Hilary Term
[2025] UKSC 3
On appeal from: [2023] EWHC 1878

JUDGMENT

El-Khouri (Appellant) *v* Government of the United States of America (Respondent)

before

Lord Reed, President
Lord Lloyd-Jones
Lord Briggs
Lord Leggatt
Lord Stephens

JUDGMENT GIVEN ON
12 February 2025

Heard on 9 October and 18 November 2024

Appellant
Clair Dobbin KC
Ciju Puthuppally
(Instructed by Stokoe Partnership Solicitors (London))

Respondent
Mark Summers KC
Benjamin Seifert
Honor Fitzgerald
(Instructed by Extradition Unit, Crown Prosecution Service)

LORD LLOYD-JONES AND LORD LEGGATT (with whom Lord Reed, Lord Briggs and Lord Stephens agree):

1. This appeal concerns the definition of an "extradition offence" and the operation of the double criminality rule in section 137 of the Extradition Act 2003 ("the 2003 Act").

2. The United States of America seeks the extradition of the appellant, Mr El-Khouri, a dual UK / Lebanese national living in the United Kingdom, to be prosecuted in the US District Court for the Southern District of New York. The United States is designated as a category 2 territory under section 69 of the 2003 Act (by virtue of the Extradition Act 2003 (Designation of Part 2 Territories) Order 2003 (SI 2003/3334)). Extradition to category 2 territories is governed by Part 2 of the 2003 Act.

The US Proceedings

3. On 9 September 2019 a grand jury in New York City returned an indictment charging Mr El-Khouri with seventeen offences of securities fraud, wire fraud, fraud in connection with a tender offer and conspiracy to commit such offences.

4. The facts alleged by the United States are set out in the extradition request and attached indictment. In summary, Mr El-Khouri is accused of insider dealing. He is alleged to have made substantial payments to a middleman to obtain confidential inside information about prospective mergers and acquisitions of companies listed on US stock exchanges and then used this information to trade securities and make large profits.

5. Four others, referred to in the extradition request as "CC1" to "CC4", were allegedly part of the conspiracy. CC1 worked as an analyst in the London office of an investment bank which also had offices in the United States. CC1 was in a romantic relationship with CC2 who was an analyst in the London office of a different investment bank which also had offices in the United States. In the course of their employments, CC1 and CC2 each had access to confidential information, referred to as "material non-public information", about prospective mergers and acquisitions involving corporate clients of their respective banks. The public announcement of those mergers would be likely to cause share prices to move. The clients were companies with their headquarters in the United States and/or whose shares were traded on US stock exchanges.

6. It is alleged that CC1 and CC2 passed material non-public information to CC3 and CC4, said to be middlemen who "spent time in London, Paris and elsewhere". CC3

and CC4, who are brothers, are alleged to have provided cash and other benefits in return for this information.

7. CC4 was a friend of Mr El-Khouri. CC4 is alleged to have provided to Mr El-Khouri in 2015 inside information acquired from CC1 and CC2 about merger negotiations involving six different companies based in the United States. Mr El-Khouri allegedly agreed to pay CC1 for the information, and to pay CC4 a proportion of the profits which Mr El-Khouri made from using it.

8. Mr El-Khouri is alleged to have taken advantage of the information so acquired to trade in contracts for difference ("CFDs"), based on anticipated movements in the prices on the Nasdaq and New York Stock Exchanges of shares in the six companies concerned. He is alleged to have entered into these transactions with a broker based in the United Kingdom.

9. A person who trades in CFDs does not buy or sell shares in the company concerned. Instead, they purchase a financial instrument tied to the value of the underlying stock. In general terms, a CFD allows a trader to speculate on share price movements in the underlying security without actually owning the underlying shares. CFDs do not trade in the United States.

10. Mr El-Khouri is alleged to have made substantial payments to CC4 in cash and benefits in exchange for the material non-public information. These included:

(1) A payment of more than US$6,000 for CC4's hotel room and associated charges at a hotel in New York where he and Mr El-Khouri allegedly stayed on a trip to New York in or about March 2015;

(2) A further US$7,000 paid for CC4's accommodation at the same hotel in New York in December 2015;

(3) A payment of €105,900 made to charter a yacht for CC4 in Greece in or about July 2015; and

(4) A payment of €10,500 made to rent a ski chalet for CC4 in France in or about December 2015.

11. Through the CFD trading referred to above, Mr El-Khouri is alleged to have made profits amounting in total to nearly US$2 million.

The UK investigation

12. It is agreed by the parties to this appeal that the conduct alleged against Mr El-Khouri could, if proved in a trial in the United Kingdom, amount to insider dealing contrary to section 52 of the Criminal Justice Act 1993 ("the CJA 1993"). Under section 52(1):

> "An individual who has information as an insider is guilty of insider dealing if, in the circumstances mentioned in subsection (3), he deals in securities that are price-affected securities in relation to the information."

It is common ground that the CFDs referred to above were relevant securities for the purposes of this provision. The circumstances mentioned in subsection (3) include the circumstance that the person dealing relies on a professional intermediary. It is not in dispute that entering into or bringing to an end CFDs with a broker, as Mr El-Khouri allegedly did here, would constitute dealing in securities (within the definition in section 55 of the CJA 1993) relying on a professional intermediary (as defined in section 59).

13. The UK Financial Conduct Authority ("FCA") conducted an investigation between November 2016 and January 2018 into Mr El-Khouri and the alleged conduct. The FCA concluded, however, that there was insufficient evidence to prosecute Mr El-Khouri, in particular because there was no evidence from any participant who could provide a narrative of how the scheme of insider dealing operated and there were also further weaknesses in the available circumstantial evidence. Mr El-Khouri was not interviewed.

The extradition proceedings

14. On 9 September 2019 a warrant for Mr El-Khouri's arrest was issued by the US District Court for the Southern District of New York in respect of the seventeen charges referred to above. A request for his extradition was later submitted to the United Kingdom. Following his voluntary surrender, Mr El-Khouri was detained in London. He was later released on bail.

15. An extradition hearing took place before District Judge Baraitser at Westminster Magistrates' Court in January 2021. Mr El-Khouri resisted extradition on two grounds, only one of which remains relevant on this appeal. This ground was that the conduct alleged in the extradition request did not constitute an extradition offence for the purposes of Part 2 of the 2003 Act because it did not meet the requirement of double criminality in section 137. The district judge rejected this contention and decided that all the requirements for extradition were met. She accordingly sent the case to the Secretary of State who ordered extradition.

16. Mr El-Khouri appealed to the High Court against the district judge's decision. The High Court (Holroyde LJ and Stacey J) dismissed the appeal for reasons given in a judgment dated 21 July 2023: [2023] EWHC 1878 (Admin). The court nonetheless certified under section 114(4)(a) of the 2003 Act that the following point of law of general public importance was involved in its decision:

> "Was the High Court's approach to whether the Appellant's alleged conduct constituted an 'extradition offence' correct, having regard to the requirements of section 137(3)(b) of the Extradition Act 2003?"

Although the High Court refused permission to appeal to the Supreme Court, the Supreme Court itself granted permission to appeal under section 114(3) of the 2003 Act.

Section 137 of the 2003 Act

17. The question whether a person's conduct constitutes an extradition offence for the purposes of Part 2 of the 2003 Act is governed by section 137. Section 137 gives effect to the double criminality rule which is a central feature of international extradition law. Broadly stated, the rule requires that the conduct which forms the basis of the extradition request should constitute a crime under the law of both the requesting and the requested state.

18. Section 137 provides in material part:

> "(1) This section sets out whether a person's conduct constitutes an 'extradition offence' for the purposes of this Part in a case where the person—

(a) is accused in a category 2 territory of an offence constituted by the conduct, or

(b) has been convicted in that territory of an offence constituted by the conduct but not sentenced for it.

(2) The conduct constitutes an extradition offence in relation to the category 2 territory if the conditions in subsection (3), (4) or (5) are satisfied.

(3) The conditions in this subsection are that—

(a) the conduct occurs in the category 2 territory;

(b) the conduct would constitute an offence under the law of the relevant part of the United Kingdom punishable with imprisonment or another form of detention for a term of 12 months or a greater punishment if it occurred in that part of the United Kingdom;

(c) the conduct is so punishable under the law of the category 2 territory.

(4) The conditions in this subsection are that—

(a) the conduct occurs outside the category 2 territory;

(b) in corresponding circumstances equivalent conduct would constitute an extra-territorial offence under the law of the relevant part of the United Kingdom punishable with imprisonment or another form of detention for a term of 12 months or a greater punishment;

(c) the conduct is so punishable under the law of the category 2 territory.

(5) The conditions in this subsection are that—

(a) the conduct occurs outside the category 2 territory;

(b) no part of the conduct occurs in the United Kingdom;

(c) the conduct constitutes, or if committed in the United Kingdom would constitute, an offence mentioned in subsection (6);

(d) the conduct is punishable under the law of the category 2 territory with imprisonment or another form of detention for a term of 12 months or a greater punishment.

…"

The offences mentioned in subsection (6) are offences under the International Criminal Court Act 2001 and its Scottish counterpart of genocide, crimes against humanity and war crimes (and ancillary offences).

Three features of section 137

19. As explained in *Norris v Government of the United States of America* [2008] AC 920, para 65, there are two fundamentally different versions or conceptions of the double criminality rule between which a choice must be made when the rule is enacted in legislation. One approach is to consider the foreign offence for which extradition is sought and see whether it corresponds to an offence under domestic law. On this approach (the offence test) the court will invariably have to examine the legal ingredients of the foreign offence and compare them with those of the supposedly corresponding domestic offence to ensure that there is no mismatch between them. The alternative approach (the conduct test) is to focus on the conduct alleged against the requested person in the foreign state and consider whether that conduct would constitute an offence under domestic law.

20. In *Norris*, at paras 87-91, the appellate committee of the House of Lords in a joint opinion concluded, after a detailed survey of earlier legislation and case law, that, while the language of section 137 was consistent with either test, the wider interpretation applying the conduct test was to be preferred. This interpretation avoided the need always to investigate the legal ingredients of the foreign offence, a problem which had long been identified as complicating and delaying the extradition process. The wider interpretation was also consistent with the approach almost universally followed in the common law world. As summarised at para 91:

> "In short, the conduct test should be applied consistently throughout the 2003 Act, the conduct relevant under Part 2 of the Act being that described in the documents constituting the request … , ignoring … mere narrative background but taking account of such allegations as are relevant to the description of the corresponding United Kingdom offence."

21. Since the decision in *Norris*, section 137 has been amended to insert an additional subsection (7A), which states:

> "References in this section to 'conduct' (except in the expression 'equivalent conduct') are to the conduct specified in the request for the person's extradition."

22. Two more points should be noted at this stage about how the double criminality rule has been enacted in section 137.

23. First, section 137 distinguishes between conduct alleged to constitute an extradition offence which occurred *in* the category 2 territory (section 137(3)) and such conduct which occurred *outside* the category 2 territory (section 137(4) and (5)). (We need not be concerned with section 137(5) which, as noted above, makes special provision for international offences of genocide, crimes against humanity and war crimes and has no application in the present proceedings.) Depending on whether the conduct occurred in or outside the category 2 territory, the wording of the test to be applied to give effect to the double criminality rule differs.

24. Second, as the tests of double criminality under section 137(3) and section 137(4) are different, it cannot have been intended that the conduct alleged to constitute an extradition offence should fall within both subsections. They are clearly intended to be mutually exclusive. Each case must be allocated to one or the other. This is problematic, as many crimes are international in that they take place across national borders with

relevant conduct occurring in more than one state. Such a situation is particularly likely to arise in cases where extradition is sought. How are such cases to be accommodated within the statutory scheme? In such cases, not only is the binary distinction drawn in section 137 unhelpful, but the 2003 Act does not specify the criteria to be applied in allocating cases to one category or the other.

Cando Armas

25. This problem arose in *Office of the King's Prosecutor, Brussels v Cando Armas* [2005] UKHL 67; [2006] 2 AC 1. The defendant in that case had been convicted in Belgium in his absence and sentenced to five years' imprisonment. He was subsequently arrested in the United Kingdom on a European arrest warrant and a request was made to extradite him to Belgium to serve his sentence. The warrant stated:

> "Cando Armas is a member of an organised gang which is responsible for the systematic illegal immigration of Ecuadorean citizens towards Europe. This organisation was directed from London by Cando Armas. Once arrived in Belgium, Cando Armas took care of accommodation and fake passports for the illegal Ecuadorean immigrants. If necessary, the illegal immigrants were escorted to Great Britain."

26. The question of double criminality was governed by section 65 of the 2003 Act, which applies when the requested person has been convicted and sentenced in a category 1 territory. Section 65(3) and (4) were in materially similar terms to section 137(3) and (4). Also relevant was section 65(2), which stated:

> "The conduct constitutes an extradition offence in relation to the category 1 territory if these conditions are satisfied—
>
> (a) the conduct occurs in the category 1 territory *and no part of it occurs in the United Kingdom*;
>
> (b) a certificate issued by an appropriate authority of the category 1 territory shows that the conduct falls within the European framework list;
>
> …" (emphasis added)

The offences with which the defendant had been charged all fell within the "European framework list", referred to in section 65(2)(b).

27. The prosecutor relied on section 65(2) and section 65(3). On an appeal to the House of Lords the question raised was whether, on the facts alleged in the arrest warrant, the conditions in either of these subsections were met. The House of Lords held unanimously that the conditions in subsection (3) were satisfied, although those in subsection (2) were not.

28. The leading judgment was given by Lord Bingham of Cornhill, with whom all the other law lords agreed. He held first, at paras 15-16, that subsection (2) did not apply because some of the conduct alleged in the warrant was said to have taken place in the United Kingdom. The condition in subsection (2)(a) that no part of the conduct occurs in the United Kingdom was therefore not satisfied. The defendant argued that, as the conduct charged did not occur wholly within Belgium, the category 1 territory, the condition in subsection (3)(a) was also not satisfied. Lord Bingham, at para 17, rejected this argument on the ground that subsection (3), in contrast to subsection (2), does not contain the qualification that no part of the conduct should have occurred in the United Kingdom. It was therefore to be inferred that no such qualification was intended. It was enough, under subsection (3)(a), that some of the conduct occurred in the category 1 territory even if part of the conduct occurred in the United Kingdom.

29. Lord Hope of Craighead agreed with the conclusions reached and reasons given by Lord Bingham (see paras 19, 29). But he said, at para 29, that "I should like to add some comments of my own on the meaning that is to be given to the word 'conduct' in this context". With regard to the condition in section 65(3)(a) that the conduct occurred in the territory of the requesting state, Lord Hope, at para 34, posed two questions: (1) whether the person must be within the territory of the requesting state at the time of the conduct which he is alleged to have committed, and (2) whether the conduct must have occurred exclusively within that territory. He considered that the answers were to be found in the language used read in its context, which was, he said, "of course, provided by the common law" and "in particular by the rules which apply when jurisdiction is claimed on the basis of territoriality" (para 35). He took it to be "now well established" that the defendant need not be physically present in the territory and that criminal jurisdiction can be exercised in respect of actions that took place outside the territory so long as the effects of those actions were intentionally felt within the territory. He concluded that conduct occurs in the category 1 territory for the purposes of section 65(3)(a) "so long as its effects were intentionally felt there, irrespective of where the person was when he did the acts which constituted such conduct."

30. To illustrate his point, Lord Hope then referred to three criminal cases holding that an English or Scottish court had jurisdiction to try the defendant for an offence involving an act done abroad which had an intended effect within the court's jurisdiction: *Director of Public Prosecutions v Stonehouse* [1978] AC 55; *Clements v HM Advocate* 1991 JC 62; and *HM Advocate v Megrahi* 2000 JC 555. Lord Hope said, at para 40, that he would construe the word "conduct" in section 65(3)(a) of the 2003 Act in the light of these authorities. To satisfy the condition in section 65(3)(a), the conduct must occur "in" the category 1 territory. However:

> "a purposive meaning must be given to the word 'conduct' in this context. It would impose a wholly artificial restriction on the extradition process if it were to be taken as meaning that all the conduct which resulted in the offence must have taken place exclusively within the category 1 territory. Actings elsewhere will be sufficient to constitute conduct in that territory so long as their intended effect was to bring about harm within that territory."

31. The other law lords agreed with the conclusions and reasons given by Lord Hope, as well as those of Lord Bingham. It is clear, however, that these observations of Lord Hope were obiter dicta. In *Cando Armas* some of the conduct relied on in the warrant was alleged to have taken place in Belgium and that was held to be enough to satisfy section 65(3)(a): it did not matter that part of the conduct occurred in the United Kingdom. It was unnecessary for the prosecutor to argue and, so far as the case report shows, the prosecutor did not argue that actions taking place in the United Kingdom would constitute conduct "in" Belgium so long as their intended effect was to bring about harm within that territory. None of the criminal cases which Lord Hope regarded as providing a relevant analogy appears to have been cited in argument. It is unclear what prompted Lord Hope to add the comments that he did on the meaning of the word "conduct" in section 65. But, as we read his speech, they were not a necessary part of his reasons for agreeing with Lord Bingham that, to satisfy section 65(3), it did not matter that the conduct alleged in the warrant did not occur wholly within Belgium and that some of the conduct allegedly took place in the United Kingdom. See also Lord Scott of Foscote at para 49.

Where did the conduct alleged here take place?

32. If one focuses simply on where the acts of Mr El-Khouri specified in the extradition request occurred and leaves aside any consideration of their intended effects, almost none of those acts occurred in the United States. Almost all occurred in the United Kingdom. Thus, Mr El-Khouri allegedly received in the United Kingdom inside

information obtained by co-conspirators through their work in the London offices of investment banks. He allegedly used this information to buy and sell for profit CFDs relying on a professional intermediary who was in the United Kingdom. Mr El-Khouri is not alleged to have dealt in any securities in the United States. The only act complained of which he is said to have done in the United States was to pay for a hotel room in New York for CC4 as part of the payments which he allegedly made to CC4 in exchange for the inside information.

33. On these facts if one then asks whether the conduct occurred "in" or "outside" the territory of the requesting state on the footing that the categories are mutually exclusive, it might be thought obvious that the conduct occurred "outside" the United States, so that the relevant test of double criminality is that set out in section 137(4).

34. The United States, however, has not relied in these proceedings on section 137(4). Instead, it has relied on section 137(3), arguing that the conduct specified in the extradition request occurred in the United States. This might not at first sight appear a promising argument. But it was accepted by the district judge on the basis that effects of Mr El-Khouri's actions were likely to have been felt on US markets and that this was enough to satisfy the condition in subsection (3)(a). In the High Court and in their written case for the appeal to this court, counsel for Mr El-Khouri did not take issue with that conclusion. Their arguments on whether the conditions in section 137(3) are satisfied were directed exclusively to subsection (3)(b).

35. At the start of the hearing of the appeal on 9 October 2024, the court invited the parties to address two questions: (1) whether the subsection applicable in this case is subsection (4) rather than subsection (3) of section 137; and (2) whether the reasoning in *Cando Armas* was correct. The court heard full argument on these questions as well as the other issues in the appeal on that day and at a resumed hearing on 18 November 2024. The court has also considered supplemental written cases lodged by the parties on the questions raised by the court.

36. Before coming to those questions, we will first consider Mr El-Khouri's case that the courts below were wrong to find that the test of double criminality in subsection (3)(b) is satisfied.

The test of double criminality where the conduct occurs in the foreign territory

37. That test is, in short, whether the conduct specified in the extradition request would constitute an offence under UK law if it occurred in the United Kingdom. In what one might think of as the paradigm case where all the acts specified in the request were

done in the territory of the requesting state, this requires an exercise of transposition. The court must consider a hypothetical situation in which those acts were done in the relevant part of the United Kingdom and ask whether, in that situation, the acts would constitute an offence under the law of that part of the United Kingdom. For example, in *Cleveland v Government of the United States of America* [2019] EWHC 619 (Admin); [2019] 1 WLR 4392 the requested person was accused of being an accessory to offences of murder and possession of a firearm during the commission of a felony in the state of Georgia. The extradition request alleged that she had been the passenger in a vehicle when the driver shot the driver of another vehicle. In applying section 137(3)(b), the High Court had to decide whether, if the conduct alleged had occurred in England and Wales, it would satisfy the requirements for liability as an accessory under English law.

38. In the present case no transposition of this kind is necessary because almost all the alleged acts actually did occur in the United Kingdom. So there is no need to postulate a hypothetical situation in which acts done in the territory of the requesting state were done in this country. Counsel for the United States submitted that the correct approach in applying section 137(3)(b) is simply to ask whether conduct which did in fact occur in the United Kingdom would constitute an offence under UK law. As it is agreed that the conduct of Mr El-Khouri would, if proved, constitute an offence of insider dealing under section 52 of the CJA 1993, the answer is that it would. The conduct therefore constitutes an extradition offence.

39. In response, counsel for Mr El-Khouri argued that such an approach is contrary to principle. They submitted that it is wrong to extradite a person to a foreign state on the basis that the person has allegedly committed an offence in the United Kingdom. If anything, the fact that the conduct occurred in the United Kingdom might be thought to indicate that the United Kingdom is the proper place for any criminal proceedings. To avoid such a paradoxical approach, counsel for Mr El-Khouri contended that a further transposition exercise is necessary in applying subsection (3)(b). They argued that subsection (3)(b) does not just require conduct alleged to have occurred in the territory of the requesting state to be treated as having occurred in the United Kingdom: it should be interpreted as also requiring conduct alleged to have occurred *outside* the territory of the requesting state to be treated as having occurred *outside* the United Kingdom.

40. We agree with the submission that it is wrong in principle to treat the commission of an offence in the United Kingdom as a basis for extradition to another country. But we do not agree that this result can be avoided by interpreting subsection (3)(b) in the way suggested. That contention is inconsistent with the words of subsection (3)(b). The sole hypothesis required by the subsection is that conduct which in fact occurred in the foreign territory occurred "in" (the relevant part of) the United Kingdom. It is impossible to read the language used as requiring or permitting the court

to transpose any conduct in the opposite direction and to treat conduct which in fact occurred within the United Kingdom as having occurred outside it.

41. By contrast, subsection (4)(b) does require this. Under that subsection the test is whether in corresponding circumstances equivalent conduct would have constituted an extra-territorial offence of the required gravity under UK law. For this purpose, it is necessary to construct a mirror image of what actually occurred. "Corresponding circumstances" are circumstances in which conduct of the requested person (or any other relevant event) alleged to have occurred outside the territory of the requesting state is assumed to have occurred outside the (relevant part of the) United Kingdom, and vice-versa. (No assumed change of location is required for any conduct occurring in a third state because in corresponding circumstances such conduct would also have taken place in a third state: such conduct therefore stays where it is in carrying out the transposition exercise.)

42. Applied here, the test in subsection (4)(b) would therefore require the assumption to be made that the conduct of Mr El-Khouri (and his alleged co-conspirators) which is said to have occurred in the United Kingdom (and therefore outside the territory of the United States) occurred in the United States (and therefore outside the United Kingdom). In other words, subsection (4)(b) requires the kind of transposition which counsel for Mr El-Khouri seek to suggest is required by subsection (3)(b). The different language used in subsections (3)(b) and (4)(b), however, demonstrates that they were intended to have different effect. Had Parliament intended to impose under subsection (3)(b) transposition in both directions, it would have used the same language as was used in subsection (4)(b).

43. This distinction between the two subsections also makes sense within the scheme of the 2003 Act. One purpose of the double criminality rule is to protect the accused from the exercise of an exorbitant foreign jurisdiction. The requirement that the conduct should be an offence within the criminal jurisdiction of the United Kingdom serves that purpose: see *R (Al-Fawwaz) v Governor of Brixton Prison* [2001] UKHL 69; [2002] 1 AC 556, paras 95 and 105(2) (Lord Millett). The more onerous requirement under subsection (4)(b) is a necessary safeguard against exorbitant claims where the requesting state seeks to exercise extra-territorial jurisdiction. Extradition will be possible only if the United Kingdom territory would exercise jurisdiction in corresponding circumstances. In this way, UK standards concerning extra-territorial jurisdiction are applied. Contrary to the submission of Miss Clair Dobbin KC on behalf of Mr El-Khouri, no such adjustment to achieve jurisdictional correspondence is needed if the conduct is considered to have taken place within the territory of the requesting state, because no question of extra-territorial jurisdiction then arises.

44. The argument made on behalf of Mr El-Khouri was considered and rejected by the High Court in *Hosseini v Head of the Prosecution Department of the Courts of Higher Instance, Paris, France* [2006] EWHC 1333 (Admin) (Richards LJ, Toulson J). Mr Hosseini was accused of participation in illegally trafficking immigrants through France to England. The conduct alleged included his sending money orders from England to persons involved in the network in France. In seeking extradition under Part 1 of the 2003 Act, France relied on the double criminality provision in section 64(3) of the 2003 Act which was materially identical to section 137(3). The High Court, treating Lord Hope's observations in *Cando Armas* as authoritative, accepted that the sending of the money orders from the United Kingdom to France could properly be regarded as conduct of Mr Hosseini occurring partly in France and partly in England, "as if he had gone from England to France to deliver the money orders personally to the recipients" (para 30).

45. Counsel for Mr Hosseini disputed, however, that section 64(3)(b) was satisfied. He submitted that section 64(3)(b) required the court to ask whether in corresponding circumstances the conduct, or equivalent conduct, would constitute an offence in the relevant part of the United Kingdom and that for this purpose it was necessary to assume that Mr Hosseini was physically outside the United Kingdom when he did the acts alleged. On that basis the conduct would not constitute an offence in England and section 64(3)(b) would not apply (para 27). This was in substance the same argument that counsel for Mr El-Khouri make here.

46. In rejecting this argument, Richards LJ stated, at para 32:

> "I do not think that section 64(3)(b) occasions any difficulty. It simply requires one to assume that the conduct alleged in the warrant occurred in the relevant part of the United Kingdom and to ask whether, on that hypothesis, it would constitute an offence under the law of that part of the United Kingdom. To deal with it as a *hypothesis* may strictly be unnecessary to the extent that the conduct alleged did *in fact* occur in the relevant part of the United Kingdom; but in my view it does not give rise to any conceptual or practical difficulty. I would reject [counsel for Mr Hosseini's] submission that the exercise of transposition requires one to ask whether in corresponding circumstances equivalent conduct would constitute an offence in the relevant part of the United Kingdom. Section 64(4), which deals with true extraterritoriality, contains that language, section 64(3) does not, and there can be no justification for importing the language of the former into the latter." (emphasis in original)

47. This reasoning was followed in *Kodos v Prosecutor General's Office of the Republic of Lithuania* [2010] EWHC 897 (Admin), where the extradition of Mr Kodos to Lithuania was sought on the basis of allegations that he had trafficked women from Lithuania to England for the purposes of prostitution. Richards LJ (with whom Cranston J agreed) held, at para 20, that section 64(3)(a) was satisfied, as part of the conduct had occurred in Lithuania. They also concluded that the condition in section 64(3)(b) was satisfied (para 21). This condition simply required one to assume that the conduct alleged in the warrant occurred in England and to ask whether, on that hypothesis, it would constitute an offence under English law. Section 64(3)(b) did not require a similar exercise of transposition to that required by the differently worded condition (c) of section 64(4), which was materially identical to section 137(4)(b).

48. In our view, this analysis was entirely correct and applies equally to subsections 137(3)(b) and (4)(b). We would therefore reject the submission made on behalf of Mr El-Khouri that correct transposition in accordance with section 137(3)(b) requires the court to ask whether in corresponding circumstances equivalent conduct would constitute an offence in the relevant part of the United Kingdom. In applying section 137(3)(b) to the present case, it is not necessary or permissible to assume that relevant conduct which in fact took place outside the United States took place outside the United Kingdom.

Revisiting the dicta in *Cando Armas*

49. As we have seen, even though almost all of the conduct specified in the extradition request occurred in the United Kingdom, counsel for Mr El-Khouri felt constrained to accept that that conduct occurred in the United States within the meaning of section 137(3)(a) of the 2003 Act, so that the test of double criminality applicable in this case is that set out in section 137(3)(b). Having boxed themselves into a corner by making this constraint, they then attempted to escape its consequences by arguing that subsection (3)(b) has the same meaning and effect as subsection (4)(b), even though the wording is materially different and clearly not intended to operate in the same way. A more logical response to the point that subsection (3)(b) is not designed to deal with a case such as this is to question the assumption that the conduct falls within subsection (3). That assumption was based on the view expressed by Lord Hope in *Cando Armas* that acts done outside the territory of the requesting state will be sufficient to constitute conduct in that territory so long as their intended effect was to bring about harm within that territory. The extradition request does not in fact, so far as we can see, make any allegation that the acts of Mr El-Khouri were intended to (or did) cause harm in the United States. But the more fundamental question is whether the interpretation of section 65(3)(a) - and by extension section 137(3)(a) - of the 2003 Act adopted by Lord Hope in *Cando Armas* is correct.

50. We consider that interpretation to be mistaken for three reasons. First, it does not accord with the language used. Second, it renders the distinction drawn in sections 65 and 137 between conduct that occurs "in" and "outside" the territory of the requesting state unworkable. Third, the justification given for the interpretation in *Cando Armas* is flawed.

51. Taking these points in turn, the word "conduct" would normally and naturally be understood as a synonym for acts done by the requested person in the specified location and not as including effects (whether intended or not) felt in that location of acts done somewhere else. A compelling reason is needed to interpret "conduct" as bearing such an abnormally wide meaning. Lord Hope implicitly acknowledged this when he said that "a purposive meaning must be given to the word 'conduct' in this context": see *Cando Armas*, para 40 (quoted at para 30 above).

52. Secondly, it is necessary to interpret the words in the context of these specific statutory provisions. The result of giving the word "conduct" such an abnormally wide meaning is to wreak havoc with the scheme of section 137 (and analogous provisions of the 2003 Act). As noted earlier, subsections (3) and (4) draw a binary distinction between conduct that occurs "in" and conduct that occurs "outside" the territory of the requesting state. We observed that the distinction may be difficult to draw in a situation where the conduct alleged comprises various acts some of which occurred within and some of which occurred outside the territory. But in principle that problem can be addressed by formulating an appropriate test. By contrast, it makes a nonsense of the provisions if the same physical acts are classified as simultaneously occurring both "outside" the territory of the requesting state because they are done outside it and "in" that territory because their intended effect was to bring about harm within the territory and this is viewed as sufficient to constitute conduct "in" the territory. This approach creates a paradox comparable to the fate of Schrödinger's cat.

53. Lord Hope makes no mention of section 65(4), which was equivalent to section 137(4) and applied when "the conduct occurs outside the category 1 territory". No consideration appears to have been given to the fact that conduct occurring outside the territory falls within subsection (4). Had this been appreciated, it would have been necessary to explain how the same conduct can consistently be regarded as falling within subsection (3) so long as its effects were intentionally felt in the category 1 territory. In such a case is the test of double criminality to be applied that in subsection (3)(b), or that in subsection (4)(b), or whichever test the requesting state chooses to rely on? None of those alternatives makes rational sense. In our view (see para 24 above), the only tenable analysis of the relationship between subsections (3) and (4) is that they are mutually exclusive. The same conduct cannot, consistently with the statutory scheme, be classified as occurring in two different places at once, both "in" and "outside" the territory of the requesting state.

54. Leading counsel for the United States, Mr Mark Summers KC, sought to defend the expansive interpretation of conduct occurring "in" the requesting state adopted by Lord Hope in *Cando Armas* in a way that recognises the mutual exclusivity of subsections (3) and (4). This required him to argue that not all cases where the acts specified in the extradition request were done outside the territory of the requesting state fall within subsection (4)(a). He submitted that the words "the conduct occurs outside the … territory" should be read down in light of the reference in subsection (4)(b) to an "extra-territorial offence". On this interpretation conduct occurring outside the territory of the requesting state only falls within subsection (4)(a) if equivalent conduct would constitute an offence under the law of the relevant part of the United Kingdom which is classified as an "extra-territorial offence".

55. Mr Summers had difficulty identifying what offences (if any) would fall within this class. That difficulty was inescapable because the expression "extra-territorial offence" is not a term of art. It is not defined in the 2003 Act and has no generally understood or accepted meaning. It cannot, in our view, reasonably be used to justify giving a wholly artificial (and indeterminate) meaning to the words of subsection (4)(a). Rather, the expression simply reflects the fact that the conduct with which subsection (4) is concerned is conduct occurring outside the court's territorial jurisdiction. The use of the term does not affect the territorial scope of subsection (4).

56. In short, the only way to make sense of the relationship between subsections (3) and (4) is to understand the word "conduct" as bearing its ordinary meaning and to read subsections (3)(a) and (4)(a) as concerned solely with where the physical acts alleged were done and not with where any effects of those acts (intentionally or otherwise) were felt.

57. Our third reason for rejecting the interpretation of subsection (3)(a) adopted by Lord Hope in *Cando Armas* is that the justification given for it does not withstand scrutiny. Lord Hope supported the claim that a "purposive" meaning must be given to the word "conduct" by saying that it "would impose a wholly artificial restriction on the extradition process" if the language used were to be taken as meaning that all the conduct which resulted in the offence must have taken place exclusively within the territory of the requesting state. We agree that, as held in *Cando Armas*, the language used should not be taken to have that meaning. The condition that "the conduct occurs in the … territory" does not require that all the conduct specified in the extradition request must have occurred exclusively within the territory: the condition may be satisfied even if part of the conduct occurred somewhere else. But it does not follow that, as Lord Hope immediately went on to assert: "Actings elsewhere will be sufficient to constitute conduct in that territory so long as their intended effect was to bring about harm within that territory". That is a different contention altogether and not one that is required to avoid imposing an artificial restriction on the extradition process.

58. What led Lord Hope to put the gloss that he did on the word "conduct" was an assumption that the language should be construed in the "context" of the common law rules which govern when criminal jurisdiction can be exercised by a UK court in relation to acts done abroad (see para 29 above). This was, however, purely an assumption because nowhere does Lord Hope explain why these rules should be thought relevant. The question whether a person may be prosecuted in the United Kingdom for acts done in a foreign country is a different question from whether conduct is to be regarded as occurring "in" another country for the purpose of deciding which double criminality test to apply in the context of extradition proceedings. We can see no reason why the answer to the former question should have any bearing on the answer to the latter question. The assumption on which the interpretation of subsection (3)(a) was founded was therefore invalid.

59. Again, the essential mistake was to overlook subsection (4) and the need to interpret subsections (3)(a) and (4)(a) in a way that renders them consistent with each other. We think it clear that the underlying scheme is a simple territorial approach to criminal jurisdiction which takes for granted that courts have jurisdiction over acts occurring within the state's own territory but recognises that they may also in a variety of circumstances exercise jurisdiction in respect of acts occurring outside its territory. The function of subsections (3)(a) and (4)(a) is merely to divide cases into these two categories. In making the allocation there is no need to take any view about the circumstances in which criminal jurisdiction may properly be claimed (whether under rules of common law or otherwise) when some or all of the conduct occurs abroad. That question becomes relevant only if the case falls in the second, extra-territorial category. Nor is there even then any need to develop any general theory of when jurisdiction can properly be exercised in relation to acts done abroad, whether based on a concept of intended effects or otherwise. All that is necessary is to ask whether, on facts transposed in accordance with subsection (4)(b), a UK court would exercise jurisdiction in the particular case. This gives effect to the underlying principle that, in deciding whether to grant extradition, we should accord to other states the jurisdiction which we claim for ourselves but no more.

60. Instead of following this simple and rational scheme, the approach proposed in *Cando Armas* applies a test of when extra-territorial jurisdiction can be claimed in deciding whether, in applying section 65(3)(a) and its analogues, the conduct should be treated as having occurred in the requesting state's own territory. This is an illogical approach.

61. A further defect in Lord Hope's account of territorial jurisdiction is that it considers only the common law and takes no account of the fact that the territorial scope of many criminal offences is defined by statute. (The offence of insider dealing is itself an example: see para 70 below.) These statutory rules can be detailed and specific (see

eg Part 1 of the CJA 1993) and are not captured by a broad theory of jurisdiction based on intended effects. If domestic rules which govern when a UK court will exercise jurisdiction in relation to acts done abroad are considered relevant at all to this stage of the analysis, there can be no justification for limiting the field of vision to rules of common law and ignoring statutory rules which expressly define the territorial scope of relevant offences.

62. Noticing this defect in turn draws attention to another flaw in the approach: it puts the cart before the horse. That is because, to apply the rules of UK law which determine whether a UK court will exercise jurisdiction in relation to acts done abroad, it is necessary to identify an offence under the law of the relevant part of the United Kingdom which is constituted by the requested person's conduct and to analyse the elements of the offence. It is also necessary to determine whether a statutory provision defining the territorial scope of an offence applies. Yet under the scheme of section 137 (and similar provisions of the 2003 Act) considering whether the conduct alleged (or "equivalent conduct") would constitute an offence under UK law is an exercise to be performed only *after* you know whether subsection (3) or subsection (4) applies. Applying such an approach to decide at the outset whether the case falls within subsection (3) therefore approaches the matter the wrong way round.

63. All this simply emphasises the muddle, as we see it, that occurred in *Cando Armas* in introducing questions about the extra-territorial scope of offences under UK law, which are properly relevant only when applying the test of double criminality in subsection (4)(b), into the initial decision whether the applicable test is that in subsection (3) or subsection (4). The mistake made is not one that it would be right to leave uncorrected on the ground that to do so would undermine legal certainty. We have already commented that Lord Hope's observations were obiter dicta on a point which appears not to have been argued. We in any case consider it essential to correct an interpretation of what Parliament enacted which, for the reasons given, we regard as clearly wrong and would produce an unprincipled result if followed in this case.

64. In summary, we conclude that it was an error to suggest in *Cando Armas* that rules of UK domestic law which govern the exercise of extra-territorial criminal jurisdiction are relevant to the question whether the conduct specified in the extradition request occurred in or outside the territory of the requesting state for the purposes of section 65(3) and 65(4) and their analogues. The latter question is a question of fact to be answered simply by considering where the acts of the requested person specified in the extradition request are alleged to have occurred (ignoring mere narrative background and focusing on the substance of the criminality alleged). It was also a mistake to suggest in *Cando Armas* that the place where effects of those acts were felt (intentionally or otherwise) is relevant for this purpose. The answer to the first question posed by Lord Hope (see para 29 above) is therefore that, to satisfy the condition in

subsection (3)(a) that the conduct occurs in the territory of the requesting state, the person must be within the territory of the requesting state at the time of the conduct which he is alleged to have committed. In stating this conclusion we emphasise that we are here concerned solely with the limited question of how cases are to be allocated for the purposes of subsections 137(3) and 137(4) of the 2003 Act and their statutory analogues. For these purposes the language used should be interpreted in a way which makes the allocation of conduct to one category or the other as straightforward as possible.

65. There may, even so, be cases concerned with a course of conduct some of which occurred inside and some outside the territory of the requesting state. In such cases the conduct constituting the substance of the alleged criminality need not have occurred exclusively within that territory. The ratio decidendi of *Cando Armas*, which we do not question, is that the condition in subsection (3) may be satisfied even if some part of that conduct occurs outside the territory of the requesting state.

Did the conduct occur in or outside the United States?

66. A difficult question of classification could arise in a case where the relevant conduct of the requested person occurred partly in the territory of the requesting state and partly in the United Kingdom. Does the case fall within subsection (3)(a) or (4)(a)? Similarly, difficult questions might sometimes arise as to where relevant conduct should be considered to have occurred. No such difficulty, however, arises in this case. Here, no part of the conduct alleged to constitute insider dealing can sensibly be considered to have occurred in the United States. The substance of the alleged criminality (dealing in securities using inside information and conspiring with others to do so) occurred in the United Kingdom and no relevant conduct occurred in the United States. The only act of Mr El-Khouri which allegedly occurred in the United States was making a payment for a hotel room for CC4 while on a trip with him to New York. This was one of various benefits allegedly provided to CC4 in exchange for the supply of material non-public information along with others which included payments allegedly made to charter a yacht for CC4 in Greece and to rent a ski chalet for him in France (see para 10 above). The places where these benefits were enjoyed and where Mr El-Khouri was situated when he paid for them are purely incidental details of the narrative of events.

67. This is therefore a plain case where the conduct occurred outside the territory of the requesting state. It falls within subsection (4)(a) and not subsection (3)(a).

Is the test of double criminality in section 137(4)(b) satisfied?

68. In presenting its case for extradition before the district judge, the United States relied exclusively on section 137(3). It did not make any alternative case that, if the applicable provision is section 137(4), the test of double criminality in subsection (4)(b) is satisfied. At the resumed hearing of this appeal, however, Mr Summers KC on behalf of the United States sought for the first time to advance such an alternative case.

69. As discussed above (paras 41-42), the assumption required by subsection (4)(b) in this case is that all the conduct of Mr El-Khouri and other relevant events alleged in the extradition request took place outside the United Kingdom.

70. It is plain that such "equivalent conduct" would not constitute an extra-territorial offence of insider dealing under section 52(1) of the CJA 1993. The territorial scope of that offence is defined in section 62(1). This provides that an individual is not guilty of an offence of insider dealing under section 52(1) unless:

> "(a) he was within the United Kingdom at the time when he is alleged to have done any act constituting or forming part of the alleged dealing;
>
> (b) the regulated market on which the dealing is alleged to have occurred is one which, by an order made by the Treasury, is identified … as being, for the purposes of this Part, regulated in the United Kingdom; or
>
> (c) the professional intermediary was within the United Kingdom at the time when he is alleged to have done anything by means of which the offence is alleged to have been committed."

71. On the transposed facts, none of these conditions would be met. Mr El-Khouri was not within the United States at the time when he is alleged to have done any act constituting or forming part of the alleged dealing; the dealing is not alleged to have occurred on a market regulated in the United States; and the professional intermediary allegedly relied on by Mr El-Khouri was not within the United States when the alleged dealing occurred.

72. Mr Summers submitted, however, that (leaving aside the question of territoriality) the facts alleged in the extradition request disclose other offences under English law as well as the offence of insider dealing: namely, (1) an offence of fraud under section 3 of the Fraud Act 2006; and/or (2) a money laundering offence under section 329 of the Proceeds of Crime Act 2002. We express no view on whether that submission is well founded or not. But even if it is, we are satisfied that on the transposed facts equivalent conduct would not constitute an extra-territorial offence under English law.

73. We need not be concerned with the suggestion that the allegations against Mr El-Khouri disclose an offence under section 3 of the Fraud Act 2006 because in its supplemental written case the United States accepted that offences under that Act do not carry extra-territorial jurisdiction. But it maintained that an offence under section 329 of the Proceeds of Crime Act 2002 does.

74. Section 329 of the Proceeds of Crime Act 2002 provides that "a person commits an offence if he- (a) acquires criminal property; (b) uses criminal property; [or] (c) has possession of criminal property". The term "property" is defined in section 340(9) as "all property wherever situated" including money. Pursuant to section 340(3): "Property is criminal property if- (a) it constitutes a person's benefit from criminal conduct …, and (b) the alleged offender knows or suspects that it constitutes or represents such a benefit". The definition of "criminal conduct" in section 340(2) includes not only conduct which constitutes an offence in any part of the United Kingdom but also conduct which "would constitute an offence in any part of the United Kingdom if it occurred there". Putting this together, a person who (with the relevant knowledge) acquires, uses or has possession of a benefit in the form of money from conduct occurring in the United States which would constitute an offence in England if it occurred there commits an offence under section 329.

75. To come within the territorial scope of section 329, however, the acquisition, use or possession of the proceeds of the criminal conduct must itself occur in the United Kingdom. When the provisions of the Proceeds of Crime Act 2002 concerned with money laundering are intended to have extra-territorial application, the statute says so. In the absence of any express stipulation that a criminal offence is committed even if the relevant act takes place abroad, the ordinary presumption therefore applies that Parliament has not made such an act a criminal offence triable in the United Kingdom. The Act does not provide that to acquire, use or possess abroad property derived from criminal conduct committed abroad constitutes a criminal offence in the United Kingdom. That would be a truly exorbitant extra-territorial jurisdiction for the United Kingdom to assert and the Act does not assert it.

76. Mr Summers on behalf of the United States submitted otherwise. He relied on section 340(11), which states:

> "Money laundering is an act which –
>
> (a) constitutes an offence under section 327, 328 or 329,
>
> …, or
>
> (d) would constitute an offence specified in paragraph (a) … if done in the United Kingdom."

77. This provision, however, is merely a definition of the term "money laundering". Section 340(11) does not provide that an act which would constitute an offence under section 329 if done in the United Kingdom does in fact constitute an offence in the United Kingdom. Indeed, it is incompatible with any such contention. The language of paragraph (d) confirms that an act described in section 327, 328 or 329, if done abroad, does not constitute an offence in the United Kingdom. The effect of section 340(11)(d) is to bring such an act, even though it does not constitute an offence in the United Kingdom, within the definition of the term "money laundering".

78. The relevance of the definition of "money laundering" is apparent from sections 330 to 332 of the Act which create certain offences of failing to disclose money laundering in which the person concerned knows or suspects, or has reasonable grounds for knowing or suspecting, that another person is engaged. By reason of section 340(11)(d), such offences may be committed even though the act of money laundering which the person fails to disclose is not itself an offence under UK law provided that it would constitute an offence under section 327, 328 or 329 if done in the United Kingdom. This does not assist the argument which Mr Summers sought to make. There is no provision of the Act which says that an act of money laundering itself constitutes an offence.

79. Mr Summers relied on a decision of the Criminal Division of the Court of Appeal in *R v Rogers* [2014] EWCA Crim 1680; [2015] 1 WLR 1017, and four decisions of the High Court in extradition cases in which *Rogers* was regarded as binding authority for the proposition that sections 327 to 329 of the Proceeds of Crime Act 2002 have extra-territorial effect: *Sulaiman v Tribunal de Grande Instance, Paris* [2016] EWHC 2868 (Admin), paras 18-21; *Jedinak v District Court in Pardubice (Czech Republic)* [2016]

EWHC 3525 (Admin), paras 31-45; *Balaz v District Court of Zvolen (Slovakia)* [2021] EWHC 1862 (Admin), paras 10-16; and *Rogala v Circuit Court in Lublin (Poland)* [2021] EWHC 3324 (Admin), para 42.

80. In *Rogers*, the defendant was a UK citizen who lived in Spain. While in Spain, he permitted money constituting criminal property obtained by defrauding persons in the United Kingdom to be paid into and then withdrawn from his Spanish bank account. He was convicted under section 327(1)(c) of the Proceeds of Crime Act 2002 (converting criminal property). On appeal, he argued that the United Kingdom did not have jurisdiction because all the relevant acts were committed in Spain in relation to a Spanish bank account. The Court of Appeal rejected that argument on two grounds. The ground relevant here is that the "provision at section 340(11)(d) that money laundering is an act which would constitute an offence (including one under section 327) if done in the United Kingdom, appears to admit of no other construction than that Parliament intended, extra-territorial effect to this legislation" (para 47). The judgment records that when counsel for the defendant was asked what alternative construction could be put on section 340(11)(d), he was unable to suggest one and fell back on a submission that "the language used fell short of indicating a clear intention by Parliament to confer extra-territorial jurisdiction" (para 48). The court was not persuaded by that submission and concluded that the defendant's conversion of criminal property was an offence in the United Kingdom even though it took place in Spain.

81. The decision in *Rogers* has been criticised by commentators and, in our opinion, rightly so: see Criminal Law Week, case comment at CLW/14/31/7; case comment by Rudi Fortson QC at [2014] Crim LR 910; and *Blackstone's Criminal Practice* (2025) at A8.5. It is unfortunate that counsel for the defendant and the court in *Rogers* failed to recognise that section 340(11)(d) merely defines "money laundering" and does not either create an offence itself or extend the territorial scope of the offences created by sections 327, 328 and 329 to acts done abroad. Indeed, as noted above, its language is positively inconsistent with the notion that Parliament intended those provisions to apply to acts done abroad. The Court of Appeal noted, at para 48, that section 340(11) (and two other provisions mentioned) "clearly relate to the conduct element of the offence rather than the criminal property element". The court therefore recognised, correctly, that the only extra-territorial effect of section 340(11) is to bring within the scope of the offences created by sections 327, 328 and 329 relevant acts of dealing in the United Kingdom with criminal property that represents the proceeds of criminal conduct committed abroad; and that it does not extend the scope of those provisions to acts of dealing with criminal property which occurred abroad. The court, however, lost sight of this point in concluding that converting criminal property in Spain was an offence under the Act.

82. It follows that, in our opinion, *Rogers* was wrongly decided. We do not think it seriously arguable that acquiring, using or possessing in the United States money which represents the proceeds of a crime in the United States can constitute an offence under section 329 of the Proceeds of Crime Act 2002. The attempt to argue that the condition in section 137(4)(b) is satisfied in the present case therefore fails.

Conclusions

83. We will summarise our main conclusions:

(1) Subsections 137(3) and (4) are mutually exclusive. In applying section 137, it is therefore necessary to decide at the outset whether the conduct of the person whose extradition is sought occurred "in" or "outside" the territory of the requesting state.

(2) For this purpose the court is concerned, and concerned only, with where the person's acts specified in the extradition request were physically done, ignoring in the case of both provisions mere narrative background and focusing on the substance of the alleged criminality. The court is not concerned with where any consequences of those acts occurred or were felt.

(3) It is not a requirement of subsection (3) or (4) that the relevant conduct occurred exclusively in, or outside, the territory of the requesting state (as the case may be).

(4) In this case, however, all the relevant conduct of Mr El-Khouri occurred outside the United States. The conditions which must be satisfied for the conduct to constitute an extradition offence are therefore those in subsection (4) and not those in subsection (3).

(5) The test of double criminality in subsection (4)(b) requires the court to consider whether an offence would be committed under UK law if the alleged conduct of the requested person (and any other relevant event) occurring outside the territory of the requesting state had occurred outside (the relevant part of) the United Kingdom (and vice-versa).

(6) The UK offence most obviously raised by the conduct alleged in the extradition request is insider dealing contrary to section 52(1) of the CJA 1993.

In corresponding circumstances equivalent conduct would not constitute that offence, as such conduct would fall outside the territorial scope of the offence as defined in section 62 of the CJA 1993. Nor would such conduct arguably fall within the territorial scope of section 329 of the Proceeds of Crime Act 2002.

84. For these reasons, we would allow the appeal, order the discharge of Mr El-Khouri and quash the order for his extradition.