11/84

No. 35 of 1983

In the Privy Council

ON APPEAL

FROM THE SUPREME COURT OF HONG KONG

(APPELLATE JURISDICTION)

CIVIL APPEAL NO. 28 OF 1983

(On Appeal from High Court Action No. 1530 of 1983)

BETWEEN

DEACONS (A FIRM)	**Plaintiff/Respondent**
and	
ROBIN M. BRIDGE	**Defendant/Appellant**

RECORD OF PROCEEDINGS

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(Ref: 11/W/JCP)

No. of 1983

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CIVIL JURISDICTION
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PART I

1983, No. 1530

In the Supreme Court of Hong Kong High Court No. 1 Writ 4th February 1983

IN THE SUPREME COURT OF HONG KONG
HIGH COURT

BETWEEN

DEACONS (a firm) *Plaintiffs*

and

ROBIN M BRIDGE *Defendant*

TO THE DEFENDANT (name) ROBIN M. BRIDGE

of (address) 15th Floor, United Centre, Queensway, GPO Box 11204, Hong Kong.

(Issued the 4th day of February 1983) 10

INDORSEMENT OF CLAIM

The Plaintiff's claim is for: –

1. An Injunction restraining the Defendant, whether by himself, his servants or agents for a period of five years from the 31st December, 1982 from acting as a solicitor, notary, trademark or patent agent or in any similar capacity in the Colony of Hong Kong whether as principal, clerk or assistant for any person, firm or company who was at the time of his ceasing to be a partner or had, during the period of three years prior to 31st December, 1982 been a client of the Plaintiff, unless the Defendant acts in any such capacity in the course of employment with Government or any public body or with any company or organisation which is not itself engaged in professional practice in any of the above fields. 20

2. An Injunction to restrain the Defendant whether by himself, his servants or agents for a period of five years from 31st December, 1982 from approaching or soliciting any person, firm or company who had, during the period of three years prior to 31st December, 1982 been a client of the Plaintiff.

3. Damages for breach of contract, being the Partnership Agreement dated 10th June, 1968 as supplemented by a further Agreement dated 24th April, 1979.

In the Supreme Court of Hong Kong High Court
No. 1
Writ
4th February 1983
(Cont'd.)

4. An Injunction to restrain the Defendant, whether by himself, his servants or agents inducing any employee of the Plaintiff to breach his or her contract of employment with the Plaintiff.

5. Damages for inducing breach of contract.

6. Further or other relief.

30

7. Costs.

THIS WRIT was issued by LOVELL, WHITE & KING, 2507 Edinburgh Tower, The Landmark, 15 Queen's Road Central, Hong Kong. Solicitors for the said Plaintiff.

In the Supreme Court of Hong Kong High Court
No. 2
Summons
4th February 1983

SUMMONS

Let all parties concerned attend the Judge in Chambers, at the Supreme Court, Hong Kong, on Friday, the 11th day of February 1983, at ten o'clock in the fore noon, on the hearing of an application on the part of the Plaintiff for an Order for Interlocutory Injunctions restraining the Defendant whether by himself, his servants or agents until the Trial of this Action or further Order from: –

1. Acting as a solicitor, notary, trademark or patent agent or in any similar capacity in the Colony of Hong Kong whether as principal, clerk or assistant, for any person, firm or company who was at the time of his ceasing to be a partner or had, during the period of three years prior to 31st December, 1982 been a client of the Plaintiff, unless the Defendant acts in any such capacity in the course of employment with Government or any public body or with any company or organisation which is not itself engaged in professional practice in any of the above fields. 10

2. Approaching or soliciting any person, firm or company who had, during the period of three years prior to 31st December, 1982 been a client of the Plaintiff.

3. Inducing any employee of the Plaintiff to breach his or her contract of employment with the Plaintiff.

AND that the costs of this Application be provided for.

This Summons was taken out by Lovell, White & King of 2507 Edinburgh Tower, The Landmark, 15 Queen's Road Central, Hong Kong, Solicitors for the Plaintiff. 20

(Estimated time not exceeding 1 day)

In the Supreme Court of Hong Kong High Court
No. 3
Telex from Miss Williamson to the Defendant/ Appellant's solicitors
18th February 1983

TELEX FROM MISS WILLIAMSON TO THE DEFENDANT/APPELLANT'S SOLICITORS

18.2.83

To: Messrs. Herbert Smith & Co.
For the attention of: Mr Harry Anderson
Re: Mr Bridge

You requested a summary of the arguments put to the Court of Appeal by the defendant in Oswald Hickson Collier & Co. -v- Carter-Ruck as to the invalidity of the covenant in restraint of trade.

The relevant covenant, insofar as material, was there "in the event of retirement . . . any partner retiring . . . . shall not either in his own name alone or as managing clerk to or as agent for or on behalf of or in partnership with any other person or persons for a period of two years from such retirement . . . . approach solicit or act for any clients of the firm (. . . . . with certain exceptions)". The CA struck out the reference to "act". 10

The arguments were put in the context that covenants between partners were more closely akin to vendor/purchaser covenants than employer/employee covenants and would therefore be more readily enforced than in the latter case.

The defendant's proposition was that because of the fiduciary nature of the relationship between solicitor and client it was contrary to the public interest that a client should be prevented from having resort to the solicitor of his choice. 20

Articled clerks have been validly restrained from acting for the firm's clients because of the competing public interest that young men should be able to get training and principals would be chary of training them if they could not validly protect their businesses.

Fitch -v- Dewes 1921 2 AC 158 is an example of this. See per Lord Birkenhead at 165-166.

However the defendant's proposition has its seeds in Dewes -v- Fitch at 1920 2 Ch 159: see (1) per Eve J at 167-168 ("now how does this restriction . . . . injurious to the public") and per Lord Sterndale MR at 177 ("I agree entirely . . . . no injury to the public"). Particularly the latter. 30

NB: (1) Eve J's remark: "It has not been disputed . . . . would be valid" was obiter (because this was an area covenant) and was a point not argued (see the report).

(2) Sterndale, in agreeing with Eve J, is referring only to Eve J's later comments as to the interests of the public in the particular case.

Therefore: A reasonable area restraint is valid because public can still use their chosen solicitor albeit possibly at a degree of inconvenience.

In the Supreme Court of Hong Kong High Court No. 3 Telex from Miss Williamson to the Defendant/ Appellant's solicitors 18th February 1983 (Cont'd.)

There is only one English 20th century case where a covenant by a solicitor against 'acting' for firm clients has been upheld:

Lewis v Durnford 1907 24 Tlr 64

This was distinguished on the grounds that

(1) The covenantor was an employee not a partner, the client's trust and confidence would be reposed in the partner concerned because he is ultimately responsible (the individual in that case was described as a clerk or conveyancing clerk)

(2) L & D concerned a general practice whereas Mr Carter-Ruck was a specialist (so that the public interest was that much more damaged because the pool of available practitioners was smaller) and

(3) In 1907 the solicitors professional code was not developed so that such covenants might reasonably have been needed to protect goodwill. Nowadays, the rules of professional conduct, against soliciting etc, fulfil this function perfectly well.

It was argued, Lewis v Durnford would be decided differently today.

The argument on this point took up about 30 minutes. In the course of argument the CA unhesitatingly accepted (indeed Kerr LJ first mentioned it) that cases on doctors where 'acting' covenants were upheld had been wrongly decided, (i.e. it would not be possible validly to prevent a doctor 'acting' for the former practice's patients.)

Regards

Hazel Williamson

In the Supreme Court of Hong Kong High Court
No. 4
The Order of Mr. Justice Hunter
1st March 1983

ORDER

BEFORE THE HON MR JUSTICE HUNTER IN CHAMBERS

UPON THE APPLICATION of the Plaintiff made on the 11th day of February 1983.

AND UPON HEARING counsel for the Parties.

AND UPON READING the Writ of Summons issued the 4th day of February 1983 and the three Affidavits of John Richard Wimbush sworn on the 5th, 11th and 18th days of February respectively, the two Affidavits of Robin Miles Bridge sworn the 11th and 16th days of February 1983, the Affidavit of Yoko Mita Bridge sworn on the 10th day of February 1983 and the Affidavit of Timothy John Hancock sworn the 10th day of February, 1983 and the exhibits respectively therein referred to. 10

AND THE PLAINTIFF by its Counsel undertaking to abide by any Order that the Court may make as to damages in case the Court should hereafter be of the opinion that the Defendant shall have suffered any by reason of this Order which the Plaintiff ought to pay.

IT IS ORDERED AND DIRECTED that the Defendant whether by himself, his servants or agents, be restrained until the trial of this Action or further Order from: –

1. Without the written consent of the Plaintiff acting as a solicitor, notary, trade-mark or patent agent or in any similar capacity in the Colony of Hong Kong whether as a principal, clerk or assistant, for any person, firm or company who was at the 20 time of his ceasing to be a partner or had, during the period of three years prior to 31st December, 1982 been a client of the Plaintiff, unless the Defendant acts in any such capacity in the course of employment with Government or any public body or with any company or organisation which is not itself engaged in professional practice in any of the above fields.

2. Soliciting any person, firm or company who had, during the period of three years prior to 31st December, 1982 been a client of the Plaintiff.

3. Inducing any employee of the Plaintiff to breach his or her contract of employment with the Plaintiff.

AND IT IS FURTHER ORDERED that this order to take effect from 3rd March, 30 1983 and the Plaintiff's costs of this application be costs in cause, certificate for two Counsel on day 1 and a special allowance for the Plaintiff's solicitor on days 4 and 5 and that there be a speedy trial.

Dated this 1st day of March, 1983.

In the Supreme Court of Hong Kong High Court No. 5 The Judgment of Mr. Justice Hunter 1st March 1983

THE HON. MR. JUSTICE HUNTER.

DATE: 1ST MARCH 1983.

JUDGMENT

I have before me in this matter three applications by the plaintiffs for interlocutory relief by way of injunction. The plaintiffs are Deacons, one of the largest and oldest firms of solicitors in Hong Kong. The defendant, Mr. Bridge, is a former partner in that firm. It is therefore painfully obvious that this is an exceedingly unfortunate piece of litigation. It is also painfully obvious that the ultimate interlocutory decision in this case, which will no doubt be taken to the Court of Appeal, is one which will have the greatest importance to both parties. 10

The facts are not very seriously in issue. They start in 1968 when the then six partners in Deacons entered into a deed of partnership dated the 10th of June of 1968. It is necessary, I think, only to notice certain of the provisions in that deed, Clause 3(a) and (b) which notes that the respective shares in the partnership are as to be recorded in the Partnership Minute Book, and that the profits and losses are to be shared in accordance with such share.

8(a) which records that the assets of the partnership, including the goodwill, belong to the partners in proportion to their respective shares. They each have their share in the undivided whole.

14(b) which requires a new partner to limit his drawings until such time as he has fully paid for his share in the partnership. 20

18(a) which requires the partners or each partner not, without the written consent of the others, to engage directly or indirectly in any profession other than that of the partnership.

Clause 19 which allows any partner to give not less than twelve months' notice in writing to terminate the partnership as far as the individual partner is concerned.

21 which entitles seventy-five per cent of the partners in substance to give notice to quit, six months' notice to quit, to another partner.

22 which provides for compulsory retirement at the age of sixty.

23 which governs what happens upon retirement by a partner, and 23(b) particularly which provides that "the surviving partner shall . . . . succeed to the share of the retiring partner in the partnership, and all the assets and goodwill thereof, including the partnership name", and pay certain sums which are then specified to the retiring partner. The first sum is the amount at which the share of the retiring partner stands in the balance sheet; and secondly the due proportion of the sum not appearing in the balance sheet, agreed from time to time as the value of, amongst other things, goodwill, assets which are compendiously described as office assets. 30

In the Supreme Court of Hong Kong High Court No. 5 The Judgment of Mr. Justice Hunter 1st March 1983 (Cont'd.)

So that put quite shortly the effect of this provision is, that the remaining partners must pay to the retiring partner his interest in the goodwill, which, I am told at the present moment, stands in the order of HK$59,000: and they must also buy back the partner's share in the assets, the cumulative profits that were undistributed, the work in progress, and other matters of that nature, all of which really constitute his interest in the firm and his cumulative return from the firm as of the date of his retirement. Those sums, I am told in this case, would total about three-and-a-half million dollars.

And finally Clause 28(a), which is the heart of the argument, reads as follows:

> "Except on dissolution, no partner ceasing to be a partner for any reason whatsoever, shall for a period of five years thereafter, act as a solicitor, notary, trademark, or patent agent, or in any similar capacity in the colony of Hong Kong, whether as principal, clerk or assistant for any person, firm or company, which was at the time of his ceasing to be a partner or had during the period of three years prior thereto, been a client of the partnership." 10

And then there is a proviso excluding Government or salaried employment.

That deed was entered into, as I said, on the 10th of June 1968. On the 1st of July of 1973 Mr. Bridge joined the firm as a salaried partner, and on the 1st of April of 1974 he became a capital partner and, as it were, party to the Deed of Partnership. The next date worth mentioning is 1978. It would seem that in something like 1973, a partner by the name of Hobson had retired from the partnership. In the summer of 1978 he asked the 20 partners to release him from the last three months of the 5-year restriction which was imposed on him, in form at least, by Clause 28 of the Partnership Deed. The matter came before the partners at a meeting on the 2nd of June, there then being nine partners. This request was rejected. This defendant was party to such rejection.

On the 24th of April 1979, the partners who were then ten in number, of course including the defendant, entered into a supplemental deed varying the Partnership Agreement. The principal matters in that deed relevant for my purposes are first, Clause 2, by which they substituted two new figures for work in progress and office assets: for work in progress, the substituted figure was five million, and for office assets which included goodwill, one million. The other relevant clause is Clause 4 which reads: "Save as aforesaid 30 the Partnership Agreement shall remain unchanged." So that in April 1979, the then ten partners were reconsidering the terms in the deed, and save for the alterations expressed in that deed were reaffirming those old terms which of course included Clause 28.

Now between 1973 and the present date, the firm of Deacons has increased enormously in size. There are now I understand something like twenty-seven partners and forty-nine assistant solicitors. Almost throughout his career with Deacons, Mr. Bridge was working in the Intellectual Property Department. He was the partner in charge of it. There were, as I understand it, five assistant solicitors in that department working underneath him, and a staff of some twenty other persons. It is a busy department. One of the reasons for the present dispute was that he felt that he was being overworked and not sufficiently 40 supported by the partnership in it.

On the 1st of December of 1981, Mr. Bridge gave the partnership twelve months' notice to expire on the 31st of December of 1982. There were then certain discussions between him and Mr. Wimbush, the senior partner, in which it appeared that Mr. Bridge had decided to continue to remain with Deacons until the 30th of June 1983. This is set out in a letter dated the 24th of September 1982. But apparently concerned that the partnership were about to operate Clause 21 against him, on the 21st December he insisted upon reinstating the 31st December as his date of retirement. The partnership accepted that on the 22nd December. So that in fact everything happened very quickly, because instead of the 30th of June 1983 being the actual date of leaving, on the 21st of December it became the 31st. I think he went on leave on something like the 24th of December, so that in the space of a very few days, the relationship came sadly and abruptly to an end. Mr. Bridge then set about setting up his own office. His office was opened on the 31st of January. By that time it became apparent that he wished to act for former clients of the plaintiff firm, and was indeed already so doing. He was asked for undertakings not to act on the 2nd of February, which were refused and these proceedings resulted. 10

Questions have arisen on the time-table on these events and an argument was addressed to me in substance that because they had sat on their rights, the plaintiffs had deprived themselves of any entitlement to interlocutory relief. I am unable to accept that submission. It seems to me that from the start to finish, the plaintiffs did nothing to induce the defendant to believe that they were not relying on the covenant. It seems to me that Mr. Wimbush was doing his best to persuade Mr. Bridge that he should in fact comply with the covenant. The fact that he was resorting to moral arguments does not in my judgment at least, rule out that they would resort to legal arguments as well. Likewise, there is nothing that I have seen in the plaintiffs' conduct to suggest that they were acquiescing in what the defendant had done or was in fact doing. It seems to me that here is a case where the defendant formed his own view of the enforceability of Clause 28; decided to ignore it; and decided as soon as he parted company from Deacons, which he did somewhat suddenly as I have indicated, at once to start to set up his own office with a view to providing professional services for a number of Deacons' former clients. 20

It seems to me that he was then taking the risk upon himself of finding that the Court might or might not enforce Clause 28, and it is really impossible for someone to say that because Deacons did not proceed quia timet against him (which is very close to what was being submitted to me), that Deacons lost their rights under this sort of covenant, embracing as it does a five-year prohibition. 30

Now there are three injunctions sought in the summons before me. The first is an injunction in the terms of Clause 28 of the deed. The second is an injunction against soliciting clients, and the third is an injunction against inducing breaches or any breach of contract. It is the first, which is the crucial one and the vital one to which I now turn. The first problem arising here is how this question should be approached by the Court. Until 1975 there would have been no doubt as to what the proper answer was. The Court would have simply asked itself the question: "Is this covenant prima facie enforceable?" And if it is then an injunction should be granted, if not it should be refused. That emerges with crystal clarity from the judgment of Lord Denning in the case of *Fellowes* v. *Fisher*(1), particularly at page 128. The reason for that approach which is I think also 40

(1) (1976) 1 Q.B. 122.

In the Supreme Court of Hong Kong High Court No. 5 The Judgment of Mr. Justice Hunter 1st March 1983 (Cont'd.)

tolerably clear, is this. In these sort of cases the facts were usually not seriously in dispute. The question, which lies at the heart of the case, the question of reasonableness, is a question of law for the Court. This was held by the Court in the case of *Haynes* v. *Doman*[2], the passage being found at page 24. The Court has to do its best at the interlocutory stage to avoid injustice if it can, to avoid the injustice of granting or refusing relief to someone who in fact succeeds at the trial. The only way of reducing the risk of injustice under such circumstances is for the Court to try and do its best to form a view as to whether or not the covenant is, prima facie, good or bad, because of the impact its decision will have one way or the other immediately on the parties.

Now that view no longer seemed to be good law immediately after the decision of the House of Lords in *American Cyanamid* v. *Ethicon*[3], in view of the contents of the speech of Lord Diplock with which all their Lordships agreed. But as I think Lord Denning showed in the *Fellowes* case [1], on one analysis at least of the *American Cyanamid* decision as it stood, one can reach substantially the same result. First it is plain in this case at least that there is a serious question to be tried. Secondly it is equally plain in my judgment that this is not a case where damages would, in the measure recoverable at common law, be shown to be an adequate remedy at the trial, which is Lord Diplock's next test. If one applied the well known principles conveniently summarised by Lord Justice Sachs in *Evans Marshall* v. *Bertola*[4] starting at page 379, one will see that this is plainly not a case where damages would be regarded as an adequate remedy if the plaintiffs were to succeed at the trial. It is a classic example of a goodwill case which Lord Justice Sachs gives as a reason for granting an injunction.

Conversely it seems to me that if I were to grant an injunction in this matter against the plaintiffs undertaking in damages, and the trial judge came to the conclusion that the covenant was not enforceable and an injunction should never have been given, then the defendant would not be adequately compensated by that undertaking in damages because again damages, as far as he is concerned here, would not be an adequate remedy.

So that one has here a situation, again in the words of Lord Diplock: "Where the extent of uncompensatable disadvantages to each party would not differ widely."[5] In which case he recognised at the time that it was proper to look at the relative strength of each party's case. He also emphasized the wisdom of preserving the status quo. In that instance, it seems to me here that the status quo points to restriction rather than permission, because what the defendant had done here, he had just started to do. He is not established; he has not set up an "established enterprise" which is the phrase Lord Diplock used.

But it does not seem any longer to be necessary, to follow Lord Denning down that path through *American Cyanamid*. Because in the decision of *N.W.L.* v. *Woods*[6], Lord Diplock himself uses the phrase that "properly understood" *American Cyanamid* still requires judges to give weight to the practical realities of the situation, and to the problems involved in weighing the respective risks, that injustice might result from their decision if it is proved to be wrong at the trial.[7]

(2) (1899) 2 Ch. 13.
(3) (1975) A.C. 396.
(4) (1973) 1 W.L.R. 349.
(5) ibid p. 409.
(6) (1979) 1 W.L.R. 1294.
(7) ibid p. 1306.

In the Supreme Court of Hong Kong High Court No. 5 The Judgment of Mr. Justice Hunter 1st March 1983 (Cont'd.)

It seems to me that that emphasis on the impact of the realities in a case like this, requires the judge before whom an interlocutory application is brought, to face fairly and squarely the question: Is this prima facie a valid covenant or is it not? It seems to me that the decision of Mr. Justice Walton in the *Atheletes Foot*[8] case at page 343 confirms this approach. Indeed neither counsel really significantly sought to persuade me to the contrary.

I then turn to the validity of the covenant. Here the law is, I think, perfectly clear that prima facie all such covenants are void unless they are shown first to be reasonable in the interest of the parties, and secondly not against the public interest. The law has been expressed in those two stages for years – first, reasonableness, secondly, not against the public interest. 10

One of the most convenient statements of principle that has been referred to before me is to be found in *Morris* v. *Saxelby*[9]. First in the speech of Lord Atkinson at page 700 where he sets out the principle – I need not, I think, read it out – pointing out the first question is reasonableness, the onus being upon the person seeking to maintain the covenant to prove that it is reasonable; and the second question – injurious to the public, if it survives the hurdle of reasonableness, the onus being then upon the other side to prove that it is injurious. What is perhaps more significant, I think, in the context of this case is the approval that Lord Atkinson gives, starting at the foot of that same page, to a passage from the judgment of Vice Chancellor James in *Leather Cloth* v. *Lorsont* where he says this: 20

> "The principle is this. Public policy requires that every man should be at liberty to work for himself, and shall not be at liberty to deprive himself or the State of his labour, skill, or talent, by any contract that he enters into. On the other hand, public policy requires that when a man has by skill, or by any other means obtained something which he wants to sell, he should be at liberty to sell in the most advantageous way in the market, and in order to enable him to sell it advantageously in the market, it is necessary that he should be able to preclude himself from entering into competition with the purchaser. In such a case, the same public policy that enables him to do that, does not restrain him from alienating that which he 30 wants to alienate, and, therefore enables him to enter into any stipulation however restrictive it is, provided that that restriction in the judgment of the Court is not unreasonable, having regard to the subject matter of the contract."

This seems to me to be a valuable statement because it emphasizes that at this stage, the Court is concerned with conflicting, competing public interests. And the same point is in fact very simply made by Lord Shaw at page 716.

Likewise, in this decision, one finds this statement by Lord Shaw at page 713 of the law in relation to sales of goodwill. What he says is this:

> "When a business is sold the vendor who it may be has inherited it or built it up, seeks to realize this piece of property, and obtains the purchaser upon a condition 40 without which the whole transaction would be valueless. He sells, he himself agreeing not to compete; and the law upholds such a bargain and declines to permit a vendor to derogate from his own grant. Public interest cannot be invoked to render such a bargain nugatory: to do so would be to use public interest for the destruction

(8) (1980) R.P.C. 343.
(9) (1916) 1 A.C. 688.

In the Supreme Court of Hong Kong High Court No. 5 The Judgment of Mr. Justice Hunter 1st March 1983 (Cont'd.)

of property. Nothing could be a more sure deterrent to commercial energy and activity than a principle that its accumulated results could not be transferred, save under conditions which would make its buyer insecure."

What those statements seem to me to show in a case like this, is that when a Court is considering reasonableness, it has to consider two different sides of a hypothetical account. On the left hand side of the account, you put in the defendant's freedom to work and the defendant's desire to act without restriction; the public interest in his ability to act without restriction; the public interest in his ability to act for those who want him to act. On the right hand side of the account is the public interest in which enables solicitors to protect their connection, the connection between the firm as a whole and their clients as a whole. Or as it was really put before me in argument in the creation, the development, and the continuance of partnership. 10

Now the public interest sought to be relied upon which entitles solicitors, it is said, to preserve their connection, I think, can be put under three separate heads.

The first head is training and this is the head with particularly commended itself to Lord Birkenhead in the case of *Fitch* v. *Dewes*[10], and I think the reference is at page 165 where he points out that unless solicitors are able to protect their interest by some sort of restrictive covenant, they would be chary of bringing in anybody to train him in the job of a solicitor. This particularly applies to young solicitors. It would equally apply to young partners. 20

The second element is something which I don't think has yet come or has been reported as having come before the Court. It was developed by Mr. Litton in this way. He pointed out the fact that the recent history of solicitors is towards expansion of firms; larger numbers of partners, larger capital expenditure, more expensive premises, more expensive capital equipment, a greater degree of specialization between partners in the firm. All this he suggested has been done to improve the quality of the service which solicitors are able to render to their clients. He said that it is in the public interest that this should happen, and this can only happen if solicitors are enabled to protect their connection; and, in a sense, it can be put to protect their investment in themselves and in their firm. As I have said I don't think that has actually come before the Court yet but it seems to me that there is obviously force in this submission. 30

The third head of public interest and public policy is precisely that which Lord Shaw refers to in *Morris* v. *Saxelby;* retirement. In the large firms this takes the form very often of the sort of provisions that one has here in clauses 23 and 28; clause 23 in particular which requires the continuing partners to buy in the outgoing partner's interest in the firm. It can equally well arise in a smaller firm, particularly in the one-man band, when the older man decides to retire to sell out his connection to the young. Now that sort of covenant, that sort of sale, would be quite impossible unless the retiring partner there is able to give his successors, give his purchasers, a covenant against competition. Unless he can give that covenant there is absolutely nothing for him to sell. 40

(10) (1921) 2 A.C. 158.

In this context, it seems to me that the law is exactly the same as I have sought to state it and as it is summarised by Lord Atkinson, but its application varies in different fields. It is well-known in a master and servant type of case that the law is particularly careful not to permit an employer, if I can put it this way, to get away with anything more than precisely what is necessary to protect his interest. Many such covenants in that field have been struck down on the basis that they are unreasonable in giving the employer more protection than is reasonably necessary. This I think reflects, amongst other things, the common unequal bargaining position between the employer and employee and possibly the risk of exploitation of the young. One case which was in fact in that field, which may be said to have gone the other way was *Fitch* v. *Dewes* to which I have already referred. 10
There the House of Lords upheld a restraint for life against a young solicitor on an area covenant, not simply as against the clients of the firm for which he was working, over a radius of seven miles from a particular fixed point. This in practical parlance seems to me to have excluded that young man from the bulk of the people who had resorted to him whilst he was working with that partnership, having regard to the nature of the country type of practice which he was concerned with, and which was no doubt the precise intent of the seven mile exclusion.

The next category of cases are the vendor and purchaser cases where the court has taken a slightly more relaxed view. The reasons I think are best put by Lord Justice Jenkins, as he then was, in *Ronbar* v. *Green* (11), at page 270, where he emphasises that this view is 20
necessary because these covenants are in the interests of both the parties concerned. That view was echoed by Lord Evershed in the Court of Appeal in *Whitehill* v. *Bradford* (12) at page 117.

The partnership cases, on the other hand, are somewhat different again and have been described as sui generis. The unique quality about these is this. In all the other cases, the parties have been in the same capacity and in one capacity only. The master doesn't become the servant and the vendor doesn't become the purchaser. But the unique feature of the partnership cases is that the partners are in it potentially in two capacities. When they enter into these agreements they don't know at the time they enter into them, whether they are looking at it as a potential retiring partner or as a potential subsisting partner. 30
They tend to be entered into by persons at arm's length. That is certainly the position here with the six partners in 1968 and with the ten partners again in 1979. It seems to me that 1979 is the date to which I should probably go back. The reports all say you have to go back and consider the state of affairs at the time when an agreement is entered into. Well strictly speaking, as I understand the law, the partnership deed is entered into repeatedly in point of law whenever any new partner enters into the partnership. Perhaps this is a slightly artificial point to take in a case like this. But certainly it seems to me that this partnership agreement was entered into for present purposes when it was reaffirmed in 1979.

The deed was between solicitors, who must be presumed to know the law in this 40
respect, and so the covenant can be said to be their collective estimation of what was reasonable in the view of the partners collectively to protect the firm connection. Now the courts have repeatedly recognised the importance of the parties' estimation of what is reasonable in cases where the parties have not been in this unique mutual position, so long

(11) (1954) 2 A.E.R. 266.
(12) (1952) 1 A.E.R. 115.

as the parties are in a position of equal bargaining power. The latest example of that which emerged in argument is *Esso Petroleum* v. *Harper's Garage*(13) in the House of Lords. There at page 300 one finds this:

> "Where two experienced traders are bargaining on equal terms and one has agreed to a restraint for reasons which seem good to him the court is in grave danger of stultifying itself if it says that it knows that trader's interest better than he does himself."

That is an observation of Lord Reid. Lord Morris says much the same thing at page 305 and goes on to quote Sir George Jessel and Lord Justice Scrutton to the same effect and Lord Pearce says much the same thing at page 323. I am therefore frankly at a loss to understand how that case can be said to have displaced the once "fashionable argument" that the parties' views were of significance which Professor Treitel appears to be saying at page 354 of his text-book.

The same view is to be found expressed in the ***Whitehill*** v. ***Bradford*** case as far as a partnership is concerned. But I think perhaps the most succinct statement of all of the principle is to be found in the judgment of Lord Justice Fenton Atkinson in the case of *Lyne-Pirkis* v. *Jones*(14) a passage appearing at page 745. The point at issue there was whether a ten mile radius of restriction was reasonable for medical practitioners, it being attacked and successfully attacked in the mind of Lord Justice Russell because most of the patients were to be found within five miles. What Lord Justice Fenton Atkinson said is this:

> "My provisional view is that there is no good reason to disagree with the three experienced and legally advised doctors, who agreed on this clause 21 knowing very well the distribution of the patients and the future prospects of the practice and who all thought that the ten mile limit was reasonable for the protection of the interests of whichever one or more might be a non-retiring partner."

I believe that that statement really encapsulates the whole of the thinking about these partnership cases. So I start with this proposition in mind, that where ten partners have agreed on a clause like 28 then the court has to proceed with great circumspection before it starts substituting its own views for the partners as to what is reasonable.

Now the clause has been attacked under three heads. It said, first of all, that five years is much too long. It said secondly, that it should not be limited to the clients of the firm but further limited to clients of the intellectual property department which was Mr. Bridge's department. Thirdly, it said that the area, namely the Colony of Hong Kong, is too large.

I can deal with the last point very shortly and simply. This is not an area covenant; it is a client covenant. I have never really understood how the area can be attacked in this case at all. It doesn't restrict Mr. Bridge from practising anywhere in Hong Kong as a solicitor. He can practise in Fanling if he wants to. The only restrictions on his activities in the outer parts of the New Territories is if it should so happen that any of the clients of Deacons happen to live or trade there.

(13) (1968) A.C. 269.
(14) (1969) 3 A.E.R. 738.

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The next criticism is five years is said to be too long. Well I confess that I do find that somewhat remarkable having regard to the history of what happened to Mr. Hobson. Here one has the striking fact that exactly a year before the deed was reaffirmed, in 1978, Mr. Hobson was denied collectively by the then nine partners three months' relief. I also find myself in much the same frame of mind as Lord Birkenhead was in *Fitch* v. *Dewes.* He said it was suggested that life was too long but ten years should be right. What he asked was the difference between ten or twenty or thirty years in a case like that. It seems to me that if the parties here thought five years was an appropriate time, it ill behoves me to start suggesting that I know their job better than they do and that three years should be substituted. 10

The last point here is that the restriction should be limited as I have indicated to the clients of the industrial intellectual property department. If this was a master and servant type of covenant, I could see considerable force in that. But it is not. That is really why the defendant's argument went like this: That Mr. Bridge's connection was entirely with this department; that on the authorities on the goodwill cases, *Schelff's* case [15] was cited in particular, you can only properly protect the goodwill of what you are selling; that Mr. Bridge's connection was with that department, that his goodwill was his connection with that department, and that was the goodwill which the remaining partners were acquiring from him.

Now I entirely accept that Mr. Bridge's personal connection was with that 20 department. That was because it was the department that he was asked to work. This was his job in the partnership, I think it must be borne in mind that this connection of his with that department and with those clients was achieved only by reason of the activities of his other partners. If he had been practising on his own there is no possible way, I believe, in which a solicitor could have specialized in the way that Mr. Bridge was entitled and able to specialize whilst working in that partnership. But these clients who he was looking after in the interests of the firm, were clients of the firm. The goodwill referred to in clause 23 is the goodwill of the firm. The sums payable under clause 23 in relation to the accumulated interest in the partnership are accumulated interests deriving from the firm's activities, from Mr. Bridge's share of profits in the firm. I simply, therefore, am quite unable to accept the 30 premise here that his is the goodwill of the intellectual property department.

So that looking at these three challenges, I am left at the moment, speaking for myself, in the same position of Lord Justice Fenton Atkinson, I am not persuaded that I know more about these partners' business than they apparently knew themselves. Therefore up to this point, I would be minded to regard this covenant as satisfying the test of reasonableness.

I must then turn to the next point which was argued before me upon the basis of public policy. I have already said that the law, the two-stage formulation of the law, is firmly entrenched, and that the second stage is, as I have indicated, injurious to the public interest. The peculiarity about this two-stage statement is that there are virtually no cases 40 that have been decided at stage two. In 1913 Lord Parker in the *Attorney-General of Australia* v. *Adelaide Steamship Co. Ltd.*[16] at page 795 is to be found saying that their

(15) (1921) 2 Ch. 563.
(16) (1913) A.C. 795.

Lordships knew of no case and that the onus upon the proponent under this part would be no light one. In *Esso Petroleum* v. *Harper's Garage,* their Lord Lordships comment in similar terms and point out that they think that there is one case in the books which could have been decided upon this basis, but in fact was not. This leads me at least to suggest that the explanation is that in the ordinary case the public interest which is at issue is the interest which I have already said arises on the left-hand side of the account in this case, a man's freedom to work. That is usually the only public interest. If that public interest has not prevailed at stage one, it is unlikely, as it were, to rise from the ashes and come up again at stage two. This at least seems to be consistent with such law as there is.

I have been introduced in the course of this hearing to a text-book on this subject matter of which I had not heard before, namely "Haydon on Restraint of Trade". He apparently has found what counsel in none of the earlier cases have found, namely one authority upon this point which is referred to at page 200 of his text-book. This is the case of *Toby* v. *Major*[17], a decision of which he is somewhat critical, of Mr. Justice Darling. But at least the judge there put the case upon an additional public policy basis, namely monopolies. A similar view was expressed by Lord Wilberforce in *Esso Petroleum.* Whilst emphasizing the importance of the second limb, at pages 340 and 341 he says this:

> "In relation to many agreements containing restrictions, there may well be wider issues affecting the interests of the public than those which relate merely to the interests of the parties."

The inference that I am minded to draw is that it is these wider issues which Lord Wilberforce had in mind as those arising at this stage.

If that analysis is correct then the overriding public interest is really part of the issue on reasonableness rather than the second issue arising at this point. But as it was dealt with as a separate issue, I will in fact attempt to deal with my judgment in the same way. The overriding public interest which was said to strike down this covenant was put in two ways: —

(1) First it was said that the client must not be deprived of the services of the solicitor of his choice, and in substance that the solicitor could not by contract deprive himself of the ability to satisfy the demand of the person who wanted his services as a solicitor.

(2) The second proposition was a slightly narrower one than that. It was said that this applied particularly to a person who is skilled or experienced in the intellectual property field; persons possessing such skill were not in plentiful supply in Hong Kong and it was against the public interest in Hong Kong that those persons should be permitted to disqualify themselves from acting for someone who desired to take advantage of their services.

Now the first proposition is based upon what was said by Lord Denning in particular, in the Court of Appeal in England, in a case called *Oswald Hickson Collier* v. *Carter-Ruck* a judgment that was given on the 20th January 1982. The principal point in the case arose on the construction of the restraining clause in that case, the defendant

(17) (1899) 43 Sol. Jo. 778.

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being the retiring partner, from the firm of Oswald Hickson Collier. As a matter of construction of that covenant, the court held that the principal client about whom the case turned was not in fact within the clause and could resort to Mr. Carter-Ruck and Mr. Carter-Ruck could take that client with him.

But there was a further point raised which apparently had not been taken in the court below. What appears in the report is this:

> " 'It was submitted by Mr. Cullen', that is counsel for Mr. Carter-Ruck, 'that – as the relationship between a solicitor and his client is a fiduciary relationship – it would be contrary to public policy that he should be precluded from acting for a client when that client wanted him to act for him: especially in pending litigation. It seems to me that that submission is right. I cannot see that it would be proper for a clause to be inserted in a partnership deed preventing one of the partners from acting for a client in the future. It is contrary to public policy because there is a fiduciary relationship between them. The client ought reasonably to be entitled to the services of such solicitor as he wishes. That solicitor no doubt has a great deal of confidential information available to him. It would be contrary to public policy if the solicitor were prevented from acting for him by a clause of this kind.' "

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Now these are words of great width. They are based upon the existence of a fiduciary relationship and Lord Denning's view that the client is reasonably entitled to the services of such solicitor as he wishes. Public policy is said to be against depriving that client of that choice. Lord Justice Kerr agreed with that view, but he qualified the matter to some considerable extent by pointing out that this was a preliminary view only, that it was interlocutory, and that in any event his inclination was to the same result on the grounds of convenience.

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Now the effect in that case has been one of the major problems in the argument before me and there are a number of problems which arise from it.

First, the case itself is unreported. By a curious chance it just so happens that at the time when the case was being argued before me, both the House of Lords and the Court of Appeal in England have complained of the number of unreported cases in the Court of Appeal now being brought before the court as a result of the Lexis system. Lord Diplock in the House of Lords really is suggesting that some of these cases may contain statements which were sufficient to determine the case before the court, which are in fact wider than is necessary and wider than perhaps is correct. But a trial judge has no such power as the House of Lords to erect barriers around the use made of such cases, particularly trial judges who might find the authorities either binding or, as in my case I think, strong persuasive authorities.

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But in order to try to understand the decision, and the basis of the argument, I have put before me a telex from junior counsel, Hazel Williamson, junior counsel to Mr. Carter-Ruck in the case, explaining what they argued and how long the argument took and so forth. The impression that I have from all this is that this was a fringe point in the case. Miss Williamson tells me that the argument took half an hour and no more. There is a garbled passage on costs which goes some way to suggest that the point wasn't strenuously disputed. I am minded to think that it was dicta (although I am troubled as to whether it is not in fact part of the ratio) and dicta expressing a preliminary view on a fringe point in the case.

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The second problem I have in the case is that I have the utmost difficulty in reconciling it with the decision of the House of Lords in *Fitch* v. *Dewes*. My difficulty is enhanced by what Miss Williamson's telex tells me. She, in enumerating the argument, says that articled clerks have been validly restrained from acting for the firm's clients because of the competing public interest, citing *Fitch* v. *Dewes* and the passage I referred to from Lord Birkenhead's speech in support of that. She goes on to say that the defendant's proposition had its seeds in the decision in *Fitch* v. *Dewes* at first instance and in the Court of Appeal. It is apparent, it seems to me from that telex that Miss Williamson at least did not appreciate that *Fitch* v. *Dewes* did not relate to a managing clerk in the sense that that phrase has been used now, for many years in the U.K. i.e. an unqualified man, but to a qualified solicitor; 10 and that the restraint that the House of Lords upheld in that case was a restraint on a qualified solicitor.

The effect of that restraint seems to me in practice to be that a very large number of people in Tamworth were in fact deprived of the services of the young man of their choice, the young man that they knew. I therefore have the utmost difficulty in reconciling – the views expressed in the Court of Appeal with that decision of the House of Lords.

Thirdly I have equal difficulty in reconciling these views with the medical cases. Indeed Miss Williamson says this:

> "In the course of the argument the Court of Appeal unhesitatingly accepted (indeed Lord Justice Kerr first mentioned it) that cases on doctors where acting covenants 20 were upheld had been wrongly decided."

All I can really say to that is it must have been some interlocutory observation because there is no way which the Court of Appeal can reverse their own decisions on these matters. The medical cases are conveniently collected in Lindley at page 215. I cannot reconcile these observations with the decision of the Court of Appeal in *Whitehill* v. *Bradford* which I have already referred to. Equally it appears to be difficult to reconcile them with decision in *Macfarlane* v. *Kent* where Mr. Justice Stamp was advocating a patient restriction rather than an area restriction judging from the summary in Lindley. Equally, if well founded, they provided a very short and simple answer to all the other cases where the covenant in fact failed for other reasons, including unreasonableness. But the point was 30 never apparently referred to from start to finish by the Court in any of those cases.

Fourthly, it is obvious that the point is not consciously known to the editors of Lindley, who have a specimen form of clause which is set out on page 210. That specimen form of restraint restrains the partner for a period of blank years immediately following his retirement from acting for or soliciting any client of the partnership.

Fifthly, I was referred to two cases *Watts* v. *Official Solicitor* [18] and *Barrett Bros.* v. *Davies*[19] as authority for the proposition that a man has a common law right to a solicitor of his own choice. Those cases both related to a person successfully resisting a solicitor foisted upon him, by an insurance company. Both are cases where insurers were

(18) (1936) 1 A.E.R. 249.
(19) (1966) 1 W.L.R. 1334.

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purporting to exercise their rights under an insurance policy. Now that seems to be a totally different matter. Because when I ask myself in what circumstances does a client in fact have the right, "the entitlement" which is the phrase Lord Denning uses, to the services of a particular solicitor I have great difficulty in seeing when that arises. The client has every right to ask a solicitor to serve. But the circumstances when a solicitor is obliged to say: "Yes" to that request seem to me either very narrow or entirely non-existent.

I always understood a solicitor was entitled to say: "No" to a client and it does not matter whether the client is an old client or a new client. He may have many good reasons for saying: "No" to a client when asked to act. He may no longer be doing that sort of work in the firm – we are looking at this on an individual basis. The firm itself may have changed its policy and may no longer be doing that sort of work. The client may have proved to be a bad payer. There are a hundred-and-one reasons why the solicitor, as I understand it, could say: "No". Secondly it is quite obvious that there are many occasions when the solicitor must say: "No" – when there is a conflict of interest situation. Thirdly it is quite obvious that a client can't require the solicitor to go on practising. The solicitor is perfectly entitled to retire.

Really when you start trying to test this proposition in the context of retirement, the difficulties become, as I see it, extreme. It is convenient to do so by reference to say the one man band who's selling out his connection to some collection of young men. Now if the old man retires to grow roses and stays growing roses, no problem arises. He can collect the full market value of his connection without any difficulty. But if these dicta are right, if he decides to leave the firm and conduct a limited practice with somebody else or on his own, he cannot then covenant not to compete with the buyers. He cannot give the buyers any value for their money. This seems to me directly contrary to the principle which Lord Shaw has expressed. But thirdly what happens if he decides to retire and grow roses and enters properly into a covenant, thinking at that stage he can fulfil it. But his roses don't grow. He gets bored to tears. He wants to come back and practise because his clients come round and say: "Your old practice is a shambles". Can he then in that case retain his money, which ex-hypothesi he has already received, and then come back and say: "No, my clients desire my services, I must come back and destroy my covenant against competition"? Now I really find it very difficult to accept that that is the law.

Mr. Haydon in his book has an interesting passage at page 182 where he discusses the history of the development of the saleability of what he calls "covenants of personal goodwill" – the typical professional situation where the man's connection depends upon his personal skill which he takes with him on retirement. There is no way he can pass on his skill to somebody else. Has he in fact got anything which he can properly sell to anybody at all? He points out that Lord Eldon, for example, thought that this was something which was simply not saleable. He then cites a number of cases, both in the United States and in the Antipodes arising out of this, showing how a contrary view prevailed. But throughout these one factor is constant and essential, and that is the covenant to abstain from competition. Because unless the person gives that covenant, he really has got nothing to sell. And he goes on: "It is now generally thought, contrary to Lord Eldon's views, that personal goodwill is freely saleable, for example, in the case of stockbrokers, solicitors, notaries, doctors, dentists, and promoters of wrestling bouts." I do not know about the last category, I prefer to substitute the radiologist which I find on the next page. But in relation to those

professionals, he refers to a number of cases in various parts of the world where those covenants have been upheld. I can not see any difference between those persons and solicitors. There seems to be the same fiduciary relationship existing. If these dicta are true of solicitors, then it seems to me that there is a whole raft of authority which may require reconsideration.

Again when one looks at the comments on the public interest in Haydon at page 200, one finds that he says that:

> "The courts are unlikely to strike down as unreasonable in the public interest the covenant which they have held reasonable between the parties."

And he quotes from, I think this is an American decision: 10

> "An equivalent is given to the public; because, ordinarily . . . . the covenantee assumes and carried on the profession, nothing is abandoned, and only a transfer is accomplished."

This is why they are held not to be against the public interest. I would observe here that, in fact there would be no transfer at all. The same firm is prepared to act for the same client.

So that I ask myself: Are these dicta in Oswald Hickson Collier of such persuasive authority that I should follow them and apply them. Unusually, as far as I am personally concerned, because I regard Lord Denning as a man not lightly to be disregarded, I do not feel that they are dicta which I should apply. 20

The alternative way of putting the matter is dependent upon skill. Again this owes something to a suggestion in Professor Treitel's book. I don't doubt here that the defendant is very skilled in his field. I don't doubt also that such skills are perhaps not too plentiful in Hong Kong. I can understand the old Deacon's clients that he was serving whilst he was with Deacons, feeling that he is still their man. Whether those feelings do justice to the support that the defendant was receiving from his department is neither here nor there. That is no doubt the clients' feeling.

But there seems to me to be two insuperable obstacles to this proposition. The first is that the defendant, Mr. Bridge, has only been able to acquire the specialist knowledge and the particular experience he now possesses by the fact of the partnership and by the 30 activity of his partners. I am at a loss to see how having benefited that way from the partnership, and having acquired that benefit as a result of the partnership, that he can now take advantage of it in this way.

Secondly I have asked myself really three questions, and I can not see any satisfactory answer to any of them. Why should I distinguish between the partners? How should I distinguish between the partners and at what date should I distinguish between the partners? Why should I distinguish? I don't know. It must be that some partners, if there is force in this, fall into this special exclusive category and some do not. But they are all in fact equal partners in accordance with their shares in this partnership. I can't see any sort 40 of good reason for distinguishing between one partner and another. If I was to distinguish, I haven't the slightest idea how I should do it, and which would rank as the specialist, which would rank as the general practitioner, and on what basis one would make that

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very invidious division.. Thirdly at what date do I do it? Here the question as to the date to which I have to return starts becoming embarrassing. If I go back to 1974, the experience didn't exist. If I go back to 1979 it existed, and in different forms, in different members of the partnership. I simply don't see how this proposition can leave the ground in practical parlance.

So having looked at these matters as best I can, I have come to the conclusion that, prima facie, this is a valid covenant, and that prima facie it is enforceable. In those circumstances, applying the established principles as I have endeavoured to set them out, this is an injunction which should be granted.

May I then turn to the other two headings which I can deal with, I hope, slightly more quickly. The first is soliciting. Now what the plaintiffs say here is this. First that apart altogether from Clause 28, Mr. Bridge is not entitled to solicit the clients of the firm. Secondly on the facts serious questions arise as to whether what he has done, does or does not constitute soliciting. And thirdly, the balance of convenience is in favour of the granting of an injunction against soliciting in this case. This has really been put before me as a straight *American Cyanamid* argument. 10

The defendant says: "Yes, I accept I am not entitled to solicit. Two I am not prepared to give an undertaking because of the problems of enforcement and the risks. The plaintiff should accept a statement that I don't intend to solicit. Thirdly, there is no question of soliciting here. All the clients that have come to me have come to me of their own volition, and there hasn't been any urging or begging or inciting in any shape or form." 20

To this the plaintiffs in substance respond: "Yes, there is no evidence of urging, begging or incitement." But they rely upon two things which they say it is plain that the defendant has done in relation to one or more of the clients, both of which they say constitute soliciting for this purpose. First of all, during his service he did not simply tell certain of the clients that he was leaving, which would have been perfectly neutral, and not objectionable. But he also said that he was setting up on his own account. Secondly they say that once he has set up on his own account, he should not be approaching any of his old clients at all, because they were then still Deacons' clients, whereas once he has set up on his own account he must be approaching them as "Robin M. Bridge & Co.", his new professional name. 30

Now I am fortunately in no position to determine this nice question as to where the dividing line is drawn between what is proper and what is not proper in these sort of circumstances. That is essentially a matter for the trial judge. It seems to me that serious questions have been raised on this as to where this line is to be drawn. A statement, such as has been offered by the defendant, is quite valueless. In the absence of any undertaking, it seems to me that the balance of convenience does point to the granting of an injunction. An injunction against soliciting but not an injunction I think in the terms as sought against approaching or soliciting.

Now the last claim is in respect of inducing a breach of contract. I am bound to say that I think this is one of the more unfortunate features of the case because, rightly or wrongly, I have never seen any answer to this particular head of claim. 40

The facts are very simple. There were two assistant solicitors employed by Deacons, a Mr. Hancock and Mr. Evans. They both appear to have worked in the Intellectual Property Department. Hancock in particular was concerned in helping a number of the clients whom the defendant most valued. They were both employed under what I am told it is a common form Deacons' contract for four years. It is not an unusual state of affairs in this colony, and it seems to me as plain as can be that that contract is not terminable on notice. Mr. Hancock, on the other hand, purported to give notice on the 22nd of December 1982 for the 30th April. It is therefore perfectly obvious that Mr. Hancock was offered a job by Mr. Bridge, almost the same day as he wrote his own letter of the 21st of December. Mr. Evans gave notice on the 1st of January for the 31st of March which suggests that he was likewise offered a job before the 31st of December. I haven't been told what terms both two gentlemen have been offered, but it is an almost irresistible inference since they both find the terms more attractive, that they are better than the terms under which they are currently employed by Deacons.

Now the only issue here which is remotely arguable is the issue of intent. What Mr. Bridge says in relation to this is at paragraph 16 of his affidavit:

> "I confirm that I have offered them both employment, that is both Hancock and Evans, with my new firm, but only from a date when they consider themselves able to take up that offer."

I regret to have to say I find that astonishing. Mr. Bridge must have known the terms of these contracts. He was a party to them. He must have known that they were four-year contracts. He must have known that there was no way in which they can be terminated validly by notice within 4 years. It seems to me inevitably to follow that he was inducing a breach of contract by offering either of them jobs which were to take effect before the expiry of that four years. And if, as I think, those jobs are on better terms then the position is a fortiori. The test of intent here is objective. One is deemed to intend the reasonable consequences of the act. It is perfectly obvious that the reasonable consequences of that act was that both men should do exactly what they did, which was to give notice.

I was at one stage offered an undertaking here in the terms of paragraph 3 of the summons. But the offer was put forward upon the basis that the damage had in fact been done. I felt constrained to point out that I was not entirely sure that that was necessarily right, and that further inducement might take place if and when the two gentlemen's notice expires, and if at that stage they then entered the defendant's employ. The undertaking was then qualified to exclude these two gentlemen. In my judgment, the short answer here is that this is something which should certainly not have happened, and that the plaintiffs are entitled to injunction in the terms of paragraph 3.

So that as far as I am concerned, the plaintiffs have made out their claims for the injunctions claimed in paragraphs 1, 2 and 3 of the summons, with the deletion of the words "approaching or" in paragraph 2.

(D.S. Hunter)
Judge of the High Court

Mr. Henry Litton, Q.C., and Mr. Ronny Wong (Messrs. Lovell, White & King) for the Plaintiff.

Mr. A.H. Sakhrani, Q.C. and Mr. R. Kotewall (Herbert Smith & Co.) for the Defendant.

In the Supreme Court of Hong Kong Court of Appeal No. 6 Notice of Appeal 7th March 1983

NOTICE OF APPEAL

TAKE NOTICE that the Court of Appeal will be moved so soon thereafter as Counsel can be heard on behalf of the above-named Appellant/Defendant on appeal from the Order herein of the Honourable Mr. Justice Hunter made on the 1st day of March 1983 whereby it was ordered that

(1) The Appellant/Defendant be restrained whether acting by himself, his servants or agents until trial of this action or further order from: –

(i) Without the written consent of the Respondent/Plaintiff acting as a solicitor, notary, trademark or patent agent or in any similar capacity in the Colony of Hong Kong whether as principal, clerk or assistant, for any person, firm or company who was at the time of his ceasing to be a partner or had, during the period of three years prior to 31st December, 1982 been a client of the Respondent/Plaintiff, unless the Appellant/Defendant acts in any such capacity in the course of employment with Government or any public body or with any company or organisation which is not itself engaged in professional practice in any of the above fields. 10

(ii) Soliciting any person, firm or company who had, during the period of three years prior to 31st December, 1982 been a client of the Respondent/Plaintiff.

(iii) Inducing any employee of the Respondent/Plaintiff to breach his or her contract of employment with the Respondent/Plaintiff. 20

(2) The order in (1) above to take effect from 3rd March, 1983 and the costs of the application before the Honourable Mr. Justice Hunter be the Respondent/Plaintiff's costs in the cause with a certificate for two counsel for the first day, and special allowance for the Plaintiff/Respondent's solicitor on the fourth and fifth days of the hearing and that there be a speedy trial.

For an order that: –

1. Each of the injunctions granted in (1) above be discharged.

2. The order for costs before the Honourable Mr. Justice Hunter be the Appellant/Defendant's costs in the cause, alternatively costs in the cause.

3. The Respondent/Plaintiff may be ordered to pay the Appellant/Defendant the costs of this appeal to be taxed if not agreed. 30

AND FURTHER TAKE NOTICE THAT the grounds of this appeal are: –

1. The learned judge failed to exercise his discretion, alternatively exercised his discretion incorrectly in granting the injunctions and in particular failed to apply correctly or at all the guidelines laid down in *Re Lord Cable* [1977] 1 WLR 7 at page 19.

In the Supreme Court of Hong Kong Court of Appeal No. 6 Notice of Appeal 7th March 1983 (Cont'd.)

2. The learned judge erred in failing to consider adequately or at all the importance of the balance of convenience and of the Respondent/Plaintiff's delay when he granted the injunctions.

3. The learned judge erred in finding that damages would not be an adequate remedy to the Respondent/Plaintiff if no injunctions were granted and if the Respondent/Plaintiff should succeed at the trial, and failed to take sufficient account of the fact that of the enormous numbers of the Respondent/Plaintiff's clients, only very few were involved, and that the Appellant/Defendant's bills of costs amounted to a very small proportion of the Respondent/Plaintiff's billings for 1981.

4. The learned judge failed to appreciate sufficiently or at all the inadequacy of an award of damages to the Appellant/Defendant when granting the injunctions. 10

5. The learned judge erred in law in failing to follow the decision of the Court of Appeal in England in *Oswald Hickson Collier v. Carter-Ruck* (unreported, 20-1-82).

6. The learned judge erred in failing to distinguish the case of *Fitch v. Dewes,* [1920] 2 Ch. 159; [1921] 2 A.C. 158 from the decision of *Oswald Hickson Collier v. Carter-Ruck,* supra and from the facts of the present case generally and in failing properly to consider that the solicitor sought to be restrained was a specialist in a field where such expertise is lacking.

7. The learned judge erred in finding that the restrictive covenant in question was reasonable as between the parties in spite of the fact that no evidence was adduced as to the necessity of its provisions and in what way they were reasonable and that it 20

(a) was for five years

(b) covered the whole of the territory of Hong Kong

(c) included all the clients of the Respondent/Plaintiff and not only those for whom the Appellant/Defendant had acted or who were clients of the department of which the Appellant/Defendant was the supervising partner.

8. The learned judge erred in ignoring the effect of the principle stated in the decision of *Watt v. The Official Solicitor* [1936] 1 All E.R. 249 and *Barrett v. Davies* [1966] 1 WLR 1334 that at common law an individual had the right to choose his own solicitor.

9. The learned judge failed to pay any or any sufficient regard to the public interest in granting the injunctions and erred in law in holding that apart from one example, no covenant in restraint of trade had been struck down as being against the public interest which has an ancillary role once it is concluded that the covenant was reasonable as between the parties to it. 30

10. The learned judge erred in finding that what the Respondent/Plaintiff was claiming under the covenant in question was legitimate protection in law despite the fact that the Appellant/Defendant had no connection with the vast majority of the Respondent/Plaintiff's clients.

In the Supreme Court of Hong Kong Court of Appeal No. 6 Notice of Appeal 7th March 1983 (Cont'd.)

11. The learned judge erred in failing to appreciate the practicalities of the injunctions granted which would mean that Respondent/Plaintiff would in all probability lose those clients who wanted his services for good.

12. The learned judge erred in granting the second injunction in that there was no evidence before him that the Appellant/Defendant had ever solicited the Respondent/Plaintiff's clients, and which injunction was in any event unnecessary in the light of the first injunction granted.

13. The learned judge erred in granting the third injunction in that: –

(a) there was no evidence that the Appellant/Defendant intended to induce any breach

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(b) he disregarded the uncontradicted evidence of Mr. Hancock that the Appellant/Defendant did not so induce him

(c) even if there had been breaches by Mr. Hancock or Mr. Evans, such breaches had already taken place once and for all when they gave notice to terminate their contracts of employment, which breach cannot at any time thereafter be undone by injuncting the Appellant/Defendant.

14. In all the circumstances, the injunctions ought to be discharged and the appeal allowed.

The Appellant/Defendant reserves the right to add to these grounds of appeal when the learned judge's reasons in writing are available.

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The Appellant/Defendant intends to set down the appeal in the interlocutory appeals list.

Dated the 7th day of March 1983.

Herbert Smith & Co.
Solicitors for the Appellant/Defendant

In the Supreme Court of Hong Kong High Court No. 7 Statement of Claim 7th March 1983

STATEMENT OF CLAIM

1. The Plaintiff is a firm of Solicitors and Notaries, and agents for trademarks and patents whose principal place of business is Swire House, Chater Road, Central, Hong Kong, with a branch office at 820 Ocean Centre, Kowloon, Hong Kong.

2. The partners in the Plaintiff carry on the practice of the partnership under the terms of a Partnership Agreement dated 10th June, 1968 ("the Partnership Agreement") as amended by a Supplemental Agreement dated 24th day of April, 1970 ("the Supplemental Agreement").

3. The Plaintiff will refer to the Partnership Agreement and the Supplemental Agreement for their full terms and effect at the trial. It will rely in particular upon the following clauses in the Partnership Agreement: – 10

3 (a) and 3 (b), 4, 8, 14 (b), 15, 17 (b), 18 (a), 19, 22, 23.

4. Clause 28 (a) of the Partnership Agreement provides "Except on dissolution, no partner ceasing to be a partner for any reason whatsoever shall for a period of 5 years thereafter act as a solicitor, notary, trade mark or patent agent or in any similar capacity in the Colony of Hong Kong whether as a principal, clerk or assistant for any person, firm or company who was at the time of his ceasing to be a partner or had during the period of 3 years prior thereto been a client of the partnership Provided, however that this Clause shall not apply to a partner acting in any such capacity in the course of employment with Government or any public body or with any company or organisation which is not itself engaged in professional practice in any of the above fields." 20

5. The Defendant joined the Plaintiff as an Assistant Solicitor on 1st May, 1967, having not previously practised as a Solicitor in Hong Kong. He became a salaried partner in the Plaintiff on 1st July, 1973 and was admitted as a capital partner on the terms of the Partnership Agreement on 1st April, 1974. He was a party to the Supplemental Agreement. He resigned from the partnership with effect from 31st December, 1982.

6. In the premises the Plaintiff will contend that the Defendant was and is: –

(a) bound to observe the terms of the Partnership Agreement and in particular Clause 28 (a) thereof.

(b) under a duty, imposed upon him at common law and/or to be implied by reason of the terms of the Partnership Agreement and the Supplemental Agreement, not to solicit any person, firm or company who had, during the period of 3 years prior to 31st December, 1982, been a client of the Plaintiff. 30

7. Wrongfully, and in breach of the said Clause 28 (a) of the Partnership Agreement the Defendant has accepted instructions to act as a solicitor for firms or companies who were at the time of his ceasing to be a partner or who had been during the period of 3 years prior to 31st December, 1982, been clients of the Plaintiff.

Particulars

The Defendant has accepted instructions from the following companies: –

United Feature Syndicate Inc.
Yoshida Kogyo KK
Dorman International Ltd.
Casio Computer Co. Ltd.
Crocodile Garments Ltd.
Easey Garment Factory Ltd.
John Walker & Sons Ltd.
Honor Growth 10

Together the above named clients are hereinafter referred to as "the said clients".

8. Wrongfully, and in breach of the said duty, the Defendant has solicited the said clients.

Particulars

The Plaintiff will rely upon the facts deposed to in paragraph 14 of the affidavit of the Defendant sworn herein on 11th February, 1983, the documents exhibited as exhibit "RMB-2" thereto, the facts deposed to in the affidavit of Yoko Mita Bridge, the Defendant's wife, sworn herein on 10th February, 1983, the documents which are exhibited as exhibit "JRW-5" to the affidavit of John Richard Wimbush, joint senior partner of the Plaintiff ("Mr. Wimbush"), sworn herein on 5th February, 1983, and with reference to 20 Easey Garment Factory Ltd. the document exhibited as exhibit "JRW-7" to the affidavit of Mr. Wimbush sworn herein on 11th February, 1983, and the facts deposed to in the affidavit of the Defendant sworn herein on 16th February, 1983.

9. By an agreement in writing dated 10th January, 1980 between the Plaintiff of the one part and Timothy John Hancock ("Mr. Hancock") of the other part, the Plaintiff agreed to employ Mr. Hancock and Mr. Hancock agreed to serve the Plaintiff as an assistant solicitor for a period of 48 months from 1st March, 1980.

10. By an agreement in writing dated 30th June, 1981, between the Plaintiff of the one part and Anthony C. D. Evans ("Mr. Evans") of the other part, the Plaintiff agreed to employ Mr. Evans and Mr. Evans agreed to serve the Plaintiff as an assistant solicitor for a 30 period of 48 months from 27th July, 1981. The said agreements were in identical terms *mutatis mutandis* to each other.

11. The Defendant was a partner in the Plaintiff at the date of both the said agreements and in the premise was a party to, and had knowledge of, the said agreements.

12. On or before 22nd December, 1982, the Defendant in breach of Clause 17 (b) of the Partnership Agreement and/or his fiduciary duty of good faith and honesty, wrongfully interfered with and/or induced Mr. Hancock to breach his contract of employment with

the Plaintiff by offering to employ Mr. Hancock as an assistant solicitor. On or before 31st December, 1982, the Defendant likewise wrongfully interfered with and/or induced Mr. Evans to breach his contract of employment with the Plaintiff by offering to employ Mr. Evans as an assistant solicitor.

13. Induced by the said offers of employment from the Defendant, Mr. Hancock and Mr. Evans, by letters dated 22nd December, 1982 and 1st January, 1983 respectively, addressed to Mr. Wimbush, purported to give notice to terminate their contracts of employment with the Plaintiff.

14. As a result of the Defendant's said breaches of contract, breach of duty and inducement of breach of contracts, the Plaintiff has suffered loss and damage. 10

15. Further, unless restrained by this Honourable Court, the Defendant threatens to commit further breaches of contract and breaches of duty and to induce further breaches of contract.

AND THE PLAINTIFF CLAIMS: –

1. An Injunction restraining the Defendant, whether by himself, his servants or agents for a period of 5 years from the 31st December, 1982 from acting as a solicitor, notary, trade mark or patent agent or in any similar capacity in the Colony of Hong Kong whether as principal, clerk or assistant for any person, firm or company who was at the time of his ceasing to be a partner or had, during the period of 3 years prior to 31st December, 1982 been a client of the Plaintiff, unless the Plaintiff acts in any such capacity in the course of 20 employment with Government or with any public body or with any company or organisation which is not itself engaged in professional practice in any of the above fields.

2. An Injunction to restrain the Defendant whether by himself, his servants or agents for a period of 5 years from 31st December, 1982 from soliciting any person, firm or company who had, during the period of 3 years prior to 31st December, 1982 been a client of the Plaintiff.

3. An Injunction to restrain the Defendant, whether by himself, his servants or agents inducing any employee of the Plaintiff to breach his or her contract of employment with the Plaintiff.

4. An enquiry as to damages for breach of contract, breach of duty and inducing 30 breach of contract.

Served this 7th day of March, 1983.

Ronny F. H. Wong

DEFENCE

1. Paragraph 1 of the Statement of Claim is admitted.

2. Save that the Supplemental Agreement is dated the 24th day of April, 1979, paragraph 2 of the Statement of Claim is admitted.

3. The Defendant will, if necessary, refer to the Partnership Agreement and the Supplemental Agreement for their full terms, effect and construction.

4. It is admitted that Clause 28(a) of the Partnership Agreement is as set out in paragraph 4 of the Statement of Claim.

5. Paragraph 5 of the Statement of Claim is admitted.

6. As to paragraph 6(a) of the Statement of Claim, the Defendant says that Clause 28(a) of the Partnership Agreement is void as being an unreasonable restraint of trade in that: 10

(a) It is too wide in that it purports to cover the whole of Hong Kong.

(b) The term of 5 years is too long.

(c) It covers all of the Plaintiff's clients and not only those for whom the Defendant had acted.

(d) None of the aforesaid terms is necessary for the protection of the Plaintiff.

(e) The Plaintiff is not entitled in law to protect the whole of its existing business by such a clause on the Defendant's resignation when the Defendant had no dealings with any of the Plaintiff's clients other than those of the industrial/ 20 intellectual property department.

(f) In the circumstances obtaining, the restraint is contrary to the public interest in that

(i) the public is denied the services of an expert in the field of industrial/intellectual property law where such expertise is in great demand and in short supply in Hong Kong;

(ii) covenants restraining solicitors from acting for any one who wishes to instruct them alternatively for former clients are in themselves contrary to public policy.

Save as aforesaid, paragraph 6(a) of the Statement of Claim is denied. 30

7. No admission is made in relation to paragraph 6(b) of the Statement of Claim, and the Plaintiff is put to strict proof of the precise scope of the duty alleged.

8. It is admitted that the Defendant had accepted instructions to act for the following companies particularised in paragraph 7 of the Statement of Claim, namely United Feature Syndicate Inc., Yoshida Kogyo K.K., Dorman International Ltd, Casio Computer Co.,Ltd., Crocodile Garments Ltd and John Walker & Sons Ltd.

9. As for the other companies particularised in paragraph 7 of the Statement of Claim, the Plaintiff has not received instructions to act for any of them for any particular case, but had indicated, when he was asked whether he would act for them, that he would be prepared so to act if that was their wish. Save as aforesaid, paragraph 7 of the Statement of Claim is denied.

10. It is denied that the Defendant has solicited any of the companies particularised in paragraph 7 of the Statement of Claim, and paragraph 8 of the Statement of Claim is denied.

11. Paragraph 9 of the Statement of Claim is admitted.

12. Paragraph 10 of the Statement of Claim is admitted.

13. Save that the Defendant had not read either of the Hancock or Evans agreements, and had no detailed knowledge thereof especially as to whether the agreement could be ~~terminated by giving notice, until after the~~ commencement of the proceedings herein, paragraph 11 of the Statement of Claim is admitted.

14. Each and every allegation contained in paragraph 12 of the Statement of Claim is denied. The Defendant was assured by both Mr. Hancock and Mr. Evans that they had taken advice on their agreements and that the same were terminable on giving reasonable notice. At no time did the Defendant induce or advise either of them in any way. All that the Defendant did was to indicate to them that he was in a position to offer them employment when they were in a position to take up such employment. At no time did the Defendant intend for either Mr. Hancock or Mr. Evans to act in breach of their contracts with the Plaintiff.

15. Save that it is admitted that both Mr. Hancock and Mr. Evans gave notice to Mr. Wimbush to terminate their contracts of employment with the Plaintiffs, paragraph 13 of the Statement of Claim is denied.

16. Each and every allegation contained in paragraphs 14 and 15 of the Statement of Claim is denied. In particular, it is specifically denied that the Plaintiff has suffered any loss or damage.

17. Save as it herein expressly admitted, each and every allegation contained in the Statement of Claim is hereby denied as if herein set out and seriatim traversed.

Served this 21st day of March 1983.

ROBERT KOTEWALL

In the Supreme Court of Hong Kong Court of Appeal
No. 9
Supplementary Notice of Appeal
29th March 1983

SUPPLEMENTARY NOTICE OF APPEAL

TAKE NOTICE that at the hearing of the above Appeal, the above named Appellant/Defendant will rely on the following further ground for this Appeal: –

The learned Judge erred in failing to find that the relevant date for testing the validity of the restrictive covenant in question was 1st April 1974.

Dated the 29th day of March 1983.

Herbert Smith & Co.
Solicitors for the Appellant/Defendant

BEFORE THE HONOURABLE MR. JUSTICE LEONARD, VICE-PRESIDENT, THE HONOURABLE MR. JUSTICE CONS, JUSTICE OF APPEAL, AND THE HONOURABLE MR. JUSTICE FUAD, JUSTICE OF APPEAL.

ORDER

UPON READING the Notice of Appeal dated 7th March, 1983, and the Supplementary Notice of Appeal dated 29th March 1983, on behalf of the Defendant/Appellant by way of appeal from the Order of the Honourable Mr. Justice Hunter given on the 1st day of March, 1983, whereby it was ordered and directed that the Defendant whether by himself, his servants or agents, be restrained until the trial of this action or further order from: – 10

(1) Without the written consent of the Plaintiff acting as a solicitor, notary, trademark or patent agent or in any similar capacity in the Colony of Hong Kong whether as a principal, clerk or assistant, for any person, firm or company who was at the time of his ceasing to be a partner or had, during the period of three years prior to 31st December, 1982 been a client of the Plaintiff, unless the Defendant acts in any such capacity in the course of employment with Government or any public body or with any company or organisation which is not itself engaged in professional practice in any of the above fields;

(2) Soliciting any person, firm or company who had, during the period of three years prior to 31st December, 1982 been a client of the Plaintiff; and 20

(3) Inducing any employee of the Plaintiff to breach his or her contract of employment with the Plaintiff.

AND UPON READING the said Order

AND UPON READING the Agreement reached between the Plaintiff and the Defendant that: –

1. the hearing of the Summons for Injunctions before the Honourable Mr. Justice Hunter be treated as the trial of the action.

2. the Order of the Honourable Mr. Justice Hunter dated 1st March 1983 that the Plaintiff's costs of the said application be costs in the cause do stand.

3. the said Order be treated as having been in the form of permanent injunctions 30 as if made at trial.

4. the undertakings set out in items (2) and (3) of the Order of the Honourable Mr. Justice Hunter be treated as permanent undertakings.

In the Supreme Court of Hong Kong Court of Appeal No. 10 Order of the Court of Appeal 3rd May 1983 (Cont'd.)

AND UPON HEARING Counsel for the Defendant and Counsel for the Plaintiff.

IT IS ORDERED that this appeal be dismissed.

AND IT IS FURTHER ORDERED that the Defendant/Appellant whether by himself, his servants or agents, be restrained until 31st December, 1987 from: –

without the written consent of the Plaintiff/Respondent acting as a solicitor, notary, trademark or patent agent or in any similar capacity in the Colony of Hong Kong whether as a principal, clerk or assistant, for any person, firm or company who was at the time of his ceasing to be a partner or had, during the period of three years prior to the 31st December 1982 been a client of the Plaintiff/Respondent unless the Defendant/Appellant acts in any such capacity in the course of employment with Government or any public body or with any company or organisation which is not itself engaged in professional practice in any of the above fields. 10

AND IT IS FURTHER ORDERED that enquiry as to damages be referred to the Honourable Mr. Justice Hunter.

AND IT IS FURTHER ORDERED that the costs of this appeal and of the application before the Honourable Mr. Justice Hunter be paid by the Defendant/Appellant to the Plaintiff/Respondent, such costs to be taxed if not agreed, with a Certificate for two Counsel.

DATED the 3rd day of May 1983.

In the Supreme Court of Hong Kong Court of Appeal No. 11 Judgment of the Court of Appeal 3rd May 1983

LEONARD, V.-P., CONS AND FUAD, J.J.A.

DATE: 3RD MAY, 1983.

JUDGMENT

Fuad, J.A.:

This appeal concerns the validity of a restrictive covenant in a partnership agreement entered into between the partners of a leading firm of solicitors in Hong Kong. The controversy is between the Plaintiff firm, Deacons, and the Defendant, Mr. Robin Bridge, one of the partners who has retired. We are, of course, only to determine the legal rights of the parties but I may be permitted to remark that it is an unhappy case indeed. The facts are to be found in affidavits sworn by Mr. John Wimbush, a joint Senior Partner of Deacons, and by Mr. Bridge. There is no real dispute about the facts which will govern our decision. 10

The practice of Deacons (under different names until 1925) has been in existence in Hong Kong since 1860. In the context of Hong Kong it is a very large firm, now serviced by 27 partners and 49 Assistant Solicitors. It has a wide and substantial practice, with its main office in Swire House, Central, and a small branch in Kowloon. The current Partnership Agreement was drawn up on the 10th June 1968, as varied by a Supplemental Agreement dated the 24th April 1979. All "Capital Partners" are bound by these agreements. Clause 28(a) of the main agreement is in these terms –

> "Except on dissolution, no partner ceasing to be a partner for any reason whatsoever shall for a period of 5 years thereafter act as a solicitor, notary, trade mark or patent agent or in any similar capacity in the Colony of Hong Kong whether as principal, clerk or assistant for any person, firm or company who was at the time of his ceasing to be a partner or had during the period of 3 years prior thereto been a client of the partnership Provided however that this Clause shall not apply to a partner acting in any such capacity in the course of employment with Government or any public body or with any company or organisation which is not itself engaged in professional practice in any of the above fields." 20

Mr. Bridge joined Deacons as an Assistant Solicitor on the 1st May 1967. He had been articled in England and had not previously practised in Hong Kong. He rose to become a salaried Partner on the 1st July 1973 and a Capital Partner on the 1st April 1974. He was then aged about 31. He retired from the Partnership, in circumstances which need not detain us, effectively from the 31st December 1982, and received the sums of money to which he was entitled under the terms of the Partnership Agreement upon his retirement. 30

Not long after Mr. Bridge joined the firm, he developed an increasing interest in Intellectual and Industrial Law and the Law relating to Trademarks. This area of Deacons' practice had been growing during the 1960s and 1970s. The invitation to Mr. Bridge to join the firm as a Salaried Partner was partly prompted by the expectation that during the next year (1974) the partner to whom he had been working would become Senior Partner and Mr. Bridge would then take over responsibility for the Intellectual and Industrial

Property area of the firm's practice, "which", says Mr. Wimbush, "by then either had been, or was about to be, recognised as a department in its own right". Mr. Wimbush acknowledges that "under Mr. Bridge's guidance, the Plaintiff's Practice in the Intellectual and Industrial Property field had become the largest practice of any firm in Hong Kong".

In July 1981 Mr. Bridge's Department moved into a separate suite of offices on a different floor in Swire House and at the time of his withdrawal from the partnership, the Department comprised five Assistant Solicitors, two Legal Executives, nine clerks, eight secretaries, and other ancillary junior staff.

Disputes arose between the parties (particularly in relation to Mr. Bridge's obligations under the Partnership Agreement) and Deacons took out a writ against him on the 4th February 1983 seeking various injunctions and claiming damages. This was followed by an application by Deacons for interlocutory relief. The Summons came before Hunter J. who delivered a considered judgment on the 1st March finding in favour of Deacons. The Order, made on the usual undertakings, was very substantially in the form sought by the application and was expressed to take effect on the 3rd March. It was in these terms –

> "IT IS ORDERED AND DIRECTED that the Defendant whether by himself, his servants or agents, be restrained until the trial of this Action or further Order from: –
>
> 1. Without the written consent of the Plaintiff acting as a solicitor, notary, trademark or patent agent or in any similar capacity in the Colony of Hong Kong whether as a principal, clerk or assistant, for any person, firm or company who was at the time of his ceasing to be a partner or had, during the period of three years prior to 31st December, 1982 been a client of the plaintiff, unless the Defendant acts in any such capacity in the course of employment with Government or any public body or with any company or organisation which is not itself engaged in professional practice in any of the above fields.
>
> 2. Soliciting any person, firm or company who had, during the period of three years prior to 31st December, 1982 been a client of the Plaintiff.
>
> 3. Inducing any employee of the Plaintiff to breach his or her contract of employment with the Plaintiff."

When the appeal was opened, Counsel informed us that since the institution of the appeal an agreement had been reached between the parties which is to the following effect, that:

> "1. the hearing of the Summons for injunctions be treated as the trial of the action.
>
> 2. the Order of Hunter J. below of Plaintiffs' costs in cause to stand.
>
> 3. the Order appealed against be treated as having been in the form of permanent injunctions as if made at trial.

4. the undertaking [to be] given to the Court of Appeal in respect of items 2 and 3 of the Order of Hunter J. be treated as permanent undertakings."

Certain issues which could present difficulties in cases such as the present can be got out of the way quite quickly, for it is common ground that –

(a) the covenant contained in clause 28(a) of the Partnership Agreement ("the Covenant") is of a class which is prima facie void and cannot be enforced unless the test propounded by the cases can be satisfied;

(b) the Covenant stands or falls in its entirety;

(c) the meaning of the Covenant is so plain that no task of construction falls upon the court; 10

(d) the reasonableness of the Covenant should be tested as at the 1st April 1974 (which was the date of Mr. Bridge's accession to the partnership);

(e) if the Covenant is binding and enforceable, an appropriately worded injunction cannot be resisted.

The leading case, I think it can fairly be said, on the issues that are before this court is *Esso Petroleum Co. Ltd.* v. *Harper's Garage (Stourport) Ltd.* [1968] A.C. 269. What I might call the test of reasonableness pronounced by Lord Macnaughten in *Nordenfelt* v. *Maxim Nordenfelt Co.* [1894] A.C. 535, at p.565 was expressly approved by the House of Lords, and cited by three of their Lordships. This is what Lord Macnaughten said –

> "All interference with individual liberty of action in trading, and all restraints of trade of themselves, if there is nothing more, are contrary to public policy, and therefore void. That is the general rule. But there are exceptions: restraints of trade and interference with individual liberty of action may be justified by the special circumstances of a particular case. It is a sufficient justification, and indeed it is the only justification, if the restriction is reasonable – reasonable, that is, in reference to the interests of the parties concerned and reasonable in reference to the interests of the public, so framed and so guarded as to afford adequate protection to the party in whose favour it is imposed, while at the same time it is in no way injurious to the public." 20

In the *Esso Petroleum* case Lord Hodson, at p.319, referred to the authoritative statement in *Herbert Morris Ltd.* v. *Saxelby* [1916] 1 A.C. 688 that the onus of establishing that an agreement is reasonable as between the parties is upon the person who seeks to rely on the agreement, while the onus of establishing that it is contrary to the public interest although it is reasonable between the parties, is on the party so alleging, but commented "The reason for the distinction may be obscure but it will seldom arise since once the agreement is before the Court it is open to the scrutiny of the court in all its surrounding circumstances as a question of law". On this point, Lord Pearce said this, at p.323 – 30

> "The onus is on the party asserting the contract to show the reasonableness of the restraint. That rule was laid down in the *Nordenfelt* case and in *Herbert Morris Ltd.*

v. Saxelby. When the court sees its way clearly, no question of onus arises. In a doubtful case where the court does not see its way clearly and the question of onus does arise, there may be a danger in preferring the guidance of a general rule, founded on grounds of public policy many generations ago, to the guidance given by free and competent parties contracting at arm's length in the management of their own affairs. Therefore, when free and competent parties agree and the background provides some commercial justification on both sides for their bargain, and there is no injury to the community, I think that the onus should be easily discharged. Public policy, like other unruly horses, is apt to change its stance; and public policy is the ultimate basis of the courts' reluctance to enforce restraints. Although the decided cases are almost invariably based on unreasonableness between the parties, it is ultimately on the ground of public policy that the court will decline to enforce a restraint as being unreasonable between the parties. And a doctrine based on the general commercial good must always bear in mind the changing face of commerce. There is not, as some cases seem to suggest, a separation between what is reasonable on grounds of public policy and what is reasonable as between the parties. There is one broad question: is it in the interests of the community that this restraint should, as between the parties, be held to be reasonable and enforceable?"

And at p.340, Lord Wilberforce had this to say –

"The second observation I would make is this: the case has been fought exclusively on the first limb of the Nordenfelt test of reasonableness (in reference to the interest of the parties) the respondent explicitly disclaiming any reliance on the second limb (in reference to the interests of the public). The first limb itself rests on considerations of public policy: it must do so in order to justify releasing the parties from obligations they have voluntarily accepted. But in relation to many agreements containing restrictions, there may well be wider issues affecting the interests of the public than those which relate merely to the interests of the parties; these may have been the subject of inquiry as in this case under statutory powers (Monopolies and Restrictive Practices (Inquiry and Control) Act, 1948) or the subject of a finding by another court (Restrictive Trade Practices Act, 1956) or may be investigated by the court itself. In the present case no separate considerations in this wider field have emerged which are inconsistent with the validity of the Mustow Green solus agreement – on the contrary such as have appeared tend to support it, but I venture to think it important that the vitality of the second limb, or as I would prefer to put it of the wider aspects of a single public policy rule, should continue to be recognised."

As both Counsel appearing before us agree, the following passage from the speech of Lord Reid (at p.301) is of particular importance:

"Again, whether or not a restraint is in the personal interests of the parties, it is I think well established that the court will not enforce a restraint which goes further than affording adequate protection to the legitimate interests of the party in whose favour it is granted. This must I think be because too wide a restraint is against the public interest. It has often been said that a person is not entitled to be protected

In the Supreme Court of Hong Kong Court of Appeal No. 11 Judgment of the Court of Appeal 3rd May 1983 (Cont'd.)

against mere competition. I do not find that very helpful in a case like the present. I think it better to ascertain what were the legitimate interests of the appellants which they were entitled to protect and then to see whether these restraints were more than adequate for that purpose."

The cases certainly show that most of the decisions reached by the courts over the years in this area of the law were on the basis of reasonableness between the parties, and it seems to me that the House of Lords in the *Esso Petroleum* case must be understood to have stressed the importance of the public interest consideration and placed it in its proper context.

Before I turn to the submissions made by Mr. Grabiner on behalf of Mr. Bridge, I will make two preliminary observations. Firstly, whether the Covenant can be said to fall within a particular category, or whether, being a covenant in a partnership agreement, it is sui generis, since the relationship of employer and employee is not involved, the cases which merely show the application of the relevant principles where such a relationship was the foundation of the agreement cannot be regarded as of great assistance. I say this because the law is well settled; difficulties arise in its application to particular circumstances, as the many cases cited to us show. Secondly (as I think was common ground) the duty of the court is to examine the Covenant at the date when Mr. Bridge agreed to be bound by it, against the background of the circumstances then subsisting and how the parties reasonably expected matters to develop, and what happened thereafter is not relevant. It is all too easy during the course of a hearing for this principle to become obscured. It must surely be that a covenant that is valid when it was entered into cannot be rendered invalid on account of the subsequent turn of events.

Mr. Grabiner submitted that the test in the *Esso Petroleum* case applied to the facts, required Deacons to identify and prove a legitimate proprietory interest deserving of the protection afforded by the Covenant. It could be no wider in scope (on a reasonable interpretation) than was reasonably necessary properly to protect that interest. Mr. Bridge was prepared to concede that Deacons did have an interest that it could legitimately protect – that interest was those clients of their Intellectual Property Department for whom he had acted in the relevant period or, at most, all clients of that Department including those for whom he did not personally act. The vast majority of Deacons' clients had never utilized the Department. On the evidence there were well in excess of 40,000 client files of which only 4,400 were in the Trade Mark field or were "current" under Mr. Bridge. In 1981 the total of delivered bills of Deacons to clients was HK$132,000,000 of which only some HK$6,000,000 was attributable to the Intellectual Property Department – i.e. about 4.5%.

It was also contended that the court, in deciding the question of law involved, had to bear in mind that this was a case of a solicitor becoming a member of an established partnership. Assuming that the original parties to the 1968 Agreement had negotiated on an equal bargaining footing, when Mr. Bridge acceded to the partnership he had been presented with the terms of the Partnership Agreement which were not the subject of any re-negotiation. He had been given 5% of the equity at a time when 74% was held by four of the Partners and 90% was held by six of the Partners. As is pointed out in LINDLEY ON PARTNERSHIP (14th Edition) at p.212 " . . . . although technically amounting to a partnership, the absence of an equity share in the partnership and the absense of significant

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decision-making power, may exceptionally place a partner substantially in the category of an employee vis-a-vis his co-partners for the present purposes. In cases however, where a restraint has been entered into between partners upon equal terms at the inception of the partnership it would seem that this is an argument for the restraint being upheld". I think it would be wrong to approach this case on the footing that Mr. Bridge was joining a big and well-established firm and buying only a 5% interest. He was a solicitor who had been with the firm (albeit in different capacities) for some seven years before he acceded to the partnership agreement. I see much force in Mr. Hoffman's point that the mutuality of the covenant is the most important consideration. Mr. Bridge was very much equal there. It was as much in his interests at the time he joined the firm to have such a covenant binding all his partners. If any of the senior partners had left soon thereafter and set up in competition with him they might well have been able to attract many more clients away from the firm than could Mr. Bridge, and his interest would thereby have been substantially diminished. I do not think it can fairly be suggested that the firm was taking any advantage at all of Mr. Bridge when he became a partner. Although the parties might be said not to have had equal bargaining power, he was an experienced professional man dealing with his future partners at arm's length. 10.

It was urged upon us on behalf of Mr. Bridge that although he took away with him some $3.5m which was his due on retiring from the Partnership, the trivial sum of $59,000 represented the goodwill he had sold and this could not be regarded as a sale of goodwill that would entitle the firm to protect itself from competition from Mr. Bridge on the principles of the vendor/purchaser cases. This was not a case (of which *Ronbar Enterprises Ltd.* v. *Green* [1954] 2 All E.R. was an example) where the court would recognise that the parties were entitled to enter into a restrictive agreement regarding competition designed to give efficacy to the transaction, to the extent that it was reasonably necessary to enable the purchaser to reap the benefit of what he had bought; "restrictions of that kind are regarded as necessary, not only in the interests of the purchaser, but in the interests of the vendor also, for they not only preserve the value of that which he buys, but also enable the vendor to realise a satisfactory price. It is obvious that in many types of business the goodwill will be well-nigh unsaleable if it was unlawful for the vendor to enter into an adequate covenant against competition" (per Harman J. at p.270). 20 30

It must be accepted that a covenant which governs the sale of a share in a partnership of this kind is very different from one which affects the run of the mill sale of a business to a successor in a trade. The essential difference here, of course, is the element of mutuality in the Covenant. When a person became bound by it no one could know who might at any given time be the vendor and who the purchaser. However, I do not think that it can be right to focus only upon the amount of $59,000 expressed to be in respect of the goodwill sold in accordance with clause 23 of the main Agreement, and from there successfully maintain that the broad principle which justifies reasonable restrictions upon mere competition in vendor and purchaser cases is not here applicable. In my view Mr. Hoffman was right to ask us to look at the entire picture. Clause 23 is long and I will not read it out but I have no difficulty in holding that it was not a mere colourable sale of Mr. Bridge's share in the partnership interest. When one bears in mind what a complicated and costly exercise it would be each time a partner retired to value his share in all the assets and goodwill of the partnership it seems to me entirely reasonable that the agreement should fix a notional sum in respect of the figure for work in progress and the goodwill, (including the 40

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library, office equipment etc., called in the agreement "the agreed value of the office assets"). Indeed I cannot see how in practice, it could be done in any other way. It has to be noted that Mr. Bridge was also a party to the Supplemental Agreement dated the 24th April 1979 by which, inter alia, the 1968 figures of $500,000 for "work in progress" and $400,000 for the "office assets" were raised respectively to $5m and $1m. Mr. Bridge cannot now be heard to say that the amount he received on withdrawing from the partnership was not a genuine sale of his entire interest in the firm so that he is entitled to some special indulgence on that account. It is well settled that "The court no longer weighs the adequacy of the consideration in any particular case" (per Lord Parker of Waddington in *Herbert Morris* v. *Saxelby*, at p.707). 10

It was a substantial plank in Mr. Grabiner's argument that the size of Deacons and the great number of their clients made an important difference. He suggested that for this reason Deacons might have to bind their Partners by more limited restriction clauses, and the scope of their legitimate interest had been revealed by what Mr. Wimbush had said in his affidavit – the clients connected with Mr. Bridge's specialised work – and to Mr. Bridge at a meeting held on the 14th September 1982: "You can injure Deacons in the area of Trademark work". He also submitted that Deacons had made no effort to produce evidence filling the gap between the clients of Mr. Bridge's Department and those of the firm's other Departments. The absence of this critical evidence was fatal to their case. On this point he relied heavily on a passage from the speech of Lord Shaw of Dunfermline in *Herbert Morris* v. *Saxelby*, at p.715 – 20

> "My Lords, the question is, can such a voluntary restraint be enforced by law? Observe its scope. In time, it is for seven years of a man's working life. In space, it is over the entire United Kingdom. In subject-matter, it is directly or indirectly and it is wholly, for that time and in that space, subversive of the way of life to which the servant's past special training has led up.
>
> This question is legitimate, and it is legitimately so put. For in my view, my Lords, when such an agreed restraint is made the basis of a claim for injunction, (1.) it is not enough to table the agreement; (2.) facts and circumstances must be set forth which would warrant the law being invoked, and the statement of these facts and circumstances must set out the specialties affecting the relations of parties, or the particular necessities of the case, so as to overcome the presumption which the law makes in favour of the free disposal of one's own labour; (3.) if such facts and circumstances be relevantly set forth, the onus of proof is upon the party averring them to satisfy the Court of their sufficiency to overcome the presumption; while (4.) as the time of restriction lengthens, or the space of its operation extends, the weight of that onus grows. Subject to these conditions and within these limits, a case may be made out for restraining that general freedom of trade to which the public interest leans in favour of the particular freedom of contract which it may be established it was not inconsistent with the general interest to maintain." 30 40

With respect, about the principle embodied in that passage there can be no doubt. If there are special circumstances which are put forward to justify a particular restriction or its width, evidence is both admissible and necessary but surely Deacon's case cannot fall to the ground because the affidavit evidence filed on their behalf does not expressly say that they were interested in keeping their clients, and explain why. One wonders what could

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have been said to advance their case in this respect. As Mr. Hoffman has suggested, the fact that Mr. Wimbush identified the firm's main area of concern in a case such as the present does not mean that they cannot rely on a wider self-evident interest. It is difficult to conceive of any professional partnership which is to continue not being anxious to retain their existing clients. The matter it seems to me cannot be approached upon principles applicable to "area" covenants or "master and servant" covenants.

As regards the duration of the restriction, Mr. Grabiner submitted that five years was excessive. Deacons had never sought to justify that period (i.e. in terms of client behaviour or the solicitor/client relationship). Deacons had to show that five years was necessary for the legitimate purposes of their business. Five years had no more logic to it than, say, three 10 years except that it heavily favoured Deacons in protecting them against competition for a long time. I am unable to accept this proposition. I can find no basis for holding that the period agreed to by the Partners was excessive in all the circumstances, and if the Covenant is otherwise valid in my judgment it should not be struck down on account of its duration. I have not, of course, considered this particular question in isolation but find it convenient to dispose of it at this stage.

On what might be called the public interest aspect of the case, Mr. Grabiner accepted that it was desirable that the public should be served by large firms of solicitors such as Deacons, with many specialised departments. It was also desirable that the public should have access to the services of Mr. Bridge because he was one of the very few 20 specialists in Hong Kong in the field of Intellectual Property Law. Accordingly Deacons' legitimate interest in protecting its client connection in the Intellectual Property Department had to be balanced against that public interest. If drawn too widely (as was the case) the Covenant operated substantially as a covenant against competition. This had a particularly striking effect where the covenantee already occupied a predominant position in the market place in Hong Kong for solicitors because it had a substantial number of important local and multi-national clients. This argument was especially significant in relation to Hong Kong where competition should wherever possible be encouraged by the Courts. During the course of his submission Mr. Grabiner also suggested that the position might have been different if Deacons had been a small firm. All the facts and circumstances 30 of a case must, of course, be taken into account, but I am bound to say I can see no justification for applying different criteria to covenants of this kind between solicitors, depending on their prestige and the number of their clients. The effect upon a small and a large firm of the loss of clients must, in proportion, be the same.

Mr. Grabiner very properly drew our attention to an unreported decision of the Court of Appeal in England to the effect that an injunction should not be granted so as to prevent a solicitor from acting for a client who wished him to act, on the grounds that the fiduciary relationship between a solicitor and the client makes it contrary to public policy to prevent a person from retaining the solicitor of his choice. This was *Oswald Hickson Collier & Co.* v. *Carter-Ruck* (20th January 1982). I do not think it necessary to 40 discuss the facts of that case or how Hunter J. dealt with it in the instant case and Walton J. dealt with it in the unreported case of *Edwards and Others* v. *Worboys* (18th March 1983). In the unreported judgment of the Court of Appeal, on appeal from Walton J. (25th March 1983), Dillon L.J. said, inter alia –

"The case came before the Court of Appeal on an appeal from a decision of Mr. Justice Jupp at an interlocutory stage of the dispute between Mr. Carter-Ruck, the defendant, and his partners or former partners. The leading judgment of Lord Denning, M.R. is concerned for the first several pages with a completely different point, namely a special term of the partnership agreement in that case which entitled Mr. Carter-Ruck to act for clients whom he had introduced to the firm. That is not relevant to the present case, but at page 6 of his judgment the Master of the Rolls refers to other points raised in the case, one discussed in the Court of Appeal but not taken in the court below being that a covenant not to approach, solicit or act for any clients of the firm would be contrary to public policy in so far as it precluded Mr. Carter-Ruck from acting for a client when that client wanted him to act for him. 10

The members of the court in the context of that case accepted that submission. I do not, however, read their judgments as laying down any rule of law on the effect of public policy in relation to covenants in restraint of trade on the part of solicitors or others who stand in fiduciary relationships with their clients. It would be surprising if they had done that without going into the relevant authorities.

It seems to me that all the members of the court are saying – and it appears even more clearly from the judgments of Lord Justice Kerr, and Lord Justice May – is that there was a serious issue to be tried that it could be said to be contrary to public policy that a solicitor should be precluded from acting for a client when the client wanted him to act for him. 20

If that is so, of course, then that is precisely what Mr. Justice Walton has done in the present case. He has accepted that there is an issue to be tried, but that is a long way from saying that it is unarguable on the plaintiffs' behalf that the covenant is enforceable. Indeed, one can think of various factors which would have to be weighed in the balance at the trial of the action which would point in favour of upholding this covenant. I do not need to rehearse them."

And Sir John Donaldson's short concurring judgment was as follows –

"I agree, and would only add that I regard the decision of this court in *Oswald Hickson Collier & Co.* v. *Carter-Ruck* as no more than a decision that there is a serious issue of law concerning the enforceability on grounds of public policy of a covenant which prevents a solicitor from continuing to act for an existing client if and when that client wishes him to act. I do not, and could not, express any view on how that issue should be resolved without hearing full argument of a type which would be quite inappropriate to interlocutory proceedings." 30

With great respect, I do not think that much more can usefully be said about the *Oswald Hickson* case. It is fair to Mr. Grabiner to note that he acknowledged that it might well now be for the House of Lords or the Privy Council to consider whether the ordinary principles applied to this class of case, laid down by a long line of authorities, should be modified by a new rule of law regarding covenants in restraint of trade by solicitors and other professional people who have a fiduciary relationship with their clients. Speaking for myself, and leaving the matter open, I am by no means persuaded that the authorities by 40

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which this court is bound would permit one to apply such a rule. I respectfully agree with Hunter J. in Hong Kong, and Walton J. in England, that in particular the decision of the House of Lords in *Fitch v. Dewes* [1921] 2 A.C. 158 would seem to present a formidable hurdle. And I may be permitted to ask myself, as did Walton J. what of other professional men and women? Could it be that the public interest could prevent a solicitor from entering into a covenant such as the one before us, and yet allow a doctor to do so? Some might feel that their health is more important than their legal affairs. If the work of solicitors (not in their partnerships but in their individual capacities) is so vital to the public interest it is perhaps surprising that the Law Societies of the Commonwealth have not stepped in to safeguard that interest by prohibiting such covenants. It might also be remarked that during the last 20 years or so the Legislature has greatly reduced the significance of common law rules on restraint of trade to stifle competition by manufacturers and distributors of goods, but has kept out of this area of the law. 10

Both Hunter J. and Walton J. remarked that a solicitor was not bound to accept a particular client. For the present I would say that I see considerable force in this point. It seems to me perfectly proper for a solicitor to refuse to act for a client, and in a case such as this to say "I am sorry I cannot act for you [any more] because I made a solemn promise to my former partners that I would not do so."

As to the actual form of the covenant, I feel that Mr. Hoffman is right to make the point that when a new partner becomes subject to it, it is difficult, if not impossible, to predict how his interests and scope of work will develop. Mr. Bridge clearly demonstrated his particular area of interest and expertise and it is true that it was in relation to this that he was taken on as a full partner, but who could tell what the position might have been if Mr. Bridge had decided, say, to stay on until retiring age, over a quarter of a century later? This mutual covenant had to apply to those who might attract away a large number of clients. I see no merit in the contention that different partners might reasonably have different covenants depending on their particular connections. Whatever their individual ages, abilities, interests, diligence or stature in the community, the essential fact was that they were all partners in a solicitors firm although (as was only to be expected) with different shares. It is against this background that the Covenant must be judged. 20 30

I have reached the conclusion that Deacons have amply established that the restraints contained in the Covenant go no further than affording adequate protection to their legitimate interests, for these legitimate interests seem to me plainly to extend to keeping all their clients, and not just those who happened to deal with Mr. Bridge, if they can. Mr. Bridge sold out his share in those interests when he left the firm and received a fair price for it. Deacons cannot prevent any of their clients going to any other of the numerous firms (some 180, the latest list published by the Law Society tells us) practising in Hong Kong. And Mr. Bridge has a very wide pool of potential clients to draw from. No doubt he has great skill and experience in his chosen field of the law but I cannot accept that the former clients of Deacons can only have their legal matters adequately dealt with by coming to him. I can find nothing to justify striking down the Covenant on considerations of the public interest. 40

In my judgment the Covenant can resist all the attacks made upon it and on the authorities it should be upheld. Before I take leave of this case I would mention one matter

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which caused Mr. Grabiner some concern and that was the risk Mr. Bridge might run in being condemned in contempt of court proceedings by inadvertently breaching the injunction I would in effect uphold. I am bound to say that I am confident that Deacons will do all it can to ensure that Mr. Bridge has all the information he needs to comply with the injunction, where his own knowledge is insufficient. I cannot envisage a real possibility that a sensible arrangement cannot and will not be worked out.

I would dismiss this appeal.

Leonard, V.P.:

I agree and have nothing to add.

Cons, J.A.:

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I am in full agreement with the judgment Fuad, J.A. has just delivered.

In the Supreme Court of Hong Kong Court of Appeal
No. 12
Order of the Court of Appeal
18th May 1983

BEFORE THE HONOURABLE SIR ALAN HUGGINS, VICE PRESIDENT, THE HONOURABLE MR. JUSTICE CONS, JUSTICE OF APPEAL AND THE HONOURABLE MR. JUSTICE FUAD, JUSTICE OF APPEAL.

ORDER

UPON READING the Notice of Motion for leave to Appeal dated the 9th day of May 1983 and the Affidavit of H.R.A. Anderson sworn on the 18th day of May 1983.

AND UPON HEARING Counsel for the Defendant and Counsel for the Plaintiff.

IT IS ORDERED THAT Leave be granted to the Defendant to Appeal to Her Majesty the Queen in her Privy Council from the Judgment of this Honourable Court dated 3rd May 1983.

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AND IT IS FURTHER ORDERED that the Appellant do within a period of two months pay the security in the nominal sum of one dollar.

AND IT IS FURTHER ORDERED that the record be prepared within two months.

AND IT IS FURTHER ORDERED that Costs of this Application be Costs in the Appeal.

Dated the 18th day of May 1983.

PART II

EXTRACTS FROM THE AFFIDAVIT OF JOHN RICHARD WIMBUSH SWORN ON 5TH FEBRUARY 1983.

I, John Richard Wimbush of 5 Coombe Road, The Peak, Hong Kong, Solicitor, make oath and say as follows: –

1. I am a joint Senior Partner with Mr. Robert Wong Wai-Pat in the firm of Messrs. Deacons, the Plaintiff herein, who are Solicitors and Notaries, and Agents for Trademarks and Patents, whose principal place of business is Swire House, Chater Road, Central, Hong Kong, with a branch office at 820 Ocean Centre, Kowloon, Hong Kong. I am duly authorised to make this Affidavit on behalf of the Plaintiff which I do, save as otherwise herein appears, from my own knowledge. 10

2. The Solicitors' practice now carried on under the name of Deacons has been in existence for well over 100 years. The name Deacons has been used on its own since 1925. Prior to that the name of the Practice reflected the admission and retirement of the Partners of the day. The war years apart, the Practice has been carried on continuously since about 1860.

3. I was admitted as a Solicitor of the Supreme Court of England and Wales in 1960. After practising there for one year, I joined the Plaintiff as an Assistant Solicitor in 1961.

4. At the time I joined the Plaintiff in 1961, the firm had 4 Partners and 3 Assistant Solicitors. Although by reason of its size, the firm was not at that time divided into departments, nevertheless a degree of specialisation existed amongst the Partners and, to a lesser 20 extent, amongst the Assistant Solicitors. The Plaintiff had, by the standards of those days, a substantial litigation practice which involved, amongst other things, handling cases for passing off, infringements of registered designs, and trademark infringements. (I cannot recall dealing with breach of patent rights although the Plaintiff was involved in registering UK patents in Hong Kong). The Plaintiff was one of some 4 or 5 firms in Hong Kong which handled on a regular basis the registration of trademarks and registered designs and a full-time trademark clerk was employed. The type of litigation to which I have referred was handled by one of the then Partners, Mr. J. C. B. Slack ("Mr. Slack") and one Assistant Solicitor, Mr. W. Turnbull ("Mr. Turnbull"). Mr. Turnbull was responsible for control of "the trademark department" and during his absence the trademark clerk would report 30 to Mr. Slack.

5. Within a few days of my arrival at the Plaintiff, Mr. Turnbull went on six months' leave during which responsibility for "the trademark department" passed to Mr. Slack. In 1964 or 1965 when Mr. Turnbull went away on long leave again, I was asked to take over temporarily responsibility for the trademark department. By that time, a very able Legal Executive, Mr. John Ip, was the trademark clerk and the department was very busy. As an Assistant Solicitor, I was involved in a large number of registrations, oppositions and prosecutions in relation to trademark matters. I also took responsibility during this time for applications (in London) for patents and design registrations and litigation involving alleged

infringements of registered designs. By 1965 one other full-time clerk was engaged in "the trademark department".

6. In July, 1968 I joined the Partnership as a Capital Partner on the terms of the Partnership Agreement ("the Partnership Agreement") dated 10th June, 1968, a true copy of which is now produced and shown to me and exhibited hereto marked "JRW-1". The Partnership Agreement was amended by a Supplemental Agreement ("the Supplemental Agreement") dated the 24th April, 1979, signed by all the then Capital Partners, including Mr. Bridge, in the firm; a true copy of the Supplemental Agreement is now produced and shown to me and exhibited hereto marked "JRW-2". All Solicitors who have joined the Partnership as Capital Partners since July, 1968 have done so on the terms of the Partnership Agreement, and undertaken to be bound by it and all Partners who have joined the Partnership as Capital Partners since April, 1979 have done so on the terms of the Partnership Agreement and the Supplemental Agreement and have undertaken to be bound by both Agreements. I became Joint Senior Partner of the Plaintiff on 1st January, 1978. 10

7. Over the years since I first joined the Plaintiff it has grown enormously in size. The Plaintiff is divided broadly into departments, serviced by 27 Partners and 49 Assistant Solicitors. The departments specialise in the following areas of law: –

Admiralty
Shipping Finance
Commercial & Company Law 20
Conveyancing
Litigation
Probate & Trusts
Company Secretarial Department
Finance & Banking Law
Trademark and Intellectual/Industrial Property
Taxation

The Kowloon branch office is less strictly divided into departments, but it covers the following areas of law:

Conveyancing work, including in particular properties in Kowloon and the New Territories 30
Litigation
Commercial Law
Some Trademark Work (although there is no Partner who specialises in this)

This expansion has had a marked effect upon the role of Partners in particular. It means that they can no longer personally be involved on a day-to-day basis with much of the legal work which is done in the various departments into which the firm has now been formally divided. As the Plaintiff grew, the time available to Partners for giving personal attention to each matter, as opposed to supervising the Assistants and Legal Executives actually handling the work, has diminished. Each file is specifically assigned to a Partner who remains ultimately responsible for it and who reads the incoming mail and telexes and signs the outgoing letters. Nevertheless, much of the work has to be left to the Assistant Solicitors or Legal Executives who of course remain responsible to the Partner. This means that letters which go out in the Partner's name have in fact been written by the Assistant Solicitor who has the conduct of the file. 40

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8. The Defendant herein, to whom I shall refer as Mr. Bridge, joined the Plaintiff as an Assistant Solicitor on 1st May, 1967, having been articled in England and been admitted as a Solicitor of the Supreme Court of England and Wales. At the time he joined the Plaintiff, he had not previously practised as a Solicitor in Hong Kong. He became a salaried Partner in the firm on 1st July, 1973 and was admitted as a Capital Partner on the terms of the Partnership Agreement on 1st April, 1974. He resigned from the Partnership with effect from 31st December, 1982.

9. At the time he joined the Plaintiff in May 1967, Mr. Bridge had only been admitted in England and Wales for a short period. After he joined the Plaintiff, I believe that he worked generally for a number of Partners, but within a relatively short space of time, he began working for Mr. Turnbull and soon developed a growing interest in Intellectual and Industrial Property Law and the Law relating to Trademarks. As I have explained, this was an area of the Practice which had been growing during the 1960s. That growth continued and indeed accelerated during the 1970s, not least because Industrial Design Copyright became actionable in Hong Kong as from the beginning of 1973. Mr. Bridge's invitation to join the Plaintiff as a Salaried Partner reflected the Plaintiff's expectation that, in the following year, Mr. Turnbull would become Senior Partner and Mr. Bridge would then become the Partner responsible for this aspect of the Plaintiff's practice which by then either had been, or was about to be, recognised as a department in its own right.

10. By December, 1981, reflecting the rapid growth to which I have already referred, Mr. Bridge submitted to the Partnership that a further Partner in his department was necessary. Under Mr. Bridge's guidance, the Plaintiff's Practice in the Intellectual and Industrial Property field had become the largest Practice of any firm in Hong Kong. By the time he retired on 31st December, 1982 the department employed full-time some 5 Assistant Solicitors, 2 Legal Executives, 9 Clerks of various grades and 8 secretaries and other persons. During this period of rapid growth, not only did the department accept responsibility for the traditional litigation and trademark and design registration work, but in addition it had expanded into advising on copyright, licensing and all aspects of litigious and non-litigious intellectual and industrial property law. By 31st December, 1982 this department occupied a separate suite of offices on the 17th floor of Swire House which had been acquired some 18 months previously as part of the long-term growth pattern of the Plaintiff's practice in this area.

11. I have referred above to Mr. Bridge's proposal in December, 1981 that the Plaintiff should appoint a second Partner to specialise in this kind of work. This was a view which I supported. The appointment of new Partners is, of course, a matter for the Partnership as a whole and, at that time, the Partnership felt Mr. Bridge's proposal was premature. As a result, Mr. Bridge became disenchanted with his situation, and gave notice of his intention to resign from the Partnership as from 31st December, 1982.

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No. 13
Extracts from the Affidavit of John Richard Wimbush sworn on 5th Feb. 1983 (Cont'd.)

14. [With a view to seeing if the differences between the partners could be resolved], a meeting took place on 14th September, 1982 between Mr. Bridge, myself and another Partner, Mr. Peter H. Davies, who kept a written record of the discussions (pp. 32-38 and 43-48 of "JRW-3"). At this meeting, Mr. Bridge was uncertain as to his intention. He told Mr. Davies and me that he had two alternatives, namely, as an in-house Attorney to Hong Kong and Kowloon Wharf or setting up his own practice, although he expressed a preference for the latter. He also told us at this meeting that he had spoken to a few clients of the Plaintiff and those clients wanted him to continue handling their litigation.

18. [It will be seen from the aforesaid correspondence that] I tried very hard to persuade Mr. Bridge, should he desire to set up his own practice, not to act in breach of Clause 28 of the Partnership Agreement. I believed this for a number of reasons. First, Mr. Bridge, in common with myself and all the other Partners, has accepted the provisions of the Partnership Agreement and the Supplemental Agreement quite freely and has enjoyed the protection of their terms. Secondly, the provisions of those Agreements are intended to create solemn and binding promises between us which are not severable; upon these mutual promises the long-term security of the Plaintiff's practice must rest. Thirdly, I refer particularly to the obligation of continuing Partners to purchase the goodwill of the Plaintiff from a retiring Partner. I do not understand how Mr. Bridge can reasonably expect to be paid for his share of the Partnership including its goodwill whilst claiming the right, in effect, to take away with him part of that goodwill. Fourthly, the continuing Partners in the Plaintiff will only feel able to take on new Capital Partners, provided they know that, in doing so, they do not run the risk that the new Partners will acquire a connection with the clients of the Plaintiff and then depart with that part of the Plaintiff's goodwill. Conversely, the new Capital Partners in the Plaintiff are required to purchase their share of its goodwill, and they could not reasonably be expected to do this if a retiring Partner could freely remove part of that goodwill.

19. Because there is no present Partner in the Plaintiff who was involved in founding the firm, each new Partner, when he is admitted to the Partnership, inherits the existing clients of the Plaintiff and they become his shared responsibility with the other Partners. Inevitably, because of the nature of the work in which the individual Partner specialises, he will become more involved with some clients than others. It has, for some years, been the practice of the firm to identify as far as possible particular clients with particular Partners so that each client looks to one Partner as a "contact" Partner who will maintain the Plaintiff's relationship with that client. This may lead a Partner to regard a particular client as "his" or "her's". Such a description is of course a misnomer, since the clients remain the clients of the Plaintiff, that is the Partnership as a whole.

20. In addition, however, Partners are expected to attract new clients to the Plaintiff. This is a vitally important part of a Partner's responsibilities, and it is a quality which the existing Partners look for when selecting new Partnership candidates. I readily acknowledge that Mr. Bridge, in common with many other Partners in the Plaintiff, has been successful in doing this, although I would dispute that it is true, as he claimed at the meeting to which I have referred above, that all the new clients and all the major clients of the Intellectual/ Industrial Property Department had been brought into the Plaintiff by Mr. Bridge's efforts

In the Supreme Court of Hong Kong Court of Appeal No. 13 Extracts from the Affidavit of John Richard Wimbush sworn on 5th Feb. 1983 (Cont'd.)

alone. Even if that were true, however, I could not accept for one moment that they were therefore "his clients" as opposed to the clients of the Plaintiff, any more than fees earned from such clients are "his fees" as opposed to fees of the Partnership. In any case, as I have indicated, the Plaintiff had an established reputation in work of this kind before Mr. Bridge joined and the growth of this work, whilst it may be largely attributed to his activities as a Partner, was built upon a solid foundation which dated back long before he joined the Plaintiff.

21. Moreover, the efficiency of the Intellectual Property Department depends on the administrative input of the Plaintiff as a whole. Without being exhaustive, I would refer to the fact that considerable working capital is required; furthermore in December, 1982 in excess of 1400 files were shown as current under Mr. Bridge's initials on the Plaintiff's computer print-out. In addition there are a further 3000 (approximately) current files listed under the heading "Trademarks". I would add that during Mr. Bridge's time as the Partner in charge of the Intellectual Property Department, he has been absent either on leave or for other reasons, most notably for two and a half months in early 1982 when he was absent on special sick leave. During that time, the department continued of course to look after the clients' affairs under the direction of another Partner (Mr. J. M. Rose) and the then Senior Assistant Solicitor Mr. A. S. Wells ("Mr. Wells").

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22. Although some 6 Partners have retired from the Plaintiff since 1968 and 2 of those Partners have subsequently returned to Private Practice, they did not return to private practice until at least 5 years after retirement from the firm. So far as I know, all retiring Partners have regarded themselves as being bound by Clause 28(a) in that none of them has ever suggested that they were entitled to act in breach of it.

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SWORN this 5th day of February, 1983.

In the Supreme Court of Hong Kong Court of Appeal No. 14 Exhibit "JRW1"

EXHIBIT "JRW1"

THIS PARTNERSHIP AGREEMENT is made this Tenth day of June One thousand nine hundred and sixty eight.

BETWEEN RAYMOND EDWARD MOORE, WAI-PAT WONG, JAMES CYRIL BARNINGHAM SLACK, WILLIAM TURNBULL, JR. and MAURICE PIN-KIN WONG, Solicitors of 601, Union House, Victoria, Hong Kong (which persons and any further persons from time to time admitted to partnership are hereinafter where not inapplicable included under the designation "the partners").

WHEREAS: –

(1) The partners have practised in partnership as Solicitors and Notaries, Patent and Trade Mark Agents under the name of "DEACONS" since 1st January 1965. 10

(2) The partners have agreed to enter into this Agreement to place on record the terms of the partnership and to make changes therein to deal with possible future emergency conditions in Hong Kong.

NOW IT IS AGREED as follows: –

1. The practice of the partnership shall be that of Solicitors, Notaries, Trade Mark and Patent Agents carried on under the name of "DEACONS".

2. This Agreement shall be deemed to have come into force on the 1st January 1968 and the partnership shall continue on the terms thereof, subject to such amendments as may from time to time be agreed, until terminated as herein provided. 20

3. (a) The respective shares of the partners in the partnership shall be as from time to time agreed between the partners and recorded in the partnership minute book or in such other manner as the partners may from time to time agree.

(b) The partners shall share the profits and losses of the partnership according to their respective shares including all losses occasioned by negligence or breach of duty of any partner other than losses occasioned by the fraud or wilful negligence or default of a partner for which he is liable to indemnify the partnership in accordance with Clause 17(e) hereof.

(c) Changes in the persons from time to time constituting the partnership shall be made as hereinafter provided and changes in their respective shares may be 30 made by oral agreement or in writing recorded as aforesaid. Subject to the provisions of Clause 21 no partner's share in the partnership shall be reduced or increased without his consent.

4. The partners shall except during the periods of leave to which they shall be entitled under Clause 15 hereof devote their whole time and attention to the practice of the partnership and shall carry on and manage the same for the common benefit of the partners to the

In the Supreme Court of Hong Kong Court of Appeal No. 14 Exhibit "JRW1" (Cont'd.)

utmost of their skill and ability with such assistance from time to time of clerks and/or other employees as the partners shall deem necessary and shall not during the continuance of the partnership be concerned or engaged directly or indirectly in any business or profession other than the practice of the partnership Provided that the above restriction shall not apply to: –

(1) the passive investment in the shares of a limited company or other similar investment.

(2) the holding, with the consent of the other partners, of any position on any Council of the Government of Hong Kong or any other public or charitable body or organisation. 10

(3) the holding of any directorship held in consequence of being a member of the partnership provided that all directors' fees shall belong to and be paid directly on receipt thereof to the partnership.

5. The minimum working capital (excluding fees receivable and the value of work in progress) of the partnership shall be such sum as is mutually agreed from time to time and shall be contributed by the partners in accordance with their shares in the partnership. If at any time the working capital of the partnership shall be found to be less than such mutually agreed sum the deficit shall forthwith be made good by the partners in accordance with their shares in the partnership.

6. If any further capital shall at any time or times be considered by the partners to be necessary or expedient for efficiently carrying on the practice the same shall be contributed by the partners in proportion to their shares in the partnership. 20

7. The bankers of the partnership shall be The Chartered Bank and/or such other bank or banks as the partners may from time to time agree.

8. (a) The assets of the partnership including goodwill and all furniture, safes, boxes, equipment, fittings, fixtures, stores and books held or used for or in connection with the practice or otherwise possessed by the Firm and (subject to the paramount claims of clients) all deeds, papers and documents in the possession of the Firm or any partner in his capacity as such shall, during the continuance of the partnership and, subject to the provisions of thid Deed, belong to the partners in proportion to their respective shares. 30

(b) The assets of the partnership shall include the shares in the following companies established to furnish services for the partnership and/or its clients, namely: –

Rex Limited
Lex Limited
Peninsula Traders Limited
Kemsing Enterprises Limited

and such other companies as shall from time to time be formed and operated by the partnership for such purposes, together with 19,600 shares of HK$10.00 each (HK$5.00 paid) in The Chartered Bank Hong Kong Trustee Limited. The registered owners of the said shares shall be deemed to hold the same in trust 40

In the Supreme Court of Hong Kong Court of Appeal No. 14 Exhibit "JRW1" (Cont'd.)

for the partnership and every such registered owner who is a partner shall on ceasing to be a partner for any reason whatsoever transfer his shares in the said companies to such other person as the continuing or surviving partners shall nominate. All such shares (including those in The Chartered Bank Hong Kong Trustee Limited notwithstanding they are only $5 paid) shall for the purposes of accounting between partners or with the personal representatives of any deceased partner, conclusively be deemed to have a par value.

9. All partnership moneys not required for daily expenses and all securities for money shall as and when received be paid into or deposited with the bankers of the partnership to the credit of the partnership account. All cheques on such account shall be drawn in the Firm's name and may be so drawn by any partner. 10

10. The rent of any leasehold premises from time to time leased by the partnership or used for the purposes of its said practice and all rates, taxes, cost of repairs, alterations, improvements, insurance and other outgoings for or in respect of the same and all costs, charges, salaries and expenses which shall be incurred in or about the said practice or anywise relating thereto and all losses which shall be incurred in respect of the said practice shall be paid out of the income or capital of the partnership and, in case of any deficiency, shall be paid by the partners in accordance with their respective shares of the partnership.

11. Proper books of account shall be kept wherein shall be entered particulars of all moneys and effects belonging to, or owing to or by, the partnership or paid or received in the course of the said practice and of all such other transactions, matters and things relating to the said practice as are usually entered in books of account kept in accordance with recognised accounting practice. The said books of account together with all records, letters, papers or writings concerning or belonging to the partnership and other documents entrusted to the partnership for the purposes of the said practice (except such as are kept with the partnership bankers or other custodians) shall be kept at the place or places of business of the partnership and every partner shall at all times have free access to and the right to inspect the same but shall nevertheless keep the same confidential and shall not use such right for any purpose not connected with the partnership or the said practice. 20

12. Unless otherwise agreed the partnership accounts shall be made up to the 31st December in each year and shall be audited by Messrs. Lowe Bingham & Matthews (who and any other firm or person for the time being acting as auditor for the partnership are hereinafter included under the designation "the Auditors"). 30

13. In addition, the partnership shall keep a daily cash account showing the receipts and payments of the partnership.

14. (a) Each partner shall, subject as mentioned in paragraph (b) of this Clause, be entitled at the end of each calendar month to draw out for his own separate use on account of his accruing share of net profits his due proportion according to his share in the partnership of the accumulated surplus (if any) shown on the cash account referred to in Clause 13 hereof for the preceding month, after setting aside such reserves as the partners may mutually agree. 40

(b) On a new partner being admitted to partnership, such new partner shall limit his monthly drawings to a figure to be agreed with the continuing partners

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until he has fully paid for his share in the partnership and all amounts to which the new partner may become entitled in excess of such limit shall be applied towards payment of all amounts owing by him for his said share.

(c) If on the taking of the annual account to the 31st day of December in any year as provided in Clause 12 hereof, the amount drawn by any partner shall be found to exceed the amount of his share in the net profits for such year, he shall forthwith repay the excess to the partnership together with interest at the rate of six per cent per annum on the amount of such excess calculated from the date on which it was ascertained until the date of repayment.

15. Subject to the reasonable requirements of the practice, each partner shall be entitled to six weeks leave of absence during each calendar year with the right to accumulate leave to a maximum of six months (24 weeks) every fourth year to be taken at such time as the partners may mutually agree. Any leave not taken within the above limits shall be forfeited. Each partner shall be entitled to draw HK$5,000.00 per annum towards the travelling and other expenses of leave whether or not he takes leave in a particular year, and such amount shall be charged in the books of the partnership as a working expense. 10

16. In the event of any one of the partners absenting himself from the practice of the partnership for more than one calendar month (except during leave of absence as aforesaid) then, subject as hereinafter mentioned in the case of absence due to illness or other cause beyond his control, such partner shall forfeit to the other partners in the proportion to their respective shares in the partnership, his share of profits in respect of such period of absence in excess of one month and shall cease to be entitled to any further monthly drawings until he again resumes attendance Provided however that if such absence is due to illness or any other cause beyond his control, this Clause shall not apply and the provisions of Clause 20 hereof shall apply instead. Every partner claiming that absence is due to illness or other cause beyond his control shall give notice thereof to the other partners as soon as it is reasonably possible for him so to do and shall furnish such evidence in support thereof as the other partners may reasonably require. 20

17. Each partner shall: –

(a) Punctually pay and discharge his separate and private debts and engagements whether present or future and indemnify the other partners and the partnership assets against the same and against all expenses on account thereof. 30

(b) Be just and faithful to the other partners in all transactions relating to the partnership.

(c) At all times give to the other partners a just and faithful account of all transactions relating to the partnership and also upon every reasonable request furnish to the other partners a full and correct explanation thereof.

(d) Account to the other partners for and pay into the partnership banking account forthwith on receipt thereof all moneys received or earned by him from clients or other persons having dealings with the partnership by way of remuneration for services rendered or otherwise in respect of anything done for 40

or in connection with the practice of the partnership including, but without in any way limiting the foregoing, directors fees and premia from articled clerks.

(e) Indemnify the other partners from all loss, damage, costs, charges or expenses which they and/or the partnership may sustain as a result of or on account of his own fraud or wilful, neglect or default.

18. No partner shall without the written consent of the other partners: –

(a) Engage directly or indirectly in the Colony of Hong Kong or elsewhere in any profession or business other than the practice of the partnership but this provision shall not apply to the activities referred to in the proviso to Clause 4 hereof. 10

(b) Employ any of the money or effects of the partnership or pledge the credit thereof except in the ordinary course of business and upon the account or for the benefit of the partnership.

(c) Enter into any bond or become bail or security with or for any person (except a partner for the purposes of the partnership) or do or knowingly cause or suffer to be done whereby the partnership property or any part thereof may be incumbered or endangered.

(d) Assign mortgage or charge his share in the partnership or any part of such share or make any other person a partner with him therein.

(e) Do or knowingly suffer or cause to be done anything contrary to the rules of professional conduct of the Solicitors Ordinance and The Incorporated Law Society of Hong Kong. 20

19. Any partner may give to the others not less than twelve months' notice in writing expiring at any time to dissolve the partnership in so far as the partner giving the notice is concerned.

20. (a) If any partner shall:

(1) Be guilty of a breach of Clause 17 and 18 hereof or be guilty of any other breach of the terms of this Agreement after notice in writing has been served on him by the other partners notifying him of a breach already committed and stating that in the event of any recurrence or any further breach, the provisions of this Clause will apply, or 30

(2) Become insolvent or bankrupt or compound with his creditors, or

(3) Be convicted or any criminal offence involving his honesty or integrity,

(4) Do or suffer any act which would be a ground for dissolution of the partnership by the Court,

then, and in any such case, the other partners shall be entitled within three months after becoming aware thereof by notice in writing to such partner dissolve the partnership so far as such partner is concerned and he shall thereupon cease to be a partner and the provisions of Clause 23 hereof shall apply.

(b) In the event of sickness or other cause beyond the control of a partner preventing his attendance, such partner shall be entitled to three months' leave of absence (hereinafter referred to as "sick leave" whether due to sickness or not) in addition to any unused leave entitlement under Clause 15. After the expiry of sick leave and any unused leave of absence under Clause 15, a partner remaining absent by reason of any such cause shall, unless the other partners agree to the contrary, thereafter forfeit his share of profits to the other partners in proportion to their respective shares and shall cease to be entitled to make any further monthly drawings on account thereof. 10

(c) If any partner is absent through sickness or other cause as aforesaid for a continuous period of six months after utilisation of sick leave and any unused leave under Clause 15, he shall, unless the other partners shall agree to the contrary, cease to be a partner on the expiration of the said period of six months.

(d) For the purposes of this Clause, a partner shall be deemed to be continuously absent during the period of six months referred to in paragraph (c) of this Clause, if he fails to attend to his duties as a partner for ninety per cent or more of the working days during such period to the intent that brief and intermittent attendances during such period shall not prevent it from continuing to run. 20

21. (a) The partners holding between them not less than seventy five per cent of the shares in the partnership or all the partners, with the exception of the one to whom notice is given, may at any time serve not less than six months' notice in writing in any year on the other partners or partner, dissolving the partnership so far as such other partners or partner are or is concerned and such other partners or partner shall cease to be members of the partnership on the expiry of such notice and the provisions of Clause 23 hereof shall apply. 30

(b) In any case in which notice is served under paragraph (a) of this Clause, the partners serving the notice may at the time of service thereof or at any time thereafter before its expiry, serve an additional notice on the partner or partners to whom notice is given requiring such partner or partners forthwith to cease attending at the office and/or taking any further part in the conduct of the practice of the partnership and the partner or partners on whom such notice is served shall be bound to comply therewith and may be excluded by the other partners from the office and from further participation in the practice.

22. Every partner shall, unless the other partners unanimously agree to the contrary, retire from the partnership on the 31st December immediately following his 60th birthday. 40

23. Where a partner ceases to be a partner under any of the provisions of Clauses 19 to 22 inclusive hereof or dies, the following provisions shall take effect: –

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(a) Accounts to the date of retirement or death shall be prepared as soon as possible thereafter in accordance with the usual practice of the Firm by the Auditors at the expense of the Firm.

(b) The continuing or surviving partners shall, subject as provided in Clause 25 hereof, and if more than one in the proportions in which they are entitled on the expiry date to share in the profits of the partnership, succeed to the share of the outgoing, retiring or deceased partner in the partnership and all the assets and goodwill thereof including the partnership name and shall pay to the outgoing or retiring partner or to the personal representative of the deceased partner in respect of such share in the manner hereinafter provided: – 10

(1) The amount at which the share of the outgoing, retiring or deceased partner stands in the balance sheet prepared at the date of dissolution as aforesaid PROVIDED that unless and until otherwise agreed the figure for work in progress shall be deemed to be HK$500,000.00 irrespective of the figure therefor which shall be shown in the balance sheet, and

(2) A due proportion of the sum not appearing in the balance sheet and from time to time agreed between the partners for the purposes of this Agreement as the value of the following items, namely, goodwill, library, office equipment, furniture, fixtures and fittings (which sum is for convenience hereinafter referred to as "the agreed value of the office assets"). Until 20 otherwise agreed, the agreed value of the office assets shall be HK$400,000.

(3) The due proportion of the par value of the shares in the companies held in trust for the partnership in accordance with Clause 8.

(c) In the event of any dispute between the continuing partners and an outgoing partner or the personal representatives of a deceased partner as to any amount payable under paragraph (b) of this Clause, the same shall be referred for decision to the Auditors who shall be deemed to be acting as experts and not as arbitrators and whose decision shall be final and conclusive.

(d) The continuing or surviving partners may retain out of any moneys payable 30 hereunder to an outgoing or retiring partner or to the personal representatives of a deceased partner, all amounts for which such partner was indebted to the partnership and the amount of all claims losses or damages which may be made against them or which they may sustain by reason of any fraud or wilful neglect or default of the outgoing, retiring or deceased partner for which he was or is liable to indemnify the other partners in accordance with Clause 3(b) hereof and all costs and expenses incurred in relation to any such claim.

(e) Subject as aforesaid, the amounts payable by the continuing or surviving partners to an outgoing or retiring partner or to the personal representatives of a deceased partner, shall be paid in the following manner: – 40

(1) As to the first $50,000.00 thereof at the expiration of two months from the date of cessation, retirement or death as the case may be.

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(2) As to the balance by eight equal quarterly instalments on the 31st March, the 30th June, the 30th September and the 31st December in each year, the first of such payments to be made on the second quarter day after the date of cessation, retirement or death as the case may be or at such earlier date as the continuing or surviving partners may elect.

together with interest calculated at the rate of six per cent per annum (6% p.a.) less interest tax on the balance from time to time unpaid from the expiration of the said second quarter day after the date of cessation, retirement or death until final payment.

(f) Notwithstanding the foregoing if at the time any payment becomes due in respect of the share of a deceased partner, no person has obtained a grant or representation to the deceased's estate, the surviving partners shall be entitled to deposit all amounts payable hereunder in a separate deposit account with the partnership bankers on 90 days or less term deposit and payment thereof shall be made to the personal representative or other person legally entitled to give a valid receipt and discharge for the same on the expiration of the term of the deposit immediately after notice is given to the surviving partners that a valid receipt and discharge can be given. The interest earned on such deposit shall be in full satisfaction of the liability of the surviving partners to pay interest in accordance with paragraph (e) of this Clause from the date on which the amount or amounts in question were deposited as aforesaid. 10 20

(g) Notwithstanding anything hereinbefore contained: –

(i) In the event that political or other conditions in Hong Kong make it impossible or impracticable to continue the practice of the Firm in Hong Kong, the continuing partners shall, from the date on which such conditions exist and from which the normal conduct of the practice effectively ceases, cease to be liable to a retiring partner or the personal representatives of a deceased partner for any amounts payable under paragraph (e) of this Clause and not then paid except to the extent of amounts (if any) actually realised by the continuing partners from the practice after that date whether by way of income, proceeds of sale or liquidation, compensation or otherwise. 30

(ii) In the event that after the cessation of normal practice under the conditions set out in sub-paragraph (i) of this paragraph, any one or more of the partners with or without new partners wishes to re-open or continue the practice or use the firm name "DEACONS" in Hong Kong, such partner or partners shall pay to the other persons who were partners at the date of cessation or their personal representatives and to any retired partner or the personal representatives of a deceased partner who had not been fully paid for their former shares at the date of cessation, such sum for any assets recovered and for the goodwill and use of the Firm name as may be agreed between them or, in default of agreement, determined by arbitration as provided in Clause 31. A single arbitrator shall be appointed notwithstanding that more than two parties may be involved and the arbitrator shall have power to settle the amounts payable to all persons entitled hereunder provided they have received due notice of the 40

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arbitration whether or not they appear or take part in the arbitration. PROVIDED that if necessary, more than one arbitration may be held to determine amounts payable to different persons pursuant to this provision.

(h) In any arbitration regarding any matter or thing to which paragraph (g) hereof relates, the Arbitrator shall have regard to the intention of the partners hereby expressed that the possibility or practicability of continuing the practice of the Firm in Hong Kong shall be judged as a business matter having regard to the physical and other risks to which the partners would be exposed had they continued to practice in Hong Kong and that the value of the assets goodwill and Firm name shall also be judged as a business matter having regard (inter alia) to the conditions then existing in Hong Kong and the future prospects so far as they can be foreseen. 10

24. If on the cessation, retirement or death of a partner, the continuing or surviving partners decide to admit a new partner or partners to the partnership, they shall nevertheless remain liable as between themselves and the outgoing or retiring partner or the personal representatives of the deceased partner for the aforesaid payment and the outgoing or retiring partner, or personal representatives as the case may be, shall not be concerned with any agreement or arrangement between the continuing or surviving partners and the new partner or partners. 20

25. (a) Notwithstanding anything hereinbefore contained, it shall be lawful for the continuing or surviving partners to elect not to purchase the share of an outgoing, retiring or deceased partner, such election to be made in the following manner: –

(1) In the case of dissolution under Clauses 19 or 21, by giving to the outgoing partner not less than three months' notice in writing expiring on the expiry date of the notice of dissolution.

(2) In the case of dissolution under Clause 20(a) by giving to the outgoing partner notice in writing concurrently with or within one month after the notice of dissolution. 30

(3) In the case of dissolution under Clause 20(c) by giving to the partner who is sick notice in writing not more than 3 months after the commencement of the period of six months referred to in that Clause that if such partner has not recovered by the end of such period, the partnership will be dissolved.

(4) In the case of retirement, by giving to the retiring partner not less than three months' notice in writing expiring on the date of retirement.

(5) In the case of death, by giving to the personal representatives or if there be none, the nearest known next of kin, notice in writing within two months of the date of death. 40

(b) Where notice is given pursuant to sub-paragraphs (1) (3) or (4) of sub-paragraph (a) above, the partnership shall be dissolved from the date of expiry of such notice.

(c) Where notice is given pursuant to sub-paragraph (2) of paragraph (a) above, the partnership shall be dissolved from the date of giving such notice.

(d) Where notice is given pursuant to sub-paragraph (4) of paragraph (a) above, the partnership shall be dissolved from the date of death and in the meantime until final dissolution shall be deemed to have been carried on by the surviving partners on the joint account of themselves and the representatives of the deceased partner. 10

(e) In each of the above cases the affairs of the partnership shall be would up according to law and the assets and/or the proceeds of sale thereof shall be distributed to the partners in accordance with their respective entitlement thereto. The partnership name and goodwill and all other assets (except cash) shall, unless otherwise agreed, be sold in so far as possible and any partner shall be entitled to bid for the same.

26. In the case of any disagreement between the continuing or surviving partners as to whether or not to purchase the share of an outgoing, retiring or deceased partner or whether or not to dissolve the partnership, the decision of the partner or partners wishing to continue the partnership shall prevail provided he or they is or are willing to purchase the 20 share or shares of the partner or partners not wishing to continue on the same terms as if the partner or partners not wishing to continue had themselves given notice of dissolution expiring on the relevant date referred to in Clause 25 hereof.

27. The partnership may be dissolved at any time by unanimous agreement of all the partners.

28. (a) Except on dissolution, no partner ceasing to be a partner for any reason whatsoever shall for a period of 5 years thereafter act as a solicitor, notary, trade mark or patent agent or in any similar capacity in the Colony of Hong Kong whether as principal, clerk or assistant for any person, firm or company who was at the time of his ceasing to be a partner or had during the period of 30 3 years prior thereto been a client of the partnership Provided however that this Clause shall not apply to a partner acting in any such capacity in the course of employment with Government or any public body or with any company or organisation which is not itself engaged in professional practice in any of the above fields.

(b) No partner (other than a partner who has purchased the Firm name on the dissolution of the partnership) shall at any time after ceasing to be a partner use the partnership name in Hong Kong or any other part of the world or represent himself as carrying on or continuing or being connected with the partnership practice. 40

29. Except where the provisions of this Agreement otherwise require, all questions arising between the partners touching or concerning the partnership shall be decided by a

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majority vote of the partners and each partner shall have one vote for each percentage of his share in the partnership and such vote shall be binding on all the partners.

30. (a) Any notice required to be given hereunder by the partners to one of their number may be given in any of the following ways: –

(1) In writing signed by all the partners giving the same or, if any be absent, by their attorneys duly authorised.

(2) By cable or telex in the name of all the partners giving such notice and sent by their authority.

(b) A notice required to be given hereunder by one partner to the others may be given in any of the ways specified in paragraph (a) but signed by or sent in the name of the partner giving the same addressed to "The Partners, Messrs. Deacons" at the principal place of business of the partnership or may be delivered personally to the senior partner for the time being in Hong Kong excluding the partner by whom it is given. 10

(c) A notice requiring to be given to the personal representatives of a deceased partner may be given in any of the way specified in paragraph (a) and, if at the time such notice is required to be given, no personal representative has yet been appointed shall be validly given if given to the nearest known adult next of kin or, if there be none, if advertised on two occasions in an English language newspaper published in Hong Kong. 20

(d) A notice in writing may be delivered personally to the person or persons to whom it is addressed or sent by prepaid registered mail to his or their last known place of abode and by airmail if such place be outside Hong Kong.

(e) A notice delivered personally shall be deemed to have been served at the time of delivery.

(f) A notice sent by prepaid registered mail to an address in Hong Kong shall be deemed to have been served on the third day after posting.

(g) A notice sent by prepaid registered airmail to an address outside Hong Kong shall be deemed to have been served on the sixth day after posting.

(h) A notice given by cable or telex shall be deemed to have been served on the day following the despatch thereof. 30

31. Except where specifically provided herein for disputes to be determined by the Auditors, all disputes which shall arise between the partners or any one or more of them or between any one or more of the partners and the personal representatives of one or more deceased partners or between the personal representatives of two or more partners whether during or after the continuation of the partnership in relation to the interpretation or effect of this Agreement or to any act or omission of any party to the dispute or as to any act which ought to be done by the parties in dispute or any one or more of them

In the Supreme Court of Hong Kong Court of Appeal No. 14 Exhibit "JRW1" (Cont'd.)

or otherwise in any way touching or concerning the partnership affairs shall be referred to arbitration in Hong Kong by a single arbitrator to be agreed upon by the parties to the dispute or, in default of agreement, to be appointed by the Chairman for the time being of the Hong Kong General Chamber of Commerce or, failing him, the President of the Incorporated Law Society of Hong Kong and the provisions of the Arbitration Ordinance 1963 or any statutory modification or re-enactment thereof shall apply to every such arbitration. In the event that it is not possible or practicable by reason of political or other conditions to conduct an arbitration in Hong Kong, the arbitration shall be held in England and the arbitrator shall be agreed or in default of agreement appointed by the President for the time being of the Law Society in England and the arbitration shall be governed by the English Arbitration Act or Acts then in force. 10

AS WITNESS the hands of the parties hereto the day and year first above written.

SIGNED by the partners in the)
presence of: –)

EXHIBIT "JRW2"

THIS AGREEMENT is made the 24th day of April. One thousand nine hundred and seventy nine BETWEEN JOHN R. WIMBUSH, WAI-PAT WONG, MAURICE P.K. WONG, SIMON S.C. PUN, OSCAR K.T. LAI, PETER H. DAVIES, ROBIN M. BRIDGE, J. MARCUS SMITH, PETER A. DAVIES and JOHN L.G. MCLEAN Solicitors practising together in partnership under the name of Deacons at 601 Swire House and 820 Ocean Centre in the Colony of Hong Kong.

WHEREAS: –

(1) This Agreement is supplemental to a Partnership Agreement dated the 10th June 1968 made between Raymond Edward Moore, Wai-Pat Wong, James Cyril Barningham Slack, William Turnbull, Jr. and Maurice Ping-Kin Wong (hereinafter called "the Partnership Agreement") whereby the parties to this Agreement now practise together in partnership as Solicitors and Notaries, Patent and Trade Mark Agents under the name "Deacons". 10

(2) The Partners have agreed to make certain changes in the Partnership Agreement as hereinafter set out.

NOW IT IS AGREED as follows: –

1. In lieu of the provisions contained in Clause 8(b) of the Partnership Agreement determining the value of the 49,000 shares of $10.00 each (the Shares) in The Chartered Bank Hong Kong Trustee Limited (the Trustee Company) the following shall apply: –

(a) The Shares in the Trustee Company of $10.00 each (now fully paid) shall be held in trust by the Registered Owners thereof for the Partnership and every such Registered Owner who is a Partner shall on ceasing to be a Partner for any reason whatsoever transfer his shares in the Trustee Company to such other person as the continuing or surviving Partners shall nominate. 20

(b) Upon any Partner ceasing to be a Partner for any reason whatsoever the valuation of the Trustee Company shares shall for the purposes of determining the sum due to the deceased or outgoing Partner be valued and paid for as hereinafter provided.

(c) In respect of any person ceasing to be a Partner on the 31st December in any year the value of the Shares shall be determined by reference to the net asset value of the Shares as shown in the audited balance sheet of the Trustee Company for such date no allowance being made for goodwill, the continuation of the business of the Trustee Company or the size of the shareholding. 30

(d) Any dispute or difference that may arise as to the net asset value of the Shares for the purpose of the preceding sub-clause shall be referred to the then auditors of the Partnership whose valuation shall be final and binding upon the deceased or outgoing Partner and the continuing or surviving Partner. In

any such reference the auditors shall be deemed to be acting as experts and not as arbitrators.

(e) In respect of any person ceasing to be a Partner on any date other than the 31st December in any year then the sum due to be paid to such person shall be determined by reference to the net asset value of the Shares as shown in the Trustee Company's audited balance sheet on the 31st December immediately preceding the date such person ceased to be a Partner from which net asset value shall be deducted any cash sum actually paid by the Trustee Company to its shareholders by way of dividend or otherwise after the 31st December of the preceding year, but prior to the date when such person ceased to be a Partner. 10

(f) Any dispute or difference as to the net asset value or the sum that falls to be deducted therefrom under the provisions of Sub-clause (e) of this Clause shall be referred to the auditors of the Partnership for determination as provided for in Sub-clause (d) of this Clause.

2. In variation of the figures for work in progress and the office assets as provided for in Clause 23(b)(1) and (2) of the Partnership Agreement the following figures shall be deemed to be the agreed figures: –

(i) For work in progress the sum of $5,000,000.00 irrespective of the figure therefor which shall be shown in the firm's balance sheet. 20

(ii) As the agreed value of the office assets the sum of $1,000,000.00.

3. (a) The obligation of the surviving or continuing Partners to make payment to the outgoing retiring or deceased Partner in respect of the sums due for work in progress and the agreed value of the office assets shall remain unchanged but there shall be no obligation to make any payment in respect of the difference between the net asset value of the Shares in the Trustee Company and the par value other than out of dividends or other payments made by the Trustee Company to its shareholders after the date the Partner ceased to be a Partner in the firm.

(b) A sum equal to the percentage held by the deceased or outgoing Partner shall be applied by the surviving or continuing Partners from all sums paid by the Trustee Company to its shareholders by way of dividend or otherwise towards the sum due to the deceased or outgoing Partner in respect of the difference between the net asset value of the Shares and the par value until the amount due to such deceased or outgoing Partner in respect of his former interest in the Shares has been fully paid and satisfied. 30

(c) If at any time prior to such sum being fully paid or satisfied all or any of the Shares held by the Partnership in the Trustee Company are sold or the Trustee Company is liquidated then a like percentage of the net proceeds of such sale or liquidation shall likewise be paid to the deceased or outgoing Partner on account of his entitlement. 40

In the Supreme Court of Hong Kong Court of Appeal No. 15 Exhibit "JRW2" (Cont'd.)

4. Save as aforesaid the Partnership Agreement shall remain unchanged.

AS WITNESS the hands of the parties hereto the day and year first above written.

SIGNED by John R. Wimbush)
)
in the presence of: –)

SIGNED by Wai-Pat Wong)
)
in the presence of : –)

SIGNED by Maurice P.K. Wong)
)
in the presence of: –)

SIGNED by Simon S.C. Pun)
)
in the presence of: –)

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SIGNED by Oscar K.T. Lai)
)
in the presence of: –)

In the Supreme Court of Hong Kong Court of Appeal
No. 15
Exhibit "JRW2"
(Cont'd.)

SIGNED by Peter H. Davies)
)
in the presence of: –)

SIGNED by Robin M. Bridge)
)
in the presence of: –)

SIGNED by J. Marcus Smith)
)
in the presence of: –)

SIGNED by Peter A. Davies)
)
in the presence of: –)

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SIGNED by John L.G. McLean)
)
in the presence of: –)

EXHIBIT "JRW3" (Part Only)

14/9/82

3:00 p.m. – JRW's Room

JRW/RMB/PHD

J.R.W.: (1) We can do nothing
You will regard yourself as leaving 31/12/82
(2) You agree to my recording 30/6/83
Go to partners asking for 31/12/82
(3) Take it to Arbitration

R.M.B.: "I can't go to Partners – until 30/6/83" 10
I said I'm not prepared to back down from fact that I've given notice. To avoid embarrassment I'm prepared to say 30/6/83 if you will go to partners to ascertain 31/12/82 terms on which I can be released. I will not admit an untruth in my correspondence

J.R.W.: If terms unsatisfactory ....

R.M.B.: Then we go to Arbitration

R.M.B.: You are asking me to say I withdrew resignation. I won't. I'm prepared to agree that resignation take effect 30/6/83, & ask you to go to Partners terms @ 31/12/82

J.R.W.: How can I go unless we agree an early release is necessary. As I did with JMS. If answer is 'No' JMS would have given 12 months. I don't see how I can ask unless we are agreed that it is 30/6/83 20

R.M.B.: We have a genuine misunderstanding – You are asking me to admit you are right
If you don't ask me to make admission – I'll make concession. You will then go to partners & ask terms

J.R.W.: "RMB & I disagree – However, if I'm right – what terms RMB – Better for matter to be resolved amicably, in all probability RMB will stay to 31/6/83 if indicate terms of release of 31/12/82

(R.M.B.): "I won't withdraw statement that I've resigned @ 31/12/81. To save JRW embarrassment & mine I'm prepared to indicate availability to 30/6/83 on condition that you do no more than go to Partners & ascertain what terms, if any, I might be released on 31/12/82" 30
I won't acknowledge that my correspondence is untruthful

In the Supreme Court of Hong Kong Court of Appeal No. 16 Extracts from Exhibit "JRW3" (Cont'd.)

J.R.W.: I don't think its in the interest of you staying on unwilling – are you happy to stay until 30/6/83?

R.M.B.: I am thoroughly enjoying my job at present – I wish to leave this firm as result of short sighted view on Partners. Assuming you are happy that I remain, I am happy to remain. I acknowledge JRW's support

J.R.W.: Sacklyn rang me to say you are setting up RMB & Associates – if there were conditions – "Are you prepared to undertake not to set up shop before 30/6/83" is likely to be the term imposed

R.M.B.: I can't undertake not to harm Deacons. I've taken advice from London Counsel – no way Partnership Agreement will hold up. I intend to get up my own practice – but I have been advised that it is possible I will be short listed for in-house Attorney to Deacons' client (HK Kowloon Wharf) I would have to get you to indicate what a super bloke I am, so that I could take work from Deacons. Working with Nigel – reporting to him or the Board of Directors 10

J.R.W.: As far as I'm concerned clearance will be forthcoming from me

R.M.B.: I imagine they would stop sending run of the mill work to Deacons. Of the two alternatives I prefer to go into private practice

J.R.W.: What should I say to partners about your practice. You can injure Deacons – in the area of TM work

R.M.B.: I can recall virtually none over the years. The only partner who has referred work is OKTL – otherwise I've got work myself. Relations with clients from overseas has been in my own time. I emphatically reject statement that Deacons have put me forward at all 20

J.R.W.: You view the goodwill in the Dept is your own. You feel under any inhibition to take work from Deacons?

R.M.B.: I would wish to consider any terms imposed

R.M.B.: It could be that 6 months' leave would be very nice before I set up practice

J.R.W.: Obiter in Oswald Hickson v Carter-Ruck is that restrictive covenant won't stick

R.M.B.: Let us look at this – (Exxon v G. Ian MacCabe)
(Atari) e.g. 30
We've got the TM work – I got that work; previously Exxon TM work with JSM. Now been built to largest practice in Commonwealth in this field.
Johnnie Walker HK litigation won't go to Herbert Smith I'm told. If I go to private practice they would want it transferred

In the Supreme Court of Hong Kong Court of Appeal No. 16 Extracts from Exhibit "JRW3" (Cont'd.)

J.R.W.: I've no doubt that a number of "your" clients will wish to go with you
I can't see partners agreeing to release you for the 6 months if they thought you would open on 1/1/83

R.M.B.: I know that certain clients of Deacons – e.g. Texwood/Easey would stay with Deacons
I am not setting out to be vindictive – don't intend to try to poach them

J.R.W.: If that is the proposal – i.e. "Not set up practice during that 6 month period"

R.M.B.: I want to think about it – I take view that Restrictive Covenant is not enforceable

J.R.W.: Restriction against acting for firm's clients

R.M.B.: I've spoken to a few clients – they want me to continue handling their litigation 10

J.R.W.: Don't you think that as this is basis on which we practise – & you want to be paid. Don't you think you have moral obligation to your partners?

R.M.B.: I'm surprised you use that term – firm is getting devoid of morality. No cooperation between partners – straight greed.
Partners not interested in seeing area of office grow – if it was a question of shares I was quite prepared to put my shares on line

J.R.W.: Getting shares never been my problem

R.M.B.: I accept the partners' repudiation – I feel no moral obligation. Come back end of last year other partners repudiated their moral obligations – 20
Get a lot of unfounded complaints – I spend a lot of time
Partners not interested in finding out my problems

J.R.W.: You will consider what I've said about setting up practice before 30/6/83

R.M.B.: I want offer from you before having it slapped in my face

J.R.W.: Are you going to slap it in my face

R.M.B.: No – I've spent 15 years here; happy except for last 18 months. Not flashing resignation around

J.R.W.: I don't want to get lost in area which is unprofitable – if we can reach amicable solution

J.R.W.: I'll put matter to partners 30

R.M.B.: All I'm asking is terms on which I can be released – I'm not committing myself

In the Supreme Court of Hong Kong Court of Appeal
No. 17
Extracts from the Affidavit of Robin Miles Bridge sworn on 10th Feb. 1983

EXTRACTS FROM THE AFFIDAVIT OF ROBIN MILES BRIDGE SWORN ON 10TH FEBRUARY 1983

I, ROBIN MILES BRIDGE of 92 Pokfulam Road, Flat 5D, La Clare Mansion, Hong Kong, solicitor, make oath and say as follows: –

1. I am the Defendant in this Action and make this Affidavit, save where otherwise appears, from my own knowledge.

2. I have read the Affidavit of John Richard Wimbush ("Mr Wimbush") sworn on 5th February last, and my comments on it by reference to the paragraph numbers in that Affidavit are as follows: –

PARAGRAPH 4 10

With a firm of seven qualified staff, I doubt whether Deacons at that time handled more than the very occasional civil case concerning trade mark infringement or passing-off.

PARAGRAPH 6

It is not the Plaintiffs' practice to produce a new Partnership Agreement each time new capital partners are admitted. The originals of Partnership Agreements (as well as minutes of partnership meetings) are kept in the personal control of the Senior Partner. The normal procedure on a change in the structure of the partnership is for memoranda similar to that exhibited at pages 16 – 18 of "JRW-3" to be circulated and signed although I myself was not asked to sign that particular 20 memorandum, which I note does not even refer to the Partnership Agreement. I am not at this point in time sure when I first saw and studied the Partnership Agreement, although I accept that I am impliedly bound by its terms and by the terms of the Supplemental Agreement, except insofaras the terms of those agreements may be unenforceable as a matter of law.

PARAGRAPH 7

The Plaintiffs have six main Departments – Shipping, Commercial, Conveyancing, Litigation, Secretarial, and Industrial Property. Some of these are sub-divided so that, for instance, Probate and Trusts is grouped in the Conveyancing Department. There is not necessarily a partner in charge of each sub-department; 30 there is not so far as I am aware a separate partner in charge of Probate and Trusts.

As far as the Industrial Property Department was concerned, by the time I left the Plaintiffs, not only was I signing all the mail of the Assistant Solicitors, but also approving all their telexes. Office regulations were that all communications should be signed by partners only, although where an assistant solicitor had developed a

close relationship with a particular client, I encouraged the practice of writing personal letters signed by the assistant, a copy of which I initialled. On a daily basis, I was signing my own mail, that of all five assistant solicitors, two executives, three trade mark clerks and an articled clerk in addition to occasional requests concerning office stationery, and the library. By way of example there were many days when I signed well in excess of 300 outgoing communications, a substantial number being telexes as related to urgent injunction applications and trade-mark searches. This was in my opinion a burden considerably greater than any other partner in the office, and was one of the main factors which contributed to my increasing disenchantment with my role with the Plaintiffs. 10

PARAGRAPH 8

I in fact took up my position with Deacons before I was admitted as a solicitor in the U.K. I have already commented on the circumstances in which I was admitted as a capital partner in my comments on Paragraph 6 above.

PARAGRAPH 10

In early 1981, the Partners decided that additional office space preferably in Swire House had to be obtained. Mr Wimbush approached several Department Heads with a view to them relocating to a new suite to be acquired on the 17th floor of Swire House. The original idea was that the Shipping Department should move, but they refused to do so. Ultimately he approached me with a view to the 20 Industrial Property Section moving and as early as Spring of 1981, I stated that my Department would move but I insisted in addition that I must have a second partner appointed 1st January 1982. Mr Wimbush agreed that this was a reasonable request (which he personally supported) as any move to office premises on a separate bank of lifts was undoubtedly going to give rise to major complications, with a consequent increase in administrative responsibilities. I in fact moved my Department to the 17th floor of Swire House in about July 1981 and when I left the Plaintiffs at the end of last year, I believe that there was in excess of thirty persons permanently on the 17th floor. In addition, I had responsibilities for "floating staff" such as office boys, litigation clerks etc. 30

PARAGRAPH 11

I accept that Mr Wimbush personally did his best in relation to these difficulties which, as I made clear, did not only relate to the question of an additional partner being made from the Department for which I was responsible. He was however unable to obtain the unanimous support of the other partners and I did indeed become increasingly disenchanted with my situation at the Plaintiffs although Mr Wimbush has not accurately summarised the reasons for my disenchantment.

PARAGRAPH 14

The meeting on 14th September 1982 was held only to resolve the dispute as 40 to whether or not the effective date of my resignation was to be 31st December 1982 or 30th June 1983. The written record is not accurate. Specifically, Mr

In the Supreme Court of Hong Kong Court of Appeal No. 17 Extracts from the Affidavit of Robin Miles Bridge sworn on 10th Feb. 1983 (Cont'd.)

Wimbush stated that I would be paid my share of the partnership assets and that his personal view was that the restrictive covenant was not binding.

At the meeting I made it quite clear that it was highly likely that I would go into private practice rather than accept the job with Kowloon Wharf (if it was offered to me). I also made it clear beyond any doubt that I did not consider myself bound by the restrictive covenant in the Partnership Deed which I considered unenforceable. As I have already said, Mr Wimbush himself appeared to agree with this view at the meeting.

PARAGRAPH 18

I will deal in more detail later in my Affidavit with the reasons put forward by Mr Wimbush in this paragraph as to why he considers clause 28 of the Partnership Agreement to be enforceable. Mr Wimbush refers again in this paragraph to my being paid for my share of the partnership "including its goodwill". The only reference in the Partnership Deed to goodwill and my entitlement to be paid a proportion thereof is in clause 23(b) (ii) on pages 12 and 13 of exhibit "JRW-1". The figure of HK$400,000 mentioned in that clause was re-valued pursuant to the provisions of clause 2(ii) of the Supplemental Agreement (exhibit "JRW-2") to HK$1,000,000. The proportion of the value of the firm's goodwill that I am due to be paid is therefore in the order of HK$50,000. The remaining sums I am due to be paid are represented by my share of the working capital, work in progress and retained profits of the firm and have nothing to do with the concept of "goodwill" on which Mr Wimbush places such heavy reliance.

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PARAGRAPH 20/21

Mr Wimbush has not accurately summarised what I said at the meeting of 17th September 1982 in relation to the introduction of clients to the Intellectual/ Industrial Property Department. The position in fact is that Mr Wimbush put to me at the meeting that many partners of the firm had introduced clients to that Department. This I categorically denied except in the case of Mr O.K.T. Lai. I accept that clients of the Department were not "my clients" but I maintained and continue to maintain that a very considerable proportion of the substantial litigation, and of the clients handled by my Department came to the firm as a result of my personal reputation in that field. The notes transcribed by Mr P.H. Davies at the meeting in question were not available for some three months after the meeting, and despite having called for them on a number of occasions they were not forthcoming until December. As I have already said they do not accurately reflect the whole of the discussion.

30

The figures given for the number of files shown as current under my reference in December 1982 are suspect. In the Autumn of 1982, the Plaintiffs computerised

the Hong Kong Office. I believe that there were approximately 40,000 files current when the computerisation took place, but Mr Wimbush had asked that as many files as possible be closed and placed in storage prior to computerisation being effected. The rush of files was such that the staff could not cope, and when I received my first computer print-out of supposedly current files it was so inaccurate that I did not read further than the first page. Subsequently, I met Mr Wimbush and commented that the print-out was wildly inaccurate and he agreed and gave me the reason as set out above.

PARAGRAPH 22

The six partners referred to are:– 10
J.C.B. Slack – retired
R.E. Moore – Jardine Matheson & Co. Ltd.
H.F.G. Hobson – Ince & Co., solicitors
William Turnbull –
J. Marcus Smith – retired
P.A. Davies – Barrister

On 7th February 1983 I spoke with H.F.G. Hobson at his office who informed me, and I verily believe, that it has always been his view that the restrictive covenant in the Partnership Deed was not enforceable; Mr Hobson also told me, and I verily believe, that he is reasonably clear in his recollection that he informed 20 Mr Wimbush of his views in or about 1978. When he retired from the Plaintiffs, he joined the C.Y. Tung Group of Companies expressly going into commerce and to avoid the pressures of private practice but that it was always his view that the restrictive covenant was not enforceable. I am not certain whether William Turnbull has returned to private practice (and therefore whether or not he is the second partner referred to in this paragraph), but I am certain that it was also his view that the restrictive covenant was not binding. In, I think, the autumn of 1977, I returned from leave and was requested that same day to attend a meeting with Mr Wimbush and the said Mr O.K.T. Lai. I was told that there was gross dissatisfaction within the partnership over the manner in which it was being led 30 by Mr Turnbull and that Mr Wimbush had the authority of the partners save and except myself alone to ask Mr Turnbull to resign. It was intimated to me that if I objected, then my own shares together with the shares of Mr Turnbull did not amount to 25 per cent and I had no alternative other than to agree to the approach. I was informed, as were other partners, that Mr Turnbull had threatened immediately to open his own private practice and that he intended to disregard the provisions of clause 28 which he regarded as unenforceable. Mr Wimbush was authorised to negotiate a settlement with Mr Turnbull under which he was to be paid not only his entitlement under clause 23 of the Partnership Agreement, but also an additional sum (which I believe amounted to approximately 40 HK$4,000,000) as consideration for his agreeing to abide by the restrictive covenant. Certainly, my share of the said sum was debited to me, and paid by me.

In the Supreme Court of Hong Kong Court of Appeal No. 17 Extracts from the Affidavit of Robin Miles Bridge sworn on 10th Feb. 1983 (Cont'd.)

3. I am advised by Counsel and verily believe, that it is for the Plaintiffs to prove to the satisfaction of the Court that the restrictive covenant in question is no more than is reasonably necessary to protect their business. This, it seems to me, Mr Wimbush has made little attempt to do in his Affidavit. His comments on this point, such as they are, are contained in paragraph 18 of his Affidavit. Three points seem to me to be relevant in relation to the covenant itself: –

(a) five years is an inordinately long period of time. If the objective of the clause is to effectively "sever" a partner's close personal relationship with various clients, and to ensure that the continuing partners can themselves generate sufficient goodwill with those clients to continue dealing with their work, then a period of eighteen months (or even perhaps two years) is in my view ample to achieve this purpose; 10

(b) the restriction purports to relate to all current clients of Deacons (both Hong Kong and Kowloon offices) as well as those who have been clients in the last three years. As I have already mentioned, my recollection of the result of the computerisation of the Plaintiffs' Hong Kong Office files (which of course ignores files opened by the Kowloon Office) was that there were approximately 40,000 current files last autumn. I have no idea of the total number of clients that would be "caught" by the restriction if it is held to be valid, but I would hazard a guess that it must be considerably in excess of the figure I have mentioned above, namely 40,000.

I would also mention that in my experience it is very common for clients in Hong Kong to go to different firms of solicitors for different types of work. Where, for instance, a client uses the Plaintiffs for, say, its conveyancing work, but another firm for its intellectual property work, it would, in my view, be unnecessary for the protection of the Plaintiffs to restrain me from undertaking that client's intellectual property work. Yet reading clause 28 literally, I would not be able to do this. 20

Another problem that arises in relation to the identity of clients is that particularly in my Department, a significant number of instructions come from other professional bodies such as trade mark attorneys and trade mark agents. As far as I can recall this point was raised at the meeting in September 1982 (but it may have been at some other time) and Mr Wimbush told me that he not only regarded such bodies as "clients" of the Plaintiffs but he also regarded the ultimate client in the same way, a view with which I disagree. By way of example, I have just been supplied with a photostat copy of Deacons' computer printout of what purports to be all current files for, inter alia, United Feature Syndicate Inc.. As appears later in my Affidavit all instructions for this client are received from Messrs Baker & Hostetler, attorneys at law, but nowhere upon the printout are listed any current trademark application files. I know that such files do exist – one application for this client has been advertised in the Hong Kong Government Gazette within the last six weeks – and I draw the conclusion that these files do not appear on the print-out because the files have been opened in the name of Messrs Baker & Hostetler probably with the name of United Feature Syndicate Inc. also appearing on the file cover. 30 40

The number of clients with whose affairs I was dealing when I left (and/or with whom I had dealt in the three years prior to 31st December 1982) are an extremely

small proportion of the total number of the Plaintiffs' clients that would be covered by the clause. I do not know the names of nor have I had any contact with the vast majority of the Plaintiffs' clients and it is in my view wholly unreasonable that the Plaintiffs should seek to restrict me from acting for all their clients as is being suggested. If the validity of the clause is to be tested at the time I became a partner (April 1974) although the numbers of clients would then have been considerably smaller than they are now, the point I am seeking to make would, in my view, have had just as much validity because the Plaintiffs were then, as they are now, one of the two largest firms in Hong Kong and the proportion of clients available to a solicitor to act for would have been just as high in proportion to the size of the business community in Hong Kong and to the size of the solicitors profession in Hong Kong at that time. 10

(c) the third point in relation to the covenant is that it seeks to restrict me from acting as a solicitor for clients of the Plaintiffs "in the Colony of Hong Kong". The Plaintiffs opened their Kowloon Office in or about 1972 and I doubt whether there were more than three or four firms who had offices outside the Island of Hong Kong in 1974. Again, if the validity of the covenant is to be tested in 1974, it is unreasonable for the Plaintiffs to seek to restrain me from acting as a solicitor in (say) Kowloon or the New Territories.

4. It is in my experience not uncommon for restrictive covenants to be held over people allegedly bound by them effectively "in terrorem" and/or because no one has really thought for some considerable time as to whether or not they are in fact enforceable. Secondly, on grounds of public policy, it is in my view unfair on clients to effectively restrain them from instructing the solicitor of their choice which would be the effect of the granting of an injunction in the terms of paragraph 1 of the Summons herein. 20

5. I would also mention that there are only a handful of firms in Hong Kong specialising in any degree in intellectual and industrial property matters, which would further restrict a potential client's choice. This is aggravated by the fact that because of the small numbers of firms involved, the possibility of a conflict of interest situation arising is even greater, and therefore those firms with the necessary expertise may not even be able to act when a client with interests contrary to those of their retained clients seeks their services. 30

6. Mr. Wimbush's Affidavit is silent on the question of the damage that the Plaintiffs presumably fear they will suffer if I am not restrained in the way suggested. I do not have a record of the sums earned by the Industrial Property Department or by myself personally in recent years. However, as will be seen from the accounts of the Plaintiffs for the year ended 31st December 1981, a true copy of which is now produced and shown to me marked "RMB-1", the Plaintiffs delivered bills in the total sum of approximately HK$80,000,000 in the year 1980 and HK$132,000,000 in the year 1981. The Industrial Property Department as far as I can recall delivered bills in the total amount of approximately HK$5,000,000 in 1980 and HK$6,000,000 in 1981; of those sums the Trade Mark Registration Department of the Plaintiffs delivered bills of approximately HK$2,000,000 in 1981 and HK$3,000,000 in 1982. I believe that I personally delivered bills of slightly in excess of HK$1,000,000 in each of those two years. I emphasize that these figures are approximate only. In purely financial terms therefore the damage that the Plaintiffs are 40

In the Supreme Court of Hong Kong Court of Appeal No. 17 Extracts from the Affidavit of Robin Miles Bridge sworn on 10th Feb. 1983 (Cont'd.)

likely to suffer if no injunction is granted is, I would have thought, insignificant when compared with the profits of the firm as revealed in the accounts to which I have referred.

7. Trade Mark Registration work is received either from clients direct, (generally multi-national corporations with their own Legal Department) or from trade mark attorneys/chartered patent agents or foreign lawyers acting on behalf of clients. Clients who send instructions to the Plaintiffs to register trade marks are unlikely to send me instructions in place of the Plaintiffs. Specifically, when trade marks are registered, an address for service generally has to be provided. It follows that both categories of clients will not instruct a new firm of solicitors unless and until that firm has demonstrated that it is financially sound. Trade marks have to be renewed every seven or fourteen years and in consequence, overseas clients (who make up the vast majority of clients of the Plaintiffs in terms of trade mark registration work) would not wish to send renewal instructions to a firm of solicitors which no longer exists. Thus it is most unlikely that in the next few years I will receive more than a small number of instructions to file trade mark applications in Hong Kong from an overseas source. Indeed, it is within my own knowledge that to cover the possibility of the failure of one firm, many large firms of trade mark attorneys and chartered patent agents send instructions to more than one firm of solicitors in Hong Kong. Specifically, Messrs. Ladas & Parry, who have offices in New York, Chicago, Los Angeles and London send work not only to the Plaintiffs but also to Messrs. Wilkinson & Grist and Messrs. Johnson Stokes & Master. Indeed, over the years, more than one partner of Messrs. Ladas & Parry has told me that they will continue to use the same law firm or law firms in any given territory unless and until that law firm becomes so inefficient that they are literally forced to remove their business.

11. In relation to clients, six have indicated to me that they wish me to continue to handle their work, and in many cases have specifically instructed the Plaintiffs to transfer files to me. The six clients in question are United Feature Syndicate Inc., Yoshida Kogyo K.K., Casio Computer Co. Ltd., John Walker and Co. Ltd. (a subsidiary of The Distillers Co. Ltd.), Crocodile Garments Limited and Dorman International Limited. In some cases, I have received instructions from these clients on which I have acted. In the majority of these cases, I have represented the clients for some years and I am totally familiar with their industrial property rights and with the nature and type of infringements that habitually occur in Hong Kong and elsewhere throughout the world in relation to their products. It would in my view be extremely difficult if not impossible for those clients listed above who I advised whilst a partner with the Plaintiffs in relation to their problems which in some cases are not only regional but also worldwide to obtain adequate legal advice in respect of their industrial property rights if I were restrained by injunction.

12. The damage that I am likely to suffer as a result of an injunction is indeed, in my opinion, incalculable. I am quite willing to undertake to keep accounts (which is my obligation anyway as a solicitor) and for the matter to be dealt with fully at trial. It is for instance, in my view inconceivable that, were I now to be restrained by injunction, the clients in question would ever return to me were I to be successful at trial. Additionally I

have been specializing exclusively in the field of intellectual/industrial property for some ten years and it would be virtually impossible for me to undertake any work outside that field in the future.

13. Because of the huge number of clients of the Plaintiffs involved and because of the impossibility, from my point of view, of identifying who the clients of the Plaintiffs are alleged to be (and because also of possible disputes as to whether or not patent agents and the like are considered to be "clients") the effect of granting an injunction against me in the terms of paragraph 1 of the Summons would in reality be to prevent me from conducting business at all as a solicitor for five years.

SWORN this 10th day of February 1983 10

In the Supreme Court of Hong Kong Court of Appeal
No. 18
Exhibit "RMB 1"

EXHIBIT "RMB1"

MESSRS. DEACONS, SOLICITORS - HONG KONG

STATEMENT OF ACCOUNTS

FOR THE YEAR ENDED

31ST DECEMBER, 1981

Lowe Bingham & Matthews

Prince's Building 22nd Floor Hong Kong

Lowe Bingham & Matthews

Certified Public Accountants, Hong Kong

Prince's Building 22nd Floor Hong Kong Telephone 5-222111, 5-262111
Cables Lowebinghams Telex HX73751
Mail Address GPO Box 690 Hong Kong

The Partners,
Deacons, Solicitors,
6th Floor, Swire House,
Chater Road,
HONG KONG.

AUDITORS' REPORT:

We have carried out a limited scope audit of the books and accounts of MESSRS. DEACONS, SOLICITORS, HONG KONG for the year ended 31st December, 1981 in accordance with our instructions as set out in your letter to us dated 23rd May, 1980.

Subject to the limitations and observations set out in our letter to the Firm dated 28th November, 1980, in our opinion, the accounts set out on pages 2 to 3 are properly drawn up so as to exhibit a true and correct view of the state of the Firm's affairs as at 31st December, 1981 and of its profit for the year ended on that date according to the best of our information and the explanations given to us and as shown by the books of the Firm.

LOWE, BINGHAM & MATTHEWS
Certified Public Accountants

HONG KONG, 17th June, 1982.

MESSRS. DEACONS, SOLICITORS - HONG KONG

BALANCE SHEET AS AT 31ST DECEMBER, 1981

	1981 HK$	1980 HK$
DUE TO CLIENTS ON TRUST ACCOUNTS	$165,080,437.24	$227,061,814.74
SUNDRY CREDITORS AND ACCOUNTS PAYABLE	$ 15,222,119.42	$ 8,905,165.29
PARTNERS' ACCOUNTS	48,668,971.88	31,593,797.08
	$ 63,891,091.30	$ 40,498,962.37

.... Principal Partner	.... Principal Partner
.... Partner	.... Partner
.... Partner	.... Partner
.... Partner	.... Partner
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.... Partner	.... Partner
.... Partner	.... Partner
.... Partner	

	1981 HK$	1980 HK$
TRUST FUNDS WITH BANKERS	$165,080,437.24	$227,061,814.74
FIXED ASSETS	$ 1,323,064.97	$ -
INVESTMENTS	703,622.00	603,622.00
DUE BY CLIENTS		
Costs recoverable	17,869,148.79	10,907,823.64
Disbursements	7,196,062.80	4,344,305.75
	$ 25,065,211.59	$ 15,252,129.39
WORK IN PROGRESS	325,000.00	325,000.00
ACCOUNTS RECEIVABLE AND PAYMENTS IN ADVANCE		
Sundry loans	837,799.50	1,317,500.00
Accrued interest on deposits	3,333,709.16	1,870,606.63
Sundry debtors and payments in advance	1,027,435.33	373,678.66
Sundry balances	172,604.55	128,104.50
	$ 5,371,548.54	$ 3,689,889.79
CASH AND BANK BALANCES		
Fixed deposits	$ 25,714,522.20	$ 8,308,530.39
Current accounts	805,188.48	1,102,102.39
Savings accounts	4,563,368.49	11,197,091.16
Cash on hand	19,565.03	20,597.25
	$ 31,102,644.20	$ 20,628,321.19
	$ 63,891,091.30	$ 40,498,962.37

MESSRS. DEACONS, SOLICITORS - HONG KONG

INCOME AND EXPENDITURE ACCOUNT FOR THE YEAR ENDED 31ST DECEMBER, 1981

	1981 HK$	1980 HK$
Salaries	$19,598,073.97	$14,454,472.59
Consultant's salary	139,900.00	124,400.00
Contribution to pension fund	1,106,786.89	745,241.10
Staff bonus	5,325,012.25	5,302,731.50
Staff commission	387,345.00	243,978.88
Staff accommodation	1,931,236.78	968,162.71
Salaried Partners-salaries & accommodation	1,680,000.00	-
Partners' leave passages	70,000.00	75,000.00
Passages and staff engagement expenses	358,565.63	316,760.17
Linklaters and Paines		
Remuneration	10,368,231.00	5,425,077.37
Solicitors on secondment	1,842,827.61	1,047,109.90
Management fee	1,147,511.36	1,288,607.72
	$43,955,490.49	$29,991,541.94
Rent and rates	$ 9,569,633.14	$ 4,557,282.33
Light and telephone	741,750.83	377,072.12
Printing and stationery	1,382,737.57	1,064,849.66
Insurance	878,026.20	908,896.22
Library	192,508.71	143,864.34
Computer expenses	1,169,164.54	-
Bank charges	3,098.71	3,033.72
Repairs and maintenance	1,465,775.03	415,319.48
Rent of office equipment and furniture and service fees	1,552,714.89	1,338,376.52
General expenses	1,427,393.00	1,079,726.14
Solicitors' service fees	17,633.30	18,590.00
Subscriptions	72,139.38	42,964.18
Audit and accountancy fees	97,500.00	66,000.00
	$18,570,075.30	$10,015,974.71
Donations	$ 51,000.00	$ 7,500.00
Ex gratia expenses	66,842.89	1,750.00
Bad debts written off less recovered	2,035,482.87	939,735.53
	$ 2,153,325.76	$ 948,985.53
Business profits tax	$ 9,739,026.75	$ 6,071,595.00
Excess of income over expenditure for the year transferred to Partners' Capital Accounts	$73,544,365.61	$43,306,661.34
	$147,962,283.91	$90,334,758.52

	1981 HK$	1980 HK$
Costs rendered	$132,336,942.01	$79,850,924.15
Sundry fees and income	1,160,956.97	1,193,525.55
Interest	11,558,041.23	7,114,502.31
Difference in exchange	398,343.70	153,278.51
Dividends	2,508,000.00	2,022,528.00
	$147,962,283.91	$90,334,758.52

In the
Supreme
Court of
Hong Kong
Court of
Appeal
No. 18
Exhibit
"RMB 1"
(Cont'd.)

MESSRS. DEACONS, SOLICITORS - HONG KONG

PARTNERS' CAPITAL ACCOUNTS

	J.R. Wimbush	W.P. Wong	M.P.K. Wong	S.S.C. Pun	O.K.T. Lai	P.H. Davies	R.M. Bridge	J.M. Smith	P.A. Davies	J.L.G. McLean
Profit Sharing Ratio as at 31.12.1980	10.5%	10.5%	10.5%	10.5%	10.5%	6.5%	6.5%	6.5%	6.5%	6.5%
Partners' Capital Accounts as at 31.12.1980	3,353,559.55	3,353,559.59	3,353,559.58	3,353,559.60	3,353,559.60	2,076,013.07	2,076,013.06	2,076,013.07	2,076,013.07	2,076,013.07
Redistribution of Capital	(+0.868%)	(+0.863%)	(+0.868%)	(+0.868%)	(+ 0.868%)	(+0.54%)	(+0.54%)	(-6.5%)	(+0.54%)	(+0.54%)
on partner's retirement	277,227.59	277,227.59	277,227.59	277,227.59	277,227.59	172,468.78	172,468.78	(2,076,013.07)	172,468.78	172,468.78
Profit Sharing Ratio	11.368%	11.368%	11.368%	11.368%	11.368%	7.04%	7.04%	-	7.04%	7.04%
Add : Share of Profit for first half year	4,180,261.75	4,180,261.74	4,180,261.74	4,180,261.74	4,180,261.74	2,588,761.67	2,588,761.68	-	2,588,761.67	2,588,761.67
	7,811,048.89	7,811,048.92	7,811,048.91	7,811,048.93	7,811,048.93	4,837,243.52	4,837,243.52	-	4,837,243.52	4,837,243.52
Less: Drawings	2,577,284.08	2,577,284.08	2,577,284.08	2,577,284.08	2,577,284.08	1,595,494.24	1,595,494.24	-	1,595,494.24	1,595,494.24
Partners' Capital Accounts as at 30.6.1981	5,233,764.81	5,233,764.84	5,233,764.83	5,233,764.85	5,233,764.85	3,241,749.28	3,241,749.28	-	3,241,749.28	3,241,749.28
Redistribution of Capital on admission of new	(-1.668%)	(-1,668%)	(-1.668%)	(-1.668%)	(- 1.668%)	(-1.04%)	(-1.04%)	-	(-1.04%)	(-1.04%)
partners	(763,540.41)	(763,540.41)	(763,540.41)	(763,540.41)	(763,540.41)	(476,068.35)	(476,068.35)	-	(476,068.35)	(476,068.35)
Balance as at 1.7.1981	4,470,224.40	4,470,224.43	4,470,224.42	4,470,224.44	4,470,224.44	2,765,680.93	2,765,680.93	-	2,765,680.93	2,765,680.93
Profit Sharing Ratio	9.7%	9.7%	9.7%	9.7%	9.7%	6%	6%	-	6%	6%
Add : Share of Profit for second half year	3,566,901.76	3,566,901.73	3,566,901.73	3,566,901.73	3,566,901.73	2,206,330.97	2,206,330.97	-	2,206,330.97	2,206,330.97
	8,037,126.16	8,037,126.16	8,037,126.15	8,037,126.17	8,037,126.17	4,972,011.90	4,972,011.90	-	4,972,011.90	4,972,011.90
Less: Drawings	3,341,521.70	3,341,521.70	3,341,521.70	3,341,521.70	3,341,521.70	2,067,640.22	2,067,640.22	-	2,067,640.22	2,067,640.22
Partners' Capital Accounts Per Balance Sheet	4,695,604.46	4,695,604.46	4,695,604.45	4,695,604.47	4,695,604.47	2,904,371.68	2,904,371.68	-	2,904,371.68	2,904,371.68

	P.G.V. Jolly	J.J. Bertram	J. Ho	A. Christie	V.W.K. Yipp	A.I.T. Wong	E.P. Mackay	R.A. Wallis	H.P.Y. Cheong	J.M. Rose	Total
Profit Sharing Ratio as at 31.12.1980	3%	3%	3%	3%	3%	-	-	-	-	-	100%
Partners' Capital Accounts as at 31.12.1980	958,159.88	958,159.88	958,159.88	958,159.88	958,159.88	-	-	-	-	-	31,938,662.66
Redistribution of Capital	-	-	-	-	-	-	-	-	-	-	-
on partner's retirement	-	-	-	-	-	-	-	-	-	-	-
Profit Sharing Ratio	3%	3%	3%	3%	3%	-	-	-	-	-	100%
Add : Share of Profit for first half year	1,103,165.48	1,103,165.48	1,103,165.48	1,103,165.48	1,103,165.48	-	-	-	-	-	36,772,182.80
	2,061,325.36	2,061,325.36	2,061,325.36	2,061,325.36	2,061,325.36	-	-	-	-	-	68,710,845.46
Less: Drawings	733,328.88	733,328.88	733,328.88	733,328.88	733,328.88	-	-	-	-	-	22,935,041.76
Partners' Capital Accounts as at 30.6.1981	1,327,996.48	1,327,996.48	1,327,996.48	1,327,996.48	1,327,996.48	-	-	-	-	-	45,775,803.70
Redistribution of Capital on admission of new	-	-	-	-	-	(+2.5%)	(+2.5%)	(+2.5%)	(+2.5%)	(+2.5%)	-
partners	-	-	-	-	-	1,144,395.09	1,144,395.09	1,144,395.09	1,144,395.09	1,144,395.09	-
Balance as at 1.7.1981	1,327,996.48	1,327,996.48	1,327,996.48	1,327,996.48	1,327,996.48	1,144,395.09	1,144,395.09	1,144,395.09	1,144,395.09	1,144,395.09	45,775,803.70
Profit Sharing Ratio	3%	3%	3%	3%	3%	2.5%	2.5%	2.5%	2.5%	2.5%	100%
Add : Share of Profit for second half year	1,103,165.48	1,103,165.48	1,103,165.48	1,103,165.48	1,103,165.48	919,304.57	919,304.57	919,304.57	919,304.57	919,304.57	36,772,182.81
	2,431,161.96	2,431,161.96	2,431,161.96	2,431,161.96	2,431,161.96	2,063,699.66	2,063,699.66	2,063,699.66	2,063,699.66	2,063,699.66	82,547,986.51
Less: Drawings	971,001.30	971,001.30	971,001.30	971,001.30	971,001.30	809,167.75	809,167.75	809,167.75	809,167.75	809,167.75	33,879,014.63
Partners' Capital Accounts Per Balance Sheet	1,460,160.66	1,460,160.66	1,460,160.66	1,460,160.66	1,460,160.66	1,254,531.91	1,254,531.91	1,254,531.91	1,254,531.91	1,254,531.91	48,668,971.88

In the Supreme Court of Hong Kong Court of Appeal
No. 19
Extracts from the Affidavit of John Richard Wimbush sworn on 11th Feb. 1983

EXTRACTS FROM THE AFFIDAVIT OF JOHN RICHARD WIMBUSH SWORN ON 11TH FEBRUARY 1983

I, John Richard Wimbush of 5 Coombe Road, The Peak, Hong Kong, Solicitor, make oath and say as follows: –

1. I crave leave to refer to my Affidavit sworn herein on 5th February, 1983 ("my first Affidavit"). I have also read what purport to be true copies of Affidavits sworn herein by the Defendant ("Mr Bridge's Affidavit"), Yoko Mita Bridge, and Timothy John Hancock. I am advised that it is not necessary for me at this stage to reply to all the points in the said Affidavits which I do not accept.

2. I wish, however, to make the following points with reference to Mr Bridge's Affidavit: – 10

(a) (Paragraph 2 – page 6) In referring to Paragraph 18 of my first Affidavit, Mr Bridge states that the proportion of the value of the Plaintiff's goodwill that he is due to be paid is in the order of HK$50,000. In fact, the figure is slightly in excess of HK$59,000. What he describes as the remaining sums will amount, when added to the said figure of HK$59,000, to approximately HK$3.5m. What I in fact was saying to him in my letter of 9th December, 1982 (pp. 28-31 of JRW-3) was that, even if the Defendant were to waive payment of the said sum of HK$3.5m., the Plaintiff would not agree to release him from the covenant in Clause 28(a) of the Partnership Agreement. 20

(b) (Page 7) I do not accept Mr Bridge's statement that the figures for the number of files shown as current under his reference in December 1982 are suspect. I recall very clearly Mr Bridge's criticism of the figures in Autumn 1982, but these inaccuracies were caused by data input problems which were solved before December 1982. The figures quoted in Paragraph 21 of my first Affidavit are correct.

(c) (Page 8) Mr H.F.G. Hobson did not return to private practice until the expiration of five years from the date on which he resigned as a Partner in the Plaintiff. He therefore fully observed the restraint imposed by Clause 28(a). Moreover, he actually requested the Plaintiff to agree that he should be able to 30 return to private practice free of the restraint imposed by Clause 28(a) six months before the five year period expired. I raised this request at a Partners' meeting, and the Partners decided not to accede to it. There is now produced and shown to me marked "JRW-8" a copy of my letter to Mr Hobson dated 3rd July, 1978. The position therefore is exactly the opposite of what Mr Bridge says.

(d) (Page 8) I cannot comment in detail on what Mr Bridge says with reference

to Mr Turnbull without checking the Plaintiff's records in this regard. I can say with certainty at this stage, however, that the primary purpose of the payment made to Mr Turnbull was to secure his early retirement from the Partnership and was not related to Clause 28(a).

(e) (Paragraph 3(b) – page 11) Even if the figure of 40,000 current files is correct, it would be quite absurd to suggest that this would mean that a figure in excess of 40,000 clients would fall within the restraint imposed by Clause 28(a). The true figure would be far smaller.

(f) (Page 12) I am quite clear that I have never suggested that in cases where clients come to the Plaintiff through other professional bodies, the professional bodies are the clients of the Plaintiff; it is only the company, firm or person for whom the Plaintiff acts who are its clients. 10

(g) (Paragraph 3(c) – page 13) The Plaintiff in fact opened its Kowloon office in December 1970. The fact that it did so bears witness to its having clients throughout the Colony of Hong Kong including both Kowloon and the New Territories, and that that situation obtained prior to the date on which the Kowloon office was opened.

(h) (Paragraph 6 – page 15) I do not accept that the loss of even a part of the figures quoted by Mr Bridge could be said to be insignificant. I also do not accept that they fall to be considered by reference to the overall turnover or profits of the Plaintiff. 20

SWORN this 11th day of February 1983

EXHIBIT "JRW8"

JRW: SW-72/16186

3rd June, 1978.

CONFIDENTIAL

Mr. H.F.G. Hobson,
c/o Island Navigation Corporation Ltd.,
Hutchison House, 12th Floor,
HONG KONG.

My dear Howard,

I refer to our discussions at lunch on 31st May. 10

There was a Partners' meeting on Friday, 2nd June, and I brought up your request under "Any other business".

There is a fairly strong feeling in the partnership that we cannot accommodate your request. You will appreciate that part of the money paid to you on your retirement included a payment in respect of goodwill so this restriction has been paid for rather than given quite gratuitously.

I am surprised that you feel inclined to come out into private practice again. The pressures on solicitors have in no way lessened during the years you have been away. The urgency is as great as ever while the problems are becoming more complex.

May I suggest, however, that if you are resolved to practise privately again, before 20 making any final arrangements with Messrs. Ince & Co., we should at least explore the possibility of your rejoining Deacons. Bill Turnbull took a very negative approach towards consultants but I am prepared to take a more flexible view. Our arrangements with Peter Vine indicate that a consultancy can be mutually satisfactory. It does not involve the consultant in taking part in the administration of the office beyond the leave dates of his secretary and the work load can be adapted to fit in with concurrent employment elsewhere. It may be assumed that the consultant will have other work and our experience with Peter has shown that the most difficult area which needs to be resolved is the consultant's other activities. The consultant must not hold directorships or other interests which are potentially in conflict with the interests of other clients of Deacons and a full 30 disclosure, with a definite understanding that additional commitments will not be taken on except with the firm's consent, is vital. I would also mention that with Peter we have an understanding, perhaps the word "covenant" is too strong, that he will never practise again in Hong Kong other than with Deacons.

The actual work, which it might be supposed is a difficult area, is in fact very straight forward. The consultant is free to refer his clients to the firm where, for some reason or another, he does not wish to handle the work himself. If he finds his work load is too great or, if the cases are unsuitable, this enables him to shed part of his load. On the other hand, if he has insufficient work, suitable cases can be referred to him. The amount of work handled can, therefore, be flexible and can take into account the consultant's other commitments.

It follows, of course, that in an arrangement of this kind the consultant's earnings are fee related. As the consultant is free to determine the number and nature of the cases handled, his earnings will be related directly to the fees he has earned. 10

Yours sincerely,

(J. R. Wimbush)

In the Supreme Court of Hong Kong Court of Appeal
No. 21
The Affidavit of John Richard Wimbush sworn on 18th Feb. 1983

THE AFFIDAVIT OF JOHN RICHARD WIMBUSH SWORN ON 18TH FEBRUARY 1983

I, John Richard Wimbush of 5 Coombe Road, The Peak, Hong Kong, Solicitor, make oath and say as follows: –

1. I crave leave to refer to my two previous affidavits sworn herein on 5th February, 1983 and 11th February, 1983 respectively. I wish to refer in particular to paragraph 2(c) of my affidavit sworn on the 11th day of February, 1983.

2. There is now produced and shown to me and exhibited hereto marked "JRW-9" a true copy of an extract from the minutes of a Capital Partners' meeting of the Plaintiff held on Friday, 2nd June, 1978. This is the meeting referred to in paragraph 2(c). From the minutes it will be apparent that my recollection as set out in paragraph 2(c) was not entirely accurate, since Mr. Hobson was requesting the Plaintiff to agree that he should be able to return to private practice free of the restraint imposed by Clause 28(a) a period of three months, rather than six months as I stated, before the five year period expired. In all other respects, what I said in paragraph 2(c) is accurate. Moreover it will be noticed that Mr. Bridge was present at the meeting, and, in accordance with the usual practice of the Plaintiff, signed the minutes. 10

SWORN this 18th day of February, 1983.

In the Supreme Court of Hong Kong Court of Appeal No. 22 Exhibit "JRW9"

EXHIBIT "JRW9"

CAPITAL PARTNERS' MEETING ON FRIDAY, 2ND JUNE, 1978 – MINUTES

Present: J.R.W., W.P.W., M.P.K.W., S.S.C.P., O.K.T.L., P.H.D., R.M.B., J.M.S. and J.L.G.M.

J.R.W. opened the meeting by referring to three small matters, namely: –

1. Mr. H.F.G. Hobson – J.R.W. reported on a conversation he had had with Mr. Hobson who had enquiried whether the Partners of Deacons would be prepared to give him a waiver of the balance of 3 months outstanding under the restrictive covenant prohibiting him from competing with Deacons. J.R.W. had understood that Mr. Hobson had been approached by Ince & Co. to head their operation in Hong Kong. Alternatively, Mr. Hobson indicated an interest in taking on a position as a consultant with Deacons after W.T.'s departure from the firm.

10

It was agreed that there should be no waiver of the restrictive covenant. J.R.W. said that provided the fees payable to Mr. Hobson on any consultancy were geared to the costs earned for Deacons by Mr. Hobson he considered that the joining of Mr. Hobson as a consultant was a definite possibility. M.P.K.W. and P.H.D. expressed favourable views as did R.M.B. who made the qualification that P.A.D. would of course have to be consulted in view of Mr. Hobson's shipping work. J.L.G.M. reported that he had discussed the matter with P.A.D. before his departure and that P.A.D. was in favour of Mr. Hobson returning as a Partner let alone a consultant. J.R.W. said that there had been no question of Mr. Hobson returning as a Partner, capital or otherwise. It was then agreed that in principle Mr. Hobson would be welcome as a consultant. J.R.W.'s draft letter was approved and it was left to J.R.W. to discuss the question of a consultancy with Mr. Hobson.

20

[Handwritten note]

There has been some misunderstanding. I have never suggested that I would agree to H.F.G.H. returning as partner. With regard to a consultancy, I would endorse J.R.W.'s views.

P.A.D.

In the Supreme Court of Hong Kong Court of Appeal
No. 22
Exhibit "JRW9"
(Cont'd.)

[Signed by the following]

....	....	....	....
J.R.W.	W.P.W.	M.P.K.W.	S.S.C.P.
....	....	....	....
O.K.T.L.	P.H.D.	R.M.B.	J.M.S.
....	....		
P.A.D.	J.L.G.M.		

In the Supreme Court of Hong Kong Court of Appeal

No. 23 Extracts from the Affidavit of Robin Miles Bridge sworn on 16th Feb. 1983

EXTRACTS FROM THE AFFIDAVIT OF ROBIN MILES BRIDGE SWORN ON 16TH FEBRUARY 1983

I, ROBIN MILES BRIDGE, solicitor of the Supreme Court of Hong Kong, of 92 Pokfulam Road, Flat 5D, Hong Kong, make oath and say as follows: –

1. I make this further Affidavit in reply to paragraph 3 of Mr. Wimbush's second Affidavit sworn and filed on Friday last, 12th February 1983.

2. In or about 1977, my then partner, Mr. O.K.T. Lai introduced the Directors of Easey Garment Factory Limited to me. The company is one of Hong Kong's largest garment manufacturers of clothing but particularly jackets and jeans made of denim up to that date as contractors for the proprietors of well-known trade marks. However, presumably due to surplus capacity, the company had introduced its own trade mark "EASY" and despite consulting numerous other firms of solicitors in Hong Kong, the client had been unable to obtain a registration of the "EASY" trade mark, and had been advised that without a registration of the trade mark in Hong Kong, it was impossible to prevent third parties from using an identical trade mark in respect of articles of clothing.

3. For the first two or three years, a large number of civil suits were instituted against manufacturers and exporters in Hong Kong for injunctions to restrain acts of passing-off to the point where today the manufacturers of counterfeit merchandise are fully aware of the consequences of applying the trade mark "EASY".

SWORN this 16th day of February 1983

In the Supreme Court of Hong Kong Court of Appeal
No. 24
Extracts from the Affidavit of Robin Miles Bridge sworn on 13th Apr. 1983

EXTRACTS FROM THE AFFIDAVIT OF ROBIN MILES BRIDGE SWORN ON 13TH APRIL 1983

I, ROBIN MILES BRIDGE of 92 Pokfulam Road, Flat 5D, La Clare Mansion, Hong Kong, solicitor, MAKE OATH and say as follows:

1. I make this affidavit first in order to place before the Court of Appeal certain contractual documentation as between the Plaintiffs and myself which my solicitors have recently obtained from the Plaintiff's solicitors and which ought, in my submission, to have been before the Honourable Mr Justice Hunter. There is now produced and shown to me marked "RMB3" true copies of the Agreement dated 1st May 1967, whereby I was appointed an Assistant Solicitor with the Plaintiffs, a Variation Agreement dated 29th June 1967, and a further Agreement dated 20th March 1968, together with copies of the Plaintiff's letters to me of 16th June 1971 and 21st June 1973, the contents of which are self-explanatory. 10

SWORN this 13th day of April 1983

In the Supreme Court of Hong Kong Court of Appeal No. 25 Extracts from Exhibit "RMB3"

EXTRACTS FROM EXHIBIT "RMB3"

AN AGREEMENT made the First day of May, One thousand nine hundred and sixty-seven.

BETWEEN RAYMOND EDWARD MOORE, WAI-PAT WONG, JAMES CYRIL BARNINGHAM SLACK, WILLIAM TURNBULL JUNIOR and MAURICE PING-KIN WONG Solicitors practising in Hong Kong as Solicitors and Notaries Public, Trademark and Patent Agents under the firm name of DEACONS (hereinafter called "the Firm") of the one part and ROBIN MILES BRIDGE of 60, Warblington Road, Emsworth, Hampshire, England (hereinafter called "the Employee") of the other part.

WHEREBY IT IS AGREED as follows: – 10

1. The Firm shall employ the Employee as an Assistant Solicitor in the Firm's said practice for the period of Forty-two months from the First day of May 1967.

2. (a) The Employee agrees to serve the Firm in the capacity of an Assistant Solicitor during the continuance of this Agreement and to perform all the lawful orders of the Firm and to conduct himself with sobriety and propriety and faithfully and to the best of his skill discharge his duties as such Assistant Solicitor.

(b) The Employee shall not accept from any client of the Firm any present or gratuity, monetary or otherwise, without the previous consent of the Firm nor shall he in any manner ask for or solicit any such present or gratuity from any client or other person with whom the Firm may have dealings. 20

(c) The Employee shall keep confidential and shall not without the previous written consent of the Firm divulge to any other person whomsoever not authorised to receive the same any matter or thing touching or concerning the business or affairs of the Firm or of any client of the Firm or of any matter in which the Firm is engaged.

3. The Employee shall not during the said term take or engage in any other employment or business whatsoever in the said Colony of Hong Kong without the previous consent in writing of the Firm.

4. (a) The Firm will pay to the Employee the following remuneration during the said term: – 30

(1) A salary of HK$3,000:00 per month with annual increments of HK$150:00 per month.

(2) A commission of ten per cent calculated on all bills delivered and paid in each calendar year for costs in respect of work done by the Employee over and above the sum of HK$100,000:00 per annum and twenty per cent over and above the sum of HK$300,000:00 per annum, such amounts to be apportioned in respect of any part of a calendar year in which the Employee is employed hereunder Provided that no commission shall be payable at the rate of twenty per cent in respect of part of a year

only unless the bills delivered and paid for costs in respect of work done by the Employee during such part of the year in fact exceed HK$200,000:00.

(b) In the event that any dispute or difference shall arise as to whether any particular work was performed by the Employee or as to the amount of commission payable thereon, the decision of the Firm shall be binding and conclusive on the Employee.

5. If at any time hereafter a Registered Medical Practitioner appointed by the Firm shall certify in writing that the Employee is likely by reason of sickness or ill-health to be unable properly to perform his duties hereunder for a period of not less than three months from the date of the certificate, this Agreement shall, unless the Firm shall otherwise agree in writing terminate at the expiration of three months after the date of such certificate and the Firm shall not be liable to pay any salary or commission beyond that date or any compensation for termination of the employment. In such event the Firm shall, provided the Employee bona fide intends to return to England, provide the Employee with an Economy Class air passage to England. The Employee agrees at any time or times during the term of this Agreement at the request of the Firm to submit himself for examination by any such Registered Medical Practitioner as aforesaid.

6. At the expiration of this Agreement, the Firm shall grant to the Employee six months' home leave on full pay and, provided the Employee bona fide intends to depart from Hong Kong at the commencement of such leave, the Firm shall provide him with an Economy Class air passage to England or, at the discretion of the Firm, with an equivalent passage elsewhere.

7. The Employee shall be entitled to join the Firm's Provident Fund from the date of his arrival in Hong Kong.

8. The Employee shall not for a period of two years after the termination of this Agreement from any cause whatsoever, within the Colony of Hong Kong, directly or indirectly and whether alone or in partnership with any other person act as Solicitors, Notary, Trademark or Patent Agent for, or solicit the business of any person who is at the date of this Agreement or who may at any time during the continuance of this Agreement, be or become a client of the Firm, nor engage, employ or remunerate any member of the Firm's staff at the date of termination or any person who ceased to be a member of the Firm's staff in consequence of his own resignation within a period of six months prior to the date of termination.

9. Notwithstanding anything herein contained, this Agreement may be terminated by the Firm summarily and without notice in the event that the Employee shall fail to observe or perform any of the provisions herein contained and on his part to be observed or performed or if he shall become bankrupt or insolvent or fail to pay his personal debts or be guilty of persistent insobriety or be convicted of any criminal offence involving his integrity or honesty or if he shall be guilty of any grave mis-conduct which, in the opinion of the Partners of the Firm is detrimental to its interests or shall absent himself without leave except through illness or accident.

In the Supreme Court of Hong Kong Court of Appeal No. 25 Extracts from Exhibit "RMB3" (Cont'd)

10. In case of any changes either by the death of any partner or otherwise in the constitution of the Firm the persons for the time being constituting the Firm shall represent the Firm for the purpose of this Agreement and shall be capable of enforcing the same against the Employee.

AS WITNESS the hands of the parties hereto the day and year first above written.

SIGNED by the said Raymond Edward)
)
Moore for and on behalf of the)
)
Firm in the presence of: –

SIGNED By the said Robin Miles)
)
Bridge in the presence of: –)

10

REM: 1b: OFF

16th June, 1971.

R.M. Bridge, Esq.,
PRESENT.

Dear Robin,

As arranged, I set out hereunder our proposals for your further employment with the Firm.

1. The Partners have decided to pay the return air passage for your wife from Hong Kong to the United Kingdom and back for your present leave.

2. The length of your next tour will be four years (including periods of leave as detailed below) calculated from the date of your return from leave subject to the Firm's right to terminate the contract at any time on six months' notice. I realise that the provision for notice is a departure from your former contract but a similar clause has been written into all agreements negotiated since last October as the Partners feel that although there is no intention of making use of such a clause in any foreseeable circumstances, it is necessary that there should be a method of terminating the employment if some fundamental change of circumstances occurs in Hong Kong or if, for some reason, the Employee is unable to contribute sufficient earnings to justify his continued employment. 10

3. During the second year, you will be entitled to six weeks' leave and an excursion return ticket will be provided for you and your wife from Hong Kong to London and return or the equivalent. 20

4. Your leave at the end of the tour will be four and a half months and economy class air passages will be provided from Hong Kong to London for yourself and your wife (with a return passage if you continue with us after this tour) or the equivalent for the purposes of this leave.

5. Basic salary for Provident Fund purposes will be HK$5,750.00 per month.

6. Guaranteed minimum commission will be HK$1,500.00 per month making the effective minimum salary HK$7,250.00 per month. The temporary accommodation allowance applicable to first tour terms will cease to be payable.

7. Commission arrangements will be as in your present contract and the current year 1971 will be apportioned on a 9 months' basis to reflect your absence. 30

8. Increases in basic salary will be subject to review in the light of your commission earnings and prevailing conditions in Hong Kong.

9. Your salary during the three months' leave will be paid monthly and will include the $250 increment making the total figure $4,800. This figure will also be used as the basis for the 2 months and 24 days pay to which you are entitled in lieu of leave.

10. Except as hereby varied, the existing Service Agreement will remain in full force and effect.

The Partners have asked me to say how pleased they are that you have decided to stay on with the Firm for a further tour and we look forward to a continuation of the very pleasant relationship which has existed throughout your first tour. Please sign the duplicate of this letter by way of confirmation in the place marked below.

Yours sincerely, 10

(Raymond E. Moore)

WT/SW

21st June, 1973.

R.M. Bridge, Esq.,
PRESENT.

Dear Robin,

I am pleased to inform you that the Partners have decided to offer you the position of a salaried partner effective 1st July 1973.

The proposed terms of your salaried partnership are as follows: –

1. Your remuneration will be a salary of HK$211,800.00 per annum. The remuneration is calculated to the nearest round figure to produce a net amount (after tax at the standard rate) of HK$180,000.00 per annum (HK$15,000.00 per month). You will not be entitled to any commission but this salary reflects a substantial increase over your existing emoluments to date. 10

2. Your name will appear on the letterhead as a partner and the capital partners will indemnify you against any liability which you may incur in consequence thereof (other than liability arising from your own act, neglect or default) until you become a full capital partner.

3. You will be entitled to attend at partnership meetings (except on occasions at which the capital partners decide to meet alone) and to express your views on partnership matters, but not to vote thereon should a vote be necessary. 20

4. Provident Fund payments will continue to be calculated on the present basis salary of HK$6,250.00 per month.

5. Other terms and conditions including leave and termination will be as in your existing Service Agreement. As you have just taken leave, your leave entitlement will begin to accrue with effect from 1st July 1973.

The period of a salaried partnership is intended to be an intermediate stage between being an assistant solicitor and becoming a full partner. In the past commitments have not been given with regard to the date or terms of becoming a full partner. However in your case and subject to your continuing to perform your services satisfactorily it is proposed that you should be made a full profit sharing partner with a five per cent share with effect from 1st April 1974 on the following terms and conditions: – 30

1. Upon becoming a full partner you will be subject to the terms and conditions of our Partnership Agreement, a copy of which is enclosed.

2. Subject to Clause 7 below, your drawings would be limited to a maximum of HK$15,000.00 per month after tax until such time as you have paid in full for your share in the partnership.

3. The price to be paid for your five per cent share in the partnership will be calculated by the firm's auditors, Messrs. Lowe, Bingham & Matthews, whose decision will be final and binding on both you and us. They will be instructed to audit the accounts of the firm as at the 31st day of March 1974 in accordance with the provisions of the Partnership Agreement on the same basis as they did when Mr. J.C.B. Slack retired from the firm at the end of 1972 and to calculate the value of the five per cent share being acquired by you on the same basis as his then share. The cost of this audit and price calculation will be for the account of the partnership after you have joined so that effectively you will bear five per cent thereof. 10

4. Payment of the purchase price by you shall be made by deduction from your share of the net profits available for distribution amongst the partners after the drawings mentioned in Clause 3 above. You will be required to contribute by way of down payment $20,000.00 out of your provident fund balance as at the date you become a partner. Interest will be payable upon the outstanding balance of the purchase price at the rate of six per cent per annum. After payment of the aforementioned sum of $20,000.00 you will not have any personal liability to make payment other than out of your share of the net profit available for distribution amongst the partners after the deduction of your actual drawings. You should note however that under the terms of the Partnership Agreement if any partner retires after you have joined then you are liable to pay that partner for any shares or fractions of shares you purchase from him. 20

5. It should be understood that the maximum limit contained in Clause 3 above is not a guarantee of any description and profitability of the partnership and your drawings will be entirely dependent on conditions prevailing at any given time.

6. Your joining the partnership will not be advertised under the terms of the Fraudulent Transfer of Business Ordinance but the existing partners will give you an indemnity with regard to any liabilities existing at the date you join the partnership.

7. The abovementioned drawing of HK$15,000.00 is based on a figure used for earlier partners and it is related to the standard and cost of living for a partner who has recently joined the firm and is paying off out of earnings the price of his share. If this figure is not realistic at the date when you become a partner the position will be reviewed with a view to a satisfactory figure being agreed. 30

8. As explained to you, we are currently arranging to admit additional salaried and full partners and certain existing partners will be retiring before you join. We reserve the right pending your becoming a full capital partner to make such changes as the partners for the time being consider expedient or necessary in the interests of the firm and in accordance with the terms of the Partnership Agreement both as to the persons comprising the partnership and their shares (if any) both now and in the future and also with regard to the partnership assets and the carrying on of the partnership business. 40

In the Supreme Court of Hong Kong Court of Appeal No. 25 Extracts from Exhibit "RMB3" (Cont'd)

Yours sincerely,

(W. Turnbull)

[Handwritten note]

Accepted with pleasure – many thanks, also, for the confidence and trust you all have shown in the past and continue to give me now.

(Sgd.) ROBIN BRIDGE

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