

# **DISHONESTY REDEFINED**

**Ivey v Genting Casinos (UK) Ltd**

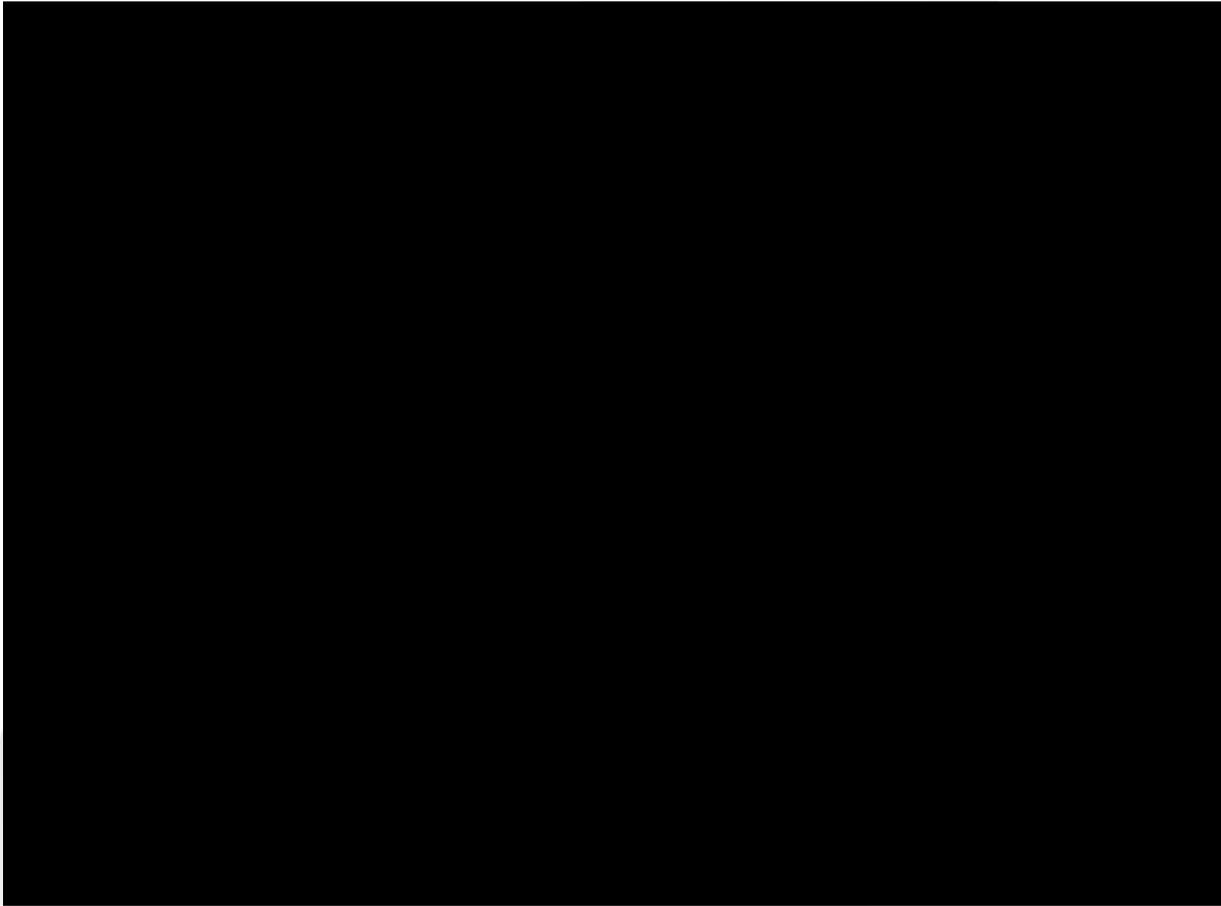
**[2017] UKSC 67**

**[2017] LLR 783**

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# DISHONESTY according to Ghosh

That test required the judge to direct a jury to apply a two-stage test:

First, it must ask whether in its judgment the conduct complained of was dishonest by the lay objective standards of ordinary reasonable and honest people.

(If the answer was no that disposed of the case in favour of the defendant.)

Secondly, whether the defendant must have realised that ordinary honest people would so regard his behaviour

(and he is to be convicted only if the answer to that second question is 'yes')

# Problems with the Ghosh test

It had the unintended effect that the more warped the defendant's standards of honesty are, the less likely it was that he would be convicted of dishonest behaviour.

It was based upon the premise that it was necessary in order to give proper effect to the principle that dishonesty must depend on the actual state of mind of the defendant,

It set a test which jurors and others often found puzzling and difficult to apply

It led to an unprincipled divergence between the test for dishonesty in criminal proceedings and the test of the same concept when it arose in civil proceedings.

AND it had no basis in authority.

# The New Test for Dishonesty

First, ascertain (subjectively) the actual state of the individual's knowledge or belief as to the facts.

(The reasonableness or otherwise of his belief is a matter of evidence (often in practice determinative) going to whether he held the belief, but it is not an additional requirement that his belief must be reasonable.)

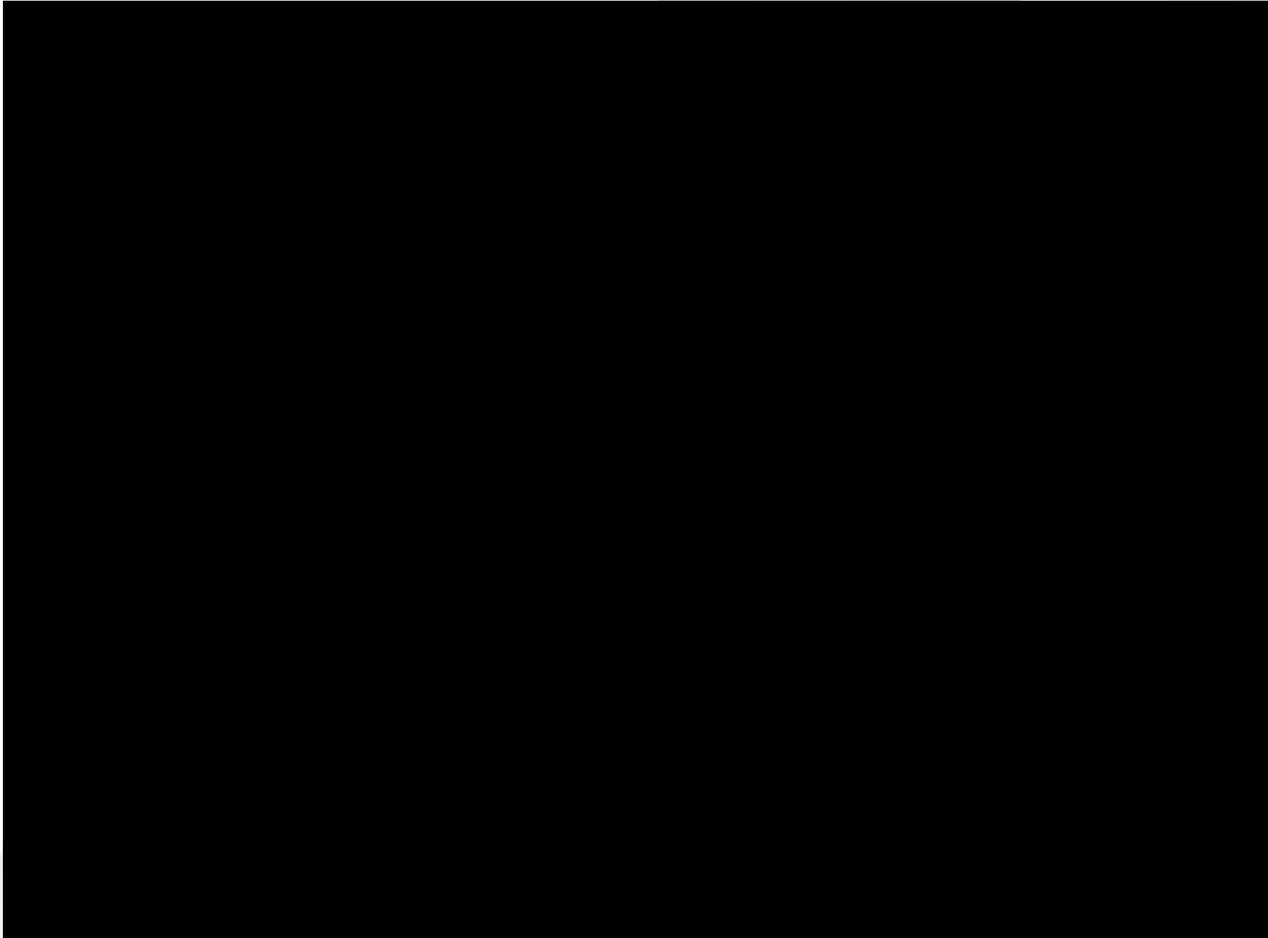
Second, whether it is a genuinely held belief

(Then, once his actual state of mind is established)

Third, whether his conduct was honest or dishonest is to be determined by the fact-finder by applying the (objective) standards of ordinary decent people.

(There is no requirement that the defendant must appreciate that what he has done is by those standards, dishonest.)

‘Although a dishonest state of mind is a subjective mental state, the standard by which the law determined whether it is dishonest is objective. If by ordinary standards a defendant’s mental state would be characterised as dishonest, it is irrelevant that the defendant judges by different standards.’



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