruling on any question of law relating to the case. Under Article 90(1), an

appeal lies to the Court of Appeal from any ruling under Article 86(3), but only with leave. 147. Preparatory hearings are to be contrasted with pre-trial hearings, for which provision is made by Articles 93 to 97 of PPCE . Pre-trial hearings are those hearings which take place after an accused is committed for trial but before the start of the trial. Since by Article 85 a preparatory hearing is the start of the trial, a pre-trial hearing is any interlocutory hearing which is not a preparatory hearing. Although the Court has power to make rulings of law at a pre-trial hearing, there is no right of appeal against such rulings. There is, however, a power under Article 94(4) for the Court to discharge or vary a ruling on application or of its own motion, but by Article 94(5) no application may be made for discharge or variation unless there has been a material change of circumstances. 148. As we have said, the disclosure application was first heard and dismissed at a pre-trial hearing. On the face of it, there can be no appeal against that dismissal. 149. The substantive application to stay the prosecution as an abuse was, however, made at a preparatory hearing; and the defence case is that, because the Commissioner had been invited to revisit his earlier refusal to order disclosure and had declined to do so, he had made a ruling on a matter of law in the course of a preparatory hearing which was appealable under Article 90(1). We do not agree. It seems to us that the Commissioner was not considering afresh whether he should order disclosure; his view was plainly that nothing had occurred to make him change the ruling he had previously given. We do not consider that that amounts to the making of a new ruling at the preparatory hearing; it was at most merely a reiteration of a ruling he had already given, and is not capable of being appealed. 150. Even if the Commissioner had refused disclosure at a preparatory hearing, his ruling would not in our view have been subject to appeal. That is because it would not have been on a question of law, and so would not have been within Article 86(3) of PPCE . Authority for that proposition is provided by the House of Lords decision in *R v H*

[2007] 2 WLR 364 , concerning the English equivalent to the relevant parts of PPCE contained in the Criminal Justice Act 1987 . At paragraphs 12 and 13, Lord Nicholls of Birkenhead said this:- "[W]as this ruling on a "question of law relating to the case" within the meaning of section 9(3)(c) [of the 1987 Act]? In my view it was not. On its face this ruling was not directed to any question of law. There could be cases where a disclosure ruling depends on the judge's view on a question of law, such as the proper interpretation of part of the indictment. Then bound up with the judge's disclosure ruling would be a ruling on a question of law relating to the case. That is not the position here. The challenge to the judge's ruling in this case is simply that, so it is said, the judge misdirected himself when deciding whether disclosure should be ordered. Whether the judge misdirected himself, and thereby vitiated his decision, is a question of law. But that is not the type of question of law at which section 9(3)(c) is aimed. Whether an order or ruling is an order or ruling on a question of law within the meaning of section 9(3)(c) depends ... on the nature of the issue which the order or ruling decides. Here the judge's decision to refuse the applicant's application for disclosure of certain prosecution documents did not decide any question of law." 151. To similar effect is this passage from the speech of, Lord Hope of Craighead,

at paragraph 24:- "It might, for example, be necessary for [the judge] to resolve a question of law as to the scope of the indictment before dealing with an application for disclosure. In that event an appeal on that question of law, and that question only, would lie under section 9(11) of the Act. His determination of the application for disclosure would not of itself be appealable." 152. Again, at paragraph 110 Lord Mance gave his reasons for taking the view that section 9(3)(c) of the 1987 Act, which provides that at a preparatory hearing the judge may consider "any other question of law relating to the case", "does not cover rulings on disclosure as such and without more". Those reasons included the observations that "Disclosure is an ancillary obligation in respect of issues which have been or are identified", and that "It is only by an unusually broad interpretation of "points of law relating to the case" that questions of disclosure could, as such and without more, be treated as questions of law, and even then only if one excluded any preliminary issues of fact that would require determination". 153. It seems to us that these passages make clear that questions of disclosure are not, or at least not ordinarily, to be classified as questions of law. 154. We were invited by the defendant to distinguish *R v H* on a number of grounds, all focussing on differences between the statutory regimes in England and Jersey. In particular, it was said that the decision in *R v H* was primarily concerned with the question whether the fact that the disclosure ruling was made in the course of a preparatory hearing meant that it was made "at", in the sense of "as part of", that hearing, and so was capable of being appealed. We accept that that was the first of the two questions considered by the House of Lords; and we incline to the view that their conclusion on that issue, that it is open to a judge in England to determine at the same time as conducting a preparatory hearing questions that do not strictly fall within the preparatory hearing regime, can have no application in Jersey. That is because in Jersey interlocutory hearings are either statutory pre-trial hearings or statutory preparatory hearings, and if a preparatory hearing is ordered any interlocutory matter heard in the course of it must necessarily be heard as part of it - there being no other statutory framework within which the matter can fall. The position is different in England, where there is no statutory pre-trial framework and the distinction between matters forming part of a preparatory hearing and other interlocutory matters depends on whether or not they fall within the ambit of sections 7 to 9 of the 1987 Act. Nevertheless, it seems to us entirely clear that the House of Lords considered the question whether a ruling as to disclosure amounted to a question of law as an entirely separate question (see in particular the opening words of paragraph 12 in the speech of Lord Nicholls of Birkenhead); and their view on that is of direct application. 155. There is an additional reason why we consider that the application for leave must fail. As Lord Mance remarked in his speech in *R v H*, "disclosure is an ancillary obligation in respect of issues which have been or are identified". In the First Judgment, the Commissioner decided that the issues raised by the defendant did not disclose a case of an abuse of process. There has been no appeal against that part of his decision. In consequence, there is no live issue to which disclosure could be relevant; and the Commissioner was right to refuse to allow the defendant disclosure for the sole purpose of enabling him to see if he could make a case

where none yet existed. VI. The Defendant's application for leave to appeal against the Commissioner's ruling that the Prosecution must particularise in the Indictment the equivalent conduct offences. 156. The Applicant, Mr Bhojwani, seeks the leave of the Court of Appeal, for an extension of time, which is granted, and for leave to appeal against the decision of the Royal Court, in the Second Judgment, on the following grounds :- (i) The Commissioner erred in law by ordering particularisation as a substitute for amendment, the latter being required in circumstances where the indictment was found to be defective pursuant to Rule 6(1) of the Indictment Rules 1972; (ii) The Commissioner erred in law in making an order which allowed, as a matter of substance, the amendment of a defective indictment without complying properly or at all with the obligation to determine the absence, in all the circumstances of the case, of injustice in accordance with Rule 6 (1) of the Indictment Rules 1972 in that he; (a) failed to require the prosecution to apply for and obtain leave for such an amendment ; or (b) failed to allow the defence the opportunity otherwise to address him on the question of whether or not such injustice exists; or (c) misdirected himself in concluding that there was no injustice . 157. On 8 October we refused leave on the ground that the application does not disclose anything had clearly gone wrong in the proceedings below. We consider the application to be without merit. We now give our reasons. The decision of the Commissioner 158. On 12 February, 2007, the indictment was preferred against the Applicant in a form silent as to the alleged predicate conduct. On 4 April, 2007, the prosecution Case Statement identified the predicate conduct as misconduct in public office. On 22 January, 2008, the defence requested that the prosecution particularise the type of criminal conduct which is alleged to constitute the predicate offence of misconduct in public office . This the prosecution declined to do. On 28 January, 2008, the defence applied to the Court for an Order that the prosecution particularise in the indictment:

- (1) the predicate conduct offence and (2) the proper identification of the alleged predicate offence . 159. The hearing of this matter took place on 17 and 18 April, 2008. Judgment was given in relation to the particularisation application on 15 August . Paragraph 82 of that Judgment refers to Rule 1 of the Indictment Rules, and the provision that every indictment shall contain "such particulars as may be necessary for giving reasonable information as to the nature of the charge" . The Commissioner continued: "Not every prosecution will involve a Case Statement, which would not in any event be seen by the Jurats, but significantly in my view, the Indictment cannot be amended without leave." 160. In paragraph the Commissioner states: "Conduct which occurred outside Jersey is defined as criminal for the purpose of this element of the offence if it would have constituted an offence in Jersey for which a person would be liable on conviction to imprisonment for a term of one year or more if it had occurred here. Thus the prosecution must prove that there has been such conduct, and that, if it had occurred here, it would have constituted such an offence, but it is not required to treat this as a prosecution within a prosecution, identifying the offenders and effectively trying them in their absence". 161. The learned Commissioner carefully set out the legal background to the application with reference to the English Proceeds of Crime

Act 2002 , and cases concerning the civil enforcement provisions. He concluded that the current indictment, which contained no particulars of the predicate conduct at all , was deficient. 162. He then considered the cases of *Michel v Attorney General* [] JCA 239, and *Michel and Gallich a n v Attorney General*

[2006] JLR 28 , with reference to the need for the prosecution to prove that the predicate conduct is criminal as defined in Article 1 of the 1999 Law. He concluded that it was incumbent on the prosecution to identify the Jersey offence or offences it asserts the conduct constitutes, so that the defence can know the case it has to meet and , together with the Court, be in a position to address the Jurats on whether the conduct asserted does indeed constitute the Jersey offence/s upon which the prosecution rely . 163. He ruled that the indictment was deficient in that it contain ed no particulars of the predicate conduct and d id not identify the Jersey offence or offences which the prosecution assert ed the conduct constitute d (and which in view of his finding in the Predicate Conduct application c ould not be or include misconduct in public office) . He then considered separately the indictment in its current 'amended, particularised' form. The submissions for the Applicant 164. The Commissioner is criticised by the Applicant for making the Order to particularise, which was in substance an Order to amend ; and which, it is submitted should have been so regarded. The Applicant submits that this contention is supported by the interchangeable use of the words ' particularise ' and ' amend ' throughout the draft judgment, and the heading under which the ruling has been made:- Amendment to the Indictment'. 165. The Applicant quotes the Commissioner , at Paragraph 3 :- "In my draft ju dgm ent I had inserted a final paragraph indicating that it would now be for the prosecution to apply for leave to amend the indictment, but as I had not had the benefit of the parties submissions in that respect, I deleted that paragraph so that the matter could be argued. " 166. In his judgment (at paragraph 8(ii)) the Commissioner stated :- "In his written submissions Mr Jowitt made it clear that whilst the prosecution had identified Misconduct in Public Office as the predicate offence, other offences arose on the same facts. Mr Jowitt informed the Court and the defence at that hearing that he would set out all the Jersey offences which the prosecution say the conduct constitutes. This he did by email dated 26th April 2008, and by subsequent letter dated 6th May 2008. Those offences are, the prosecution say, likely to be Foster fraud, conspiracy to commit Foster fraud, forgery, bribery and fraudulent conversion." 167. No application was made by the prosecution to amend the indictment or the case statement pending judgment in this matter on 15 th August, when the Commissioner ruled that misconduct in public office was not an offence known to Jersey customary law. He then ordered that the prosecution set out in the three counts of the indictment the particulars of the ' offence or offences which it is alleged such conduct would constitute under Jersey Law had the equivalent conduct occurred in Jersey. 168. This has been done as appears in the indictment now before the Court. The Applicant contends that the order was in substance an order to amend as opposed to the particularisation of the single offence upon which the defendant was originally indicted, and is in breach of Rule 6 (1) of the Indictment Rules . 169. Rule

6(1) provides :- "Where, before trial, or at any stage of a trial, it appears to the Court that the indictment is defective, the Court shall make such order for the amendment of the indictment as the Court thinks necessary to meet the circumstances of the case, unless, having regard to the merits of the case, the required amendments cannot be made without injustice." Discussion 170. We agree that the indictment was deficient and that particulars of the alleged predicate conduct/offences should have been included. As indicated in paragraph 93 we do not support the Commissioner's ruling that the prosecution do not have to prove that the defendant is himself guilty of the predicate conduct, merely that it has taken place and that the property represents his proceeds from it. We do not agree that the indictment was in substance amended. The elements of each offence are unchanged and the particulars/amendments relate only to form. Article 34 of the 1999 Law describes 'criminal conduct' and from an early stage in these proceedings the prosecution had identified the offence or offences constituted by the alleged predicate conduct. From May 2008, the defence can have been in no doubt as to the range of offences alleged to be constituted by the alleged predicate conduct. The prosecution had not applied for leave to amend, and the Applicant had requested an Order that particulars in relation to each of the three counts be added to the Particulars of each offence. The Commissioner accepted the defence submissions that the indictment as originally drafted was deficient in this respect and subsequently made his Order. 171. The Applicant contends that as a matter of law he is entitled to such an opportunity under Rule 6(1). The Court has found the indictment defective and must make an order for amendment, unless, having had proper and considered regard to the merits of the case, the required amendments cannot be made without injustice. 172. It was submitted that the Commissioner erred in law in refusing the opportunity to the defence to identify such injustice and/or in failing to require the prosecution to make an application for leave before making such amendments and/or misdirected himself as to the absence of injustice when making the order to amend (particularise) the indictment. 173. Before he made his Order, it was open to the Commissioner to have heard representations from both prosecution and defence on the matter of injustice, had he regarded it as necessary in the interest of fairness. He was not, as a matter of law, obliged to do so. In his Judgment he referred to the defence application to be heard in relation to a stay of the Indictment on the ground of 'no case'. Clearly he had this in mind and rejected it. Injustice or prejudice arguably did not arise from the Order made. The defence had sought the order for particularisation. The defence had been aware for a considerable time of the way in which the prosecution put their case. There was no element of surprise to the defence by the particulars the subject of the Order, nor could any injustice follow. 174. The prosecution had made no application for leave to amend, therefore, as the Commissioner had acceded to the defence request to make the Order, he did not err in law by failing to require the prosecution to make an application for leave to amend. He cannot be criticised for the course that he took, or the Order that he made on the defence application. 175. The Commissioner, in all the circumstances, made the appropriate Order; being the Order of the Royal Court that the Indictment be amended by the addition of the particulars of the

alleged criminal conduct and offences . The application is refused. SUMMARY 176. To recap the decisions of this Court:- (i) We allow the Attorney General's Appeal against the Commissioner's finding that Misconduct in a Public Office was not an offence known to Jersey Law; (ii) we dismiss the Defendant's Appeal against the Commissioner's ruling that there is no burden on the prosecution under the 1999 Law to prove that the Defendant had committed an offence for which he was seeking to avoid prosecution; (iii) we dismiss the Defendant's appeal against the Commissioner's ruling that the issues raised in the indictment were non-justiciable; (iv) the Defendant's application for leave to appeal against the Commissioner's ruling in respect of the Larceny Act is refused; (v) the Defendant's application for leave to appeal against the Commissioner's ruling that the Appellant was not entitled to orders in respect of failure of disclosure on the part of the Crown is refused; and, (vi) the Defendant's application for leave to appeal against the Commissioner's ruling that the Prosecution must particularise in the Indictment the equivalent conduct offences is refused. MCNEILL JA: 177. I agree. MARTIN JA: 178. I also agree. *Authorities Proceeds of Crime (Jersey) Law 1999. R v Montila*

[2004] UKHL 50 . *Criminal Justice Act 1988. Drug Trafficking Act 1994. R v Boulanger* [2006] 2 SCR 49; 2006 SCC 32. *R v Bembridge* (1783) 3 Dougl. 327; 99 ER 679 (K. B.). *R v Llewellyn-Jones* (1967) 51 Cr App R 204. *R v Dytham* (1979) 69 Cr App R 387 CA. *Shum Kwok Sher v HKSAR*

[2002] 5 HKCFAR 381 . *Question of Law Reserved (Number No2 of 1996)* (1996) 67 SASR 63. *Official Misconduct* (1978) 2 Crim L. J. 307. *Corruption (Jersey) Law 2006. La Cloche v La Cloche* (1870) 4 Moo. P. C. C. N. S. 383; 16 ER. *Foster v The Attorney General*

[1992] JLR 6 . *Booth v Arnold*

[1895] 1 QB 571 . *Alexander v Jenkins*

[1892] 1 QB 797 . *A G v Le Quesne* (1849) PC 276. *AG v De St Croix* (1858) PC 261. *AG v Gosset* (1886) PC 122. *AG v Nicolle* (1896) PC 276. *Farley* (1817) 6 PC 182. *Le Petevin* (1817) 6 PC 152. *Le Maistre* (1816) 6 PC 20. (unnamed) (1819) 6 PC 284. *Chevalier* (1820) 6 PC 382. *Nicolle* (1823) PC 256. *Arthur* (1824). *AG v Urgate* (1920) PC 154. *AG v Langtry* (1945) PC 249. *AG v Dumond and Others* (1945) PC 191. *In re Yaheeb Trust*

[2003] JLR 92 . *R v Saik*

[2007] 1 AC 18 . *R v Brown (Vincent John)* [2004] EWCA Crim 744. *R v Montila*

[2004] 1 WLR 3141 . *Buttes Gas & Oil Co. v. Hammer* [1982] AC 888. *Kuwait Airways Corporation v. Iraq Airways Corporation* (Nos. 4 and 5)

[2002] 2 AC 883 . *Durant Intl Corp v AG*

[2006] JLR 31 . *Kirkpatrick & Co. Inc. v. Environment Tectonics Corporation International* 110 SCT 701 (1990). *R. v. Bow Street Magistrates Court ex parte Pinochet (No. 1)*

- [1998] 3WLR 1456 . Privy Council in Civil Air Transport Incorporated v Central Air Transport Corporation
- [1953] AC 70 . Fayed v Al-Tajir [1988] QB 712. Williams & Humbert Ltd v Rumasa SA [1986] AC 368. R v Debruiel (1861) 11 Cox CC 207. Renouf v Attorney General
- [1936] AC 445 . Manning v Attorney General
- [2000] JLR 32 . Police Procedures and Criminal Evidence (Jersey) Law 2003. R v H
- [2007] 2 WLR 364 . Criminal Justice Act 1987. Indictment Rules 1972. English Proceeds of Crime Act 2002. Michel v Attorney General
- [2007] JCA 239 . Michel and Gallichan v Attorney General
- [2006] JLR 287 . Page Last Updated: 22 Jul 2016 BAILII: Copyright Policy | Disclaimers | Privacy Policy | Feedback | Donate to BAILII

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