



The Gibson Dunn-OSCOLA Commercial Law Moot 2021

Moot Problem and Information

IN THE SUPREME COURT

ON APPEAL FROM THE HIGH COURT OF JUSTICE

BETWEEN:

CHRISTOPHER CLARKE

Appellant

– and –

OWEN OSWALD

Respondent

STATEMENT OF AGREED FACTS

Background

1. Anthony Smith died from a terminal illness on 1 February 2021. In life, he was a well loved law professor at Cambay University and a keen amateur shooter. In his uncontested will, he appointed his grandson, Anthony Smith III, as his executor. His will contained the following article:
 - 1) I give my entire collection of firearms to the Cambay University Shooting Club, in the hope that I may assist in their continued triumphs over The Other Place even when I am gone.
2. It is common ground that Anthony Smith's collection of firearms comprised five

custom made .38 calibre rifles made by the famed Austrian Gunsmith Steinberg & Sons, each valued at £5,000.

3. Anthony Smith III loved his grandfather dearly, but is an alumnus of Oxenfurt University (the longstanding rival of Cambay University) and once served as the captain of the Oxenfurt University Shooting Club (the “OUSC”). He knows that the OUSC’s armoury is in a sorry state for the upcoming season and that OUSC lacks the funds for the purchase of new rifles, and so decides to give his grandfather’s rifle collection to the OUSC, intending to buy them back and give them to the CUSC only after the varsity blues match scheduled for July 2021.
4. On 15 February 2021, Anthony Smith III contacts Owen Oswald, the current captain of the OUSC, to arrange the collection of the custom Steinberg rifles for use in the upcoming varsity blues match. Owen, having previously seen the Cambay team use similar rifles, asks Anthony where he got the rifles from, to which Anthony replies, “don’t look a gift horse in the mouth, mate.” Anthony then departs to Singapore on other business, and until now cannot be located or contacted.
5. Owen is impressed by the custom Steinberg rifles, but seeing as they are a bit old, trades them in with Steinberg & Sons, and pays a further £5000, in return for five new state-of-the-art Steinberg Mk. II rifles.
6. The OUSC members begin using the new Mk. II rifles, and begin shooting better than ever before, winning the Oxenfurt County Championships in March 2021. They continue using the Mk. II rifles exclusively during training over the next two months and sell their derelict old guns for scrap.
7. On 1 May 2021, Christopher Clarke, the captain of the Cambay University Shooting Club (the “CUSC”), is made aware of Anthony Smith’s will, and discovers what Anthony Smith III has done with the custom Steinberg rifles. Upon contacting Steinberg & Sons, Christopher learns that the company has melted down the custom rifles for scrap. Christopher then demands the Mk. II rifles from Owen in lieu, who refuses. However, Owen says he will consider selling Christopher the Mk. II rifles after the varsity blues match in July, since there was not enough time to buy replacement guns for the OUSC team and to acclimatise to them.

8. Both the OUSC and the CUSC are unincorporated associations with about thirty members each. Their day-to-day administrative tasks are handled by elected subcommittees led by the captain, who serves a one-year term.

The Claim in the County Court

9. The parties resort to litigation to resolve their differences. Christopher Clarke filed an application against Owen Oswald in the County Court for an order for the immediate surrender of the Mk. II rifles, or in the alternative, a sum of £25,000 from Owen Oswald (this being the value of the five custom Steinberg rifles). On 15 June 2021, Mr. Justice Spence in the County Court gives the following judgment:

- 1) I find that Mr. Clarke, on behalf of the CUSC, rightly has a 5/6 beneficial interest in the Mk. II rifles, since they were acquired in that proportion by a mixture of trust property that rightly belongs to the CUSC and the club funds of the OUSC.
- 2) In these circumstances, however, I do not consider it just for Mr. Clarke to demand the possession of the Mk. II rifles. Mr. Oswald and the other members of the OUSC, who are innocent volunteers, have insufficient time to acquire or adjust to new guns ahead of the upcoming varsity match, and should not be punished for the unconscionability of Anthony Smith III.
- 3) It remains to address Mr. Clarke's alternative claim for £25,000. I do not find Mr. Oswald to be a constructive trustee on the basis of knowing receipt: he has not acted unconscionably. However, even though Mr. Oswald is an innocent volunteer, I am bound by the decision in *Re Diplock* [1951] AC 251 to find that he must personally account for property wrongly received in the administration of an estate.
- 4) Even so, I will not order Mr. Oswald to pay Mr. Clarke £25,000, because I find that Mr. Oswald's position has changed through no fault of his own. He would not have acquired the Mk. II rifles for the OUSC and traded in the OUSC's old rifles but for Anthony Smith III's breach of trust, on which matter he is wholly innocent. If Anthony Smith III had not offered the custom Steinberg rifles, it is

unthinkable that Mr. Oswald would have purchased the Mk. II rifles for £30,000.

The Appeal

10. By August 2021, the varsity blues match between the OUSC and the CUSC had concluded. Christopher is no longer interested in the Mk. II rifles, as he is eyeing Steinberg's newest model of Mk. III rifles, though these are very expensive. He therefore decides to appeal Mr. Justice Spence's decision to not award him the £25,000 he claimed.
11. The High Court upholds Mr. Justice Spence's decision and reasons. Undeterred, Christopher appeals further.
12. Because the matter touches on important points of law, Christopher Clarke has been granted a certificate pursuant to the Administration of Justice Act 1969, s 12 to make a "leapfrog" appeal directly to the Supreme Court, on the following grounds:
 - 1) Mr. Oswald was in knowing receipt of trust property; the fact that he did not allay his justified suspicions on the provenance of the custom rifles is sufficient to render him unconscionable. Thus, he must personally account for the loss suffered by the CUSC. The change of position defence cannot apply because he is a constructive trustee.
 - 2) In the alternative, even if Mr. Oswald is a volunteer, the change of position defence cannot apply in respect of a volunteer who innocently receives trust property; the interest of the cestui que trust must prevail. In any event, Spence J applied the test too loosely; the present facts are insufficient to ground a finding of change of position.

Competition Information

Written Submissions

Participants should form teams of two and should prepare written submissions (skeleton arguments & bundles of authorities), due by **Week 3 Sunday, 9 May 2021 at 11:59pm BST**. If participants are unable to find a partner, they may contact the OSCOLA Committee at info@oscola.org, who will do their best to find them a partner. Participants must prepare written submissions for **BOTH** the Appellant and the Respondent, with separate bundles of authorities for each side.

Participants may cite up to **four** cases per side (i.e. four cases across both counsel for the Appellant and another four cases across both counsel for the Respondent), in addition to any cases that have been cited in the Statement of Agreed Facts. Participants need not cite the same set of cases in both their submissions. Participants may cite **any** number of academic authorities or legislation. The written submissions for each side must be written in font size 12, not exceeding 2 A4 pages and with 2.5cm margins.

Oral Rounds

The top eight teams (selected on the basis of their written submissions) will proceed to the preliminary oral rounds on **Week 3 Thursday and Friday, 13 and 14 May 2021**, and will be assigned either the Appellant or Respondent side to represent. Skeleton arguments will be used and scored in oral rounds.

The four winning teams in the preliminary oral rounds will proceed to the semi-final, which will be held on **Week 4 Monday, 17 May 2021**. If more than two teams representing the same side proceed to the semi-final, a coin toss will be used to determine the side they represent in the semi-final.

The two winning teams in the semi-finals will proceed to the final, which will be held on **Week 4 Friday, 21 May 2021**. If both winning teams represented the same side in the semi-finals, a coin toss will be used to determine the side they represent in the final.

The final will be judged by **Penny Madden QC**, partner in the London office and Co-Chair of the International Arbitration Practice Group at Gibson, Dunn & Crutcher, and **Charlie**

Falconer QC, partner in the London office of Gibson, Dunn & Crutcher, and former UK Lord Chancellor and first Secretary of State for Justice. Other judges may be confirmed at a later date.

Participants should keep these dates as free as possible to ensure they are available to compete. The specific timing of each moot will be confirmed closer to the oral rounds with the availability of mooters and judges taken into consideration.

Format and Speaking Order

All moots will run virtually on the Microsoft Teams platform.

For each oral round, each speaker shall have up to 10 minutes to make their submissions, and there shall be no right of reply or sur-reply. The speaking order shall be:

1. Leading Counsel for the Appellant
2. Leading Counsel for the Respondent
3. Junior Counsel for the Appellant
4. Junior Counsel for the Respondent

For the avoidance of doubt, Leading Counsel should make submissions for the first ground of appeal, while Junior Counsel should make submissions for the second ground of appeal.

Prizes

The prize for the winning team in the final shall be **£200**, with **£100** for the runner-up.

Registration Information

The moot is open to all Oxford students (including law, non-law, undergraduate and postgraduate students). To register, each team of two should send an email to info@oscola.org with the following information:

- The name, college, and contact information (email) of **BOTH** team members
- Their written submissions and bundle of authorities for **BOTH** the Appellant and the Respondent, in accordance with the rules stated above.

The deadline for registration is **Week 3 Sunday, 9 May 2021 at 11.59pm BST**. Teams will be informed by **12 May 2021** whether they have progressed to the oral rounds of the competition.

Queries and clarifications are to be submitted by email to info@oscola.org.