

18/85

IN THE PRIVY COUNCIL

No. 66 of 1984

O N A P P E A L

FROM THE HIGH COURT OF SINGAPORE

B E T W E E N :

JAMES CHIA SHIH CHING

Appellant

- and -

LAW SOCIETY OF SINGAPORE

Respondent

RECORD OF PROCEEDINGS

PART I

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O N A P P E A L

FROM THE HIGH COURT OF SINGAPORE

B E T W E E N :

JAMES CHIA SHIH CHING Appellant

- and -

LAW SOCIETY OF SINGAPORE Respondent

RECORD OF PROCEEDINGS

PART I

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O N A P P E A L

FROM THE HIGH COURT OF SINGAPORE

B E T W E E N:

JAMES CHIA SHIH CHING Appellant

- and -

LAW SOCIETY OF SINGAPORE Respondent

RECORD OF PROCEEDINGS

PART I

10	No. 1 <u>CHARGES</u>	In the District Court
	IN THE SUPREME COURT OF THE REPUBLIC OF SINGAPORE IN THE MATTER OF DAC 4624 & 4625 of 1980 JAMES CHIA SHIH CHING Appellant against PUBLIC PROSECUTOR Respondent	No.1 Charges Undated

APPEAL under the provisions of Chapter
 XXVIII of the Criminal Procedure Code.

20 AT a District Court No.9 held in Singapore
 before Soon Kim Kwee Esquire, a District Judge
 for the Republic of Singapore the abovenamed
 appellant was charged as follows :-

That he on the 10th March 1980, in Singapore,
 being entrusted with dominion over a sum of
 £400 attempted to commit criminal breach of
 trust of this sum and he had thereby
 committed an offence punishable under Section
 406 read with Section 511 of the Penal Code.

30 and

That he on the 20th March 1980, in Singapore,

In the
District
Court

No.1
Charges
Undated

(continued)

being entrusted with dominion over a sum of \$800 committed criminal breach of trust of this sum and he had thereby committed an offence punishable under Section 406 of the Penal Code.

Alternatively

That he, on or about the 7th day of March 1980, in Singapore, cheated Tong Eng Brothers Private Ltd. by deceiving the Company into believing that a sum of £800 was due and payable to one D.C.Potter, Queen's Counsel as legal fees for work rendered when he knew that such sum was not in fact determined nor due and payable and he had thereby dishonestly induced the Company to deliver to him a bank draft for £800 which it would not do if it were not so deceived and he had thereby committed an offence punishable under Section 420 of the Penal Code.

10

No.2
Notes of
Evidence
(Charges)
5th October
1981

No. 2

NOTES OF EVIDENCE

Monday, 5th October 1981
In Open Court
Before me
Sd: Soon Kim Kwee
District Judge
Subordinate Courts

20

DAC 4624-5/80
IT S/S 2421-2

PP vs James Chia Shih Ching

Sec. 420 Cap. 103
Sec. 406 Cap. 103
Sec. 6(a) pu Sec.94(2) Income
Tax Act (2 counts)

30

Prosecuting Officer: DPP Mr Fong Kwok Jen
assisted by Mr Kelvin Lim

Defence Counsel: Mr H.E.Cashin assisted by
Mr Choo Man Teck

Mrs Lucy Hangchi on watching brief for
the Comptroller of Inland Revenue and Chief
Assessor.

40

DPP:- I am tendering an amended charges in respect of DAC 4624/80 and DAC 4625. The 3rd charge is an alternative to the 1st and 2nd charge. I had given a copy to the Registrar last week.

In the
District
Court

Mr.Cashin: I have no objection to the amended charges.

Amended charges are marked A, B and C respectively.

No.2
Notes of
Evidence
(Charges)
5th October
1981

10

DPP: May the plea be taken.

Court: Mr Fong, are you proceeding with all the charges.

DPP: Your Honour, I am only proceeding with the DAC cases at this stage.

Charges read explained and understood.
Claims trial.

DPP: I am applying for the charges to be tried jointly.

Defence Counsel: I have no objection.

20

DPP: May I apply for Assistant Director CPIB, Chung Song Meng and Mr D.C.Potter to be present in court.
My learned friend has no objection.

Court grants application.

(DPP tenders an opening address.
DPP reads).

(Opening address - 'D').

P.W.1
DONALD CHARLES POTTER

Plaintiff's
Evidence

30

PW1: Donald Charles Potter - sworn in English
Barrister-at-Law and Queen's Counsel.
4, Pump Court Temple, London.

P.W.1
Donald
Charles
Potter
Examination

I specialise in Revenue Law. In the courts of my profession I have accepted several instructions and one brief from the Inland Revenue Department, Singapore.

In the course of this, I came to know the accused, Mr. James Chia. He was during that time, I understood him to be the Senior Legal

In the
District
Court

Plaintiff's
Evidence

P.W.1
Donald
Charles
Potter
Examination

(continued)

Officer in the Singapore Tax Office.

In my Chambers, I have a chief clerk,
Tony Brown.

I recently refreshed my memory by looking
at the instructions and I can say that in
January '80 I received instructions regarding
Tong Eng Brothers (Pte) Ltd. I do not
normally see any letter addressed to Mr Brown.
May I see the letter? (Witness is shown a
letter). I did not see this letter but I
received the instructions below. (Letter is
marked for identification - 'E'). (Brief
is marked and admitted P5).

10

I wrote a written opinion and I remember
it was in February '80. I do not remember the
date. (Witness is shown a letter and an
opinion). I recognise the letter dated
14.2.80 signed by me. It is addressed to the
accused. I recognise the opinion which is
signed by me and which is dated on 14.2.80.
That is the opinion in respect of the
instruction. (Letter is marked P6 and opinion
is marked P7).

20

Fee system is perhaps a euphemism because
it is never very systematic. I never directly
deal fees with an instructing solicitor. Fees
are always arranged by Tony Brown. He discussed
them with the solicitor and arrives at an
agreement with the solicitor. Tony Brown will
send the solicitor what we call a fee note, ie
a bill. He never shows me the fee note in
advance. He received a cheque from the solicitor
and he pays the cheque into my bank account in
London without showing it to me. At the end of
each month, Brown hands me a piece of paper on
which is type-written a figure being the total
fees that he had paid into the bank in that
month. Also on that paper is a calculation of
the sum of money which I have to pay into the
general chambers account representing my share
of the general expenses. However, sometimes
Brown will discuss with me what sort of fee
should be charged in particular matters. This
is unusual except in cases of brief to appear
in court. But even then, the discussion is in
essence to give Brown guidance as to what fee is
to be charged. I never personally insist on any
particular fee.

30

40

I personally know that Brown discusses fees
with the solicitor before work is done because
I frequently hear him discussing about this
when I happen to go into the clerk's room.

50

My understanding is that my fees are not normally discussed in advance save for briefs to appear in court. The reason is this. Normally most solicitor know the sort of fees that my clerk charges for my work. Therefore an agreement in advance is not necessary. Furthermore it is often not known in advance how much work is required. The exception is briefs in court. There the rule of the English Bar is that on the brief must be marked clearly the fee that it carries and that must be marked before any counsel goes to court.

In the District Court

Plaintiff's Evidence

P.W.1
Donald Charles Potter
Examination

(continued)

Usually the fee note is not sent together with the opinion. The fee note goes when the solicitor ask for it but if he fails to ask for it, it goes within a matter of some months after the opinion had been despatched. But I should add that that is my clerk's province and in particular cases, it may vary. I have known cases where the fee cheque comes with the brief. There is no particular rule but as I understand it, if the solicitor does not ask for a fee note, I think the majority do not, then the staff who assists the chief clerk, every so often go through my file which is a card index and prepare a fee note on all outstanding matters. I think but I am not sure, that happens about once every 3 months. If the fee is not paid, then reminders are then sent but how often I do not know.

In respect of P7, I thought that this brief concerns what I call a family matter though I had no idea what the connection was between the accused and the company. I thought the company was what we would call his "family company". I do not remember exactly but there can only be one way I will know this and that is, my clerk telling me and presumably the solicitor tells my clerk. A possible alternative, not relevant in this case, is that the brief will make it clear that the company, the trust, the partnership or whatever was a family matter. I should add that the phrase 'family matter' or 'private matter' could be used and as far as I am concerned, the two matters meant the same thing. I now say that I have since look at the brief and that I could not have obtained that impression from the brief. Perhaps I should add this. Sometimes a solicitor telephones me or meets me before delivery of the brief and tells me that it is a family matter but that is very rare. That certainly was not this case. In P5, the figure 18.1.80 is the date on which my clerk received the brief. In the normal

In the
District
Court

course, the opinion is sent by airmail if it is overseas but sometimes by telex but that is exceptional.

Plaintiff's
Evidence

P.W.1
Donald
Charles
Potter
Examination

(Witness is shown a letter). This is a letter purportedly from the accused to my clerk stating that my opinion has been received. The scribbling are shorthand notes by Brown. I am sure Brown must have shown this letter to me but showing it to me is exceptional. On looking at the letter, I recall seeing it. (Letter is marked and admitted P8).

10

(continued)

In respect of para.2 of P8, it would appear that the fee note had not been rendered by then. That is not unusual? The majority of my clients are in London and they may readily telephone. In respect of a client outside London or abroad, I do not see how he could suggest a fee other than by letter. I would make a distinction as regards future work. As for future work where the brief is delivered, then payment for the future work though unusual in my particular case is I believe not particularly unusual at the English Bar. On the other hand, payment for non-specified work, ie, for briefs to be delivered in the future is in my experience very exceptional in London Chambers.

20

(Witness is shown a letter dated 13th March '80). This is the letter written by Brown to the accused. (Letter if marked and admitted - P9).

30

Although I did not see this letter nevertheless my clerk must have discussed with me the question of not charging. The reason I can say that is that my clerk Mr Brown, would not render a nil fee save after mentioning to me.

Solicitors are compelled to keep several clients account apart from office account but so far as I am aware, no barrister does that. There is a Chambers Account kept by the clerk. That is the common pool but no fees are paid into that account. That is meant for paying rent, wages, etc.

40

Most English barristers simply call their clerks to pay all fees into their bank account. I think it is true that that is so because barristers do not hold client's money.

(Witness is shown a carbon copy of a letter dated 20th March '80). I am reasonably sure I have seen the original of this letter. I am sure

I saw this letter because any letter conveying thanks to me is normally shown to me by the clerk. Moreover I remember the two photographs being handed to me. (Letter is marked and admitted without objection - P10).

In the
District
Court

Plaintiff's
Evidence

10 (Witness is shown a copy of a bank draft). I have no recollection of this draft but I can identify the signature on the reverse which is mine. The handwriting above my signature is that of my junior clerk, Adrian Taylor. The reason why I do not remember this draft is because it was brought to me already prepared for me to put my signature on. (Bank draft is marked and admitted - P11). I recall the accused seeing me in London and I have subsequently refreshed my memory as the 23rd May '80. He gave me lunch. After lunch, he saw me in conference the whole afternoon. He sought my advice on two matters, one was in respect of Nakhoda Investments. The other matter was in respect of the opinion I rendered in respect of Tong Eng Brothers. I am sure the accused made an appointment to see me a few days before the 23rd May '80. It was after lunch. I forget how long but it was certainly over an hour. It was a general discussion on the Tong Eng matter. I do remember no papers had been delivered to me on the previous day but I am sure I had a copy of my opinion. I cannot remember precisely what topic was covered or what opinion was given in respect of the Nakhoda matter or the Tong Eng matter. So far as my memory serves me, no new facts or new laws were referred to me by the accused on the Tong Eng. I must say that I gave advice often and even after a week, I may not remember what advice was given. I do not keep notes of matter discussed or opinion given. I am sure I did not keep notes for this case. I cannot say now if the accused was well prepared or not for the conference. It certainly was a generalised discussion. I must say a lot of my clients come for generalised discussion. It certainly did not surprise me either by being too generalised or too particular.

P.W.1
Donald
Charles
Potter
Examination

(continued)

50 I do have knowledge now that a fee of £450 as fee for the conference. I did not know that on the day of the conference but I take it that the fee must have been settled between the accused and Brown. May I add that in the case of a family or private matter, it would not surprise me if an instructing solicitor either insist on paying from the start or subsequently when the matter requires further work insists on paying for the further work.

In the
District
Court

Plaintiff's
Evidence

P.W.1
Donald
Charles
Potter
Examination

(continued)

(Witness is shown a letter dated 24th July '80). I don't believe I have seen it. It is not the sort of letter which will be shown to me. I was not on leave on 24th July '80. I usually take a holiday first week of August till the middle of September. Yes, I have seen the letter before the present visit to Singapore. The date 18.8.80 in the letter is in the handwriting of 18.8.80. I am sure I must have seen it in view of what had happened subsequently. In 1980, my clerk and I were both visited by members of the London Police Force and therefore in this particular case, after that visit, this matter was discussed between myself and my clerk as your Honour can well imagine but I am sure I did not see it when Brown received it.

10

(Letter is marked and admitted - P12).

Barristers are usually paid for work done, sooner or later.

20

It strikes me as being unusual that our instructing solicitor should pay an account for future consultation before papers are delivered. As far as I am aware, I have never been paid in advance before work is done. There existed until this year in England the custom of a retainer. By retainer a solicitor could pay, I think £5 to a leading counsel simply on a particular matter and no service was rendered by the counsel to the solicitor for that £5 but it meant that in future in that matter that counsel could not appear against that client. Whence it follows that when instructed by that client, he would normally be obliged to accept his instruction. That £5 is given for no work or for future work, of course the future work would also be paid. The retainer is the counsel's own money. He does not hold it in trust or on account. I am not saying that that the instruction in P12 to hold the £400 in account for future consultation is comparable to a retainer. I had no knowledge of the acceptance of the £800 by my clerk at that time.

30

40

(DPP:- I am going to show the witness a series of letters between Mr Brown and the accused which the witness had seen at some time. The reason for my doing so is to enable my learned friend to question the witness in respect of those letters).

50

(Witness is shown a letter dated 29.8.80). At the time I did not see it as I was on holiday in August but I saw it subsequently. (Letter is marked and admitted - P13). (Witness is referred to the words Clerk to Mr Nolan as the address of the aerogramme). Mr Nolan is a Queen's Counsel and he is the head of the chambers. He is technically the employer of the clerk. I know that Mr Nolan and the accused were known to each other.

In the
District
Court
Plaintiff's
Evidence

P.W.1
Donald
Charles
Potter
Examination

10

(Witness is shown a letter dated 18th August '80). I saw this letter subsequently. (Letter is marked and admitted - P14). The name 'Adrian' refers to Adrian Taylor. I had no knowledge of the acceptance of £800 by Mr Brown. (continued)

20

(Witness is shown a letter dated 26th August '80). Here again I did not see the letter then but I saw the letter later. (Letter is marked and admitted - P15).

(Witness is shown a letter dated 29th August '80). I did not see this letter at the time nor did I see the accompanying fee note.

I was subsequently shown a copy of this letter. (Letter is marked and admitted P16). (Fee note is marked P16A).

30

It was some date in early September on my return from my holiday that I was contacted by officers of the New Scotland Yard on this matter.

(Witness is shown a letter).

40

I cannot identify the accused's handwriting but I can recognise the figure on top of the letter. By this time, the police officers had visited us. My clerk and I by then formed the view that the matters may be referred to me. (Letter is marked and admitted P17 and the fee note is marked and admitted P17A).

(Witness is shown a letter dated 16th September '80). I identify my clerk's signature. The fee note is amended as suggested by the accused. (Letter is marked and admitted P18. Fee note is marked and admitted P18A.)

(Witness is shown a letter dated 20th November '80). I had no idea then and now what the £30 relate to. As I recollect, P18, I think I drafted or consulted my clerk regarding the

In the
District
Court

last paragraph. The letter just shown to me by Brown. (Letter is marked and admitted P19. Letter of Clerk - 19A).

Plaintiff's
Evidence

In November, I knew the fee of £450 had been paid. Normally I would not know. The letter P18 was an answer in respect of the £450. So by 16th September '80 I must have known about the £450.

P.W.1
Donald
Charles
Potter
Examination

Subsequent to the 23rd May '80 I did not render any advice to the accused about Tong Eng or the asession of business. 10

(continued)

(Witness is shown a letter dated 27th November '80). This is a reply by my clerk. I did ask my clerk to reply in that manner. Either on 27th November '80 or shortly before or after that, it came to my knowledge that my clerk had received fee in excess of work done ie £350. By the end of 1980 I knew that my junior clerk had during my holiday received the £350 in excess of work done. (Letter is marked and admitted - P20). As a result, I instructed Mr Brown to write to the accused. (Witness is shown a letter dated 19th January '81). I may have drafted all or part of it. I was aware that there was an amount outstanding. I think it was in the Nakhoda matter but I am not certain. I find the £350 an embarrassment. I had thought of transferring it to our Chamber's account but then I had second thoughts and so I opened a second current account at my own bankers in London. I transferred £350 into that account. I think the account was called "E.C.Potter - re J.C." in order to separate it from my own money. (Letter is marked and admitted - P21). 20 30

On receiving no reply from the accused on 2nd February '81, Brown wrote a letter. (Witness is shown a letter). This is the letter. (Letter is marked and admitted - P22). I had no idea what the charges were about but I thought that in the circumstances, any reason for keeping £350 in my bank should be nullified. I probably drafted the second paragraph, probably both paragraphs. 40

(Witness is shown a telegram). This was received from Singapore. I forget the date it was received but I am pretty certain Brown showed it to me. (Telegram is marked and admitted - P23).

(Witness is shown a letter dated 1st March '81). The date on the top 6.3.81 is in Brown's handwriting. I do not exactly remember seeing 50

this but I think it was shown to me. (Letter is marked and admitted - P24).

In the
District
Court

Plaintiff's
Evidence

P.W.1
Donald
Charles
Potter
Examination

(continued)

XXN:

Cross-
Examination

Q. How well did you know the accused, lets say by November or December '79?

A. That is after I have been in Singapore on a government matter. I knew him fairly well. I would say I knew him better than I usually know professional clients.

10

Q. You were on Christian name terms?

A. Yes.

Q. You told us that the question of fees was left to Brown?

A. Yes.

Q. But am I not right that Mr Nolan and yourself do frequently advise the Inland Revenue Department of Singapore?

A. Yes, both of us have.

20

Q. In so far as the Inland Revenue Department was concerned, were they not on 'concessionary' rate?

A. Yes. May I explain. In England and in Scotland, the rates paid by the Inland Revenue are very substantively lower than other clients. I would generally say somewhere between 1/4 and a 1/2. As far as I am concerned, I believe something like that applies to Singapore Inland Revenue Department but certainly not between 1/4 and a 1/2. I recall a case in London where my fee was 1/10 of the fee of my opponent. I regard that as unusual.

30

Q. I imagine the percentage given to Inland Revenue Department is known to Brown?

A. I think he would know.

In the District Court

Plaintiff's Evidence

P.W.1
Donald Charles Potter
Cross-Examination

(continued)

- Q. In respect of the accused he probably knew from Brown there were concessionary rates to Inland Revenue Department?
- A. I am certain he did. I had been engaged in litigation for the Singapore Government in October '79. The accused with others had visited London I think three years earlier. I do remember quite vividly that Mr Peter Reeves who is now a junior Minister was jointly advising the Republic. Then subsequently Mr Reeves dropped out being engaged in politics. I remember either in '76 or '79 or some date in between the accused asked me if I would be willing to travel to Singapore. I gathered from his tone that he had gathered that I was not likely to travel to Singapore. I was unwilling to travel. I am not very fond of travelling. I do remember mention of level of fees and the accused saying that the level of fees might be less than in the private sector or less than my opponent. 10 20
- Q. I refer to P8. Before this particular matter, the accused had not sought your advice on private or family matter?
- A. That is right.
- Q. Do you agree that when he refers to average fees, the average must be with reference to the fees your chamber normally charges? 30
- A. I agree that is a possible interpretation. As I see it, the reference could be my own average fee in reference to London fees.
- Q. The accused would not know your Singapore fees rather than your London fees?
- A. The accused was on friendly terms with Mr Brown and the other staff and I think the £400 could be in reference to my London fees. 40
- Q. You told us that you understand the matter to be a family or private matter?
- A. Yes.
- Q. You have also told us that in such cases, you do not charge a fee?
- A. Yes, unless they insist.
- Q. You knew that the accused was the Senior Legal Officer in Inland Revenue Department or a senior legal officer? 50
- A. Yes.

Q. Therefore he was a Singapore Government Servant?
A. Yes, indeed.

Q. If the accused had written to you seeking your advice on behalf of a good friend and send you instruction for advice, would you have been surprised that a senior government servant would write like that?
10 A. I do not think I would be surprise but I would note the fact. I can't honestly say I would be surprised.

Q. You said you cannot point to any letter or conversation which gave you the impression that it was a family matter?
A. That is so but I presumed Mr Brown must have told me. The name Tong Eng Company does not relate to J.C.

20 Q. In P8 it is clear that the accused had intention to pay the fees?
A. Yes.

Q. Whatever average fee might mean, would you not think P8 could be read to mean:-
"I do not know what fee you are going to charge. Your average fee is £400. Here is a bank draft of £800. If you charge £400, then there is a balance."
30 It is a kind of request to charge an average fee. Do you agree?
A. I would not dissent.

Q. It would follow that the accused would not know what fee will be charged?
A. I would not dissent. I would be very surprised if he knew what the fee to be charged would be.

Q. Are you aware of ever having a conversation with the accused in which you told him of the custom of not
40 charging a fee in respect of a solicitor regarding his private or family matter?
A. I am certain I have not.

Q. In P10, the words other purposes relate to the subject matter?
A. To my mind, it would mean that. It could also mean other advice relating to other matters.

In the District Court

Plaintiff's Evidence

P.W.1
Donald Charles Potter
Cross-Examination

(continued)

Court adjourns for lunch.

In the
District
Court

Plaintiff's
Evidence

P.W.1
Donald
Charles
Potter
Cross-
Examination

(continued)

Court resumes.

PW1: (Recalled) - (on former oath)

XXN:

Q. You did not see the draft of £800 at that time?

A. That is so.

Q. If I were to tell you that the draft was from Tong Eng, the words 'other purposes' would refer only to the affair of Tong Eng?

10

A. The only evidence I can give is that I would simply sign the endorsement on the draft. I cannot fairly say that I applied my mind to the £800. The other purposes would refer to the heading of the letter. It is also open to interpretation that it refers to advice on other matters. What I take objection to is any inference that it could be other than my giving advice.

20

Q. Look at P7. I refer you to the last sentence, look also at P6, the last sentence again. Very much the same sort of thing?

A. Yes.

Q. On 23rd May '80, when you were told you had an appointment to see the accused were you told it is in respect of this matter?

A. I cannot exactly remember but I think not.

30

Q. I take it that at the lunch preceding your consultation, he must have told you what he intended to discuss?

A. It is possible that he did.

Q. In the light of what you said in P6 and P7, you could not be surprised that he was coming back on this matter?

A. Yes, I normally do not write in my opinion the last sentence such as that in P7, but I was indicating, to put it brutally, that the instructions were not entirely sufficient to give a complete opinion. So I was qualifying my opinion. Had the accused been a solicitor in London or even in S.E.England, I am reasonably certain I would not have written the opinion. I would have got my clerk to ring up and suggest that the

40

solicitor come and see me and then I will endeavour to fill in the shortcomings of the instructions.

In the District Court

Q. Suggest: When you saw him on 23rd May that is exactly what happened?

Plaintiff's Evidence

A. I thought it was a wide ranging conference. I cannot remember any further specific point that was raised or any further specific opinion that I gave.

P.W.1
Donald Charles Potter
Cross-Examination

10

Q. I am going to give to you a copy of the notes taken down by the accused of the conference and which is in the Prosecutor's possession. (Notes is marked for identification 'F'). Does the 1st note bring back anything?

(continued)

A. No. I do not have memory of that. I had glanced very quickly at 'F' I find I remember about the case under Purchase & Sales of Shares. I honestly at this length of time cannot remember if this is a summary of the conference or not.

20

Q. You would not be able to say?

A. If I could go on point by point. Point 1, I cannot remember. In respect of 2, I remember about splitting the company. As for (3) I cannot say. In respect of shares, I do remember about distributing the shares. In respect of purchase & sale of shares, we were discussing about the management of Tong Eng and not the shares in Tong Eng. In respect of Trading Stock of Land in Tong Eng, that sounds like the kind of advice I would give to a dealer. (2) also does ring a bell a very faint bell.

30

Q. Look at P9. Let us look at the 2nd paragraph. Would you agree that the past tense is used in 'I have credited your account'. It would appear as if it had been paid when the draft was only paid in later?

40

A. Yes.

Q. A lawyer not practising in London would not know how the fees would be paid?

A. He might not know.

Q. It is not unknown for a solicitor to telephone Brown for the approximate fee you will charge and an indication would be given?

50

A. An indication may be given but Brown and my former clerk would not give the amount till he receives the instruction.

In the
District
Court

Plaintiff's
Evidence

P.W.1
Donald
Charles
Potter
Cross-
Examination

(continued)

- Q. If I were to write to Brown enclosing instruction and ask for the fees what would happen?
- A. I see nothing irregular in that.
- Q. Solicitors becoming personally responsible for counsel's fees so that people like us want to know what the fees would be like so that we could get it from our clients?
- A. I would accept that with some reservation.
- Q. In P8, does it not look as if the accused had already got fees from his clients? 10
- A. Yes. £800.
- Q. Is it not prudent?
- A. Unquestionably prudent for a solicitor to get the fees from his client in advance. I understand it is a practice.
- Q. Look at P10.
(Defence Counsel reads para.3).
Do you agree that bearing in mind the 1st line on P9, the accused honestly believed the money had been transferred from one account to another? 20
- A. Yes, if I understand the question correctly I would say that a reasonable person receiving P9 might form the view that the draft had been paid into some account when in fact it had not. I must say that. In construing the letter, I must go back to P10 which is where the phrase, 'credited to my account' comes in. Ignoring P8, and looking only at P9 and P10, I would certainly agree with your suggestion. When it is stated 'Kindly effect the transfer' payment for one account to another is not a transfer. 30
- Q. You are aware that solicitors would have clients account. I am going to suggest to you that the accused thought the same thing happened to barristers?
- A. If that is put to me as a factual matter it is one of which I cannot speak. 40
- Q. I want to return to the meeting of the 23rd May again. Did the accused give you as a sort of token a small tin of Chinese tea?
- A. He gave me a small well decorated packet of tea.
- Q. When the accused had consultation with you, did he clarify that Tong Eng was not a family company but was a company of a friend? 50

- | | | | |
|----|--------------|--|----------------------------------|
| | A. | I cannot deny it but by then he had received notification that no fee had been charge. | In the District Court |
| | Q. | The accused was embarrassed and he mentioned to you that it was a friend's company and not a relative company? | <u>Plaintiff's Evidence</u> |
| | A. | Try as best as I can, I cannot say 'yes' or 'no'. | P.W.1
Donald Charles Potter |
| 10 | Q. | You will see in 'F' that there is reference made about a feasibility study. This is of course the accused's wording. If he had worked out a programme showing what to be done and how and sought your advice, would you be surprised? | Cross-Examination
(continued) |
| | A. | I did not catch your question. | |
| 20 | Q. | When he returned from London on 7th July, he saw Teo Tong Wah and that over two or three weeks, he was putting together a feasibility study so that he could present it to you for your comments. Would you expect to receive the plan? | |
| 30 | A. | I would not be surprised as the possibility of two companies has already being mooted. I should also mention that at the risk of appearing over fastidious, I normally impress upon solicitor' clients who are going to start tinkering with company - splitting, reconstruction etc - that they really must have a programme in advance as to what they were going to do. This is nothing to do with Singapore. This is generally applicable. Get the thing in outline first. It is like a military manoeuvre. Don't do something unless you know what you are going to do. | |
| | <u>REXN:</u> | | Re-Examination |
| 40 | Q. | You recall about being questioned about two letters and the opinion given by you. Those statements at the end were intended as a mild rebuke for not giving full instruction? | |
| | A. | Yes, it is a very mild rebuke. If the solicitor was in London, it would not be a rebuke but an invitation to see me. | |
| 50 | Q. | Did you have the impression that the accused was better prepared when you saw him on 23rd May? | |

In the
District
Court

Plaintiff's
Evidence

P.W.1
Donald
Charles
Potter
Re-
Examination

(continued)

- A. Only to the extent that I expected a written document containing full instruction. Counsel cannot give definite advice unless definite questions are asked. If a solicitor wants a definite clear answer, then he should write definite clear question well in advance.
- Q. In this case, no definite written instruction was sent to you before 23rd May? 10
- A. No written instruction was sent before the 23rd May.
- Q. You were asked in cross-examination whether you agree that unless one is a barrister in Singapore he would not know how fees are paid in London. You agree to it subject to the fact that he might not know?
- A. I think that question was put to me in relation to P8. 20
- Q. In the accused's case, on previous occasions, he had referred instructions for Inland Revenue Department?
- A. I say this morning I received 1 brief. I had one brief in Singapore and I had one in P.C. There were also a few briefs to write advice.
- Q. We can say quite safely the accused would know that the fees are payable when fee notes are given? 30
- A. I find it difficult to answer it. I can honestly say I don't even know when I was paid for earlier work or when I was paid. It was only during the last seven days that I ascertain what my earnings for the 1st trip here.

Witness stands down.
Intld: S K K

P.W.2
JOSEPH ANTHONY BROWN

In the
District
Court

PW2: Joseph Anthony Brown - sworn in English.

Plaintiff's
Evidence

Barrister's clerk.
29, Great North Road, Barnet
Hertfordshire.

P.W.2
Joseph
Anthony Brown
Examination

The accused is known to me. I first met him in 1975 when I came to Singapore with one Mr Nolan, Queens Counsel.

10 Since then, I had seen him in London on several occasions and he had referred work to my Chambers.

I am the chief clerk of Mr Michael Nolan's Chambers in 4, Pump Court. In these chambers are five silks and eight junior barristers. Mr Potter is one of the Queens Counsels in the chambers.

20 As a chief clerk's duty is to assess the fees for the barristers. I assess first how long counsel spends on the case. It depends on his experience and seniority I suppose I can say there is a guideline for a certain member. I usually assess the fees on my own judgment. There are occasions where I need to refer to the barrister especially when a matter is going to court regarding how long the case is going to take.

30 In respect of non-court work, I would not ask for the fee first. We will do the work first, assess the fee and then sent a fee note to the solicitor. Non court work would usually be in the form of conference and opinion. It is very seldom by letter.

40 It is very rare that a fee note accompany an opinion. It is not normal to do so. It is only done when a solicitor ask for it to be sent. In our Chambers as a general practice, we set fee note on a three months cycle on completed matter. If it is a continuous matter, then no fee note is sent. Fees are only paid after work is done.

I became a barrister's clerk in 1949. It is very very rarely that fees are paid before work is given. In a case where a solicitor has a doubtful client, a solicitor may ask me for an estimate so that he could get the money from his client. The solicitor would put the money in his client's account and it would be very unusual for him to send the money to me before

In the
District
Court

Plaintiff's
Evidence

P.W.2
Joseph
Anthony Brown
Examination

(continued)

the work is done. Even in these circumstances, the money is held by the solicitor and not by me. As barristers my chambers do not have a client account. My barristers do not hold money on behalf of our clients.

Prior to January '80, the accused had on several occasions referred work to my chambers on behalf of Inland Revenue Department, Singapore. For this purpose, I received many correspondence from him. I am familiar with his handwriting and signature.

10

In January '80, I received instructions from the accused for Mr Potter's advice. I can only give the date if I refer to my diary which I keep on such matters.

(DPP: applies for the witness to be allowed to refer to the diary)

Defence Counsel has no objection.

Court grants application).

I received the brief on 18th January '80.

20

(Witness is shown 'E'). This is the covering note to the instruction. ('E' is marked and admitted - P25).

(Witness is shown P5). This is the instruction I received.

(I could have informed Mr Potter that the Tong Eng matter was the accused's family matter. The accused could have told Mr Potter himself. I have made a note in the diary that the matter is personal to the Accused's family. So presumably no charge for this). In P25, the accused refers to a conversation he had with me. Certainly I could have made the note about the matter being a family one as a result of the telephone conversation. It would be normal practice for a solicitor like the accused to say that he has instruction which he wish to submit. The accused could have told me at that time it was personal but I do not have any record of when or what the telephone conversation was. The note was made on the 18th January '80. At that time no firm decision was taken to waive the fees.

30

On 14th February '80, Mr Potter gave his opinion.

(Witness is referred to P8). There are some

shorthand notes made by me in P8. It is a letter from the accused. (DPP reads paragraph 2 of P8).

In the
District
Court

I imagine the accused thought we had an account for him and that I was to credit the money into that account for future work.

Plaintiff's
Evidence

P.W.2

Joseph
Anthony Brow
Examination

(continued)

10

(Witness is referred to P9). This is my reply. You will see para 2 of P9 that on receiving the accused's letter I had a word with Mr Potter as I had doubt as to whether to charge a fee, Mr Potter said that we will not charge and so I was able to write para 2 of P9.

There was an enclosed bank draft of £800 to P8 payable to Mr Potter.

(Witness is shown P11).

This is a copy of the bank draft.

20

The letter P8 was an unusual letter to receive. I thought that counsel in Singapore were not quite familiar with administration in a barrister's chamber in London. So when I wrote in P9 that 'I have credited your account' it caused a problem to me as I now have a cheque for £800 for as I had said, we do not have a client's account. I was really wondering what to do with the cheque. In fact I kept the cheque on my own desk for a period of days in the hope that I would hear from the accused again which I did. I was hoping that the accused would say there would be future work and the money could be utilised. There was no banking done at all. When I used the word 'I have credited your account', I was just using the accused's words. I did nothing and I kept the cheque in front of me.

30

(Witness is shown P10). This is a copy of the letter from the accused. I think what may have happened to the origin is this.

40

When the letter arrived, I am sure I handed it and the two photographs to Mr Potter and possibly Mr Potter replied. It is also possible that I had read the letter as a letter of authority to bank in the draft and the Bank retained it. I asked Mr Potter to endorse on the draft so that it could be paid into the accused's account.

It is unusual to have a fee paid without a telephone conversation or fee note being sent to the solicitor first. When the solicitor telephoned

In the
District
Court

Plaintiff's
Evidence

P.W.2
Joseph
Anthony Brown
Examination

(continued)

he would telephone me and asked me what the fee was. It is most unusual for a solicitor to presume the fee I will be charging. It would be very unusual for the solicitor to ask for the amount to be credited to my account.

There is a note in my diary concerning the appointment Mr Potter had with the accused on 23rd May. When the appointment was made I did not know the subject matter to be discussed. The appointment was made by a telephone. The appointment was made by another member of the staff. Subsequently when the conference was held, he gave me the name of the two matters discussed. That was done immediately after the conference. He did not give me the subject matter but the name of the two matters. One of which concerned Nakhoda investments. The other was in respect of Tong Eng Brothers. He asked me for the fee for the conference. I put the figures in and the fee notes were typed immediately as the accused asked if he could take them immediately with him. I fixed the fee of £350 in respect of Nakhoda. In respect of Tong Eng Brothers £400. The two fee notes were handed to the accused.

10

20

In July '80, I was on vacation at home. Towards the end of July I received a telephone call from Adrian Taylor, the second clerk. He phoned me because he had received a letter from the accused asking him to accept a sum of £800 for fees for Mr Potter. He actually read the letter to me over the telephone. I said to Mr Taylor 'Don't worry when I come back I will sort it out with Mr Chia because there is £800 outstanding for the work that Mr Potter had done in May'.

30

On 18th August '80, I returned to the office and that is when I saw the letter for the first time. (Witness is shown P12). This is the letter. (DPP reads P12). (DPP refers to 2nd sentence). The nature of the work for future consultation is yet to be determined. This is not normal. Payment to barrister is usually for work which has been done.

40

(Witness is shown P14). This is my reply to P12. I suggested that the £800 be used to settle the two accounts.

(Witness is shown P13). This is a letter dated 17th August from the accused. My impression is that P13 was written as he had not received a reply to P12.

50

I see the difference in P12 and P13 concerning the purpose for which the £800 is to be transferred. I now know that the opinion given by Mr Potter under Section 35 of the Income Tax Act in February was the same matter raised in the conference on Tong Eng. It did not matter as I suggested that the money was to be used in another way.

Witness stands down.

In the
District
Court

Plaintiff's
Evidence

P.W.2
Joseph
Anthony Brown
Examination

10 For further hearing 6th October '81
at 9.30 am
Bail extended.

(continued)

Sd: Soon Kim Kwee

Tuesday, 6th October 1981
In Open Court
Before me
Sd: Soon Kim Kwee
District Judge
Subordinate Courts

20 DAC 4624-5/80
IT S/S 2421-2

PP vs James Chia Shih Ching

Sec 406 Cap.103 (2 counts)

Alt.charge: Sec 420 Cap.103

Sec 6(2)(a) pu Sec.94(2) I.T.Act
(2 counts)

Prosecuting Officer: DPP Mr Fong Kwok Jen
assisted by Mr Kelvin Lim.

30 Defence Counsel: Mr H.E.Cashin assisted by
Mr. Choo Han Teck.

Mrs. Lucy Nangchi watching brief for the
Inland Revenue Department.

PW2: (recalled) (on former oath).

(Witness is shown a letter). This is the
letter wrote in reply to the accused letter
P10. (Letter is marked and admitted P26).

The cheque for £800 is the bank draft P11.
I caused P11 to be paid on the date stated in

In the
District
Court

Plaintiff's
Evidence

P.W.2
Joseph
Anthony Brown
Examination

(Continued)

P.26. I did that in compliance with the
accused direction in P10.

(Witness is shown P15). By this letter,
the accused authorized the off-setting of
£450 in respect of the May conference against
the £800 in the possession of Mr Potter.
However, he did not agree to my suggestion the
balance of £350 be off-set against the fee in
respect of the Nakhoda matter. I replied to
him on 29th August. (Witness is shown P16).
That is my reply. I enclosed a receipted fee
note. (Witness is shown P16A). This is the
receipted fee note. (Witness is referred to
the statement "There is still £350....."
in the fee note). I put this statement because
I had received £800. The fee note was for
£450. There was a balance of £350. As I said
it is unusual. But as it is from Singapore,
it could be in ignorance of our practice. I
would have preferred the balance to be paid
in respect of the Nakhoda matter. The accused
had said that the balance is to be set aside
for future work. So I just wish to make it
clear. I was just following the instruction
of the accused in P12.

10

20

The accused replied to my letter vide
a letter dated 8th September. (Witness is shown
P17). This is the reply. He enclosed my
fee note and made certain amendments.

The note is P17A. I do not know who Mr
Teo was. This was one of the names given by
the accused at the conference in reference to
assist his accounting in Singapore. He did not
tell me if Mr Teo had any connection with Tong
Eng. The alteration made by the accused were
the cancellation of the words 'advocates and
Mr Teo'. The words Tong Eng Pte Ltd was deleted
and substituted with the words "Cessation of
Business: Section 35". Three words in the
sentence in the "There is still £350" were
deleted ie "to this company".

30

40

To my mind, at that time, I thought Tong
Eng Brother was the same matter in the
conference as the one which Mr Potter had given
his opinion on cessation of business earlier.
Now I know they are the same matter.

(Witness is shown P18). I replied by means
of this letter. I enclosed a fresh fee note
ie P18A.

On around 27th November '80, I received a
letter from the accused. (Witness is shown P19).

50

10 This is the letter. The note on the top
in shorthand is "answer 27.11.80". It
means that I answered it on 27.11.80. It is
the same with the other letters. At that
time, I did not know at all what the £30
in P19 referred to. The accused enclosed
a letter of authority for the transfer of
£30. It is P19A. I replied. (Witness is
shown P20). This is the letter. I did
consult Mr Potter. I was very concerned,
we still have £350 on account. If I had
accepted the £30, it would only increase
that figure. So I went to see Mr Potter
and spoke to him. Following our conversation
I sent P20. When I read P19, I cannot see
what the £30 was for. I thought the accused was
going to see Mr Potter again in the future
and possibly the £30 was in addition to the
£350 already received. I was really very
20 puzzled by P19 and could not see why it was
sent.

(Witness is shown P21). I wrote this
letter on 19th January '81 to the accused.

30 Both Mr Potter and I were very concerned
that we had £350 for work we had not done.
This letter was written on Mr Potter's
instructions. So we had a balance of £350
and an outstanding fee in respect of Nakhoda
which had not been paid. The accused did
not reply to P21. I wrote to him again on
the 2nd February '81. (Witness is shown P22).
This is the letter. In P22, the words "on
the said matter", refers to Nakhoda matter.
I received a telegram from the accused in
response to P22. (Witness is shown P23). This
is the telegram. (DPP reads). The accused wrote
to me a letter dated 1st March '81. (Witness
is shown P24). This is the letter. Mr Potter
had £350 put in a separate account. At one
40 time he was thinking of putting in the
Chambers' account but thought it would cause
more confusion as we do not have client's account.
The £350 is still in Mr Potter's account. I
believed it is in Barkeley's Bank but I am not
sure. The £350 I was mentioning was the
balance of the £800.

(Witness is shown 6 fee notes). These
are fees notes from my chamber regarding advice
given by Mr Potter.

50 Defence Counsel: The fee notes should not be
admitted as they are confidential
documents unless Mr Fong
tenders the authority of the

In the
District
Court

Plaintiff's
Evidence

P.W.2
Joseph
Anthony Brown
Examination

(continued)

In the
District
Court

Plaintiff's
Evidence

P.W.2
Joseph
Anthony Brown
Examination

(continued)

tax payers concerned
waiving the privilege. What
can be done is for the
witness to be shown the
bundle of notes and ask him
to identify them and to ask
him the amount of the fee
note if required.

DPP: I can ask that the names of the taxpayer
be blocked out. That would keep the
identity of the taxpayer a secret.

10

Defence Counsel: The blanking out of the name
of the taxpayer will not
help. The documents are
confidential.

DPP: I refer your Honour to S.6(1) and S.6(4)
of the Income Tax Act (Cap.141) regarding
the secrecy of taxpayers. (DPP reads).
The blanking of the notes would still
keep the information about the tax
payer a secret.

20

DPP: Your Honour, I am applying for ½ hour
adjournment for Mrs Hangchi to refer this
matter to her office.

Defence Counsel: I have no objection to the
suggestion.

Court: Grants application.

Intld: S K K

Court resumes.

30

DPP: Subject to your ruling, Mrs. Hangshi
has spoken to the Comptroller of Inland
Revenue. He has no objection to the fee
notes being produced so long as the
particulars of the taxpayer be blanked out

Court orders the names of the taxpayer be
blanked out.

PW2: (recalled) (on former oath)

(Witness is asked by the DPP to blank out
the names of the taxpayer in respect of the 3,
4 and 5 fee note). These 6 fee notes are for
my Chambers. (Six fee notes are marked P27A to
P27F).

40

(Witness is shown P27A). In P27A Reference:- Legal/JC is the reference from Singapore. It is not mine. I would say J.C. stands for James Chia. The opinion was rendered on 11th July as stated in P27A. The fee note was probably sent out without request because the opinion was given the previous year on 11th July. (Witness is shown P27B). This the same reference as the previous one. The name James Chia is given. The fee note was received on 16th January '81. The opinion was given on 2nd April '80. (Witness is referred to P27A). The advice was by way of a letter on 28th June 77. The fee note was only rendered on 3rd August '79 with the Inland Revenue Department, Singapore, we would know we will definitely know he paid. So unless there is a request, we would not send the fee note out as quickly as on other cases. The lapse of 2 years in this case is exceptional. In respect of P27A and P27B, it looks like they went out our fee cycle of 3 months when our fee clerk sees the matters is completed.

10

20

(Witness is shown P27D). On 25th May '78 an opinion was given. On 4th July, further instructions (pursuing) was given. The fee note was rendered on 30th January '79.

30

(Witness is shown P27E). The opinion was rendered on 24th March '77. This is a receipted fee note. The amount was rendered on 14th June '77 which is in the remarks column.

40

(Witness is shown P27F). The opinion was rendered on 17th May. Further correspondence was on 13th June. The last was a letter on 14th July. The fee note was rendered on 8th November '77. I cannot tell from this if there has been fee notes sent earlier. For the Inland Revenue Department, Singapore, I would not stamp the reminder note even if it is a reminder.

In my dealings with Inland Revenue Department, Singapore, I would say it is a very good paymaster. I would say they do pay on receipt of the first fee note.

XXN:

Q. In examination-in-chief, you told us you first met the accused in 1979 when you came to Singapore?

A. Yes.

In the
District
Court

Plaintiff's
Evidence

P.W.2
Joseph
Anthony Brown
Examination

(continued)

In the
District
Court

Plaintiff's
Evidence

P.W.2
Joseph
Anthony Brown
Cross-
examination

(continued)

- Q. Over the succeeding years, did you come to know the accused well?
A. Yes.
- Q. You regarded him as a friend?
A. I did, certainly.
- Q. You knew by 79/80 that he was Senior Legal Officer, Inland Revenue Department (Singapore)?
A. Yes.
- Q. Do you know he had never been in private practice? 10
A. No. I just knew he was very senior in the Inland Revenue Department.
- Q. All his dealings with your Chambers up to the time of Tong Eng was always in respect of Inland Revenue Department matters?
A. Yes. I cannot recall any private matters.
- Q. Now, in examination-in-chief yesterday, the gist of the evidence you gave is that it appeared to you that the accused did not seem to know how a barrister's chambers is run in so far as money being held is concerned? 20
A. Very much so.
- Q. To highlight the reasons why you thought that was this. By P8, he sent £800 before a fee note is rendered?
A. Yes. 30
- Q. P8 displays his ignorance. The tenure of that letter is to the effect a suggestion that he be billed £400. That itself is unusual?
A. It is.
- Q. The other part which is also unusual is the crediting of £400 by account?
A. Yes.
- Q. You said yesterday that you thought from that that the accused seem to believe that barristers keep a client's account? 40
A. Yes.
- Q. Will you confirm that the entire correspondence with the accused indicate his ignorance as to how fees are paid?
A. Yes.

	Q.	After you had paid on his instructions £800 to his deposit account, I believe on 27 or 28 March 80, at a later stage he returned a sum of £800 to you and again asked you to credit it since he thought you had a client's account?	In the District Court
	A.	I accept that.	<u>Plaintiff's Evidence</u>
			P.W.2
10	Q.	You were asked about your duties. It was put to you that one of your most important duty was to assess fees?	Joseph Anthony Brown
	A.	Yes.	Cross-examination
			(continued)
	Q.	Am I right in believing that your Chambers act for Inland Revenue of England as well?	
	A.	Very much so.	
	Q.	Again in England because of your connections, concessionary rates are given to Inland Revenue Department?	
20	A.	With government work, be it England, Singapore, Africa, we would not charge the same scale of fees as in private sector. The reason is that you realise you are dealing with public money.	
	Q.	Would it be the same rate in UK as in Singapore?	
30	A.	In UK, it is very much left to the Inland Revenue. They mark the brief and instruction with a figure before they are received in my Chambers. If I think it is too low, sometimes it happens the fees are very low I will then speak to the solicitor in the Inland Revenue Department and ask them if they can increase the fee. Perhaps by way of illustration, we sometimes have a court case in Chambers where one is acting for the Crown and the other for the taxpayer. There is often a great	
40		disparity between the fee for counsel for the Crown and counsel for the taxpayer.	
	Q.	I will ask you to concentrate on fees where the barrister acting for government. In terms of percentage, what percentage of fees would be charged for Singapore as compared to private sector?	
	A.	For Singapore government, we probably charge two-third of the private scale. That is very rough.	
50	Q.	Over the years when you came to know the accused, would the accused know if there was a concessionary rate?	

In the
District
Court

Plaintiff's
Evidence

P.W.2
Joseph
Anthony Brown
Cross-
examination

(continued)

A. I cannot say if he knew or not.

Court: Your Chambers would not indicate directly or indirectly that the rate charged is concessionary?

A. That is so.

(Defence Counsel continues)

Q. If I put to you that he knew there was a concessionary rate, you cannot deny?

A. Certainly not.

Q. Mr Potter told us that where a solicitor has indicated that a matter was his own private one or a family matter, it is a custom not to charge a fee?

A. Yes, that is correct.

Q. Do you know whether the accused knew of this custom or practice?

A. I do not know.

Q. You know the profession in Singapore is mixed?

A. I do.

Q. With that knowledge, you would presume that Advocates & Solicitors keep client's account?

A. Certainly.

Q. You would know from the practice of solicitors in UK that solicitors normally would accept fees to account of work to be done?

A. Yes.

Q. Barristers do not?

A. That is correct.

Q. From the letters, can you tell us whether the accused equates barristers with advocates & solicitors?

A. Yes.

Q. Bearing in mind what you said would you turn to P8, you said that you understood perhaps from a telephone conversation that this matter was a private matter or family matter?

A. Yes.

Q. I refer to the 1st sentence in para.2. When you saw that sentence, can you tell us if the words 'fees' refer to fee Mr Potter charge in respect of Inland Revenue

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	Department, Singapore?	In the District Court
	A. When I read the letter, I thought the accused was saying in his mind, that was the average fee which Mr Potter charged.	<u>Plaintiff's Evidence</u>
	Q. You were handed some 6 fee notes (P27). Do you agree that the average fee charged by Mr Potter for Inland Revenue Department is from £250-£400?	P.W.2 Joseph Anthony Brown
10	A. Yes, but I must point out that in some of the fee notes in P27, they are dated 1977 and they are therefore different from time in 80 or 81.	Cross-examination (continued)
	Q. I refer to P27C. Is it fee for an opinion?	
	A. No. It is an advice by letter. I cannot say what it is. My guess is that it might be just a short letter.	
20	Q. I now return to P8. The last line. (Defence Counsel reads). When you saw 'other purposes' what did you believe?	
	A. For future work.	
	Q. The words 'near future' suggested he was going to follow up shortly with some work?	
	A. Yes.	
	Q. The letter is clear in that the accused believed he is going to be billed?	
30	A. Yes.	
	Q. That seems to indicate that he did not know of the customs relating to private matters?	
	A. I would think so.	
	Q. The letter was asking you the same concessionary rate given to Inland Revenue Department (Singapore)?	
	A. Perhaps, if he knew there is concessionary rate.	
40	Q. Do you agree that it was perfectly open to you despite P8 to bill a fee note in excess of £400?	
	A. Certainly.	
	Q. There was nothing definite about it at all?	
	A. No.	
	Q. You were puzzled with the £800 and did not know what to do?	
	A. Yes.	

In the
District
Court

Plaintiff's
Evidence

P.W.2
Joseph
Anthony Brown
Cross-
examination

(continued)

Q. You had the cheque on your desk for a few days and you hoped to hear from him soon?

A. Yes.

Q. I refer to P9. You stated there that you credited his account. If you thought that the accused thought that barristers kept client's account, your words "I have credited" was unfortunate?

A. All I wanted to say was that I was holding the money. 10

Q. You said you believed in March '80 that the accused seem to think barrister keep client's account. If you were right in that belief then everything that the accused did makes sense in that he look at you as solicitor. He was paying you for work to be done.

A. I can only say that is what I thought.

Court: Mr Brown, if you thought that the accused was labouring under a misconception why did you not enlighten him? 20

A. I thought I was doing so by saying that Mr Potter was not charging fee. All I wish to say was that I was holding the £800 for him.

(Defence Counsel continues)

Q. Could I ask whether you would think it would be embarrassing for you to write a letter pointing out the correct position in England? 30

A. I do not think it is my duty to write to him in that way.

Q. Turn to P10. Following your letter P9 and bearing in mind 'I have credited your account' do you agree that the accused in all probability thought that the draft had been paid into a bank?

A. He could.

Q. Look at the 2nd line of para 3. The word 'transfer' seem to indicate taking out of one account and putting it into another? 40

A. It could be.

Q. The accused had consultation with Mr Potter on 23rd May '80. 23rd was in fact a Friday. Mr Potter said he was informed of the conference a few days before the conference?

	A.	That is likely but I am not sure.	In the District Court
	Q.	You told us that after consultation the accused gave you the names of two persons?	<u>Court</u>
	A.	Yes.	Plaintiff's Evidence
	Q.	He asked for fee notes?	P.W.2
	A.	Yes.	Joseph Anthony Brown
10	Q.	Did you know at that time that one matter discussed was that concerning the instructions he had sent?	Cross-examination
	A.	No, not at that time.	(continued)
	Q.	You came to know that later?	
	A.	The opinion given was entitled 'Concession of business'. There was no name of the persons. After the conference the accused gave me two names. I had no reason to tie up the two matters.	
20	Q.	When did you know that one of the matters discussed at the conference was the same as the one in the opinion?	
	A.	I only knew much later. The only thing I knew was that it was not government matter.	
	Q.	If the instruction sent by the accused had been an ordinary client not one of this private or family matter, what fee would have been charged in the opinion.	
30	A.	May I look at the opinion. Casting my look to 14th February '80, I would say I would charge about £500. It is a very rough estimate.	
	Q.	I am going to show you a copy of instructions and a copy of the opinion given. Are they on the same point as those in the opinion in this case?	
	A.	Yes. It is for another Queens Counsel in my chambers.	

40

Intld: S K K

Court adjourned for lunch.

Court resumes

In the
District
Court

Plaintiff's
Evidence

P.W.2
Joseph
Anthony Brown
Cross-
examination

(continued)

PW2: (recalled) (on former oath).

XXN:

Q. If a firm of advocates & solicitors from Singapore were to send instructions for opinion to a silk in your chambers and at the same time wrote to ask if you could give an indication of fee, would that be normal?

A. Quite normal.

Q. If the Singapore solicitors who specialises in taxation matters, could the latter take the form or suggest that as there was a previous similar matter, could they suggest that the service fee be charged?

A. That would be unusual.

Q. Has it happened?

A. Very rarely.

Q. Taking a case where they write to you for an indication you would not expect to see the fee until the fee note is given despite the indication?

A. That is correct.

Q. So that if a solicitor when writing to you for an indication of fees had explained it was his private or family matter, would you write to him then to inform him that there would be no charge?

A. It would almost or certainly that I would reply to that effect.

Q. That is what ought to have happened had the accused been a solicitor acting for Tong Eng Brothers?

A. Yes.

Q. I only have one more question. You and Mr Taylor received a present of one tin of Chinese tea when the accused went for consultation?

A. Yes.

Re-
examination

REXN:

Q. If you look at P27, it appears that the matters in question appeared to have been referred to your chambers by the accused?

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- | | | | |
|----|----|---|---|
| | A. | Yes. They all have the same reference. | In the District Court |
| | Q. | All these dealings except for P27a were prior to the time of the Tong Eng instruction? | <u>Plaintiff's Evidence</u> |
| | A. | Yes. | |
| | Q. | The accused had many dealings with your Chambers not only with Mr Potter but with the other silks as well? | P.W.2
Joseph
Anthony Brown
Re-examinator |
| | A. | Yes. | |
| 10 | Q. | My learned friend asked if concessionary rates were given to Inland Revenue Department in England and you said 'Yes'? | (continued) |
| | A. | Yes. | |
| | Q. | You then said the tax department in England would mark the fees or the brief and if the figure is too low you would suggest a higher figure? | |
| | A. | Yes. | |
| 20 | Q. | In those instances, they are briefs for court work? | |
| | A. | Yes, that only is the brief marked by the English Revenue Dept on same occasion of sending document before going to court the backsheet of those instructions will be mark with a figure. | |
| | Q. | Why is it that although no fees were charged in respect of the opinion, a fee was charged in respect of the conference relating to the Tong Eng matter? | |
| 30 | A. | I would not refer the fee to Mr Potter. I would assess the fee myself. It was only later that Tong Eng was the same matter as the cessation matter. If I had known I would make no charge. I knew it was not a government matter. | |

Witness stands down.

Intld: S K K

- 40 DPP: Could I apply for the release of both Mr Brown and Mr Potter. I believe my learned friend has no objection.

Defence Counsel: That is so.

Court: PW1 and PW2 are released.

Intld: S K K

In the
District
Court

P.W.3
MICHAEL SEET CHOH THIAM

Plaintiff's
Evidence

PW3: Michael Seet Choh Thiam - sworn in
English.

P.W.3
Michael
Seet Choh
Thiam
Examination

59E, Blk 66, Jalan Tiong,
Singapore 0315.
Bank Officer, Industrial Commercial Bank.

In March '80, I was in the Remittance Department, Industrial Commercial Bank. In the afternoon of 7th March 80, I was asked by my Assistant General Manager to prepare a bank draft in the sum of £800 for one Mr D.C. Potter. This was a result of a memo my department received from our Deputy Chairman, Dr Tan Poh Lin. (Witness is shown a memo). This is the memo that I received. (Memo is marked and admitted - P28). The banking hours in my bank ends at 3 o'clock. I am not sure of the hour of receiving P28. I cannot remember if it was before or after 3 pm. I proceeded to prepare a bank draft as instructed in memo. I was also instructed to debit the amount from the account of Tong Eng Brothers Pte Ltd. I treated the matter with some urgency. My Assistant General Manager told me that the memo will be forthcoming. He asked me to look out for it and prepare the draft. I waited for the memo as it will show us the actual name of the payee. When P28 arrived I prepared the bank draft. 10
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(Witness is shown P11). It is a copy of the bank draft I prepared. The signature on the right is mine. The bank draft has a perforated portion we call a memo which is for personal record. It is attached to the bank draft. (Witness is shown a document). This is the memo attached to P11. (Memo is marked and admitted P29).

When the bank draft is issued we have kept a copy of the bank draft. (Witness is shown a document). This is a copy of the bank draft. (Document is marked and admitted - P30). 40

(Witness is shown a document). This is a Statement of Account of Tong Eng Brothers. (Document is marked and admitted - P31). On 7th March there is a debit entry for 3,902.87 which is for the bank draft. The debit entry for 8th March was a wrong entry and was reversed on 10th March.

Subsequently I received a letter of authorization from Tong Eng Brothers. (Witness is shown a letter). This is the letter. (Letter is marked and admitted - P32). The name given in P32 is Charles Potter. So I asked my officer to confirm that the person is the same as D.C.Potter.

In the District Court

Plaintiff's Evidence

(Witness is shown a document). This is the Statement of Account of my bank with the Manufactures Hanover Trust Company. The company is our agents. It shows the clearance of the bank draft in entry 160715 cheque 035153. (Statement is marked and admitted - P33).

P.W.3
Michael Seet
Choh Thiam
Examination

(continued)

XXN: Nil.

Cross-examination

REXN: Nil.

Re-examination

Witness released without objection.

P.W.4
WAN FOOK HOY

Plaintiff's Evidence

PW4: Wan Fook Hoy - sworn in English

P.W.4
Wan Fook Hoy
Examination

903 Pearlbank Apartment,
No.1 Pearlbank,
Deputy Commissioner of Inland Revenue.

I know the accused. He was the Head of the Legal Section of Inland Revenue. He was in fact the Senior Legal Officer. There were occasions when my Department had sought advice from Queens Counsel for advice and even litigation. In all these matters it was the responsibility of the accused as Senior Legal Officer to instruct Queens Counsel himself or to vet all instructions for his junior. He has to take instructions from me or the Commissioner. When the fee notes from the Queens Counsel arrived, he will certify them so that they can be sent to the Financial Executive Officer for payment.

We have a File Registry. When a senior officer request for a file to be taken out of the section, there is a note on the file cover as to who has taken out the note. In the File Registry, there are three sections. There is a section dealing with government files. There are two other sections dealing with individuals. When the file is returned a note is made on the file cover.

In the
District
Court

Plaintiff's
Evidence

P.W.4
Wan Fook Hoy
Examination

(continued)

(Witness is shown a file). This is the file cover of Tong Eng Brothers Pte Ltd kept by the Companies Section of the File Registry. On the 10th and 11th line of the 1st column, there is a chop which is a movement chop. It is very faint but it is similar to the two clear chops on the next column. The letters "S.L.O." which refers to the S.L.O. (ie the accused) means that it was taken out by the S.L.O. The date 22/11 is the date it was taken out and the date 2/1/80 shows it was returned on that date.

10

DPP: May I delete the file No. before it is admitted as evidence for security reasons.

(File is marked and admitted - P34).

The accused joined the Department on 29.4.70. He was made the acting head of the Legal Section on 1.7.74. He was promoted to the post of Head of the Legal Section on 1.5.79. Between 22.11.79 and 2.1.80, I do not believe that there was any need for him to look at P34 in his official capacity.

20

From my records on 21.5.80 in the evening, the accused left for London. He left in connection with a tax proceedings in the Privy Council. The hearing was on 5th or 6th of June. I have no records of it with me.

(Witness is shown a file). This record shows the hearing to be on 3rd, 4th and 5th of June. He returned to Singapore on 7th June.

30

As his superior officer, I approve his leave form.

Court: Mr Fong why are you adducing this evidence.

DPP: I wish to lead in evidence regarding the signature of the accused as certain documents written by the accused had been presented to this court and these had been sent to the Document Examiner.

Court: Mr Fong, the learned Defence Counsel has not challenged the fact that the documents which you had tendered as originating from the accused were indeed from the accused.

40

Defence Counsel: That is so. The Defence Counsel is not denying that the documents

tendered were in fact from the accused.

In the District Court

Plaintiff's Evidence

P.W.4
Wan Fook Hoy
Examination

(continued)

XXN:

Cross-Examination

Q. From your files, can you establish that the accused must have known in the beginning of January '80 that he was going to be in London in June?

A. I do not have the set of correspondence with me.

10 Q. Can you check it by tomorrow?

A. Yes.

Q. With reference to the certificate of the fee notes by the accused, I understand he travels out of Singapore quite a lot. If the fee note arrives his assistant will certify?

A. That occasion did not arrive.

20 Defence Counsel: Your Honour I want it to be recorded that the accused is not making an admission of committing an offence for taking out the file. I submit that it is completely irrelevant.

DPP: The evidence is to show that the accused had given the instruction. It will show that the accused had taken the file pursuant to Mr Teo asking the accused to prepare the instructions.

30 Defence Counsel: We are not denying that the instruction was sent to Mr Potter by the accused. What I am saying is that it is irrelevant in so far as the charge is concerned.

DPP: I would like to refer to S 7 of Evidence Act. (DPP reads).

In the
District
Court

Plaintiff's
Evidence

P.W.4
Wan Fook Hoy
Cross-
examination

(continued)

Defence Counsel: All I wish to do is to reserve the stand that the fact that I have not cross-examined the witness.

DPP: The evidence on the file will support the evidence of Mr Teo. They relate to the charges. The prosecutor has only adduced one-third of its evidence.

Court rules that the evidence is relevant.

Court asks the Defence Counsel if he wishes to cross-examine the witness on the matter.

10

Defence Counsel: I do not propose to do so.

REXN: Nil.

Witness released.

Intld: S K K

Plaintiff's
Evidence

P.W.5
Evelyn Yap
Teck Neo
Examination

P.W.5
EVELYN YAP TECK NEO

P.W.5: Evelyn Yap Teck Neo - affirmed in English.

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43, Lorong H, Telok Kurau.
Stenographer, Inland Revenue Department.

I am the stenographer in the Legal Section of Inland Revenue Department.

From 1975 - 1978 when I was transferred to another section of Inland Revenue Department. In May 79, I came back to the Legal Section where I remained till July '80.

During the period when I was with the Legal Section from May 79 to July 80, the accused was the head of the Section. I did a lot of work for the accused. (Witness is shown P10). I typed this letter for the accused.

30

XXN: Nil.

REXN: Nil.

In the
District
Court

Plaintiff's
Evidence

P.W.6
Richard Tan
Cheng Nam
Examination

(continued)

On 7th March 80, my company bought a bank draft for the sum of £800 from Industrial Commercial Bank payable to one Mr D.C.Potter, Queens Counsel. This draft was put for by debiting the company's account with the Industrial Commercial Bank. (Witness is shown P32). This is the letter of authority issued by my company to Industrial Commercial Bank authorising the debiting of account of £800 for the bank draft. I prepared this letter. I prepared it on the instruction of Mr Teo Tong Wah. I can identify him. (Teo Tong Wah produced and identified). I was told by Mr Teo that the £800 was for legal fees. He told me that Mr Charles Potter is the Queens Counsel. The letter was signed by Mr Teo Tong Wah and Mr Teo Thye Hong. Mr Teo Thye Hong is the Chairman of the company. Mr Teo Tong Wah is director of the company.

10

Before payments are made out, as the bank account requires two signatures, so both of them signed. When we received the statement from the bank, we will enter the amount according to the statement. (Witness produces a cash book). It is entered in this cash book. (Cash book is P35). I refer to page 16. It is entered on 8th March 80. The entry is legal fee - banker's order to Queens Counsel under the account of ICB \$3,902.87. There is also a note there that the entry is also found at P.79. of the General Ledger. I now produced the General Ledger. (General Ledger marked and admitted - P36). The heading of P.79 is "Legal Fees". There is an entry '8th March 80'. The entry is 'To QC to Bank - ICB bankers order'. The amount is \$3,902.87.

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Cross-
examination

XXN:

Q. Is there any reference in your books to an invoice or bill not against any item?

A. It depends on circumstances.

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Q. Are there circumstances when you actually have a bill or invoice?

A. If the bill is from a supplier.

Q. When your suppliers sent you an invoice, you will record it?

A. Yes.

Q. In this particular case, there was no bill or invoice?

A. Yes.

REXN:

In the
District
Court

Q. You have said in this case there was
no bill or invoice?

A. Yes.

Plaintiff's
Evidence

Q. What do you use for the supporting
document for this entry?

A. I use the letter of authority and bank
statement. In the case of fees payable
to government and consultants, on
receipt of telephone, I will write the
payment voucher for the approval of
the director.

P.W.6
Richard Tan
Cheng Nam
Re-
examination

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Q. In this case, you did not have a bill?

A. Yes.

Q. So what did you use as payment voucher?

A. The letter of authority.

Witness stands down

Intld: S K K

DPP: This witness tells me that they are in
the middle of auditing and the books
are required. I will make photocopies
of the relevant pages. May the books
be released.

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Intld: S K K

P.W. 7
TEO TONG WAH

Plaintiff's
Evidence

PW7: Teo Tong Wah - affirmed in English

335, East Coast Road.
Businessman.

P.W.7
Teo Tong
Wah
Examination

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I am a director of Tong Eng Brothers Pte
Ltd. The company was incorporated in 1960 by
my late father and his brother, Teo Thye Hong.
The shares in the company were divided equally
between my father and uncle. My father passed
away in 1968. His shares in the company is now
held by myself, my brother and two sisters.
The other shares are held by my uncle and his
family. At present, the Board consist of my
uncle as Chairman. He is also the Managing
Director. There are three other directors
including myself, my brother, Mr Teo Hong Lim
and my cousin Dr. Teo Tong How.

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In the
District
Court

Plaintiff's
Evidence

P.W.7
Teo Tong Wah
Examination

(continued)

In 1976, Tong Eng Brothers started developing Tong Eng Building at Cecil Street. It was completed at the end of 1979. In '79 the company bought over a nearly completed housing estate called Greenbank Park at Bukit Timah Road. The development of Greenbank Park was mainly completed towards the end of 1980. There were still some minor work in 1981.

I know the accused. I came to know him in 1978 through Dr. Tan Poh Lin. Dr Tan is the Deputy Chairman of Industrial & Commercial Bank. Dr Tan is a good friend of mine. After I was introduced to the accused I got to know him rather well. I frequently met him socially. I knew he was the Senior Legal Officer of the Inland Revenue Department. 10

By the end of 1979, the company realised that owing to the development of Tong Eng Building, the profits of the company will be quite substantial both for the end of 79 and 80. The Directors of the company decided to cease the operation of the company in 1981 and to take advantage of the cessation provisions in the Income Tax Act. The other Directors and I knew that if we ceased operation in 1981, it is possible to avoid tax either in the year 79 or 80. Around October 79, I think it was over lunch with the accused. I told him about the company's intention and I conferred with him the operation of the cessation provision of the Income Tax Act. He told me that it was a one year dropout of the last three years profits and that it was allowed. He told me that it can be done. The next time this was discussed was when the accused advised me that we should consult a Queens Counsel. I agreed to this. At that stage, the other directors were aware of the discussions I had with the accused. My company had never consulted any Queens Counsel before this. I have also not consulted Queens Counsel before this time when the accused suggested the engaging of a Queens Counsel in the beginning of December. He said a brief of the company's history and operations has to be prepared. I requested him to do it for us. So around December, he produced a written brief and read it to me. That was around X'mas. I accepted the contents of the brief. It took place in my house. We read it together. At the time I requested him to write the brief, I told him about the company's operation briefly. I cannot remember what he said when I agreed with the brief but I remember he wanted to send the brief by post. 20 30 40 50

The accused and I discussed the matter of opinion after the Queens Counsel had given his written opinion. The accused came to my house after receiving the opinion and he read it to me in my house. (P7 is shown to the witness). This is the opinion he read to me. It was shortly after the accused received the opinion. It is in February 80. The impression I got was that the Queens Counsel's answer is in between. It was a 'Yes' and 'No' answer. I am a layman. I have my own opinion. I believe the cessation could be carried out. The accused did not fully agree with the Queens Counsel's opinion. After reading the opinion to me, the accused gave me a written note with £800 written with it, with the Queens Counsel's name Potter also written in it. He told me to pay the £800. I have lost that note subsequently.

In the District Court

Plaintiff's Evidence

P.W.7
Teo Tong Wah
Examination

(continued)

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After that I did pay the £800 by bank draft on 7th March. When he handed me the note, he said the £800 was for payment to the Queens Counsel for his fees. I mislaid the note and I forgot about it. After the accused had explained the Queens Counsel's opinion, my company did take steps to cease operation. The accused suggested a lawyer's firm Swee Kay Wan to form new companies which is a step towards ceasing the operation of Tong Eng Brothers. I accepted the suggestion. Three companies were formed. One of the three companies was jointly between myself, my brother and sisters and my uncle and his family. The second was wholly owned by myself, my brother and sisters. The third company was owned wholly by my uncle and his family. May I correct one. Three companies were to be formed at that time and not formed. At the end of 79, we were very firm in our decision to cease operation. Subsequently we had second thoughts. The second thoughts arose around April when prices of office space shot up substantially. The accused was not told about us having second thoughts.

50

On 7th March 80, the accused called me after lunch. He told me over the phone that he was going to Dr Tan Poh Lin's office afterwards. He requested me to get a bank draft for the Queens Counsel's fee so that he could pick it up from Dr Tan's office. I did accordingly. I rang Dr Tan up after the accused's call and asked him to authorise the debiting of my company's account for £800 for the Queens Counsel's fee. On Dr Tan's suggestion, I agree to give a letter of authorization of our company. Subsequently I

In the
District
Court

Plaintiff's
Evidence

P.W.7
Teo Tong Wah
Examination

(continued)

arranged my company to prepare a letter of authorization. It was signed by me and my uncle. (Witness is shown P32). This is the letter of authorization. The signature on the left is mine and the one on the right is that of my uncle. Later in the afternoon, one of the Industrial Commercial Bank officers called me and asked the name 'Charles Potter' in the letter should be D C Potter, Queens Counsel. P32 was prepared by Mr Richard Tan, my financial controller. Immediately after the accused had called me informing me that he was going to Dr Tan's office, I authorised Dr Tan to issue the bank draft. It is not normal for me to call Dr Tan and ask him to issue a bank draft. I did that because firstly, the accused told me that he was going to Dr Tan's office. Secondly, it is because of the time factor. It was then near the closing time of banking hours. That is why I call Dr Tan instead of calling any other bank officer. That was the last time I had anything to do with the £800 before investigation began. (DPP informs court that the investigation began on 3.7.80). (DPP informs the witness that the court was told that the fee for the opinion was waived by him). The accused did not tell me or the company about that before the 9.7.80. As far as I was concerned, I thought the £800 was paid to Mr Potter. If Potter had waived the fees I expected Potter to send the bank draft back to Singapore. When I spoke to Mr Lim about preparing the bank draft, I told Dr Tan that the accused would be coming to his office and requested Dr Lim to get the bank draft ready for the accused. As far as I was concerned, the accused would have collected the bank draft from the bank. Nobody from my company collected the bank draft. If the accused had collected the bank draft and sent it to Mr Potter and Mr Potter waived the fees, I expect Mr Potter to send it back to Singapore and I expect it to be returned to my company by the accused.

I knew that the accused left for London on 21.5.80 on official duties. Between the 7.3.80 and 21.3.80, I think steps were taken to form the three companies. In April 80 my company had second thoughts about cessation but I did not tell this to the accused. If the final decision was not to cease operation, we would still use Tong Eng Brothers for new schemes which is in fact what is happening today.

The accused and I had lunch together on the

day the accused left for London. At the lunch, the accused told me that he will be seeing Potter and told me that he would like to clarify the Queens Counsel's written opinion. I said 'Okay'. I did not tell him that my company was already having second thoughts about ceasing operation.

In the District Court

Plaintiff's Evidence

P.W.7
Teo Tong Wah
Examination

(continued)

10

On his return from London the accused visited me at my home in June 80. He went through the steps we should take in ceasing the operation of Tong Eng Brothers. He suggested that the company appoint a valuer to value Tong Eng Building. He suggested the company called Richard Ellis which I accepted. I know both the partners. They are Mr Willie Shee and Mr Peter Newman. The accused suggested one of them. I cannot remember which of the two. (DPP tells the witness that Mr Potter charged £450 for the conference he had with the accused). The accused did not tell me that at the material time.

20

On 9th July 80, I knew of the investigation. That is when I was asked by the CPIB to help in the investigation.

On 7th August 80, I returned home and I found a letter posted to me by the accused. (Witness is shown a letter). This is the letter. (Letter is marked P37. Envelope marked P37A). It is addressed to me personally. (DPP reads P37). When I received it, I could not understand it. (DPP refers to 1st paragraph of P37). I did not understand that sentence. As far as I am concerned the £800 had been paid to the Queens Counsel. When the accused returned from London, the accused and I did not discuss the possibility of consulting Mr Potter further. These are the two reasons why I could not understand the 1st paragraph.

30

40

XXN:

Cross-examination

Q. In your evidence, you told us that you came to know the accused in '78?

A. Yes.

Q. You came to know him through Dr Tan?

A. Yes.

Q. Dr Tan is a close personal friend of yours?

A. He is.

In the
District
Court

Plaintiff's
Evidence

P.W.7
Teo Tong Wah
Cross-
examination

(continued)

- Q. It was put to you by my learned friend that after you were introduced to the accused, you got to know the accused well. I suggest you got to know the accused extremely well as a friend?
- A. Yes.
- Q. Dr Tan, you and the accused were all on the very best of terms?
- A. Yes.
- Q. You frequently had lunch together? 10
- A. Yes.
- Q. You had dinners together on occasions?
- A. Yes.
- Q. You played poker together?
- A. Yes.
- Q. So far as poker games were concerned, at the end of any one session of poker, you may have owed the accused money or the accused might have owed you money but you all did not settle it then? 20
- A. We will settle it at the next session. It is not a running account.
- Q. If it was the accused who owed you money, did you trust him completely to pay that money?
- A. Yes, I did.
- Q. At times would the amount owed run into a few hundred dollars?
- A. Yes.
- Q. You trusted him completely and he trusted you? 30
- A. Yes.
- Q. Did you ever think that the accused was ever hardup?
- A. No.
- Q. Did he ever give you reasons to believe he would be hard put to find \$4,000-\$5,000?
- A. No.
- Q. You told us that at about October your company considered the advantages of the cessation provisions of the Income Tax Act because it looked as if there were substantial profits of the company in '79 and '80? 40
- A. Yes.

	Q.	A consideration of the cessation provision was done by the Directors as a whole? The directors discussed it?	In the District Court
	A.	The directors discussed it.	<u>Plaintiff's Evidence</u>
	Q.	Until the lunch in October '79 which you had with the accused, there was no previous mention of wh t you had in mind to the accused?	P.W.7 Teo Tong Wah
10	A.	That is right.	Cross-examination
	Q.	So it was not his idea to take advantage of the cessat on provision?	(continued)
	A.	It was not his idea.	
	Q.	To get the picture in proper prospect, the accused really only knew you well out of the directors of the company?	
	A.	That is correct.	
20	Q.	When you mentioned to him about the company's intention at that lunch in October 79, you were making an approach to him as a close friend?	
	A.	Yes.	
	Q.	<u>Suggest</u> : It was not so much the company that was making the approach but you were approaching him in your own personal capacity?	
30	A.	It was a company matter. I did not tell him if I was asking it in a personal capacity or as a director of the company.	
	Q.	You knew at that time that he was the Senior Legal Officer?	
	A.	I was going to the accused as a friend wearing two hats ie as a friend and a director.	
	Q.	Were you expecting friendly advice?	
	A.	Yes.	
40	Q.	You were not expecting to have to pay for the advice?	
	A.	No.	
	Q.	Whatever the hat, you were asking a favour?	
	A.	Yes.	
	Q.	He did advise you?	
	A.	Yes.	
	Q.	Did you convey that advice back to your directors?	
	A.	Yes.	

In the
District
Court

Plaintiff's
Evidence

P.W.7
Teo Tong Wah
Cross-
examination
(continued)

- Q. You said the next time was when the accused advised that you should engage a Queens Counsel?
- A. Yes.
- Q. After that lunch meeting, did you have one or two discussions or just one discussion?
- A. I cannot remember.
- Q. But you can remember there was a meeting when the accused suggested getting the advice of a Queens Counsel and you agreed? 10
- A. Yes.
- Q. When he said this, did you have a discussion as to how the Queens Counsel is to be instructed or brief?
- A. What I remember is that an introduction of the history of the company's transaction over the past 20 years was required.
- Q. Did you ask him to try to prepare it? 20
- A. He told me to get our company legal officer to make the instruction. Our legal officer was new. So I requested him to assist.
- Q. He agreed to assist?
- A. Yes.
- Q. Up to this point, was there any suggestion that the accused was pushing himself or manoeuvring himself into your company's affairs so that he would instruct the Queen's Counsel? 30
- A. No.
- Q. In order to prepare this history, were there one or two meetings to get the date together?
- A. Yes.
- Q. Did he suggest to you and ask for company's account for past years and so on?
- A. Yes.
- Q. Did you get these for him? 40
- A. I think I did not give him all the documents he had asked for.
- Q. Some of the documents he got and some you got?
- A. Yes.
- Q. I see. If he had got some of the

documents from the files from the Inland Revenue Department of your company, would you have objected if you had known this?

In the District Court

A. No.

Plaintiff's Evidence

Q. Let us turn it around. Supposing he told you that in order to get some informations from your company's file in Inland Revenue Department but you had better write to him officially and ask for the informations would you have written?

P.W.7
Teo Tong Wah
Cross-examination

10

A. No. We have to get the informations from our company.

(continued)

Q. That is a very good answer. You told us, that around X'mas time, he produced a brief to you at your home?

A. Yes.

Q. Did you go through the brief with him?

20

A. Yes.

Q. Did you go through the various documents he had got together?

A. At that time, the brief had summarised the various data he got. I was just reading the brief.

Q. Did you know he sent copies of the documents to the Queens Counsel?

A. No. I was only aware of the brief.

Q. Were you leaving to him the preparation of the brief?

30

A. Yes.

Q. If he had decided that some of the documents had to be sent to the Queens Counsel, would you have objected?

A. No.

Q. So far as you know, the accused sent the brief to a Queens Counsel?

A. Yes.

Q. At that stage, did you know to which Queens Counsel the brief had been send?

40

A. I did not know the name.

Q. In February, the accused received the opinion from Mr Potter, the Queens Counsel?

A. Yes.

In the
District
Court

Plaintiff's
Evidence

P.W.7
Teo Tong Wah
Cross-
examination

(continued)

Q. You told us that shortly after that
the matter was discussed again?

A. Yes.

Q. At your home?

A. Yes.

Q. What happened was that the accused
went through the opinion with you?

A. Yes.

Q. The opinion was a 'yes', 'no' opinion?

A. Yes.

10

Q. You thought, you believed that you
could go ahead with the reconstruction?

A. Yes.

Q. And was the accused happy with that
opinion?

A. I think he did not agree with the
Queens Counsel's opinion.

Q. Neither of you were happy with the
opinion?

A. Yes.

20

Q. Look at P7. Just look at the last
page. The last sentence.
(Defence Counsel reads).

Did you or the accused suggest that
perhaps it would be a good thing to
clarify with the Queens Counsel?

A. I do not remember. What I wanted was
a 'yes' or 'no' answer. I was not
concerned with the legal technicality
of the opinion.

30

Q. After you had gone through the opinion,
the accused gave you a written note
with £800 written on it and the Queens
Counsel's name?

A. Yes.

Q. Was the Queens Counsel's address also
written?

A. I do not really remember.

Q. If a draft has to be prepared the
address is needed?

A. Not really. The draft is to the person.

40

Q. Did he produce a bill from the Queens
Counsel?

A. It did not occur to me if it should
be call a note or bill.

- Q. I am instructed that the accused suggested to you that you should pay £800 to the Queens Counsel and he said that £800 would be about right?
- A. After reading the opinion, at the end of the session, the accused gave me the note and ask me to pay the £800 to the Queens Counsel.
- 10 Q. He did not indicate anything else?
A. He did not.
- Q. The £800 was for payment to the Queens Counsel?
A. Yes.
- Q. We then have the history you related with regard to the 7th March when the accused telephoned you and you then telephoned Dr Tan, you told Dr Tan to give the bank draft to the accused?
A. Yes.
- 20 Q. When you told Dr Tan to give the draft to the accused you did not intend the money to be given to the accused?
A. Definitely not.
- Q. You intended that the money was to be paid to Mr Potter?
A. Yes.
- Q. So far as you were concerned when Dr Tan handed the draft to the accused, it was only the process by which Mr Potter would be paid?
30 A. Yes.
- Q. You already told us that the accused so far as you were concerned were doing you a favour?
A. Yes.
- Q. You did not expect the accused to have to pay the incidental surrounding the sending of the brief?
A. What we ought to pay.
- 40 Q. If I tell you that the brief when sent to London with copies with documents costs about \$70/- to do so. That is the sort of thing you would expect to pay?
A. Yes.
- Q. Going back to the poker game by the same example, you trusted him and he

In the
District
Court

Plaintiff's
Evidence

P.W.7
Teo Tong
Wah
Cross-
examination

(continued)

In the
District
Court

Plaintiff's
Evidence

P.W.7
Teo Tong Wah
Cross-
examination

(continued)

- trusted you so that you intended to pay the incidental like postage.
- A. Yes. When he tells us, we will pay.
- Q. Do you agree that you never believe for a moment that the accused was going to steal the £800 or keep it for himself?
- A. No.
- Q. Let us pass on to the next stage. When you went through the brief at about X'mas time and later when you went through the opinion in February, did the accused tell you at any stage that he was going to London? 10
- A. I do not think so.
- Q. You certainly knew on the day he left?
- A. Yes.
- Q. Was that the first time you knew he was going to London?
- A. I knew before that lunch. 20
- Q. He asked you whether you agree to his seeing Mr Potter to clarify certain points in the opinion and you agreed?
- A. Yes.
- Q. Again, you realise that if he saw Mr Potter on a consultation such as that Mr Potter would not be doing it for nothing?
- A. That meeting was to clarify the opinion. I did not think about the fees. But if there was fees to be paid for the consultation I would expect the accused to tell me. 30
- Q. When you agreed that he consulted Mr Potter for clarification, although no fees were mentioned you expect to pay if there was?
- A. Yes.
- Q. On his return the accused saw you again?
- A. Yes. 40
- Q. He went through the steps your company has to take?
- A. Yes.
- Q. It was a sort of program?
- A. Yes.

	Q. The accused suggested Richard Ellis?	In the
	A. Yes.	District
		<u>Court</u>
	Q. You knew both the partners?	
	A. Yes.	<u>Plaintiff's</u>
		<u>Evidence</u>
	Q. Is it true that even now, you were leaving to the accused to prepare a scheme?	P.W.7
	A. Even now?	Teo Tong Wah
		Cross-
		examination
10	Q. No, no, I mean at that time?	
	A. Yes, even though our company had second thought over cessation.	(continued)
	Q. You were quite happy that he was handling it?	
	A. Yes.	
	Q. Now, the investigation started on 9th July?	
	A. Yes.	
20	Q. If there had been no investigation and the accused had finished the programme and got a valuation from Richard Ellis, supposing he suggested that you should go to the Queens Counsel for a clearance, would you think it was a good thing?	
	A. I was not interested in the legal technicalities.	
30	Q. Supposing there had been no investigation and supposing the accused had sent the programme and valuation to Mr Potter, would you have objected?	
	A. No.	
40	Q. Equally if the accused had come to you at the end and said, 'Look, there is a consultation in London. That costs £450. The final approval was £200. I spent so much on postage. I gave Mr Potter lunch. I bought Mr Potter's clerk bags of tea. The total is £830. Mr Potter has waived the fees. There is still £800 with Mr Potter. That leaves £30. Would you have paid him that £30?	
	A. Yes.	
	Q. Would you have paid him even though he had told you when he said for the first time the Queens Counsel had waived the fees?	
	A. Yes.	

In the
District
Court

Plaintiff's
Evidence

P.W.7
Teo Tong Wah
Cross-
examination

(continued)

- Q. Supposing in the example I have given when you found that he had kept £800 in an account in London, would you think he was trying to cheat you?
- A. It is a difficult question to answer. Basically the £800 is a small amount. We did not think the accused would or would not take the £800.

Defence Counsel: Repeats his previous question.

- Q. Did you think £800 to the accused is a big amount? 10
- A. It is not that big amount to him also.

Witness stands down.

Court adjourns for lunch.

Court resumes.

P.W.7 (recalled) (on former affirmation).

XXN:

- Q. You did not make a complaint against the accused?
- A. I did not. 20
- Q. Next point is do you still consider him as a friend?
- A. Yes.

Re-
examination

REXN:

- Q. You told us that it was on the suggestion of the accused that you and your family instructed Miss Kay to set up the three companies?
- A. Yes.
- Q. When were the three companies incorporated? 30
- A. After the opinion of the Queens Counsel was shown to me, we proceeded to have the three companies formed. Naturally in forming the companies, the choosing of names was to be done by us. The approval of the names by Registry of Companies is also required. We did that between end of February to May. The actual incorporation was in June or July. 40

Q. Was it in June or July?
A. Frankly speaking, I cannot say.

In the
District
Court

Mr. Cashin: I do not see how the questions arise out of my cross-examination.

Plaintiff's
Evidence

DPP: The evidence was that the accused was doing the cessation. My line of questioning is to show there was a lawyer involved.

P.W.7
Teo Tong Wah
Re-
examination

10 Court: overrules objection.

(continued)

Q. (Witness is shown 3 files).
Can you look at the files and see if you can now tell us the date of incorporation?

A. The first company is Cecil Investment Pte Ltd. It was incorporated in June. The other Feature Investment is in June 80. T.H.Teo Holding was incorporated also in June.

20 Q. In so far as the incorporation the costs and legal expenses, were they paid by your family?

A. If it is my family's company, it is paid by us. Cecil is my family's company. So we paid for that. My uncle paid the costs for T H Teo Holding. Both my family and my uncle's family share in the cost in respect of Feature Investment.

30 Q. You agreed with the Defence Counsel that you did not know in March the accused was going to steal your money?

A. Yes.

Q. As far as you were concerned and your company was concerned, the bank draft was paid to Mr Potter?

A. Yes.

Q. It was paid to Mr Potter for the written opinion which he had given?

A. Yes.

40 DPP: through the court.

Q. Has Nakhoda Investment related to your family or Tong Eng?

A. No.

Witness stands down.

Intld: S K K

In the
District
Court

P.W.8
DR. TAN POH LIN

Plaintiff's
Evidence

PW8: Dr Tan Poh Lin - affirmed in English

47, Jalan Mutiara,
Banker.

P.W.8
Dr. Tan Poh
Lin
Examination

I am the Deputy Chairman of Industrial Commercial Bank. Mr Teo Tong Wah is a close friend of mine.

I cannot remember the year I came to know the accused but I know him for a couple of years. I do not know if the accused knew Mr Teo through me but they are my mutual friends. I know Tong Eng Brothers Pte Ltd has an account with my bank.

10

On 7.3.80 in the afternoon, Mr Teo called me on the phone. He asked me to issue a bank draft for £800 in favour of Mr D C Potter, Queens Counsel. He gave me the No. of his account and he said somebody would come and collect. I thereupon wrote a memo to my Remittance Department. (Witness is shown P28). This is the memo. 2.46 pm is the time I wrote the memo.

20

Mr Teo told me that a letter of authorization would be coming that afternoon or the following morning. (Witness is shown P32). This is the letter of authorization. I received this letter half an hour later. After I wrote the memo the whole transaction was not done by me except that when I received P32, I sent it to the Remittance Department. The accused did drop into my office but he did not stay for long. We did not exchange much words. He appeared to be in a hurry.

30

Cross-
examination

XXN:

Q. You told us Mr Teo was a close friend of yours?

A. Yes.

Q. The three of you are very good friends indeed?

A. Yes.

40

Q. You dine and played poker together?

A. I do not play poker. I play card games.

Q. You authorised giving the accused

	bank overdraft of \$50,000 against share deposited?	In the District Court
	A. No. It never reach my level. He must have applied through the normal channel.	<u>Plaintiff's Evidence</u>
	Q. Do you know he has the overdraft?	P.W.8
	A. Yes.	Dr. Tan Poh Lin
	Q. Do you regard him in 1980 as financially sound?	Cross-
10	A. Yes, to the extent of the facilities granted to him.	examination
		(continued)

REXN: Nil

Witness released without objection.

Intld: S K K

P.W.9
YONG SER HIONG

Plaintiff's Evidence

PW9: Yong Ser Hiong - affirmed in English
Dy Director CPIB

P.W.9
Yong Ser Hiong
Examination

20 In the morning of 9th July 80, I went to No.70, Branksome Road which is the home of the accused. There I requested him to assist in my investigation. I had with me two search warrants, one for searching his home, the other for searching his office in Fullerton Building. In the presence of the accused, both in his home and in his office, I recovered some documents. I recovered the following documents :-

- 30
- (i) P5;
 - (ii) P25;
 - (iii) P7;
 - (iv) P29;
 - (v) P10;
 - (vi) P26;
 - (vii) P9;
 - (viii) P6.

I also recovered a Statement of Account of the accused with the Midland Bank.

In the
District
Court

Plaintiff's
Evidence

P.W.9
Yong Ser
Hiong
Examination

(continued)

Cross-
examination

I also recovered other documents.

(Witness shown 4 bank statements of Midland Bank). These are the bank statement. (4 statements marked collectively as P38). There is an entry dated 1st April 80 of a credit for £800 on the third sheet. The fourth sheet has 4 debit entries starting from 23rd May. The total debited is £500. Before the credit of £800, the balance was £91.69.

On 9th July I started to record a statement from the accused. I questioned the accused on the subject in respect of the present charges on 22nd July 80.

10

XXN:

Q. I believe that in addition to the Midland deposit account, you also seized statement of the accused's cheque account?

A. Yes.

Q. Did you seize this one?
(Witness is shown a document).

20

A. Yes. (Statement is marked and admitted - D1)

Q. On 3rd June, there was a balance of £67.32?

A. Yes.

Q. On 13th June £67.32?

A. Yes.

Q. If you add that to 511.69, the total is about £579.01?

A. Yes.

30

Q. Did you also seized a statement of DBS. He had US\$75,000 from February - May?

A. I remember there a sum show but I cannot remember the period.

Q. You should have a letter from the accused to Midland and its reply relating to bank interest in England?

A. I am not so sure. I can go back and check.

Q. There is also a letter from the accused to the manager of Midland asking him to transfer £450 from his deposit account to his chequing account?

40

A. I do not know.

REXN: Nil

Witness stands down.

Intld: S K K

In the
District
Court

Plaintiff's
Evidence

DPP: I do not propose to call any other witness. I am offering Mr Teo Thye Hong for cross-examination.

P.W.9
Yong Ser
Hiong
Re-
examination

Defence Counsel: I don't wish to cross-examine Mr Teo Thye Hong.

10 For further hearing 9.11.81
at 9.30 am
Bail extended.

Sd: Soon Kim Kwee

Friday, 9th October 1981
In Open Court
Before me
Sd: Soon Kim Kwee
District Judge
Subordinate Courts

20 DAC 4624-5/80
IT S/S No.2421-2

PP vs James Chia Shih Ching

Sec 406 Cap 103 (2 counts)

Alt.charge Sec 420 Cap 103
Sec 6 (2) (a) pu Sec 94(2) I.T.
Act (2 counts)

Prosecuting Officer: DPP Mr Fong Kwok Jen
assisted by Mr Kelvin Lim.

Defence Counsel: Mr H E Cashin assisted by
Mr Choo Han Teck.

30 P.W.9: (recalled) (on former oath)
(To produce the documents)

In the
District
Court

Plaintiff's
Evidence

P.W.9
Yong Ser
Hiong
Cross-
examination

(continued)

XXN:

- Q. Can you produce a letter dated 23rd June 80 to the accused from DBS?
- A. Yes. This is one of the documents I seized.
(Letter is marked and admitted - D2)
- Q. Can you also produce a similar letter dated 21st April 80?
- A. Yes. (Letter is marked and admitted - D3)
- Q. A debit advice dated 21st March 80? 10
- A. Yes. (Advice is marked and admitted - D4).
- Q. Can you produce a copy of the Statement of Account for March 80?
- A. Yes. (Statement is marked and admitted - D5).
- Q. Look at this letter dated 3rd December 79. Is it one of the documents seized by you?
- A. Yes. (Letter marked and admitted - D6). 20
- Q. Look at this letter dated 3rd July 80. Was it also seized by you?
- A. Yes. (Letter is marked and admitted - D7).
- Q. Did you also seized £56 from the accused's safe and you gave him this receipt?
- A. Yes. The money has been returned.
(Receipt is marked and admitted - D8).

REXN: Nil. 30

DPP: I have spoken to my learned friend and I wish to inform your Honour that it is admitted by the Defence and the Prosecution a few days after 7.1.80, the accused was informed by a letter of that that Jaques & Co., solicitors in London that they will probably be able to get the case in the Privy Council heard on or about 7th May 80.

Defence Counsel: Confirms this. 40

Defence Counsel: I have an application to make. I have spoken to my learned friend. I am in the process of making a written submission including the Privy Council

case of Haw Tua Tau's case.
I am applying for the case
to be stood down till 2.30 pm
in the afternoon.

In the
District
Court

DPP: I have no objection.

Plaintiff's
Evidence

Court: Grants application.

P.W.9
Yong Ser
Hiong

Court adjourns till 2.30 pm.

(continued)

No. 3 (a)

No.3(a)

DEFENCE OPENING

Defence
opening

10 Court resumes

Defence Counsel: The accused faces two charges framed under S406 of the P.C. The first being an attempt, the second being a criminal breach of trust. The third charge which is an alternative charge is cheating. I am dealing with the cheating charge later.

20 In respect of the first two charges, the Prosecutor has chosen to go under the clause "dominion over property". I refer to the Ratanlal's Law of Crime (22nd Edition) page 1050. (Defence Counsel reads the para under the heading 'Scope').

30 In either case whether it is entrustment or dominion, the accused must have the property. I refer to Gour's Penal Code, 9th Edition at p.3243 which says the very same thing. When you are accusing a person of being entrusted with the dominion of the property, it means the person must have control of the property and be able to direct its use. The donor of the trust ie Mr Teo must have consciously or intentionally entrusted the accused giving him dominion over that money with direction of its use. What in fact happened is that he gave a draft of £800 on 7th March 80 to the accused. The only person who can use

In the
District
Court

No.3(a)
Defence
opening

(continued)

the draft is the person named in it. The person named in it can of course pay it into someone else's account but he must endorse on it. In cross-examination of Mr Teo, I put to him certain questions. In answer he said the £800 was payment to the accused. He also said he did not intend the £800 to be for the accused. He agreed that the handing of the draft to the accused was the process by which Potter was to be paid. In my submission, there is no entrustment of the money. He did not give to the accused in the form in which the accused could make use of it. Indeed the accused could not make use of it.

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The second point of entrustment is this. It was a draft. It was not £400 or £800 in cash. Had the money itself been handed to the accused, there would be an entrustment of it and had dominion over it. So right at the outset the Prosecution's case fails as there is no entrustment or dominion of a sum of £400 in respect of the first charge and £800 in the second charge.

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Let me look at the first charge closer. The date 10th March 80 is the date when the accused sent P8. The accused posted the letter with the draft. Mr Brown believed that the accused did not understand that in barrister's chambers, barristers do not keep client's account. The accused just posted the draft. Look at the second charge. The accused was not entrusted over dominion on the £800. The 20th March 80 was in fact the second letter after he had learned that Mr Potter was waiving his fees. The dominion of the money still lay with Mr Potter. Only he can deal with it. On 20th March, Potter had been entrusted with the money. Even if we alter the date, the accused was never entrusted over dominion of the property. Whatever crime the Prosecution may think the accused committed, it can never be criminal breach of trust.

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At this stage, I want to now look at the third charge. In dealing with the third charge, I wish to cite Haw Tua Tau's case [1981] 2 MLJ 49. I wish to refer to p.51, para 'C' (left column). What Lord Diplock is saying is that if there is some evidence to support the essential ingredients the trial must go on. At first sight, it would appear that the smallest scintilla of evidence would be sufficient. However he has taken as a standard the position of the jury in Singapore before it

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was abolished and the position in England now. Later he explains what "some evidence" means. That is to be found at p.52, para 'F' (left column). It is essential to see what is happening in England. There is a practice direction in [1962] 1 AER 443. (Defence Counsel reads). This is followed in 1981 by R V Galbraith [1981] 2 AER 1060. I invite you to turn to p.1062. The difficulty we face in Singapore is that we do not have a jury. There is a passage in Archbold (40th Edition). We are bound by S.179(f) of the CPC. Once you called upon the Defence, then you have no alternative but to convict if the accused elects to remain silent. I think this is where Lord Diplock had gone wrong. He had forgotten about the jury's function to decide if there is sufficient evidence at that stage. Until such time as the Privy Council decision may be changed, your Honour has to convict if the accused remains silent after defence is called. In view of the twist of justice which may be unwittingly caused by the Privy Council decision, I am going to ask you to review the evidence very carefully whether the ingredient spelt out by Lord Parker & Lord Lane are present.

In the District Court

No.3(a)
Defence opening

(continued)

Let us look at the alternative charge. (Defence Counsel reads). An essential ingredient is to show that Tong Eng Brothers was induced into believing that the £800 was due and payable to Potter.

There is not a scrap of evidence to show that the company would not have paid £800 had it not been deceived. The evidence goes the other way. Teo said in effect that he would have paid even though Potter had waived his fees if he knew what the accused had expended on the conference, the lunch, the tins of tea, and the postage. There is no evidence to show that the company would not have paid £800.

The point is the deception. Where was it? When I cross-examined Mr Teo, he made it clear that the company had already started to consider the provisions of the Tax Act or a reconstruction. It was he who suggested to the accused that the accused should advise him. The accused did. When the accused suggested they ought to take advice from the Queens Counsel, Teo agree. So far where is the deception. Then there was the preparation of the instructions. Where is the deception. Then there is the sending of the brief in January. Again where is the

In the
District
Court

No.3(a)
Defence
opening

(continued)

deception. The accused shortly after receiving the opinion, went through it with Teo. Where is the deception. The only thing you have got is that the accused writes out on a sheet of paper £800 and Mr Potter's name and ask Teo to pay £800 to Mr Potter. Would the accused know what fees Potter is going to charge? According to Mr Potter, the accused would know there were concessionary rates which his chambers charge the Inland Revenue Department. The next point was average fee. Both Mr Potter and Mr Brown were of the view that the average fee related either to the chambers' fee or Mr Potter's fee. Both stated they did not know Potter was going to waive the fees and secondly whether Mr Potter would charge at a concessionary rate. Mr Potter said he could not recall that the accused knew he would waive the fee. When the accused asked for £800, he had a guess of what the fee should be, he had asked for it. He could not make use of the draft. How does he cheat anybody? Are you going to infer that if Potter had waived his fee or send £500, the accused would put it in his pocket? Where is the evidence? The evidence about the non-disclosure of waiver to Teo was neutral evidence. How can P8 disclose an intention to deceive. If you alter the date to 20th March what happens. The letter P10 cannot show that there was an dishonest intention. The conduct of the accused after investigation began cannot go to show his intention earlier on.

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Once the £800 was paid into his account, he became an agent. He had a duty therefore to account for it. He became an agent by conduct, not by appointment. Mr Teo expected to pay all the out of pocket ancilliary relating to the opinion. From the start to finish, the accused had in his possession far in excess of the £800. He had around £500 in his two London accounts. He had US\$75,000 on deposit and thousands of dollars in his accounts. The inference of deception is so faint that I would ask your Honour when considering "some evidence" it would be absurd to hold that there is evidence. On the charges as they stand I would ask your Honour to say there is no case to answer.

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PROSECUTION REPLY

No.3(b)
Prosecution
Reply

DPP replies :-

My reply will be brief. (DPP reads the three charges).

10 I shall first deal with the first two charges. The gist of the learned Defence Counsel's argument is that the Prosecutor has failed to prove that the accused had been entrusted with dominion of property. The Defence Counsel is trying to persuade your Honour that a person cannot be entrusted with a bank draft unless it is in his name. I am afraid this is a very novel submission and I urge that it should not be accepted. Entrustment means nothing more than giving some property in a particular purpose. I refer to Sathiadas v PP [1970] 2 MLJ 241. I refer to p.243 (Column C (right)). There is no difference between cash and a bank draft. It is money nevertheless. It is not disputed that the bank draft of £800 was arranged for the specific purpose of paying for the fees of Mr Potter to be paid. Certainly it was entrusted to him.

30 My learned friend is quite right in saying that the date in the first charge is based on P8. It is not a case where the accused was trying to reduce the fee and let the benefit go to Tong Eng. The accused intention in P8 is clear. Keep £400 for yourself and credit £400 to me. He fails in that attempt in that Mr Potter and Mr Brown chose to waive the fees. Mr Teo said that had he known the fees were waived, he would expect the bank draft to be returned to the accused for him to return to Teo. Mr Potter and Mr Brown were innocent agents and acted according to the accused's direction in P10. In causing the draft to be transferred to his account in England. By doing so, he had converted the use to him.

40 The evidence of Mr Teo on his willingness to pay for the disbursement of the accused is irrelevant.

I refer to Yeow Fook Yuen & Anor v. Regina [1965] 2 MLJ 80. I read p.82 (B, left column). In the present case, the bank draft of £800 was given specifically to the accused to be paid to Potter and when he put it in his account he had

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District
Court

misappropriated the amount. Up to this day, Tong Eng has not approved the putting of £800 into the accused account.

No.3(b)
Prosecution
Reply

The cheating charge is in the alternative. This charge has to be in the alternative to the criminal breach of trust charges because if there is a deception, then the property is stolen property and there is no entrustment.

(continued)

On the 7th March, there was no decision taken by Mr Potter and Mr Brown on the fees. Certainly the fee was not £800. Certainly the accused knew the fee was not determined. It may be his mind that some fee is payable but he must know the fee was not due and payable shortly after receiving the opinion, the accused after going through the opinion with Teo, the accused gave Teo with a note showing £800 and Mr Potter and told him that was the fee of Mr Potter. The accused did not indicate anything else. In giving Mr Teo the note and asking Teo to pay £800 he had deceived Mr Teo that the fee was £800 and was due and payable. This offence was complete by 7th March when the accused said Mr Teo asked him to prepare a bank draft. Whether the accused knows that the Government is given a concessionary rate is irrelevant. Whether the accused knew or did not know if Potter would waive the fee is irrelevant. The question is whether on the unknown date in February 81 and on 7th March 81, the accused knew the fee was £800 and was due and payable. The accused did not know the fee was £800. He knew it was not due as no fee note was given. It is not a case where the accused told Teo, "I do not know what the exact fee is but I think £800 will cover it". It is clear that the payment of the £800 was as a result of the deception.

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Coming to the question of Haw Tua Tau, my learned friend has suggested that as a result of that case, if one wished to apply Lord Diplock's test, if at the end of the Prosecution's case there are evidence (if believed) to support each ingredient of the offence and the accused's defence is called and the accused remains silent, the court has to convict the accused. I disagree with my learned friend. The court is to defer on the weight of the Prosecution's evidence. If defence is called, and the accused calls no other evidence, it is the duty of the court to weight all the evidence before it. It is still open to the court to acquit the accused. If on weighing the evidence the court feels that the Prosecution has not proved beyond

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reasonable doubt then the accused can be acquitted.

In the
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Court

I refer to S.214 CPC and S.72 of P.C.

No.3(b)
Prosecution
Reply

10 I cannot agree with the learned Defence Counsel in saying that the correspondence subsequent to the commencement of the investigation. Certainly his conduct around the time of the commission is important. Conduct which attempt to influence the act which are in issue are relevant. The court is entitled to say, would an innocent man knowing the investigation is going on does that? The Court is entitled to make such inferences as it deems fair.

(continued)

That is my submission.

No. 3 (c)

No.3(c)
Defence
Reply

DEFENCE REPLY

20 Defence Counsel: In view of two cases cited, can I just take two minutes. I think my learned friend in saying that there is no entrustment of dominion I mean just then. My learned friend makes no distinction between entrustment of property and entrustment of dominion of property. Therefore Sathiasda's case is irrelevant as it was.

30 DPP: I am not citing Sathiada's case to show that there is no difference between a bank draft and cash in connection with a criminal breach of trust charge.

Court: Mr Fong, are you saying that you have not been able to find any precedent where the subject matter of a criminal breach of trust charge is a bank draft.

40 DPP: Your Honour, my colleague has informed me that there is a case where the subject matter in a criminal breach of trust charge is a cheque. However I do not have the case with me. If your Honour will permit me, I will obtain the case and cite it on Monday.

For further hearing 12th October 81 at 9.30 am.
Bail extended.

Sd: Soon Kim Kwee

In the
District
Court

No.3(c)
Defence
Reply

(continued)

Monday, 12th October 1981
In Open Court
Before me
Sd: Soon Kim Kwee
District Judge
Subordinate Courts

DAC 4624-5/80
IT 2421-2

PP vs James Chia Shih Ching

Sec 406 Cap 103 (2 counts) 10

Alt. charge Sec 420 Cap 103
Sec 6(2)(a) pu Sec 94(2) I.T.
Act (2 counts)

Prosecuting Officer: DPP Mr Fong Kwok Jen
assisted by Mr Kelvin Lim.

Defence Counsel: Mr H B Cashin assisted by
Mr Choo Han Teck.

Defence Counsel: I wish to make a reply to
my learned friend. Having heard my
learned friend, I have the impression 20
that my learned friend has not understood
my point in respect of the two criminal
breach of trust. The word 'entrustment'
denotes a relationship. It is a general
term for giving. Gour uses the word
'dealing'. In certain circumstances,
of cash cheque and draft are the same as
cash. Our Bill of Exchange Act S.831(4)
reads. (Defence Counsel reads). Here
the only person who can deal with it will 30
be porter. The use of the word
'dominion' in the charge is a concession.
There is only one entrustment in both
the charges. There is one draft. How
can there be entrustment for £400 or
£800.

No.3(d)
Prosecution
further
Reply

No. 3 (d)
PROSECUTION FURTHER REPLY

DPP: The question which your Honour wishes
me to address you further on the entrust- 40
ment of the draft. Entrustment has a
much wider meaning than just 'donor' and
'donee' as used by my learned friend.

I wish to refer to Chittaby & Raio Vol.4
(2nd Edition) page 28.

In the
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10 Dominion means control. Entrusted with
dominion means he is given control of the
property although he is not in physical
possession of the property. I refer to
Emperor v Bimala Charah Roy 1913 Vol.35
ILR 361 (Allahabad Series.) (DPP reads
the judgment). I refer to Dalmia & Ors. v
Delhi Administration AIR 1962 SC 1821. One
must see if the accused could convert the
use of the bank draft. The draft is not a
bill of exchange. The bank draft is not an
order from one person to another. It is
merely a promissory note. It is only an
order from Industrial Commercial Bank to
Industrial Commercial Bank.

No.3(c)
Prosecution
further
Reply

(continued)

20 In drafting the first charge, one only put
down the sum in which the offence was
committed. A cheque is a form of money.
A draft is a form of money. I refer to the
meaning of "money" in the Concise Oxford
Dictionary. (DPP reads). Money does not
mean cash. The bank draft can be converted
to cash.

Court: Case made out by the Prosecution in
respect of the alternative charge.

30 Defence is called on the third charge.
Two courses opened to the accused are explained.
Accused elects to give evidence on oath.

In the
District
Court

D.W.1.
JAMES CHIA SHIH CHING

Defendant's
Evidence

DW1: James Chia Shih Ching - sworn in English

D.W.1
James Chia
Shih Ching
Examination

70, Branksome Road.
Senior Legal Officer,
Inland Revenue Department.

I know Mr Teo very well.

By 1979/80, I had known Mr Teo for about
three years. I treated Mr Teo as a very close
friend. He was in the inner circle of my
friends as well as Dr Tan. It is correct that
Mr Teo and I dined frequently. I am a
regular visitor to his house. We are neighbours.
We had card games with him where money is
involved. At the end of each card game, we
would jot down the amount we owe each other.
We would settle it at the following session or
much later. The sums would range between
\$500 to \$1,000. The sum would either he
might owe me or I might owe him. We always
expect each other to honour our debts. I have
always honoured my debts to him. Likewise,
he has done so to me. Dr Tan is also a close
friend of mine. The same remarks I made of
Mr Teo applies to Dr Tan. 10
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I recall the discussion I had with
Mr Teo regarding the cessation provision of
Income Tax Act in respect of Tong Eng Brothers.
It was certainly at the instance of Mr Teo
that we discussed the matter. I expressed my
opinion on the matter. I would not say I
advised him. It was around September or October
when he mentioned to me a few times about the
cessation provisions. I think he wanted
confirmation on the application of the Income
Tax Act. I regarded Mr Teo's approach as a
personal approach. It never occurred to me
that the approach came from his company. Those
occasions were always brought up at social
functions, either at lunches or dinners. If
Mr Teo had told me that he was asking me as a
director of his company, I would certainly
decline and ask him to seek advice from his
own accountants. After the discussions, I
finally expressed this opinion. I did suggest
round December period, I am not too certain
about the period, to Mr Teo that if he is
pressing to make use of the cessation provision
for his company, he should seek opinion from
Queens Counsel in London. I think it was
around late November, early December. I said 30
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that in this case, if you want to seek Counsel's advice, a brief is required. I explained what a brief is. I did mention Mr Potter's name to Mr Teo. It was in December.

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District
Court

Defendant's
Evidence

I asked Mr Teo to get his legal officer of the company to prepare the instruction. I explained to Mr Teo what the instruction contains, namely, the history of the company, supporting documents to support the trading activities of the company and a reference to the Income Tax Act. Mr Teo said that he would do so at that point. Subsequently, he came back and said that his legal officer does not have the expertise or something of that sort and he requested me to do it. That would be round about the latter part of December. Subsequent to this request, I did prepare the brief together with Mr Teo because the primary facts of the company had to be provided by him. I remember I went through the brief with Mr. Teo around X'mas. The factual history had to come from Mr Teo. There is no document for that. He narrated to me. Then there is the Memorandum of Article of the Company, the balance sheets of the company. I think the balance sheets were from 1975. Also there was the Profit & Loss Account. A chart of the alleged transactions of the company had to be gathered. I would assume that Mr Potter had a copy of the Income Tax Act but I did append a copy of the Income Tax Act with all the amendments, to all the instructions when acting for Inland Revenue Department and seeking advice like that from London counsel, in most instances I would sent a copy of the Act to keep him up to date with the latest amendments of the law. In the instructions pertaining to Estate Duty or the Stamp Act, a copy of the relevant act and amendments will be attached to the brief.

D.W.1
James Chia
Shih Ching
Examination

(continued)

I think it was around the early part of January 80 that the brief was ready for despatch. All my previous dealings with Mr Potter were on behalf of Inland Revenue Department. This particular matter was the first of a non Inland Revenue Department matter ie a non-government matter. I must say I felt awkward or I was in a dilemma to express the relation of the instruction with myself. The dilemma was if I were to write to Mr Potter and say this was other than a Inland Revenue Department matter, he might be puzzled or he might raise the relationship between myself and this particular matter. What I did was I desptach the instructions with the supporting

In the
District
Court

Defendant's
Evidence

D.W.1
James Chia
Shih Ching
Examination

(continued)

documents to Mr Potter. Subsequent to that, I rang up Mr Brown and explained to them the brief which he has received was a private matter. I paid for the postages for despatching the brief and supporting documents. I paid for the telephone call to Mr Brown as well. At that time, I did not ask Mr Teo for disbursement nor did I thought I should ask Mr Teo for it. I did not even mention the expenses I had incurred to Mr Teo.

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At the time when Mr Teo told me that his legal officer could not prepare the instruction and Mr Teo asked me to prepare the instruction, I felt that I would handled the matter for him in my own way.

As Senior Legal Officer, I have in the past sought opinion from counsel in London on behalf of the government. I knew Mr Nolan was the head of Chambers. There were occasions when we sought opinion from Mr Nolan as opposed to Mr Potter I had also sought opinion of counsel from other chambers such as Mr Reeves. So far as fee notes were concerned, the government of Singapore were getting concessionary rates from these counsels. I know this myself. I did not know the exact percentage of concession given to the government. I was aware that the Chambers of Mr Nolan gave concessionary rates. I would think that the percentage given would be approximately half of the rate of the private sector. In January 80, I believed that was the rate as well. I recall Mr Potter's encounter with Mr Reeves and I knew there was a concessionary rate. I remember the particular incident.

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In January when I first rang up Mr Brown to explain that it was a private matter, I certainly was not aware of the custom of barristers in England of not charging solicitors for work done in respect of family or private matter of a solicitor.

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As a general rule, fee notes would come varying from 9-12 months.

Witness stands down.

Intld: S K K

Court adjourns for 15 minutes.

Court resumes.

In early January 80, I was aware I had to

go to London regarding a Privy Council hearing.

In the
District
Court

I cannot remember the date on which I despatch the instruction to London but it was about the middle of January.

Defendant's
Evidence

10 (Witness shown P6). I received this together with the opinion. On receipt of P7 (the opinion) I read it. Before discussing with Mr Teo, I thought that the opinion was rather unsatisfactory. The crosses on page 1 of P7 were put by me. There were crosses throughout the opinion. Those are my disagreement with Mr Potter. The underlinings were also mine. I would say that there were certain points which must be raised with Mr Potter. (Accused is referred to last line of P6). This sentence is not found in other letters from others. (Accused is referred to last sentence in P7). That is not the kind of sentence I find in other opinions. Taking the last sentence of P6 and P7 together, the impression I found was that Mr Potter was inviting me for further clarification.

D.W.1
James Chia
Shih Ching
Examination

(continued)

30 After digesting the opinion, I saw Mr Teo. We went through the opinion together. I pointed out to him the parts of the opinion which I thought were unsatisfactory. I explained to him why those parts were unsatisfactory. The impression I gathered from Mr Teo was that he was unhappy about the opinion. About that period of time, I did mention to Mr Teo that I would be in London about May. I think it is incorrect for Mr Teo to say that he knew that I was leaving for London a few days before I left. I left on the 22nd. No I left on the 21st. Subsequent to the discussion in late February or early March we met several times to dine at social gatherings. He knew that I was going to London during those occasions. I thought that I had told Mr Teo in February and March that I would be clarifying the opinion with Mr Potter. There was never a doubt that I will be handling the matter and he agreed to the consultation with Mr Potter. When I received the opinion in around late February, I read the opinion, made notes and queries on the opinion. I had the discussion with Mr Teo after that. After the discussion, I raised this question of payment. I had not received a fee note at that time. With my past experience, I expect the fee note to come towards the end of 1980. After the opinion was discussed, I raised the question of

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In the
District
Court

Defendant's
Evidence

D.W.1
James Chia
Shih Ching
Examination

(continued)

payment with him and said that we have to pay for the opinion provided by Mr Potter. I handed Mr Teo Mr Potter's name, the address and a figure of £800. It was in my handwriting. It did not look like a fee note from Chambers. When I handed the slip of paper to him, I did say to Mr Teo, "I have not received the bill yet but we must pay for the opinion rendered by Mr Potter. £800 should be sufficient to cover his opinion". From my dealings with Mr Potter, the charges which he has billed the Inland Revenue Department of opinions varies from £250 to £750. The average would be £400. Mr Teo's matter is a private matter. I took the precaution of doubling it. When I say it is a private matter, I mean as opposed to government matter I did not think of getting a concessionary rate for Mr Teo. When I asked for £800, I had no idea with any certainty as to what fee Mr Potter would charge. I did not have any idea of what the fee would be like. I did mention to Mr Teo that no bill had been forwarded by Mr Potter at that time. I definitely had no intention at all of cheating Mr Teo. In asking for £800 I had no intention of deceiving Mr Teo that Mr Potter's fee must be £800. The £800 was only for Mr Potter in view of the opinion rendered by him. The £800 was an estimation. I was anxious to discharge Mr Potter's debt, whatever it was. That is why I did not wait until the arrival of the fee note at the end of '80. In the case of government matter the fee note will be sent approximately 9-12 months later. The debtor is the Singapore government. In this respect of the Tong Eng matter I would be responsible for the payment and I wanted it to be discharged immediately. I have experience of payment of fee notes. Mr Brown would send the bill in an envelope addressed to the Comptroller of Income Tax. On receipt of it, the bill will go immediately to the accounts department. The accounts officer would make out a performa payment of the bill. The performa with the bill would be handed to me for certification that the opinion on the bill has been rendered. Thereafter, payments are made by the Accounts Department.

In respect of government matters, all I have to do is that I certify that an opinion had been rendered. In so far as Tong Eng matter, I would be responsible for payment to Mr Brown. That was the main reason why I wanted to sent the £800 as soon as possible. I did not deceive Mr Teo at any stage that a sum of £800 was due and payable to Mr Potter. I did not

dishonestly induced the company or Mr Teo to deliver to me a bank draft of £800. The bank draft had Mr Potter's name on it or his order. If I had intended to deceive Mr Teo or his company, I would have asked for cash from Mr Teo. There was no suggestion by me or Mr Teo that I should be paid for preparing the brief. So far as the incidentals such as the phone call and postage, Mr Teo will have to bear them.

In the District Court

Defendant's Evidence

D.W.1
James Chia
Shih Ching
Examination

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On 7th March, I did telephone Mr Teo and told him to get ready a bank draft of £800 in the name of Mr Potter. I went to the Industrial & Commercial Bank that afternoon where I saw Dr Tan. I was handed an envelope by a bank officer. I opened the envelope much later. When I opened it, I found a draft of £800 made out in the name of D C Potter or order. There was also a memorandum indicating that the money was paid by Tong Eng Brothers Pte Ltd. It is not my case that Tong Eng did not pay for it. I did not cheat or deceive Tong Eng Brothers on 7th March. Mr Teo had directed that the draft be sent to Mr Potter.

(continued)

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On 10th March 80, by letter of that date, I sent the draft to Mr Potter (Witness is shown P8). This is the letter. So far as I was concerned, I had carried out the instruction of Mr Teo to pay Mr Potter. (Defence Counsel reads the 2nd para of P8). I put the 1st sentence there because the average fee charged by Mr Potter for government matters is £400. (Witness is referred to the 2nd sentence). I was persuading Mr Potter to give the same concessionary rate which he gives to the Government to this matter before him.

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If Mr Potter had charged me £650 or something like that, it would be impossible for me to say he could not. I could not disagree with him. I had no control any fee which Mr Potter might charge. When I talked about the remainder of £400, I was hoping that my persuasion would result in a reminder. I had no idea how barristers receives money in London at that stage.

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I was aware about the receiving of fees by advocates & solicitors in Singapore before work was done. To my knowledge, advocates & solicitors in Singapore do receive money on account for work to be done. When advocates & solicitors receives money on account, they would

In the
District
Court

Defendant's
Evidence

D.W.1
James Chia
Shih Ching
Examination

(continued)

put it into a client's account. By the words 'credited to my account', I meant a client's account with Mr Potter in my name. I had no intention of cheating Mr Teo or his company when I wrote that.

Regarding the last line in P8, I meant that about that time when I wrote this letter, I knew I was going to London and I was going to take the opportunity to discuss the matter with Mr Potter. The money was to held in my name against further consultation. P8 would have been received by Mr Brown in mid-March.

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(Witness is referred to P9). When I received this letter, I think I was embarrassed. I was embarrassed. I was embarrassed that Mr Potter was waiving his fees. I was not aware of th practice in London of barrister waiving fees in respect of solicitors' private or family matters. The letter does not say the practice in London. The first time I was aware about the practice was last week when Mr Potter told this court of it. I could only make a guess at that point of time why he was waiving the fees. This guess would be that it being a private matter, Mr Potter thought he would not charge me. I thought Mr Potter was doing me a special favour. That was the reason for my embarrassment. I never raised the matter family or private. By private matter, I would mean a personal matter related to me.

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Witness stands down.

Court adjourns for lunch.

Court resumes.

DW1: (recalled) (on former oath).

I don't think I told Mr Teo about Mr Potter's decision to waive the fees when I received the letter P9. The matter regarding Tong Eng was not complete. It was still going on for further consultation with Mr Potter. I was going to wait for the whole matter to be completed before I render him a statement of account.

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(Witness is referred to P10). It is dated 20th March 80. It was written by me to Mr Brown. (Witness reads para 3 of P10). I asked Mr Brown to transfer the £800 to my account as the interest rate in London at

that time was 15%. In view of the very good interest rate, I was going to put the £800 to earn interest for Mr Teo. Once it is paid into my account, I had control over the £800. I did not intend to deprive Mr Teo or his company of the £800. If I had intention to deprive Mr Teo or his company of the £800, I would not have the consultation. Mr Teo already knew that I was going to London in May to see Mr Potter. I would have taken the £800 into account when rendering the account. Between the time I received P9 and the time I went to London, I met Mr Teo many times. I did remember on several occasions I did mention to him about P9. Before I left for London, Mr Teo knew I was consulting Mr Potter. He agreed that I should.

In the District Court

Defendant's Evidence

D.W.1
James Chia
Shih Ching
Examination

(continued)

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I was embarrassed when Mr Potter waived his fee. I must clear this point with Mr Potter at the earliest opportunity which I did on 23rd May. I telephoned Mr Brown telling him I wish to see Mr Potter. I think it was the earlier part of that week. I arrived in London on 22nd May. I contacted Mr Brown before I left Singapore. On 23rd May, I took Mr Potter for lunch. I paid for it. When I arrived at the Chambers, I gave him a box of China tea. I also gave Mr Taylor and Mr Brown tea boxes. I felt obligated to the kind gesture of Mr Potter. I was doing it on behalf of Mr Teo. I bought the three wooden cans of China tea in Singapore. They costs \$150 in total. The lunch and transportation was about £80. When I consulted Mr Potter on the 23rd, the first thing I did was to clarify with him my relationship with Tong Eng in that there is no relation with me, that it was a close friend's company. The fee note was given to me on my last day in London ie 5th or 6th June. I did ask for the fee note immediately on the 23rd May. When I received the fee note, I took it that it was for consultation on the same matter. That was known to Mr Potter also. When I got the fee note, I assumed that Mr Potter had told Mr Brown about the fact that it was not a private matter. During the consultation, we went through the programme as shown in the exhibit that has been tendered. I arrived in Singapore on 7th June. (Witness is shown 'F'). I recognise these. Those were the notes taken by me of the discussion I had with Mr Potter. The typewritten matter was the programme I had to bring up for the re-construction. ('F' is marked and admitted D9).

In the
District
Court

Defendant's
Evidence

D.W.1
James Chia
Shih Ching
Examination

(continued)

After my return from London, I did not see Mr Teo immediately. I think it was ten days to two weeks later that I discussed with him my meeting with Mr Potter. I was very busy in the office. I did not have the opportunity to call on Mr Teo. I saw Mr Teo on about the third week of June. At this meeting I went through the advice which Mr Potter gave as shown in exhibit D9. I told him that there are certain procedures and steps that we had to carry out. There were a few meetings on this matter. During the discussions with Mr Teo both of us brought up certain feasibility reports as advised by Mr Potter. (Witness is shown two documents). These are copies of the feasibility studies. They were amongst the documents seized. I had prepared these together with Mr Teo. The studies were not actually finished at this stage. (Feasibility studies are marked and admitted D10 & D10A). On 9th July, the investigation on myself started by the officers of the CPIB. I did not finish the feasibility study. If there had been no investigation, I intended to finish the programme as advised by Mr Potter. When it was finished, I would have dispatched it to Mr Potter for his approval. Obtaining his approval would certainly have caused fees to be incurred. If that stage been reached, I would have rendered the statement of account when the programme was approved by Mr Potter and was carried out by Mr Teo. If he did not carry it out, I would have given the Statement of Account at that stage. I would have given Mr Teo credit of the £800. I would have given him credit on the interest earned. If I had made use of the money, I would still have shown it as a credit. The items on the credit side would be the £800 and the interest earned. On the debit side I would have shown the bill for consultation ie £450, the bill for the approval of the programme, postage to cover the initial brief and later on the package containing the program for approval, the tea, the lunch, taxi fares and telephone calls in fact all the ancilliary expenses. If there is a credit for Mr Teo I would settle the account in Singapore dollars whichever way it was, I would expect it to be in Singapore currency.

On 3rd July, I transferred £450 from my deposit in my checking account with Midlands with intention to pay the fee of £450. That is in my letter I wrote. (Witness is shown D7). This is the letter. It is six days before the investigation started. In London, I used my

American Express Card. The bill was £460.74 on the credit card. That together with £450 with Mr Potter, I did not have enough in my account in London to meet the payment. I was going to send about £1,000 to cover the American Express bill and to leave £300 in my account. I had to wait for notification from Midland Bank had been effected. On 9th July, Midland Bank replied to me.

In the District Court

Defendant's Evidence

D.W.1
James Chia
Shih Ching
Examination

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The investigation started on 9th July. The following Monday, I was in hospital until the end of the week. I first consult my solicitors that weekend when I was discharged. It was on 19th or 20th. It was a Saturday.

(continued)

When I met my counsel, Mr Cashin, I gave him a broad outline of what has been covered in the investigation and matters which I had done. My counsel advised me right through the investigation on the steps that I had to take to put matters in order. Those letters written from 24th July to London between Mr Brown and I were on the advice of Mr Cashin. I drafted the letters. In so far as the letters written to Mr Teo were concerned, it was also on the advice of Mr Cashin. So far as payment of £800 to Mr Potter, it was also the advice of Mr Cashin.

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I also sought Mr Cashin's advice on Mr Brown's proposal about the fees in respect of Nakhoda.

On 7th March or on any date thereafter, I never intend to cheat Mr Teo or Tong Eng of any money at all. I did not intend to cheat Mr Teo before the 7th March.

XXN:

Cross-examination

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Q. You said that when you were first approached by Mr Teo and you were asked to advise on cessation of business of Tong Eng, to your mind Mr Teo had approach you on a personal basis?

A. Yes, can I mention something. Mr Teo was not asking me for advice. He was asking me for my opinion on the operation of the cessation provision.

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Q. If it was your impression that he approached you as a Director, you would have declined to give any opinion?

A. Yes I would.

In the
District
Court

Defendant's
Evidence

D.W.1
James Chia
Shih Ching
Cross-
examination

(continued)

- Q. You would advise him to see his company's lawyers?
A. His company's accountants.
- Q. If you had the impression that he was approaching you as a director, why would you have declined to give an opinion?
A. This would be something which he would have to see his public accountants.
- Q. I am afraid you have not answered my question. (DPP repeats quest on). 10
A. That would become an official matter. He should then approach his own professional advisers.
- Q. Around December 79 when Mr Teo spoke to you again, he was pressing from you a formal opinion. It was at this time that you advised him to seek Counsel's opinion?
A. Yes. 20
- Q. By that, I suppose you meant Queens Counsel?
A. Yes.
- Q. Did you not by then get the impression that he was approaching you as a director of Tong Eng?
A. No. The matter was brought up at social meetings. I always regarded them as social matters.
- Q. In fact you had no occasion to meet him officially? 30
A. That is so.
- Q. During that period at least?
A. Yes.
- Q. You had no occasion to meet him but on social occasion?
A. Yes.
- Q. Could he not have brought up his company's matters when he met you socially?
A. On a personal basis yes. 40
- Q. You also told him that before he could seek Queens Counsel's opinion, you asked him to get his legal officer to prepare the instruction?
A. Yes.

	Q.	Certainly by this time, you must have impression that he was approaching you very much as a director of Tong Eng?	In the District Court
	A.	Not to my mind.	
	Q.	Why not? He is a director of Tong Eng. He asked you for your opinion on his company's matters?	<u>Defendant's Evidence</u>
	A.	He is my friend. He could raise in general questions which could be discussed between friends.	D.W.1 James Chia Shih Ching Cross-examination
10	Q.	Subsequently, according to you, he came back and told you th t his legal officer could not prepare the instruction and asked you to prepare it, by then you must have the impression that he was approaching you as a director?	(continued)
	A.	No, not to my mind.	
	Q.	Even though when you knew the £800 came from the company, you still did not regard it as company matter?	
20	A.	When I raised about the £800, I raised it with Mr Teo himself. When the draft was given to me in March, the memorandum spelt out Tong Eng. That is the payment by Tong Eng. I believe Mr Teo might have his own arrangement as far as his company is concerned.	
	Q.	You thought Mr Teo was using company fund to pay his own purpose?	
30	A.	No. I thought he had some arrangements with his company.	
	Q.	You still thought it was not a company matter?	
	A.	The fact that it was paid by the company does not alter my relationship with him.	
	Q.	Of course not.	
	A.	I am in no position to tell him not to pay by way of company draft.	
	Q.	When would you consider in a case when he approach you as a director?	
40	A.	When Mr Teo tells me that he is no longer talking to me as a personal friend.	
	Q.	So you would do anything for Mr Teo, advise him about Tong Eng if he does not tell you, I am not approaching you as a director, you would have no compunction to advise him?	
	A.	I disagree.	

In the
District
Court

Defendant's
Evidence

D.W.1
James Chia
Shih Ching
Cross-
examination

(continued)

- Q. Is that not precisely what you said?
A. That is if he had come in that fashion but he did not.
- Q. Looking at normal conduct, you must give regard to the subject matter?
A. Not necessarily.
- Q. Look at D10a and D10b. What has that to do with Mr Teo?
A. That is Mr Teo's group of companies.
- Q. That is the company of Mr Teo's uncle. 10
It has nothing to do with Mr Teo?
A. I was told of them.
- Q. Was it not you who instructed Miss Kay to incorporate T.H. Building Pte Ltd on behalf of Mr Teo?
A. No. Miss Kay is known to Mr Teo.
- Q. She is also known to you?
A. Yes. The incorporation of the company was between Mr Teo and Miss Kay.
- Q. You had no idea who were the shareholders 20
of T H Teo Holdings Pte Ltd?
A. I do not think so.
- Q. Is it not true that Miss Kay was instructed on your suggestion or recommendation?
A. Miss Kay is also a friend of Mr Teo. I did mention her name.
- Q. My instructions are you were very much a go-between Miss Kay and Mr Teo and his uncle. In other words, instructions to Miss Kay from Mr Teo and his 30
uncle were given through you?
A. That is incorrect.
- Q. Certainly when you saw Mr Brown about the fee note after consultation, you told him it was a matter concerning Tong Eng Brothers and he so recorded it in his diary?
A. Yes. To me that was the same matter as the opinion rendered by Mr Potter.
- Q. Look at P5. Does it not all concern Tong 40
Eng. The company is such. Its business is such in para 1. The whole brief concerns Tong Eng Brothers?
A. Yes.

- 10 Q. Even at this stage, would you not regard Mr Teo as coming to you as a director of Tong Eng?
- A. Can I explain. This brief was prepared in December between Mr Teo and I. The facts of the company were recorded by him. This information in the brief was stated by him. Certainly the subject matter concerned his company but I regarded him not as Mr Teo of Tong Eng but as a personal friend.
- 20 Q. In the final analysis, you are saying that if he comes as a friend to you, no matter how much the matter involved his company, you would have no compunction to help him but if he had come as a director, you would decline. Is that what you are saying?
- A. I would have to disagree with you when you say I would have no compunction to assist him. This matter is just a history of the company. It does not contain any advice. It is for Mr Potter to give advice. I was just assisting him in collating the facts.
- 30 Q. Please do not get me wrong. I am not suggesting that it is wrong to help friend even if he is a director. I am only referring to your evidence that you would decline to assist had he come as a director of the company. Now, what would you have done if Mr Teo say, 'This concerns my company but as a friend would you help my company?'
- A. I would have asked him what is it about. It depends on the extent.
- 40 Q. To the extent of preparing a brief and working out a programme?
- A. That I have done I have done as a friend.
- Q. You said that after you had despatched instruction, you called Mr Brown and explained that the brief he had received was a private matter?
- A. Yes.
- Q. Did you call Mr Brown before despatching the instruction?
- A. After despatching.
- 50 Q. You are quite certain?
- A. Yes.

In the
District
Court

Defendant's
Evidence

D.W.1
James Chia
Shih Ching
Cross-
examination

(continued)

In the
District
Court

Defendant's
Evidence

D.W.1
James Chia
Shih Ching
Cross-
examination

(continued)

- Q. Look at P25. It would appear your conversation with Mr Brown was before you despatched the instruction?
- A. No. The bundle was despatch in early January. I was checking with him if he had received the bundle. I was explaining over the phone the relationship of the matter that was to be received.
- Q. Are you saying that your brief did not go together with P25? 10
- A. It did not.
- Q. You sent P25 on 14th January?
- A. Yes.
- Q. According to Mr Brown, he received your brief on 18th January 80?
- A. Yes.
- Q. Would it not indicate that the letter went with the brief?
- A. I cannot confirm that. 20
- Q. You are quite certain the brief did not go with P25?
- A. Yes.
- Q. Could the telephone conversation be on 9th January. Look at this document. Did you not call Pump Court on 9th January?
- A. It is not in relation to this matter.
- Q. On 9th January you called Mr Brown on your own home telephone? 30
- A. That would be so as appears from this bill.
- Q. Does it not refer to the telephone conversation referred to in P25?
- A. No. It referred to another matter.
- Q. What matter was your conversation about?
- A. About another opinion with Mr Potter.
- Q. Government matter?
- A. Yes.
- Q. You paid for the bill? 40
- A. Yes.
- Q. If it is a government matter, you would have charged it to the government?
- A. Can I explain. Anything relating to

the government, I will claim reimbursement from the government unless I cannot get Mr Brown on the phone.

In the
District
Court

Defendant's
Evidence

Q. According to that bill, you made a call to Mr Nolan's Chamber. Was the phone call paid by you personally?

A. Yes.

D.W.1
James Chia
Shih Ching
Cross-
examination

10 Q. As a superscale officer, your home phone is paid by the government?

A. If indeed that phone call concerned a government matter, I would have no reason to pay for it.

(continued)

Q. Would you like to refresh your memory as to whether that phone call related to P25 and not a government matter as you had mentioned earlier?

A. Possible.
(Bill is marked and admitted - P39).

20 Court:

Q. Mr Chia, I am not very clear on this matter. You said that if the phone call is a government matter, you would claim reimbursement. In this case in P39, did you claim reimbursement?

A. After looking at P39, I find that I was informed by my officer that it was a private matter and I paid for it.

DPP continues:

30 Q. When you were instructing Mr Potter in January 80, you felt awkward and you were in a dilemma?

A. Yes.

Q. Could you tell us what gave rise to this awkwardness?

A. The awkwardness was how I was to represent to Mr Potter in view of this matter because prior to this, my dealings with him was official.

40 Q. Is this not awkwardness something you brought upon yourself. Could you not have simply written to Mr Potter, "This is my friend's company"?

A. At that time, I thought an explanation over the telephone was more appropriate.

In the
District
Court

Defendant's
Evidence

D.W.1
James Chia
Shih Ching
Cross-
examination

(continued)

- Q. Why should it be? Why did you not write a short note to Mr Brown, "This matter concerns the company of a very good friend of mine". Why could you not have done that?
- A. To prevent any raising of query from Mr Brown, I spoke over the phone.
- Q. If you had so written to Mr Brown, what queries would Mr Brown have?
- A. I do not know what queries Mr Brown had. I thought that a phone call would be sufficient. 10
- Q. What queries were you anticipating Mr Brown would have had you so written?
- A. I am just guessing. I cannot be certain what Mr Brown would be raising. What is my relationship with this company? That would probably be one of the queries.
- Q. Which you could have explained in your letter that it is your friend's company? 20
- A. The mode of explanation I thought best at that time was by telephone call.
- Q. But certainly over the phone you did not tell Mr Brown this matter concerned your friend's company?
- A. I said it was a private matter.
- Q. Is that not a very vague description of the relationship of the subject matter and you? 30
- A. To me at that time, that was the best explanation.
- Q. You called him over the phone just to tell him that when you could have just written to Mr Brown, "Look, this is my friend's matter".
- A. The mode of communication was best through the telephone.
- Q. But even on the phone you could not bring yourself to tell Mr Brown, "This is my friend's company"? 40
- A. The word 'private' covers the situation.
- Q. Certainly it does but it can also mean your own affairs, your parent's affairs, your brother's affairs or even your uncle's or aunties' affairs?
- A. Mr Brown did not raise the point further.

- | | | |
|----|--|-----------------|
| | Q. You have not answered the question? | In the |
| | A. Can you repeat. | District |
| | | <u>Court</u> |
| | Q. (DPP repeats question) | |
| | A. If there were misconceptions, Mr | Defendant's |
| | Brown would have raised it. | <u>Evidence</u> |
| | Q. Mr Brown did not raise it because | D.W.1 |
| | by 'private' he took it to be your | James Chia |
| | own matter or your family matter? | Shih Ching |
| 10 | A. If he look at the brief closely he | Cross- |
| | would probably know. | examination |
| | Q. What I am saying is that this | (continued) |
| | awkwardness was a difficulty brought | |
| | upon yourself? | |
| | A. I have already given the explanation. | |
| | Q. I see no difficulty why you had not | |
| | written to Mr Brown or told him over | |
| | the phone that Tong Eng Brothers | |
| | concerned your friend? | |
| 20 | A. My word 'private' covers such a | |
| | situation. | |

Court to accused:

- Do you agree that had you said to Mr Brown, 'This is my friend's matter', you would have stated your relationship with the matter in the instructions much more specifically than by using the words, 'private matter' and thereby prevent any misconception from arising?
- 30 A. Yes, but I do not know what goes on in Mr Brown's mind.

Witness stands down.

For further hearing 13th October '81
at 9.30 am.
Bail extended.

Sd: Soon Kim Kwee

In the
District
Court

Defendant's
Evidence

D.W.1
James Chia
Shih Ching
Cross-
examination

(continued)

Tuesday, 13th October, 1981
In Open Court
Before me
Sd: Soon Kim Kwee
District Judge
Subordinate Courts

DAC 4624-5/80
IT S/S 2421-2

PP vs James Chia Shih Ching

Sec 406 Cap 103 (2 counts) 10

Alt. charge Sec 420 Cap 103
Sec 6(2)(a) pu Sec 94(2)
IT Act (2 counts)

Prosecuting officer: DPP Mr Fong Kwok Jen
assisted by Mr Kelvin Lim.

Defence Counsel: Mr H E Cashin assisted by
Mr Choo Han Teck.

DW1: (recalled) (on former oath).

XXN:

Q. You told us that you left Singapore on 21st May and arrived on 22nd May? 20

A. Yes.

Q. The Privy Council appeal took place on 4th, 5th and 6th June?

A. 3rd, 4th and 5th June.

Q. You arrived in Singapore on 7th June?

A. Yes.

Q. In January, you knew you would be going to London?

A. Yes. 30

Q. You knew you would be arriving in London on 22nd May on or about 28th April. To refresh your memory, I show you a letter.

A. This is the letter. I agree that I knew I will be arriving in London on 22nd May. (Letter is marked and admitted - P40).

Q. You saw Mr Potter on 23rd May which is a Friday. According to P40, you saw 40

	Mr Rippon on 26th May in connection with your official duty?	In the District Court
A.	Yes.	
Q.	26th May was a Monday?	Defendant's Evidence
A.	Yes.	
Q.	For the rest of the week you were busy preparing for the appeal?	D.W.1
A.	Well in the morning of 23rd, I was in Mr Rippon's Chambers.	James Chia
		Shih Ching
		Cross-examination
10	Q. That would indicate your change of plans from your letter?	(continued)
A.	No.	
Q.	You were staying with a friend near Kew Garden?	
A.	No. I was staying with a friend in Swiss Cottage.	
Q.	Mr Teo told us that after he went through the opinion with you, he disagreed with Mr Potter's opinion.	
20	Perhaps he was bolstered in this opinion as you also disagreed with Mr Potter?	
A.	I cannot say if I bolstered his opinion but he did form the opinion himself.	
Q.	But certainly without Mr Potter's opinion Mr Teo and his family went ahead and took steps towards the cessation of Tong Eng?	
A.	That is what he said in court.	
Q.	Is that so?	
30	A. Yes, by the discussion which we continued.	
Q.	But it was something more than that. After the discussion of opinion, did Mr Teo and his family set up structure as a step towards the cessation of Tong Eng?	
A.	No. Let me explain. He went on to form the companies.	
Q.	He formed three companies?	
40	A. I am not to know. That is between him and his solicitors.	
Q.	Is it not true that without forming the companies, he could not cease the operation of Tong Eng?	
A.	What are the three companies he formed?	

In the
District
Court

Defendant's
Evidence

D.W.1
James Chia
Shih Ching
Cross-
examination

(continued)

- Q. Mr Teo said he formed three companies. One was by his family. One was by his uncle's family. One jointly by Mr Teo's family and his uncle's family. How can you advise the cessation of Tong Eng without knowing about the forming of the companies because without forming them, Tong Eng could not cease operation?
- A. The two companies I knew as shown in the feasibility companies. As to who are the shareholders, I do not think he told me. 10
- Q. Could I refer to P5. I refer to paras 18, 19 and 20. You recall telling us that Cecil and T H Teo Holding were to be holding company and Feature was to be development company. (DPP reads para 18). Investment holding company is to take over the investment part of Tong Eng?
- A. Yes. 20
- Q. In para 19, you described the development company. (DPP reads para 19). So the property development company is to take over the land development part of Tong Eng?
- A. Yes.
- Q. Do you agree that Cecil & T H Teo were going to take over the investment part of Tong Eng and Feature was to take over the development operation of Tong Eng?
- A. When the brief was written in December 79, the companies were not formed yet. I think it was formed much later. 30
- Q. According to Mr Teo, the formation of the companies started after the opinion of Mr Potter was received. You knew very much who the shareholders were as the companies were formed after the instructions were written by you?
- A. Para 20 in the brief refers to the shareholders in Tong Eng. When the two companies were incorporated, I did not assist in the incorporation. It was done between Mr Teo and Miss Kay. 40
- Q. What I am asking is how can you advise Tong Eng how to cease operation without knowing how Tong Eng will be re-structured?
- A. I mean that was what we were going to ask Mr Potter.

- | | | | |
|----|----|---|--|
| | Q. | You had already in your mind what you were going to do. You were not asking him what you have to do. You were asking him of his advice on what you intended to do? | In the
District
Court |
| | A. | Yes, I would say that is correct as far as the brief is concerned. But when the companies were formed in '80, I believe, if my memory serve me correct, one is for his family and one for his uncle. | <u>Defendant's
Evidence</u> |
| 10 | Q. | But the e is another company in para 19? | D.W.1
James Chia
Shih Ching
Cross-
examination |
| | A. | If you look at p.18, it is one investment company. I think after the opinion, Mr Teo said there was some disagreement with his uncle. So he said that he would like to split the company. | (continued) |
| 20 | Q. | So you ended up with two holding companies? | |
| | A. | That would appear so. | |
| | Q. | So you knew the shareholders of the holding company by the time you prepared the feasibility studies? | |
| | A. | I prepared the feasibility studies in June. By that time I knew. On my return from London I was told by Mr Teo that the companies had been formed. | |
| 30 | Q. | But you gave us the impression yesterday that you did not know who the shareholders were? | |
| | A. | Can I correct. In June, I knew who the two groups of the families were. I knew one side is Mr Teo's family. The other side is Mr Teo's uncle. | |
| | Q. | So you are correcting yourself? | |
| | A. | No, no, no. I am explaining the time I was focussing my mind on. | |
| 40 | Q. | The point I am putting to you is very simple. The formation of the companies is very much part and parcel of the cessation of Tong Eng, without the companies, there can be no cessation of Tong Eng? | |
| | A. | Yes I agreed. | |
| | Q. | <u>Suggest:</u> If you were to advise Mr Teo on the cessation of Tong Eng you would know about the companies which were to be formed and their shareholders? | |
| | A. | At what period of time? | |

In the
District
Court

Defendant's
Evidence

D.W.1
James Chia
Shih Ching
Cross-
examination

(continued)

- Q. From the time you wrote the brief?
A. I would agree as to the companies to be formed but as to the shareholders that was Mr Teo's confines.
- Q. You still insist that you did not know the intended shareholders of the company until June?
A. I definitely knew by June who the people were in these two companies.
- Q. You also knew the intended shareholders of the companies as per your instruction to Mr Potter? 10
A. In para 20, the shareholders refer to shareholders in Tong Eng in '79.
- Q. Were there any change in the shareholders in Tong Eng between December 79 and June 80?
A. Mr Teo did not mention to me.
- Q. That is not an answer?
A. What is an honest answer. How do I know the internal affairs of Tong Eng unless I ask him. 20
- Q. You had no reasons to believe there was a change in the shareholders between the time you wrote the brief in December 79 and June 80. After all Tong Eng was exclusively Mr Teo's family affairs?
A. I really do not know if there were changes in the company.
- Q. The whole idea of cessation of Tong Eng is to gain a tax advantage for the shareholders of Tong Eng? 30
A. I disagree. Let me explain. The whole exercise is to benefit the company in a one year exercise.
- Q. Who benefits when the company benefits?
A. Going further, on the one year dropout if you distribute to the shareholders then the shareholders will benefit. That I think Mr Teo will have to decide. 40
- Q. But if they were not to distribute what alternative is opened?
A. They could form a new company.
- Q. Form a new company?
A. I am just speculating.

	Q.	Was distribution in Mr Teo's mind?	In the
	A.	I would think probably that would be in his mind.	<u>District Court</u>
	Q.	If you look at the feasibility studies, you will see that was very much in Mr. Teo's mind?	<u>Defendant's Evidence</u>
	A.	Yes, I would think that was in his mind.	D.W.1 James Chia Shih Ching
10	Q.	In these circumstances, can you have any reasons to believe that Mr Teo and his family and his uncle and his family would even consider between December - June selling the shares of Tong Eng to a third party. The whole grain of setting up the company goes against the idea of selling the shares. So there could be no reason for you to think there was any change?	Cross- examination (continued)
20	A.	In looking at para 20, it is stated that the shareholders in Tong Eng remain the same, I would agree.	
	Q.	To recap, I was asking you about what Mr Teo did after receiving the opinion notwithstanding the opinion?	
	A.	Yes.	
	Q.	Mr Teo and his uncle were very much going ahead with the cessation of Tong Eng notwithstanding Mr Potter's caution?	
	A.	Yes.	
30	Q.	You remember Mr Teo saying that Mr Potter's answer 'yes' and 'no' was no good to him?	
	A.	Yes.	
	Q.	He said that the subject of consulting Mr Potter again did not arise until 21st May?	
40	A.	Well I must disagree with that. If we look at the last para of the opinion of which Mr Teo had read it and his discussions with me on the opinion, he felt unhappy on the opinion. I mentioned to him that we must have a follow-up. I said I was going to London in May. I would take the opportunity to have further discussion with Mr Potter. He agreed that I should have that meeting.	
	Q.	Mr Teo evidence is not only that you did not tell him until 21st May, his evidence was that when you told him that on 21st May,	

In the
District
Court

Defendant's
Evidence

D.W.1
James Chia
Shih Ching
Cross-
examination

(continued)

- it was only to clarify Mr Potter's opinion?
- A. I have to disagree with that.
- Q. What you did in London confirms Mr Teo's evidence that your consultation was ad hoc. In other words, it was not something you foresaw or planned earlier?
- A. Can I refer to the notes of my meeting with Mr Potter.
- Q. Before we go to that, you said in evidence yesterday you said you called Mr Brown from Singapore to fix the appointment on 23rd May? 10
- A. Yes.
- Q. My instructions are that no calls were made by you from your office or from your home in May 80 to Mr Nolan's Chambers. You did make a call to Mr Rippon's Chambers on 16th May?
- A. To the best of my recollection, there was an appointment for that week. I believe I must have made the call in the earlier part of the week. 20
- Q. You would presumably call either from your office or your home?
- A. I would not disagree with that, but the fact is that there was an appointment. It shows there was a call. It is so long time ago.
- Q. What I am saying is that the record does not show you made the call in Singapore. I suggest that you made the call to make the appointment when you landed in London on the 22nd? 30
- A. That is very unlikely to meet a Queens Counsel a day before.
- Q. If he is free he would fit you in. After all Mr Potter know you much better than a lot of his clients. He considered you very much a friend? 40
- A. From my previous dealings with counsel, at least as shown by the letter to Mr Rippon, an appointment has to be made much earlier.
- Q. I show you a phone bill of your office. There is only one phone call. The No. in London is that of Mr Rippon's Chambers. The No. is 2429755?
- A. Yes, that is a call to Mr Rippon.

	Q.	So it would appear you did not make any other trunk call to London from your office here?	In the District Court
	A.	Yes. (Bill is marked and admitted P41).	<u>Defendant's Evidence</u>
	Q.	There is no bill of trunk call for the month in May from your home?	
	A.	Can I have a look at P41. It is my office phone. Can I look at the home phone bill?	D.W.1 James Chia Shih Ching Cross-examination
10	Q.	There is no bill for the home for the month of May in respect of trunk call?	(continued)
	A.	I honestly say that when one sees the counsel one has to make an appointment. The fact whether there is a phone bill, it happened so long ago. I just can't say. I say there must be a call to make an appointment.	
20	Q.	You are deducing that you must have called Brown from Singapore and not speaking from memory?	
	A.	To the best of my memory, I think I did.	
	Q.	This would be if you did make the phone call, it would be part of the incidentals that you had expended on behalf of Tong Eng?	
	A.	Yes.	
30	Q.	You said it was your intention to render accounts at the end of the day?	
	A.	Yes.	
	Q.	If you in fact had made the call, you would have kept the bill?	
	A.	I would have noted of it mentally.	
	Q.	Are you saying that in so far as all the expenses you had incurred on behalf of Tong Eng, you noted in your memory?	
	A.	Yes.	
40	Q.	You must have a fabulous memory. But you cannot say for certain you called Mr Brown from Singapore. The best you could do was to say 'I think I did'?	
	A.	Yes, to the best of my recollection.	
	Q.	<u>Suggest</u> : You made no such phone call from Singapore because you did not get the go ahead to see Mr Potter until the day you left for London?	

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(continued)

A. The go ahead was from the discussion of the opinion with Mr Teo.

Court: Are you saying it took place on the day when you handed the note with the words '£800' and Mr Potter's name written on it?

A. Yes.

DPP continues:

Q. I would be surprised that your conference was planned well in advance, Mr Potter did not know of the appointment to discuss the matter until after lunch on 23rd May?

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A. Mr Potter said there was an appointment to see him.

Q. I am not disputing that. I am saying that he did not know the subject matter on which you wanted to see him until after lunch?

A. Yes I agree.

20

Q. Certainly no papers were sent in advance to Mr Potter. Do you agree?

A. Yes.

Q. You are not unfamiliar with dealings with Queens Counsels, you have instructed many Queens Counsels on many occasions?

A. Yes.

Q. Look at P40. You see para 2. Your last sentence. (DPP reads the sentence). "In the meantime I am preparing the getting up and would send my notes to Mr Rippon in a fortnight's time. When you saw Mr Rippon, you sent the paper in advance".

30

A. In this matter I did. The hearing for the Privy Council was on 3rd June. Mr Rippon was the Senior Counsel. I was the junior counsel. I had to do the getting up of the case with him because it involved Singapore law. On 28th April, (the date of P40) the getting up was almost completed with authorities and my comments on the petition of appeal. I was sending this ahead to Mr Rippon for him to look at my comment and the relevant cases so that we could discuss it during the discussion which the appeal will follow immediately after my arrival in London. Mr Rippon is a very senior counsel and he

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always wanted the matters for discussion to be before him. That was why I was preparing the getting up.

In the District Court

Q. Let us look at your reasons. Your reasons for sending the brief were these. You had to do the getting up as it involves on Singapore Law. You were Mr Rippon's junior counsel. Mr Rippon is a senior counsel?

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10 A. Yes.

Q. Mr Potter is a very senior counsel?

A. Yes.

(continued)

Q. In fact he is one of four well known silks on Revenue Law?

A. I would not dispute that.

Q. Tong Eng's case also involves Singapore Law?

A. Yes.

20 Q. As such you were junior counsel to Mr Rippon, you were acting as the instructing solicitors for Tong Eng?

A. Yes.

Q. So if one looks at your criteria for sending papers, the Tong Eng matter falls squarely on the case where papers are required to be sent?

30 A. I disagree. There is a distinction between Mr Rippon's matter and Mr Potter's matter. Can I explain. If you look at D9 which are the notes I made of the conference, points were already jotted down by me before I left Singapore. If we look at the 1st point, in D9. This is a new point. In point two was the financing of the two investments companies. How the financing was to be carried out. This was also a new point. The 3rd point was the return on the rentals which the investment company will receive on letting out after the purchase. This was also a new point raised with Mr Potter. The next point concess "Shares - in quoted and unquoted company". This refers to the share investment portfolio of Tong Eng. The next point is Trading stock of land in Tong Eng. This was in relation to the opinion in which Mr Potter raise. The next point under the heading 'Important' (1) was discussed. The next sub-item was what was to be done. The next point is

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(continued)

the query I wish to raise with Mr Potter. The five cases that follow were not stated in the opinion.

Q. From what you tell us there were many new points you wish to raise with Mr Potter?

A. Yes.

Q. Therefore is there not more reason for a paper to be sent to Mr Potter for him to chew on?

A. Mr Potter had seen the brief, written an opinion. His memory would be very fresh and by my raising it, he gave me the impression that he knew what he had written.

Q. Mr Potter memory of the meeting was that it was a wide generalised discussion and that you did not raise any new point about this opinion?

A. I can only say that based on D9, there were several new points.

Q. Let us look at your points. Let us look at the 1st point. The value on which Tong Eng could sell the floor space does not involve legal advice as it is very much a management decision?

A. I have to disagree.

Q. What are the legal connotations?

A. I raised this point with Mr Potter that the company wanted to attribute the market value at that period in January/February 80 and the feasibility programme which has to be brought up on my return and the latter part of '80. No valuation by an independent valuer has been done when this point was raised with Mr Potter. I said would there be any difficulties if the market value were in fact backdated to January/February 80.

Q. Mr Teo tells us that from April 80, there was quite a spectacular rise in office space. The price in January/February 80 was comparatively lower than in May 80 when you saw Mr Potter?

A. Yes.

Q. In para 1, you were referring to the unsold office space in Tong Eng?

A. Yes.

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Q. The basic idea of cessation proposal is that the unsold space would be transferred to the two investment companies? In the District Court

A. Yes. Defendant's Evidence

Q. By May 80, the value of office space like that of Tong Eng would be around \$500 per square feet? D.W.1 James Chia

10 A. I am not in a position to say, I cannot comment. Shih Ching Cross-examination

Q. Let us assume that it is \$500 per square foot. In May Tong Eng was and is still holding on to the unsold space which is about 30% - 40% of the office space? (continued)

A. I am not aware of the percentage. I know there were unsold space.

20 Q. If you assume the price is \$500 per square foot, Tong Eng will have to sell the unsold space to the two investment companies and if the price of the sale to the two companies were substantially lower than the market value at the time of transfer, anyone can foresee the situation when Inland Revenue Department will come in and say "Ah hah, you have a fictitious transaction"?

30 A. That was the very point Mr Teo asked us to ask Mr Potter. Mr Teo wanted to attribute the market price in January/February 80. At the time of the discussion in May with Mr Potter, it was much higher. He asked me to ask Mr Potter if he were to attribute this figure for February/March, would there be any legal problems. I raised this point with Mr Potter.

40 Defence Counsel: What has this line of questioning to do with the cheating charge.

DPP: It has very much to do with the charge. The accused had said that as far back as February 80 he regarded the matter of Tong Eng was a very much going matter. Quite apart from the ad hoc conference on 23rd May, the Prosecution's contention is that there was no plan for further consultation with Mr Potter on the matter after the 23rd May while the accused had stated that the £800 was kept

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there for the purpose of further
consultation.

Court overrules the objection.

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(continued)

Q. Do you agree that the question poised
in para 1 is such that any lawyer will
advise caution?

A. This was a point which Mr Teo requested
me to raise with Mr Potter. The legal
implications that follow about the market
value in January/February. 10

Q. What legal implications. The Inland
Revenue Department will give, come and
say it is a fictitious transaction?

A. Impliedly that was what Mr Teo want me
to ask Mr Potter. Mr Potter has been
advising all along. We had to put his
question to him.

Q. You were not a bystander?

A. As to the final advice on this matter,
it has to come from Mr Potter. 20

Q. Look at para 2 and 3. They have nothing
to do with Mr Potter?

A. It certainly has something to do. Sub-
para (1) refers to the capital outlay
of the individual shareholders. The
20% or 30% back to back loan will be
money deposited by the company into the
bank and the bank will give the loan.
Item 3 70% or 60% - mortgage loan.
Looking at this in totality is this
arrangement acceptable in the planning
of the purchase of the office space.
What are the implications that follow
for such an arrangement. 30

Q. I have just have confirmation from the
Telecoms that no trunk call was made
from your home in May 80. So you could
not have called Mr Brown from your home
here?

A. I do not wish to labour on this point
but there was an appointment made, whether
in Singapore or London. 40

Q. Do you disagree with me that no trunk
calls were made by you from your home to
London in May '80?

A. It may be so.

Q. You would not deny that?

A. I would not.

	Q.	We have seen the office bill. You have also not denied you did not call Mr Brown from your home. You do not deny calling Mr Brown from your office?	In the District Court
	A.	I do not dispute whether the call was made in Singapore or London.	<u>Defendant's Evidence</u>
	Q.	Please answer the question.	D.W.1
10	A.	I can only say it happened so long ago.	James Chia Shih Ching Cross-examination
	Q.	You rather not answer my question?	
	A.	I will not dispute. If the bill says there was no phone call, I would accept it.	(continued)
	Q.	Mr Brown said that he did not know what you were going to discuss with Mr Potter until after the discussion?	
	A.	Yes.	
20	Q.	Is that not consistent with you not informing him earlier of the subject?	
	A.	If my recollection is correct, Mr Brown says there was an appointment to see Mr Potter but he did not know the subject matter.	
30	Q.	Mr Brown said that the appointment was not noted by him but by one of the other persons in the Chambers. If you had spoken to Mr Brown before you left for London several things would have happened. Firstly, Mr Brown would have noted it down. Secondly, Mr Brown would know what you would be discussing with Mr Potter. Is that not consistent with the probability that you did not call Mr Brown as you claimed you did?	
40	A.	All I can say is that the appointment book as Mr Brown has said showed I had an appointment with Mr Potter. If you ask me now to reflect in May 80 whether the phone was to Mr Brown or his assistant, I cannot be certain but it does show that there was an appointment to see Mr Potter.	
	Q.	We do not dispute that. We do say that that appointment was made only on your arrival in London because you did not have Mr Teo's concurrence to consult Mr Potter until the day you left for London?	
	A.	If we look at item 1 in D9, it shows that	

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Mr Teo wanted me to clarify with
Mr Potter and this cannot be made on
21st May.

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(continued)

- Q. When do you say it was made?
A. It would be round about March/April 80.
- Q. Forgive me if I am wrong, did my
learned friend ask Mr Potter if D9 were
the notes of the meeting of the 23rd May?
A. Yes.
- Q. Now you told us D9 was made in April? 10
A. No, no, no. Don't misunderstand me.
D9 was a summary of 23rd May discussion.
The points raised in this discussion
was jotted down by me and brought to
London.
- Q. Then why did you say you were writing
on D9 as far back as April 80?
A. I did not say that. What I said was
that the points were raised by Mr Teo
way back in April. 20
- Q. Mr Teo said that after the opinion he
disagreed with it and said "Let us go
on" and on your recommendation Miss Kay
was instructed to form the new company.
He also said that he left the legal
technicalities to you. My impression
is that he left you to deal with Miss
Kay?
A. That is what he said.
- Q. He may well have raised the questions 30
with you but according to Mr Teo, the
question of consulting the Queens Counsel
again was not raised until the 21st May?
A. To go back on what I said, the question
of consulting the Queens Counsel further
was raised when Mr Teo and I discussed
the opinion. Following from that the
points were raised in March/April.
- Q. Suggest: The advice in conference in 40
May 80 was very much an ad hoc. decision
which you got the concurrence of Mr Teo
on the day you left for London?
A. I disagree.
- Q. Is it your evidence that after your
returned from London on 7th June, it was
in your mind and understanding that
Mr Potter would be consulted further?
A. On my return from London, I saw Mr Teo

10	<p>subsequently. I went through the points raised in the conference. I said Mr Potter advised that certain steps should be programmed. One of the steps taken was to do a valuation report on the properties and the feasibility reports and several others like the disposal of shares as to when and what not to be disposed. Detail facts were not known to me except to Mr Teo. I had to get it up on a format and enclosed whatever documents which had been done on the format for Mr Potter's final approval. That was Mr Potter's advice.</p>	<p>In the District Court</p> <hr/> <p>Defendant's Evidence</p> <hr/> <p>D.W.1 James Chia Shih Ching Cross-examination (continued)</p>
20	<p>Q. To sum up, it was in your mind to put up a programme and Mr Teo knew about that?</p> <p>A. This was communicated to Mr Teo.</p>	
30	<p>Q. You heard Mr Teo saying in court that after your return from London, there was no possibility of instructing Mr Potter further. Do you agree?</p> <p>A. I do not think he said that.</p> <p>Q. I will rephrase it. Mr Teo's evidence is that on your return from London when you discussed the conference, you did not discuss the possibility of consulting Mr Potter further. This would go against your evidence that you told Mr Teo that it is necessary to consult Mr Potter further?</p> <p>A. I went through the points I discussed. I said we have to set up according to Mr Potter's discussion. On having done all that, we will have to despatch it to Mr Potter for his final approval.</p>	
40	<p>Q. Are you saying that what Mr Teo said in court is not true?</p> <p>A. I can only say that this was mentioned to him by me.</p> <p>Q. But certainly your evidence on this cannot co-exist with Mr Teo's evidence. One must be true and the other must be untrue. Do you agree?</p> <p>A. I can only say that I did tell him that.</p>	

Court to accused:

You have not answered the learned Deputy's

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(continued)

question. You said that you told Mr Teo that you will have to send the programme to Mr Potter for approval while Mr Teo said there was no discussion about the possibility of consulting Mr Potter further. The point which the learned Deputy is asking is whether you agree that either your version is true or Mr Teo's version is true?

(The accused laughs).

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Court to accused: I do not see why you are laughing. There is nothing funny.

Do answer the question as to whether you agree with the learned Deputy that one version must be true and the other false?

A. I agree.

Witness stands down.

Court adjourns for lunch.

20

Court resumes.

DW1: (recalled) (on former oath).

XXN:

Q. To summarize my cross-examination this morning. I am suggesting to you that you never believed in February 79 or at any time thereafter that there will be a series of consultation with Mr Potter?

A. (Accused remains silent).

30

Q. Could you answer 'yes' or 'no'?

A. I have to disagree with you. The consultation on the 23rd May was the next stage. Will you look at the last sentence in the opinion and the letter dated 14th February (P6), a consultation was necessary.

Q. Mr Potter remarks in P6 and the opinion in P5 was a rebuke to you in giving insufficient instruction and not an invitation to further consultation?

40

A. He said it was a mail rebuke in that the brief was not fully substantiated with facts but after reading his opinion, I formed the impression that he was inviting me for further discussion.

	Q.	The May conference was an impromptu event and it was to clarify Mr Potter's opinion?	In the District Court
	A.	The consultation on the 23rd was planned between myself and Mr Teo on the points raised in D9 for discussion with Mr Potter. It was not an impromptu one.	<u>Defendant's Evidence</u>
10	Q.	D9 was your notes which you made between May 80 and the time you discussed with Mr Teo on your return from London?	D.W.1 James Chia Shih Ching Cross-examination
	A.	D9 was a summary of the advice given by Mr Potter.	(continued)
	Q.	Your counsel asked Mr Potter and Mr Brown if you gave them each a packet of tea when you saw them?	
	A.	Yes.	
20	Q.	You did not tell Mr Potter or Mr Brown that the gift was not from you but was from Tong Eng?	
	A.	Yes.	
	Q.	Up to the time you bought the tea, you would not have incurred incidental of more than £800?	
	A.	I agree.	
30	Q.	Am I correct to say that up to that part of time, the money for the tea would have come from the £800 on your balance sheet?	
	A.	I was going to render a statement. The tea was incurred in Singapore money. If you say the \$150 was really part of £800, it is not because it was Singapore money spend.	
	Q.	You would deduct \$150 from the £800?	
	A.	In presenting the statement of account, it would follow.	
40	Q.	If I were to accept that, the tea was paid for by Tong Eng and not by you?	
	A.	The tea was physically bought by me.	
	Q.	I know but you were going to charge Tong Eng for it?	
	A.	Yes.	
	Q.	So in the evidence it will be Tong Eng who paid for the tea?	
	A.	Yes.	

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(continued)

- Q. Why did you take credit for something which is not out of your pocket. It was out of Mr Teo's pocket or Tong Eng's pocket?
- A. How could I tell Mr Potter or Mr Brown, this is a gift from Tong Eng. Mr Teo would have left the gesture to me.
- Q. You were only his agent?
- A. Yes. I am not claiming credit for that. 10
- Q. Are you not?
- A. No. I am not claiming credit for that.
- Q. Is it not your evidence that the tea was a gift from you, James Chia?
- A. I did not say that.
- Q. That was the effect?
- A. No.
- Q. You heard Mr Potter and Mr Brown saying that they thought the tea came from you and they thanked you very much for the tea? 20
- A. The tea was as a result of the waiver and I was returning a good gesture for Mr Teo including the lunch to Mr Potter.
- Q. If you say you gave the tea on behalf of Mr Teo, you would have certainly made it known to Mr Potter and Mr Brown?
- A. If I must say, I must specify to Mr Potter and Mr Brown that it came from Tong Eng, then that is not my way of doing things.
- Q. Put: If it were true that you gave the tea on behalf of Mr Teo or Tong Eng, the natural thing would be to tell Mr Potter and Mr Brown to the effect that my friend, Mr Teo thanked you very much for waiving the fees and would give you the tea as a token of his appreciation or words to that effect? 30
- A. I did not do it that way.
- Q. I know that you did not do it that way. I am suggesting to you that this is the normal way. Do you agree or not? 40
- A. As far as I am concerned, the gift of the tea and lunch to Mr Potter and Mr Brown I made it on behalf of Mr Teo.
- Q. You have not answered my question. My question is very simple. If you had done it on behalf of Mr Teo, it would be normal

	for you to have told him so?	In the
	A. I am sorry th t is not the way I will carry it out.	District
		<u>Court</u>
	Q. What I am saying is very simple. Do you agree with what I said. If you agree say you do. If you disagree say you disagree?	<u>Defendant's Evidence</u>
	A. I have to disagree.	D.W.1
	Q. Similarly for the lunch, Mr Potter thought you bought him the lunch?	James Chia
10	A. For the same reason as I am doing it on behalf of Mr Teo.	Shih Ching
		Cross-examination
	Q. But again, you did not make this known to Mr Potter?	(continued)
	A. I agree with that.	
	Q. Did you keep the bill for the tea?	
	A. I did not but I made a note of it/	
	Q. Where?	
	A. Mentally.	
20	Q. Did you keep the bill for the lunch?	
	A. In lunch, when you have lunch, the bill is taken back by the restaurant.	
	Q. We know that. I also know that if you ask for a copy, you will be given a copy?	
	A. I made a note of the lunch expenses.	
	Q. Also mentally?	
	A. Yes.	
30	Q. When you were in London, you asked Mr Brown for the fee note for the £450?	
	A. Yes.	
	Q. At that time, you had £800 sitting in your bank account?	
	A. Yes.	
	Q. I refer to P38, sheet 4F. I see many withdrawals when you were in London?	
	A. Yes.	
	Q. You had many occasions to go to the bank?	
	A. Yes, one, two, three.	
40	Q. You went to the bank on three different occasions?	
	A. Yes.	

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(continued)

- Q. If it is true that you were holding the £800 for incidentals, why did you not draw from the £800 and pay for the £450 in respect of the advice and conference?
- A. The first item on 23rd May, the withdrawal of £200. I withdrew that amount for my lunch and transport expenses in the matter of Mr Teo. The fee note was given to me on 6th June by Mr Brown. Mr Brown did not insist on payment on that date. I took the fee note back to Singapore. I subsequently made arrangement in July. 10
- Q. You are referring to the letter of 3rd July?
- A. Yes.
- Q. We all know that Mr Brown would not insist on payment. It is not their way of doing things? 20
- A. I cannot speak for Mr Brown.
- Q. But that is what he said and your experience with him?
- A. That is in relation to Inland Revenue Department matter. The government never fails in payment.
- Q. You yourself said in relation to the opinion that you did not expect the bill to be sent until the end of the year. How can you disagree with me that it is just not Mr Brown way in insisting payment there and then? 30
- A. With respect to Inland Revenue Department, it comes much later from Mr Brown. With respect to this matter, he allowed me to take the bill back to Singapore.
- Q. Most certainly I would be very surprised if he did not. My point is this, you had £800 in your account in London which you said you were holding it for Tong Eng and you were keeping it for incidentals. During the period in London, you had visited your bank on three occasions and draw on the account. Even on the day before you left, you visited the bank and put in cash £120. My question is this. If you had indeed intended to hold the £800 to pay for incidentals, you would have settled the fee of £450 there and then when you were in London? 40 50

	A.	I can only say that Mr Brown did not insist on my settling it which I would do if he did.	In the District Court
	Q.	When the incidentals do arise, you did not make any effort to pay them out of the sum you say you were holding for Tong Eng?	<u>Defendant's Evidence</u>
10	A.	The incidentals in London at that time were the lunch and transport which I did out of the £200 I withdrew on the 23rd. The fee note was brought back to Singapore by me for settlement later. The incidentals incurred in Singapore up to that point of time was a debt owing by Mr Teo to me. Taking all these together, I would render a statement to him.	D.W.1 James Chia Shih Ching Cross-examination (continued)
20	Q.	You gave evidence yesterday that all your correspondence on this matter starting from P12 were written on the advice of your counsel?	
	A.	Yes.	
	Q.	Are you waiving solicitors - client privilege?	
	A.	Can I seek my counsel's instruction.	
	<u>Defence Counsel:</u>	I do see any privilege arising from the document.	
30	<u>Court:</u>	Mr Cashin I think the learned Defence thinking of the advice by the counsel to the accused in respect of the writing of the letter.	
	<u>Defence Counsel:</u>	I must apologise. I thought the learned Deputy was referring to the letter.	
	Q.	Are you waiving the solicitors and client privilege?	
	A.	I waive.	
40	Q.	Do you waive privilege in regard to communication made by you to my learned friend in the course and purpose of his employment as your counsel and the state and content of any document which he had become acquainted in the course and for the purpose of his employment and to disclose any advice to you by you in the course and for the purpose of such employment?	

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(continued)

Defence Counsel: Before the witness is asked to answer the question, I would ask to be allowed to have two minutes with the accused.

Court grants the Defence Counsel's application.

(Accused steps down from the witness box and has word with the counsel).

(Accused returns to the stand).

(Accused is asked to answer the last question).

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A. I am waiving privilege as regards the communication between me and Mr Cashin and his advice to me.

Q. You are waiving the privilege under the 1st and 2nd limb of S.126(1) of the Evidence Act?

A. Yes.

Q. In so far as P12 to Mr Brown is concerned, in the transfer of £800 to Mr Potter's account you did not deduct the lunch and taxis fare?

20

A. Yes.

Q. Neither did it cross your mind on 24th July to settle the debt of £450 for advice in conference?

A. I discussed this matter before the 24th July with Mr Cashin.

Q. Can I ask you the day?

A. 19th or 20th but I cannot be certain of the date. It was the weekend.

30

Q. Please go on?

A. I discussed with Mr Cashin about the investigation. We came to this point about the £800. Mr Cashin's advice to me was, "Put the record straight to show that there is no impropriety transfer the money back to Mr Potter". His further advice on the incidentals were that, "You can settle that with Mr Teo later on".

40

Q. That advice would go against the grain of your evidence in that you were keeping the £800 to settle the incidentals?

A. I have to disagree with that straightaway.

	What I meant when I render the statement of account is to take into account on the credit side the £800 and on the debit side, all the incidentals and the fee notes. I would account to them in Singapore dollars.	In the District Court <u>Defendant's Evidence</u>
		D.W.1 James Chia Shih Ching
10	Q. So up to this point, most of the incidentals were in £ sterling. The lunch was in £ Sterling. Why did you not at least deduct the expenditure in Sterling from the £800?	Cross-examination
	A. The postage in January on the bundle of documents were in Singapore dollars.	(continued)
	Q. How much was that?	
20	A. I think it was about \$70. The purchase of the Income Tax Act and Amendments were in dollars.	
	Q. It is a new item?	
	A. No. It was mentioned yesterday. The January phone call was in Singapore dollars. The purchase of China tea was in Singapore dollars. The letters that followed were in Singapore dollars.	
	Q. Which letters are you referring to?	
	A. 14th January, 20th March.	
30	Q. 10th of March?	
	A. Yes.	
	Q. If you add all, all of that it still does not come up to the £80 which you said you incurred for the lunch and transport from your residence to Mr Rippon's Chambers.	
	Q. I thought you went to Mr Rippon's Chambers that morning. You could not have gone from your residence to Mr Rippon's Chambers. You would have gone from Mr Rippon's Chambers?	
40	A. There was an interval of time between Mr Rippon's Chambers and 1 pm I went back to my residence.	
	Q. My question is still this. Up to that point of time, 23rd of May, the lunch would still be the largest amount and exceeded all the incidentals in Singapore dollars?	

In the
District
Court

Defendant's
Evidence

D.W.1
James Chia
Shih Ching
Cross-
examination

(continued)

- A. Yes, making a rough calculation.
- Q. The conversion rate then was well below \$5/-?
- A. \$4.80.
- Q. So £80 will be \$384 at \$4.80?
- A. Yes.
- Q. Coming back to my question, if it is true that you were keeping the £800 for the incidentals, you would have rendered a statement of account to Tong Eng on 24th July. You would have given a statement of account saying, "Look, I was holding £800 for me. I have incurred so much in £ and so much in Singapore dollars. And this is the balance"?
- A. I discussed the whole matter with Mr Cashin. His advice was, "For God sake don't see Mr Teo or contact him but just send the money across and you get account to him later." 10
- Q. You could have written to Mr Teo giving him a statement of account and returning the balance to him, if any. What is the objection to that?
- A. My counsel's advice was not to do that. 20
- Q. If you had done that at that point of time, the truth would have been revealed there and then if indeed that was the truth?
- A. I discussed this matter with my counsel and this was his advice. 30
- Q. Let us look at your letter of the 17th August (P13). Was this letter also written on the advice of your counsel?
- A. Can I have a word with my counsel.
- DPP: No.
- A. I am sorry. This is written on advice of my counsel.
- Q. Look at P17. This presumably was also written on advice of counsel?
- A. Yes. 40
- Q. Also your letter dated 26th August 80 (P15) was on your counsel's advice?
- A. Yes.

	Q.	In respect of P15, you had no intention of settling off the £450 from the £800?	In the District Court
	A.	This letter refers to a letter from Mr Brown dated 18th August. Can I have the letter. (Witness is given P14). Yes, I wrote this letter.	<u>Defendant's Evidence</u>
	Q.	At that stage there was no objection of settling the £450 against the £800?	D.W.1 James Chia Shih Ching
10	A.	Yes. It is a fee note which has to be paid to Mr Brown.	Cross-examination
	Q.	Why was there an objection to settling the £80 incurred for lunch but not the £450 against the £800?	(continued)
	A.	I never said there was an objection of settling the £80 against the £800. I said I noted the expenses. At this point in this letter of 18th August, Mr Brown asked if he should deduct from the £800 which was already transferred to him on the fee note owing to him, I said, 'Yes, you may do so'.	
20			
	Q.	I thought you told us that you were advised not to touch the £800?	
	A.	No.	
	Q.	By your letter P12, you told Mr Brown to credit the amount to the account of Tong Eng Brothers for future consultation?	
30	A.	That is the title.	
	Q.	You were going to credit Tong Eng?	
	A.	It is the same matter. The cessation of business.	
	Q.	On letter of 17th, you changed your mind. Why the change of mind?	
	A.	It is the same subject matter. The reason why I changed the title was to follow the title of the brief.	
40	Q.	Looking at P12, is it not your intention the £800 to be credited to Tong Eng and by that you mean it was the money of Tong Eng Brothers?	
	A.	No. The subject matter is the Tong Eng matter or cessation matter which are the same subject matter.	
	Q.	So who is Mr Potter to hold the money for? You or Tong Eng?	
	A.	There would be a client's account in Mr Potter's hand.	

In the
District
Court

Defendant's
Evidence

D.W.1
James Chia
Shih Ching
Cross-
examination

(continued)

- Q. You presume there would be?
A. No. There would be a client's account.
- Q. Who was Mr Potter to hold the money for? You or Tong Eng? You have not answered my question?
A. The folio on Mr Potter's client's account would be my name - Tong Eng Brothers, cessation of business. I will be holding on behalf of Mr Teo.
- Q. But Mr Potter is not to know that? As far as Mr Potter is concerned, you intended him to hold this money for you? 10
A. I think Mr Brown said there was a client's account for me.
- Q. That was not. Did you intend Mr Potter to hold the money on behalf of you, James Chia, as opposed to Mr Potter holding this sum for Tong Eng?
A. Right through the correspondence from the very beginning ie 10th March, the account was client's account bearing my name. I was holding the money on behalf of Mr Teo. 20
- Q. So what difference does it make whether you hold the money for Tong Eng in your bank account or hold it in account with Mr Potter? Why did you need to transfer the £800 out of your bank account into an account which you want Mr Potter to open? 30
A. Before the letter of 24th July (P12) was despatched, my discussion with Mr Cashin was to transfer the £800 back to Mr Potter.
- Q. Let us not hide behind the advice you were given. I am asking you what was your rationale for taking such an action?
A. The rationale as I said earlier on and as advised by Mr Cashin is to prevent any impropriety being raised by the authorities. 40
- Q. No impropriety was alleged against you on this score until the 22nd July when you were questioned by Mr Yong. Why should you attach any impropriety to the £800 during your discussion with your counsel on 19th and 20th July?
A. That was advice to me by my counsel.
- Q. Why should you even raise the question of

	£800 on the 19th and 20th July. If your hands were clean, what have you to worry about the £800?	In the District Court
	A. I did discuss this matter with Mr Cashin. I can only say I was acting on his advice.	<u>Defendant's Evidence</u>
10	Q. That is not my question. My question is this. No allegation of impropriety. In fact the question of the £800 was not raised until 22nd July 80?	D.W.1 James Chia Shih Ching Cross- examination
	A. I am not certain on the dates.	
	Q. Would you like to look at your statement recorded by Mr Yong on 22nd July?	(continued)
	A. Yes. (Witness is shown a file containing statement recorded by the CPIB).	
20	Q. Are those statement made by you, 91 pages of it?	
	A. Yes.	
	Q. They were recorded on many occasions beginning of 9th July?	
	A. On 9th July, it was about other matters.	
	Q. You were assisting the investigation till 12th July on other matters?	
	A. Yes.	
30	Q. Then I believe you were admitted to hospital for observation?	
	A. Yes.	
	Q. The next statement was on 22nd July after you came out of hospital?	
	A. Yes.	
	Q. It was a yesterday. It was only on that day that you were first asked questions about the £800?	
	A. Yes.	
40	Q. I refer to para 131 (p.35). That was when you were first asked about the £800?	
	A. Yes.	
	Q. So my question to you is this. If it is only on 22nd July that you were questioned by Mr Yong about the £800, why should you instruct your counsel on 19th or 20th July about the £800?	
	A. I discussed this in general over what happened over the years of my dealings.	

In the
District
Court

Defendant's
Evidence

D.W.1
James Chia
Shih Ching
Cross-
examination

(continued)

I touched on this matter of Tong Eng.
His advice was to transfer back to
the hands of Mr Potter.

- Q. You agree that prior to that date
nothing was alleged against you concern-
ing the £800?
- A. The point was not raised.
- Q. If the £800 was not raised and your
hands are cleaned, why should you be so
fearful of holding that sum? 10
- A. I certainly was not fearful of holding
the money but this was my counsel's advice.
- Q. You are not a layman. You are legally
qualified as I am. If such advice was
in fact given by the counsel what is the
rationale behind it?
- A. I already stated the rationale earlier
on.
- Q. Which is?
- A. To prevent any implication of impropriety 20
from the authorities.
- Q. Let us come to P16 and P16A which is
the letter from Mr Brown and the fee
note. Mr Brown thought that your
instructions in P12 and your comment
in P11 was to put the money to the
credit of Tong Eng. He addressed you
as James S. Chia Esq. Advocate. Look
at the title "Tong Eng Pte Ltd". Did
Mr Brown not take your letter of 24th 30
July at face value. He regarded it
as holding the money on account of Tong
Eng and not your account?
- A. It was addressed to me.
- Q. He regarded you as an advocate. He
regarded the holding of the £800 for
Tong Eng and not you, James Chia?
- A. He regarded me as an advocate. I believe
Mr Brown said in court that the £350 is
still credited in client's account in my 40
name?
- Q. Not in your name please. Read the fee
note, "To Tong Eng Pte Ltd" and not you.
Do you disagree?
- A. Mr Brown said in court he still thought
that the £350 was to the client's account.
How he worded the statement in P16A does
not seem to be in accordance with his
explanation.

- | | | | |
|----|----|--|---|
| | Q. | Never mind what Mr Brown say. Look at P16A. Do you agree tha it was credited to Tong Eng for work that is to be done in the future? | In the District Court |
| | A. | I cannot take this literally. | <u>Defendant's Evidence</u> |
| | Q. | It is staring it straight in the face? | D.W.1 |
| 10 | A. | Let me explain. If you read it from the top, which is my name, advocate, there is only one interpretation and that is client's account. | James Chia
Shih Ching
Cross-examination |
| | Q. | Have you finished? | (continued) |
| | A. | Yes. | |
| | Q. | How do you interpret "credit to this company"? | |
| | A. | There is credit to my account, advocate James Chia. | |
| | Q. | For your work to be done in the future? | |
| 20 | A. | For further work to be done in on this subject matter. | |
| | Q. | <u>Put</u> : It is obvious reading P16A with your letter P15 and in particular your letter P12, Mr Brown was only following your instruction and he credited £350 to Tong Eng and not you. Do you agree or disagree? | |
| 30 | A. | I disagree with that because there is a subsequent letter by Mr Brown which shows his intention. I think it is the letter of February. | |
| | Q. | Yes, we will come to that. | |

Witness stands down.

For further hearing 14.10.81 at 9.30 am
Bail extended.

Sd: Soon Kim Kwee

In the
District
Court

Wednesday, 14th October 1981
In Open Court
Before me
Sd: Soon Kim Kwee
District Judge
Subordinate Courts

Defendant's
Evidence

D.W.1
James Chia
Shih Ching
Cross-
examination

(continued)

DAC 4624-5/80
IT 2421-2

PP vs James Chia Shih Ching

Sec 406 Cap 103 (2 counts) 10

Alt. charge Sec 420 Cap 103
Sec 6(2)(a) pu Sec 94(2)
I.T. Act (2 counts)

Prosecuting Officer: DPP Mr Fong Kwok Jen
assisted by Mr Kelvin Lim.

Defence Counsel: Mr H E Cashin assisted by
Mr Choo Han Teck.

DW1 (recalled) (on former oath).

XXN:

- Q. You said that on 3rd July by your letter D7 you arranged for the transfer of £450 from your account to your checking account? 20
A. Yes.
- Q. You said that with the intention of paying for the fee of £450 in respect of the conference?
A. Yes.
- Q. Did you received a reply to D7?
A. I received a reply dated 9th July 80. 30
- Q. Do you have the letter?
A. Yes.
- Q. Can I have the letter?
A. I produce the letter. (Letter is marked and admitted P42).
- Q. You did not carry through the intention of then paying Mr Potter for the £450?
A. The intention was carried out by the transfer of £800 on the later part of July. 40
- Q. You did not in fact pay Mr Potter £450 with the transfer in D7 and P42?

	A.	I received P42 in July which was during the investigation. I did not pay attention to this matter while investigation was on. During my discussion with Mr Cashin, the full amount of £800 was raised.	In the District Court <u>Defendant's Evidence</u>
	Q.	That would be on 19th and 20th July?	D.W.1
10	A.	Yes. And his advice was to transfer the full amount of £800 into the hands of Mr Potter. Mr Brown subsequently deducted the £450 from the £800 in his hands.	James Chia Shih Ching Cross-examination
			(continued)
	Q.	If it was your intention on 3rd July to pay the fee of £450 out of the monies you had in the bank, why did you not transfer the £450 directly out of your deposit account to Mr Potter instead of transferring it to the checking account?	
20	A.	I can only issue cheques from the checking account and not from the deposit account.	
	Q.	Look at P12. Did you not transfer a sum of £800 directly from your deposit account to Mr Potter's account?	
	A.	Yes.	
	Q.	Look at P19 and P19A. Were those not instructions to transfer £30 directly from your deposit account to Mr Potter?	
30	A.	Yes.	
	Q.	Why did you not do likewise on 3rd July if indeed it was your intention to pay Mr Potter £450?	
	A.	My cheque book was seized by the CPIB on 9th July. I have no cheque book with me. This was the best mode of transferring money to Mr Potter.	
40	Q.	You knew you could transfer money out of your deposit account to Mr Potter if you wanted to?	
	A.	The £800 was the first time I transferred out. All my previous transaction were written out in cheques. The CPIB told me that I could not get my cheque book back whilst investigation was going on. That also applied to my two Singapore accounts. The cheque books were also	
50		seized by them.	

In the
District
Court

Defendant's
Evidence

D.W.1
James Chia
Shih Ching
Cross-
examination

(continued)

- Q. You have not answered my question. My question is that on 3rd July you knew you could transfer the money from your deposit account to Mr Potter if you had so wanted?
- A. Your Honour, have I to answer this question in view of what I had said. (Court directs accused to answer the question). All my funds taken out were by cheques written by me. The transfer of £450 from the deposit account to checking account was to issue a cheque from the checking account. That has always been my way of settling bills. Likewise in this matter on 3rd July. I was going to have sufficient funds to issue the cheque. The notification of the transfer was received by me in mid-July. I had to wait until the funds were transferred to the checking account before I could issue a cheque. 10
- Q. You have still not answered my question. My question is very simple. Did you or did you not know on 3rd July that you could transfer money from your deposit account directly to Mr Potter's account?
- A. I could do it but I did not choose to do it that way. 20
- Q. Suggest: If indeed it was your intention on 3rd July to pay Mr Potter fees, you would have transferred it directly to Mr Potter's account? 30
- A. The fee note was with me. I was responsible for the payment of the fee note. I decided that the best way was to issue a cheque when the money has been transferred from the deposit account to the checking account.
- Q. Please look at P37. It is your letter of 4th August 80. Do you agree that there is no mention in this letter that you had incurred expenses on behalf of Tong Eng? 40
- A. This letter was addressed to Mr Teo at his residence. I would agree there is no mention of the fee note.
- Q. Or any other expenses?
- A. I agree.
- Q. Could you not have just as easily rendered him a statement of account when you wrote 50

	P37 to Mr Teo?	In the
	A. The investigation was still on and I was advised by my counsel not to get in touch with Mr Teo. The expenses and the statement of account were raised during my discussion with Mr Cashin. Mr Cashin's advice was to settle the matter later with Mr Teo when the investigation is over. Can I explain how this letter was written. A few days before P37 was written at one of the interviews at CPIB, there was an allegation by the officers of CPIB that I cheated Mr Teo. I was astonished by that allegation. I discussed the matter with Mr Cashin and he said that I had to put the picture right and inform Mr Teo.	<u>District Court</u> <u>Defendant's Evidence</u>
10		D.W.1 James Chia Shih Ching Cross-examination (continued)
20	Q. How did you put the picture right by writing P37? A. The first para of P37. May I read. This was with respect that there will be future discussion with him when I return from London. In the second para, I asked him if he wanted the £800 back or leave it with Mr Potter. The point raised during the investigation was that they told me Mr Teo did not know that the fee was waived. (Pause).	
30	Q. Which is what Mr Teo said in court? A. Let me finish please, I said I did mention to him at one of the social meetings I had with him. That gave rise to the letter.	
40	Q. You have been persistent in your evidence in this court that you were holding the £800 in respect of the expenses and that it was your intention to render a statement of account at the appropriate time. You told us that on 4th August when you wrote P37, you knew that the allegation against you was that you cheated Mr Teo of this sum. Is that not an appropriate time to keep the record straight by rendering a statement of account to Mr Teo and carbon copy it to CPIB if need be? A. I did raise this with my counsel about the whole spectrum of this matter, advices and expenses. The advice of my counsel was that the money belongs to Mr Teo, the sooner we get the money out of your hands	
50		

In the
District
Court

Defendant's
Evidence

D.W.1
James Chia
Shih Ching
Cross-
examination

(continued)

will put you in a better position as to show no impropriety. As between yourself and Mr Teo, there is plenty of time to discuss the whole statement of account with him.

- Q. You said earlier on in cross-examination that you were advised against getting in touch with Mr Teo. You knew the allegation that you cheated Mr Teo. Is that not the appropriate time to come up with the truth if that was indeed the truth? 10
- A. I do not understand the question.
- Q. You said earlier on against getting in touch with Mr Teo. You knew the allegation that you cheated Mr Teo. How are you going to settle the account with Mr Teo if you do not contact him?
- A. That is why I wrote this letter. I will settle the account with him when the investigation is over. 20
- Q. But then throughout the investigation nobody but you would know you were holding the £800 for expenses incurred by you?
- A. Mr Teo certainly knew there were expenses incurred.
- Q. Mr Teo may well know that there were expenses incurred by you but he would not know you took the £800 against the expenses? 30
- A. During my whole relationship with Mr Teo he trusted me which he said in court. He would know that I would deal with all these matters to the best of his interest. That would include all expenses incurred on his behalf.
- Q. I come back to my original question. Apart from saying it is counsel's advice, you have not given reason why you have not rendered the statement of account on 4th August? 40
- A. I thought I already answered the question. I raised the question with my counsel. His advice was to do it later when investigation was over.
- Q. Did you ask Mr Cashin what was his reason for his advice?
- A. Mr Cashin has experiences dealing with the CPIB. At that time I trusted him that

	the advice was in my best interest and I followed his advice.	In the District Court
	Q. My question is did you ask Mr Cashin the reason why he gave that advice?	Defendant's Evidence
	A. No, because I trusted him.	
	Q. You are a relatively senior lawyer. You have been a qualified person in 1968?	D.W.1 James Chia Shih Ching Cross-examination
10	A. I graduated in 1968. I have no comment on whether I am relatively senior. I have been in the Inland Revenue Department for about 10 years but I have not been in private practice.	(continued)
	Q. I was using 'lawyer' as a general term. You also have a Master's degree?	
	A. Yes.	
	Q. In your legal background and legal experience, I find it difficult to accept that you would take Mr Cashin's advice without asking him the reason for his advice?	
20	A. Mr Cashin has been an advocate & solicitor for more than 30 years. The reason why I went to see him was for me to advise him. If I am not going to carry out his advice, then I shouldnot have consulted him.	
	Q. I believe that you said that you suggest to Mr Cashin that you should render the account to Mr Teo?	
30	A. Yes.	
	Q. And he said 'No'?	
	A. He said I was to wait till investigation is over.	
	Q. He did not give any reason?	
	A. I cannot recall. He may have and he may have not. It did not register on me.	
40	Q. Neither did you ask him?	
	A. I did not.	
	Q. You told us that you have much respect for my learned friend, you saw it fit to carry out his advice?	
	A. Yes. I have tremendous respect for him.	
	Q. But at least I would have expected you	

In the
District
Court

Defendant's
Evidence

D.W.1
James Chia
Shih Ching
Cross-
examination

(continued)

- to ask him for the reason being a legally trained person yourself?
- A. Whether I am legally trained, at that point of time, I placed the whole matter in his hands.
- Q. Is it your evidence that you followed his advice blindly?
- A. I disagree with that statement. I did not follow his advice blindly.
- Q. You would like us to believe that you wrote P37 and did not render a statement of account on your counsel's advice without knowing the reason for such an advice. Is that correct? 10
- A. As I have said, I trusted my counsel and the wisdom of his advice.
- Q. You have not answered my question. You wrote P37 and did not render a statement of account to Mr Teo because of Mr Cashin's advice without knowing the reason of that advice? 20
- A. I did not ask him for the reason.
- Q. You have not answered my question.
- Defence Counsel: My learned friend has asked the same question four or five times over during the last hour. The question has been answered.
- DPP: Your Honour could see that I have not been getting answers to the question. 30
For the past one hour, this witness has not answered my question. One just look at my last three questions and one finds my question has not been answered.
- Objection overruled.
- (Court directs the accused to answer).
- A. Yes.
- Q. I am now moving on to the next issue. Did you on 24th November by a letter through your counsel forward your statement to the CPIB in reply to the charges which were preferred against you. (Witness is shown a statement). 40
- A. Yes.
- Q. You made the statement on 22nd November 80

- In the
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Court
-
- Defendant's
Evidences
-
- D.W.1
James Chia
Shih Ching
Cross-
examination
- (continued)
- and forwarded on 24th November 80?
- A. Yes.
- Q. This was as a result of Mr Koh Hung Meng formally charging you with cheating Mr Teo and committing criminal breach of trust of £400. (Accused is shown his S.121(6) CPC statement).
- A. Yes.
- 10 (DPP:Your Honour the first page of the statement of the accused through the counsel does not relate to the matter before the court. I have covered the first page).
- Covering letter of counsel marked and admitted - P43. Statement of accused despatched through P43 is marked and admitted - P44.
- 20 Charges, notice of warning under S.121(6) CPC and statement of accused is marked and admitted P45.
- Q. Look at P45. On 14th November 80, you were formally charged by Koh Hung Meng, the Assistant Director, CPIB of two charges?
- A. Yes.
- Q. After the notice of warning was served, you stated that you deny the charges and that you will give a written reply later?
- 30 A. Yes.
- Q. On 24th November, you forwarded through your counsel P44?
- A. Yes.
- Q. Am I correct to say that in P44, no mention was made by you that you were keeping the £800 against expenses you would incur on behalf of Mr Teo or for that matter Tong Eng?
- 40 A. It is not stated.
- Q. Why did you not state that in P44?
- A. As I have said this morning, my counsel said I should settle the matter with Mr Teo when the whole investigation was over. When I was charged, the investigation was still on.
- Q. It is your case that you did not have

In the
District
Court

Defendant's
Evidence

D.W.1
James Chia
Shih Ching
Cross-
examination
(continued)

- the dishonest intention to cheat
Mr Teo of £800?
- A. Undoubtedly so.
- Q. It is your defence that your intention
all along was to hold the £800 against
expenses you would incur on behalf of
Mr Teo or Tong Eng?
- A. Yes, on behalf of Mr Teo.
- Q. On 14th November you were warned by
Mr Koh to state any fact you would
rely on in court. Is it correct? 10
I refer to the notice of warning in P45.
(DPP reads the warning).
- A. Yes.
- Q. Not only did you not state it on 14th
November, you also did not mention your
defence in P44?
- A. Yes.
- Q. You knew by the time you gave P44 you
were aware of the warning given by Mr Koh? 20
- A. Yes.
- Q. Is there any reason you would like to
state now why you did not mention that
you were holding the £800 against expenses
you would incur?
- A. That settlement of the expenses is a
matter between me and Mr Teo. As advised
earlier by Mr Cashin, a statement will be
rendered by me to Mr Teo when investigation
is over. At the point of the writing 30
of P44, we were solely concerned on the
quest on of putting the £800 in its proper
perspective ie into Mr Potter's hands.
- Q. How would putting the £800 in its proper
perspective bear any relation to an
offence said to have been committed on
7th March. Do you understand my question?
- A. No.
- Q. You were alleged to have deceived Mr Teo
on 7th March. What can you possibly do 40
on 24th July which can answer to your
conduct of a prior date?
- A. The sequence of events from March to July
was explained by me to the authorities.
They still allege that I wanted to cheat
Mr Teo. I discussed this whole issue with
my counsel. He said, "Let us put the
money back to Mr Potter".

	Q.	Presumably you told your counsel that you have been warned to state your defence?	In the District Court
	A.	Yes. May I refer to p.44, page 2 last para. (Accused reads). Also page 3. There is a typographical error in that instead of '£350', it should read '£800'.	<u>Defendant's Evidence</u>
10	Q.	Your defence in this court is that you had no dishonest intention to cheat and that you were holding the £800 in respect of the expenses?	D.W.1 James Chia Shih Ching Cross-examination
	A.	Yes.	(continued)
	Q.	Did you not ask your counsel why that fact should not be given in P44?	
	A.	No, I did not.	
	Q.	You did not know his reason for his advice?	
20	A.	I did not.	
	Q.	Am I correct in describing you as having followed his advice blindly?	
	A.	I would follow his advice but not blindly.	
	Q.	To your mind, would it not be more logical to tell the CPIB that you had all along held the £800 in respect of the expense?	
30	A.	The investigation had started on 9th July. During the first few days of investigation it involves two sums which I was charged and subsequently acquitted. During the two days I strenuously tried to convince them that the two sums were not as what they were trying to allege against me. They went on and on. I reached a stage during the investigation that no amount of explanation is acceptable to them.	
40		When the issue of £800 was raised, I told them that I was holding on behalf of Mr Teo. I believe they were not convinced. That is what they appear to me. To my mind, what was the necessity of carrying on convincing them if they don't believe me. I decided at that point whatever allegation they are going to bring against me, I am prepared to face them in court. Does that answer you question Mr Yong?	
50			

In the
District
Court

Defendant's
Evidence

D.W.1
James Chia
Shih Ching
Cross-
examination
(continued)

- Q. The fact that you were charged by Mr Koh showed clearly that they were unconvinced by your explanation?
- A. Likewise they were not convinced about the other two sums.
- Q. My question to you is that the fact that Mr Koh charged you that the CPIB was not convinced with your innocence?
- A. Clearly so. They were not convinced.
- Q. Look at the notice of warning in P45. The warning is not that you should convince the CPIB of your innocence. The warning there is that you should state your defence for the court. If I may read. "In court" Mr Chia. The warning is that you should give a statement for the court and not to CPIB. Do you agree? 10
- A. Yes.
- Q. Having said that, I must repeat my question. Having been so warned, would it not be logical for you to state in P44 that you were holding the £800 against the expenses? 20
- A. The statement was made with the assistance of my counsel. I think that there is one para which makes reference to the expenses, ie the last para in page 2.
- Q. It is your defence that your intention all along that you were holding the £800 against the expenses?
- A. My defence is that I was in charge of the cessation matter by Mr Teo. He left the matter entirely to me, the consultation and taking into consideration my expenses incurred in respect of the matter. 30
- Q. Let us at least agree on this. It is because you have to take into consideration your expenses that you held on to the £800. Can we agree?
- A. Could I look at the charge then.

Defence Counsel: I am objecting. The questions in the manner they are directed completely irrelevant either it was framed originally or it is framed now. It is not my purpose of addressing you as I would do at the end of the case. But for my friend to say that it is our case that the money was held 40

	against the expenses. The questions are not directed on the charges. The charges relates to 7th March 80.	In the District Court
	I have sat patiently listening to the questions wondering what on earth they have to do with this charge.	<u>Defendant's Evidence</u>
10	My learned friend can prefer charges on what happened to the £800. We had to put up with a galore of questions that had nothing to do with the charge. The subsequent conduct is irrelevant. The events closed on 10th March.	D.W.1 James Chia Shih Ching Cross- examination (continued)
20	There has not been any question about the deception. I do not wish to make an uproar but it is just that my learned friend has not asked a single relevant quest on. The statement did not call for those facts that were called.	
30	My learned friend has gone off the tangent. I am not accusing my learned friend of deliberately asking a wrong line of questioning. What I am saying is that he is doing so.	

DPP: My learned friend has made a fine speech, but I fail to see his point. The issues all along in the original charge and the amended charge are substantially the same. The crux is whether he deceived Mr Teo and as a result of that deception induce Mr Teo to deliver bank draft of £800 to the accused. It was alleged that the accused had dishonestly deceived Mr Teo. Apart from that, it is the evidence of the accused that he had no dishonest intention. His evidence was that he had asked for the £800 with completely honest intention. He said that he held on the £800 against the expenses incurred by him on behalf of Mr Teo. At the end of the day, he would render a statement of account. As such he could be asked why he had not rendered the statement. The next point is that the accused had given P44 in answer to an allegation of dishonestly deceiving Mr Teo. I refer to S.145 of the Evidence Act. If I am not allowed to ask those questions, then my learned friend had adduced completely irrelevant evidence

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concerning the accused's subsequent
conduct which they try to show that
the accused had never had an dishonest
intention.

Defendant's
Evidence

D.W.1
James Chia
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Cross-
examination

(continued)

Defence Counsel: It seemed to have escaped
my learned friend. The
charge is regarding 7th March.
If they wish to charge him
for dishonestly obtaining
the £800 date on 20th March
we will certainly raised the
question of the rendering of
statement.

10

Court overrules the objection of the Defence
Counsel.

Court adjourns for lunch.

Intld: S K K

Court resumes.

Defence Counsel: During the lunch adjournment,
I learned from my colleague,
Dr Myint Goe told me that he
was defending a case before
the High Court presided by
two judges. In that case the
decis on of A P Rajah J was
referred to in which he
disallowed the DPP, Mr Lawrence
Ang, from tendering a S.121(6)
statement which was made
pursuant to a charge which was
subsequently amended. I would
be obliged if I could be allowed
to look into this matter
further and if I think it
necessary, I will address your
Honour on it tomorrow. On the
other hand, after further
consideration, I may drop the
matter.

20

30

DPP: To set the record straight, the case which
was referred to by my learned friend was
prosecuted by Mr Ismail Hamid and not
Mr Lawrence Ang. Although in that case
the court did not allow the statement to
be used, there are subsequent cases where
it was allowed. A further point which I
wish to say is that in our case, P44 is
not a S.121(6) statement.

40

Court grants application for adjournment.
For further hearing 13.10.81 at 9.30 am
Bail extended.

In the
District
Court

Sd: Soon Kim Kwee

Defendant's
Evidence

D.W.l.
James Chia
Shih Ching

Thursday, 15th October 1981
In Open Court
Before me

Cross-
examination

Sd: Soon Kim Kwee
District Judge
Subordinate Courts

(continued)

10

DAC 4624-5/80
IT 2421-2

PP vs James Chia Shih Ching

Sec 406 Cap 103 (2 counts)

Alt. charge: Sec 420 Cap 103
Sec 6(2)(a) pu Sec 94(2)
I.T.Act (2 counts)

Prosecuting Officer: DPP Mr Fong Kwok Jen
assisted by Mr Kelvin Lim.

20 Defence Counsel: Mr H E Cashin assisted by
Mr Choo Han Teck.

Mr Cashin: I contacted Mr A P Rajah J
yesterday and his clerk gave the
particulars of the case. Cr. No.11
DPP v Mohd Yasin bin Hussein.
The accused was originally charged
with murder. He was convicted and
the case went up to the Privy
Council. The Privy Council held it
was not murder and sent the case
back. The accused was this time
charged with rape. The learned DPP
then sought to admit a S.121(6)
(I think it was). A P Rajah J
held it was inadmissible as it was
made in respect of the original
charge and not in respect of the
original charge. I learned from
my learned friend that matter has
been canvassed in the Court of Appeal
and it has gone the other way. But
that is not my point. What I am
saying is that although the statement

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40

In the
District
Court

Defendant's
Evidence

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Cross-
examination

(continued)

is admissible, the statement refers specifically to the charge and the accused is asked why he did not raise the issue in answer to the charge, the accused's mind was directed only to that charge. The Prosecution is not entitled to cross-examine him on this line.

DPP: I agree with my learned friend that in certain cases, what the accused has to answer in an original charge may be very different from the amended charge. The charge remains the same. The charge is substantively the same as the amended charge. If the accused stated in his statement that I did not know the fee was £400 and not £800, then it may not be fair for me to cross-examine him. But from the statement he denied the allegation of deceiving Mr Teo and that he did not act dishonestly. I am handing to your Honour the case which my learned friend referred to yesterday. The case is Sim Han Yin v PP. (Criminal Appeal No.1 of 80.) The original charge appears in page 5 of the bundle. The amended charge is at page 2 of the bundle. The section has been amended. He is now charged with the one using the firearm. I read the notes at p.(3) and (4) of the bundle. So what my learned friend is saying is not correct.

Mr Cashin: Dr Myint Soe told me that the PP had told the court that as there was a ruling by his lordship Mr A P Rajah, he was not tendering the statement. That is why we find in the passage A P Rajah's comment that the Prosecutor did not wish to introduce the statement.

Court: In so far as the objection raised by the learned Defence Counsel on the right of the learned Deputy to cross-examine the accused on why he did not mention certain matters in P44, I am overruling the objection. The learned Deputy may continue with his cross-examination on this line.

DW1: (recalled) (on former affirmation). 50

XXN:

In the
District
Court

Q. You agreed yesterday that you have the statement P44 in reply to the warning by Mr Koh in P45?

Defendant's
Evidence

A. Yes.

Q. You also agreed that the Defence you have in this Court is that you had no dishonest intention as your intention was to hold the £800 against expenses?

D.W.1
James Chia
Shih Ching
Cross-
examination

10

A. I do not agree with the second part. What was stated in P44 with regard to £800 was to complete the sequence of event up to the transferring of £800 back to Mr Potter. That was why the £800 was raised up at that stage.

(continued)

Q. Do you recall answering 'Yes' to my question, "Your defence in this court was that you had no dishonest intention and your intention was to hold the money against expenses?"

20

A. Yes, I said that. But the second part is not my defence.

Q. You are now changing your evidence?

A. I am qualifying it. The expenses was brought up by Mr Yong and also Mr Cashin to rebut the inference which was made in the opening address. That was why the explanation on the expenses were brought up. As to the facts why the expenses were not stated in P44 which was made with counsel's advice, the facts were known to my counsel and why it was not stated I can only assume it was not relevant to the original and even less so to the present charge.

30

Q. You said the expenses was brought up in examination-in-chief to rebut the letters subsequent to 13th March.

40

A. Yes.

Q. You said that in P44, the incidental expenses were not stated?

A. Other than the £450.

Q. Are you changing your statement?

A. No! No! It is there.

Q. Did you not also fail to state in P44 that you had intention to use the £800 against expenses?

In the
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Defendant's
Evidence

D.W.1
James Chia
Shih Ching
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examination

(continued)

- A. Yes, I did not state it.
- Q. You said you assumed it was not relevant to the original charge. Tell me why it is not relevant?
- A. The criminal charge refers to cheating £800. The facts surrounding 7th March was that a bank draft was forwarded to me to be forwarded to Mr Potter. The bank draft was to the order of Mr Potter. That was the nature of the bank draft. The transaction was completed at that stage as to the cheating. My intention was quite clear that the bank draft went immediately to Mr Potter. Never did I know at that point of time that Mr Potter was not going to charge for the opinion of a private nature. I only knew after the 13th. 10
- Q. Are you trying to say your conduct subsequent is not relevant to this trial? 20
- A. Yes.
- Q. If I walk up to you and take your pen from your table when you were not looking, subsequently I went home with the pen. You then went to the police and lodge a complaint to the police. Is the fact that your pen was hidden under my bed relevant as to my intention in taking the pen? 30
- A. Your Honour, have I to answer a hypothetical question.
- (Court orders the accused to answer).
- A. You are saying whether your action in hiding the pen under your bed is relevant. Well that is for the police officer to infer. I can only say that my pen is missing.
- Q. I am asking if the fact the pen was found in my bed? 40
- A. I am only concerned with the taking of the pen from my desk. What takes place after that including putting it under the bed is not my concern.
- Q. You are saying that what you did after taking the £800.....? (Accused interrupts).
- A. I did not take the £800 please.

	Q. Then how would you like to put it?	In the
	A. The matter ended on 7th March.	District
		<u>Court</u>
	Q. Are you saying once the £800 draft	Defendant's
	came into your hands and you forwarded	<u>Evidence</u>
	to Mr Potter, that is relevant?	
	A. Yes.	D.W.1
	Q. You are saying what you did with the	James Chia
	£800 once the draft left your hands	Shih Ching
	is irrelevant?	Cross-
10	A. In relation to this charge?	examination
	Q. Yes, please Mr Chia, I am only talking	(continued)
	about this charge?	
	A. Yes.	
	Q. The reason you did not state in P44	
	that you were holding the £800 against	
	expenses is that that refers to your	
	conduct subsequent to the 7th March and	
	such conduct is irrelevant?	
20	A. I can only say this. After the	
	discussion with my counsel, the expenses	
	were not mentioned. It can only mean	
	they were not relevant in answer to the	
	original charge.	
	Q. I am afraid you have not answered the	
	question. Why is it not material in	
	answer to the original charge?	
	A. The facts surrounding that period	
	shows my intention in answer to the	
	cheating charge.	
30	Q. Look at p.2 of P44. Look at 2nd para.	
	I read, "On being informed by Anthony	
	Brown that Mr Potter did not intend to	
	charge the opinion he had rendered, I	
	requested him to transfer the £800 to	
	my deposit account with the Midland Bank	
	so that it could earn interest."	
	A. Yes.	
	Q. Is that not fact subsequent to the 7th	
	March?	
40	A. Yes, but if you look at the heading of	
	the statement, it is in answer to a	
	cheating charge and a criminal breach	
	of trust charge. This statement is in	
	answer to two charges.	
	Q. I accept that. Look at the next para.	
	"Subsequently I mentioned to Mr Teo that	
	Queens Counsel had not charged for the	
	opinion he had rendered and that I was	

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Defendant's
Evidence

D.W.1
James Chia
Shih Ching
Cross-
examination

(continued)

holding the money in my bank account
in London for him". Is that not
subsequent to the date in the cheating
charge as it took place after the 20th
March?

A. Yes. This was to continue the sequence
of event.

Q. Would you like to explain "continue
the sequence of event"?

A. The other paras refer to the sequence
of events until the transfer of £800 into
the hands of Mr Potter on advice of
counsel. 10

Q. They are all subsequent to both the
charges?

A. I would say these subsequent paras were
focusing on the criminal breach of trust
charge.

Q. You have not answered my question. We
get on so much better if you would
answer my question. I find myself
repeating my question again and again.
My question is that these facts were
subsequent to the time stated in both
the cheating and criminal breach of
trust charges? Is it not obvious? 20

A. Yes, however the emphasis on the
cheating charge is shown in the first
five paragraphs of the statement.

Q. Perhaps so. But are you not referring
to events after the date of the charges
to show your innocence of them? 30

A. Yes, I was replying to the cheating
and criminal breach of trust charges.

Q. Would you like now to reconsider your
earlier statement that what took place
after the 7th March is irrelevant to
the charge?

A. We are now questioning a reference to
two charges. Looking at the statement
the first few paragraphs refer to the
cheating charge. Subsequent paragraphs
were to complete the picture in the
criminal breach of trust charge. 40

Q. I have great difficulty in trying to
understand you. I will try. Is it
your evidence that subsequent events
have no relevance to a charge of cheating
but that subsequent events is relevant
if the charge is one of criminal breach
of trust? 50

	I will repeat that. (DPP repeats).	In the
	A. The question is in two parts. There is no relevance in a cheating charge. No relevance because what I did at that period of time is important.	District Court
	Q. Any relevance in the case of criminal breach of trust?	<u>Defendant's Evidence</u>
	A. The subsequent events may have some relevance.	D.W.1 James Chia Shih Ching
10	Q. Why the difference?	Cross- examination
	A. In the charge of cheating, one of the main ingredients is deception. So the surrounding facts as to whether I did deceive Mr Teo is important. The ingredient of criminal breach of trust is dishonesty. These subsequent events have some relevance.	(continued)
	Q. Is dishonesty not also an ingredient of the cheating charge? Look at P45.	
20	A. Where is the word "dishonesty" in P45?	
	Q. It is alleged in P45 that you thereby dishonestly induced him to deliver to you a bank draft for £800?	
	A. I would not disagree but the primary ingredient is deception.	
	Q. Does deception not involve dishonesty?	
	A. Yes.	
30	<u>Defence Counsel:</u> It seems to me that to continue flogging the same matter should be a matter for submission. It is surely a matter for address to your Honour.	
	<u>DPP:</u> Perhaps my learned friend could bear with me for a short while.	
	Court asks the DPP to continue.	
40	Q. <u>Suggest:</u> You very well knew the relevance of your intention of holding the £800 in respect of subsequent events to a charge of cheating? Do you agree or not?	
	A. No. I stand by what I stated in P44.	
	Q. You knew on the 22nd July that the CPIB were looking into this matter?	
	A. It was raised on 22nd July but I did not know prior to that.	

In the
District
Court

Defendant's
Evidence

D.W.1
James Chia
Shih Ching
Cross-
examination

(continued)

- Q. It was not until the 14th November 80 that the CPIB decided that you be prosecuted for the offence?
- A. I had no idea until the 14th November 80 that I was going to be prosecuted.
- Q. You did not give an explanation on 14th November?
- A. I said I would do so later.
- Q. You had thought over for 8 days before you decided to make P44?
- A. I made the statement on 24th. 10
- Q. 22nd.
- A. 22nd. I am so sorry.
- Q. Even after making the statement you chewed on for two days before despatching it?
- A. I did not chew it. I signed it on 22nd. It was despatched through the official channel of Murphy & Dunbar.
- Q. Over the 8 days, you consulted the counsel before arriving at that statement?
- A. Yes. 20
- Q. Put: This question of holding £800 against expenses was something contrived by you subsequent to the 22nd November?
- A. I utterly disagree with you. This statement about expenses was brought up as early as 19th July in consultation with my counsel and was also present in my mind before the letter of 4th August to Mr Teo. I have waived my privilege between solicitor and client. The DPP can cross-examine my counsel. 30
- Q. But you did not waive privilege in respect of documents?
- A. What sort of documents?
- Q. I do not know.
- A. All the documents are in court.
- Q. Let me refresh your memory. (DPP reads).
- A. I stand by that. 40
- Q. If you had waived privilege to your counsel's documents I would have asked for the file then and there. Anyway if you had intended to hold the £800 against the expenses, you would have kept record of it which you did not?

	A.	As to many of the items, postages, taxi fares, London lunches, there is no receipt. The bill of the London call is before your Honour. As to the other minor expenses, it will be between Mr Teo and I.	In the District Court <u>Defendant's Evidence</u>
	Q.	In so far as the London lunch, you agreed that if you ask for the bill, it will be given to you?	D.W.1 James Chia Shih Ching
10	A.	A copy of the bill and not the original bill.	Cross-examination
	Q.	I accept that. In so far as the telephone bill, it was produced by me. It was not kept by you?	(continued)
	A.	It was paid by me.	
	Q.	You recall that you said the postage to Mr Potter cost \$70. I have asked my Investigating Officer to weight a bundle, the documents which you sent to Mr Potter. (DPP reads out the documents in the bundle). The bill came to \$54. It weighs 720 gm and it cost \$54 by air mail.	
20	A.	I do not accept that. I posted that package. The postal authorities charged me approximately \$70.	
	Q.	Did I leave out any documents from the bundle?	
30	A.	There may be a further amendment to the Income Tax Act but I am not going into that issue. All I say is that I paid about \$70.	
	Q.	I am suggesting that your memory is poor?	
	A.	I can only say I paid that amount as postage.	
	Q.	<u>Suggest</u> : Your memory is so poor in that you cannot even remember if you call Mr Brown from Singapore for the appointment, much less the telephone charges?	
40	A.	As to that telephone call, my memory may have failed me but there was certainly an appointment to see Mr Potter.	
	Q.	<u>Put</u> : If indeed you gave Mr Potter lunch on behalf of Tong Eng, you would have mentioned to Mr Potter about that?	
50	A.	The lunch was given to Mr Potter through me. To my mind, I think it is very uncivilised on my part to say this lunch is from Mr Teo of Tong Eng Brothers. I have never done such a thing in the fashion	

In the
District
Court

Defendant's
Evidence

D.W.1
James Chia
Shih Ching
Cross-
examination

(continued)

as suggested by my learned friend.

- Q. Put: You would have also told Mr Brown and Mr Potter that the tea was a token of appreciation from Mr Teo or Tong Eng?
- A. My previous answer applies.
- Q. Put: If it is true that you were holding the £800 against expenses and you would not have raised the question of impropriety or otherwise of holding the £800 with your counsel before the issue was raised by the investigator on 19th July and 20th July before the issue was raised by CPIB on 22nd July? 10
- A. I did raise it with Mr Cashin. He can testify to that.
- Q. Put: You would not have written to Mr Teo on 4th August 80 in the way had you the intention to hold the £800 against expenses and to render statement of account? 20
- A. I have stated earlier on that on advice of counsel to settle the expenses matter after investigation was over. In this respect, I am still following advice in that all statements will be rendered until all these matters are cleared.
- Q. Put: If it were true that you were holding the £800 against expenses, you would have paid the fee of £450 when you were in London? 30
- A. On the last day before I left London, I was handed a fee note by Mr Brown. He did not ask me to settle the fee note. when I returned to Singapore, arrangement was made by me on 4th July to settle the fee note which would have been settled in mid-July or later part of July had not the CPIB seised my bank book. However that settlement of the fee note was made by Mr Brown. 40
- Q. Put: But not for the investigation starting in July 80, you would have eventually ask Tong Eng to pay the fee of £450 for you knew that Mr Brown was not particular about when payment are made?
- A. That is a preposterous suggestion because the transfer of the £450 from my deposit account to the checking account shows my intention to pay for the £450.
- Q. When you return from London, you took two 50

fee notes back ie one for Tong Eng and one for Nakhoda. Look at P24. Your letter dated 1st March 81 you did not make arrangement to pay the Nakhoda bill until March 81. Do you agree?

In the
District
Court

Defendant's
Evidence

10 A. The bill for Nakhoda was handed to me by Mr Kwee, my friend around the mid or after the middle part of June. Mr Kwee was questioned by the CPIB and I believe that fee note may have been in the possession of the CPIB. Mr Kwee was responsible for the payment of that fee note. On advice from course I was not supposed to get in contact with any witnesses questioned by CPIB. When I received Mr Brown's letter either in January or February saying th t th re is no settlement of the fee note, Mr Choo Nan Teck contacted Nakhoda stating that there is an outstanding fee note of £350. I believe it was subsequently paid after Mr Choo contacted Mr De Souza.

D.W.1
James Chia
Shih Ching
Cross-
examination

(continued)

Q. Look at P17A. You did make the amendments to this fee note?

A. Yes.

Q. Why?

30 A. On receipt of the fee note, I had a discussion with my co nsel and I said that the title 'Advocate' after my name is incorrect and I wanted to correct that with Mr Brown. As to the subject matter, it refers to the same matter and I was following the title of the brief.

Q. The name ' Mr Teo' was deleted. Is that also inaccurate?

40 A. It was deleted because I was responsible for payment.

Q. What has that to do with the fact that the matter concerns Mr Teo?

A. Mr Teo is part of Tong Eng. When delete Tong Eng, following the title of instruction it necessary goes.

Q. It is non sequitur?

A. Because I was responsible for payment.

Q. This matter was referred to you by Mr Teo. Correct?

50 A. Yes.

In the
District
Court

Defendant's
Evidence

D.W.1
James Chia
Shih Ching
Cross-
examination

(continued)

- Q. If Mr Potter says your reference is Mr Teo, what objections do you have?
- A. At that point of time, I was just putting the matter in line with the subject matter. It necessarily follows that this has to be rectified.
- Q. There must be an error before rectification. I am asking you what is the error in giving the reference 'Mr Teo'?
- A. The error is that I am responsible for payment and Mr Teo's name should not appear. 10
- Q. It is on your instruction I presume that my learned friend put to Mr Potter that solicitors hold themselves responsible for the fees?
- A. That was said by Mr Potter.
- Q. My question is did your counsel ask that?
- A. Yes.
- Q. In this matter, you were holding yourself very much in the shoes of a solicitor? 20
- A. Yes.
- Q. You would upholding such a practice feel yourself responsible to pay whatever fees of Mr Potter?
- A. Yes.
- Q. What has the putting the reference 'Mr Teo' is given by Mr Brown?
- A. More so will you agree. Mr Teo's name should not appear because I am responsible for payment. 30
- Q. Mr Brown has not said it was not Mr Potter's reference. He said it was your reference?
- A. I have nothing more to say.
- Q. Well if you cannot give us a reasonable answer, let us move on. Why did you delete the words "to this company" in Mr Brown's statement in the fee note. "There is still £350 in credit to this company for work which is to be done in the future?" 40
- A. Simply because when the title Tong Eng Pte Ltd this follows. In essence this is the same subject matter.
- Q. I am not quarrelling with that. You know and I know now the conference and the

opinion concern the same matter.
What I am asking is why you have deleted
all references to matters which would
indicate you were acting merely as a
solicitor?

In the
District
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Defendant's
Evidence

A. I cannot agree with that suggestion.
The fact that the fee note was handed
to me by Mr Brown.

D.W.1
James Chia
Shih Ching
Cross-
examination

10

Q. I wish to point out that P17A is a
receipted fee note. It is not the
one handed to you?

A. This fee note is a photocopy of the
fee note given to me on 5th or 6th
June before I left for London. I
asked for a copy of this for my records
during the investigation. When I
received this, I had to make the
necessary amendments to make the
position in proper perspective. For
example, I am not an advocate at that
point of time. I have nothing more to
add.

(continued)

20

Q. If you recall Mr Brown stating that
when he spoke to you on 23rd May, you
told him the subject matter of the
conference was Tong Eng Brothers and
the reference was Mr Teo. Do you
agree?

30

A. I did mention the Tong Eng name which
in fact is a similar matter known to
Mr Potter. I did mention Mr Teo but
I could not say that was a reference.

Q. Mr Brown then issued a fee note to you
when you were in London?

A. Yes.

Q. That is identical to P16A except for
the date?

A. Yes.

40

Q. Why did you not object or tell Mr Brown,
'Look you have not recorded the fee note
correctly'? When you were in London you
said you took the fee note on 6th June?

A. I did not look at it closely at that
point of time. It did not matter to me
as I was going to be billed. Or rather
because of the investigation, I discussed
this point with my counsel and I said we
should put the proper perspective on all
the documents and he agreed.

50

Q. How would your amendments in the fee note
put the matter in a better perspective?

A. I have already explained.

In the
District
Court

Defendant's
Evidence

D.W.1
James Chia
Shih Ching
Cross-
examination

(continued)

Q. How would the deletion of the word 'Advocate' put it in better perspective. We all know you are the Senior Legal Officer, Inland Revenue Department?

A. You have answered your own question.

Q. You agree with me that you delete 'advocate' because you are not an advocate?

A. Yes.

Q. But how would that put it in a better perspective in relation to the investigation? 10

A. I am a government servant, I am not an advocate & solicitor.

Q. Is it so wrong to help a friend out?

A. Your Honour I have answered this question over and over again. Have I to continue this.

(Court directs the accused to answer the question). 20

A. To my mind it is improper to be labelled as an advocate.

Q. Do you agree that the word 'advocate' in this context clearly indicate you are not Mr Potter's client?

A. Mr Potter looks to me as a solicitor. At the consultation in May, Mr Potter knew the position of this company and myself as I explained to him at the very beginning. Thus the relationship was known to him. 30

Q. Mr Potter was not asked any question on this score?

A. He was. He said he could not remember. Neither could he deny it.

Q. What I am asking is does the words 'advocate' indicate clearly you are not Mr Potter's client?

A. I have already answered.

Court: Mr Fong: In what context are you using the word 'advocate'. 40

DPP: I am using it to show that the accused is not Mr Potter's client but an agent.

(DPP repeats question).

	A.	I am acting as a solicitor in this matter.	In the District Court
	Q.	I do not care what you consider yourself now. Look at the word 'advocate' in P16A. Does the word 'advocate' not indicate you are not Mr Potter's client?	<u>Defendant's Evidence</u>
	A.	I am not an advocate. That is why I deleted it.	D.W.1 James Chia Shih Ching Cross-
10	<u>Court:</u>	Mr Chia, what the learned Deputy is asking is whether by the usage of the word 'advocate' by Mr Brown, it would indicate that you were not Mr Potter's client but only acting for someone else?	examination (continued)
	A.	Yes, I agree.	
		(DPP continues)	
20	Q.	Does "Mr Teo" under "Your reference" not indicate that you are not Mr Potter's client?	
	A.	Yes.	
	Q.	Do the words "to this company" not indicate that you are not Mr Potter's client?	
	A.	The word 'company' was I believe reference to Tong Eng. In that respect 'Yes'.	
30	Q.	Let me make it quite clear on record. There is still credit of £350 with Mr Potter for work to be done for Tong Eng. Taking this in its context, the heading 'Tong Eng Pte Ltd' and the words 'to this company' that the real client is Tong Eng?	
	A.	To Mr Potter, they are the same.	
	Q.	What is the same?	
	A.	The matters.	
40	Q.	You have not answered my question. (DPP repeats). Do the heading and the words 'to this company' not indicate Tong Eng is Mr Potter's client?	
	A.	Yes.	
	Q.	I preface my next question that it has no reference of your intention of altering the fee note. I am asking you as a fact that by the alterations all references that Mr Potter's client is Tong Eng Pte Ltd has been removed?	

In the
District
Court

Defendant's
Evidence

D.W.1
James Chia
Shih Ching
Cross-
examination

(continued)

- A. Your Honour has heard from Mr Potter and Mr Brown. They know that the "Cessation of business" and Tong Eng are the same matter.
- Q. Look at P16A. I will repeat my question.
- A. I disagree. It is so apparent that I have to disagree.
- Q. Why do you disagree?
- A. I have already explained to you in my series of answers. 10
- Q. I am afraid you have not. Look at P18A. Is it not the fee note which was issued pursuant to your amendments?
- A. Yes.
- Q. Point out to me on P18A any reference that you are not Mr Potter's client?
- A. This was issued after the consultation. So Mr Potter knows well who is his client. He knows that I am not part of Tong Eng.
- Court: Mr Chia, what the learned Deputy wants 20
to know is whether a person on looking at P18A would find no reference in it that you were not Mr Potter's client.
- A. Your Honour I cannot answer this question without reference to the background.
- (DPP continues)
- Q. Let me repeat the question again. Just looking at P18A, can you point out any reference that you are not Mr Potter's client. Can you or not? 30
- A. "Cessation of Business: Section 35". I am a civil servant. What has that got to do with me. It has only to relate to somebody else.
- Q. For the sake of argument, it could be for your own improvement on Section 35. Can it also not refer to a company you own or your father own. Are you not Mr Potter's client?
- A. If I own a company or my father owns a company I do not have to see Mr Potter. We can solve our own matter. 40
- Q. Could the words "Cessation of business" refer to a company that you own.
- A. I cannot agree.
- Q. Why not?

A. I have already answered that if it is my company or my father's company, I would not need to see Mr Potter.

In the District Court

Court: Mr Chia, the learned Deputy is asking this series of questions on the interpretation which a person with no knowledge of the background would give to the fee note. You are not asked to construe the notes as Mr James Chia for the purpose of these questions.

Defendant's Evidence

D.W.1
James Chia
Shih Ching
Cross-examination

10

Accused: Yes, your Honour I find it difficult not to answer them as James Chia. If that is the position, my answer is that it is capable of that interpretation.

(continued)

Q. Put: After 24th July, you sought to make yourself out as a client of Mr Potter in the belief that it will stop Mr Potter and Mr Brown from testifying against you? Shall I repeat the question?

20

A. You don't have to. I totally disagree. That fact can be borne out by my counsel.

Q. Put: By your letter of 24th July, (P12) you wanted to transfer £800 to Mr Potter in the account of "Tong Eng Brothers for future consultation." Do you agree?

A. I disagree.

30

Q. Is that not what your letter says, "Kindly credit this £800 to the account of Tong Eng Brothers Pte Ltd for future consultation." How can you disagree with me?

A. Up to this date, Mr Potter knows Tong Eng and "Cessation" are a group of persons who are my friends which I told him on 23rd May. He knows I was seeking advice on behalf of those people. Mr Potter knows my position as an employee of the government. This letter cannot alter that relationship.

40

Q. I am not saying that the letter P12 alter your relationship. My question is whether by that letter, you wanted £800 to be transferred to Mr Potter to the account of "Tong Eng Brothers Ltd - for future consultation?"

A. No.

Q. I will read the letter to you again. "Kindly credit.....future consultation". What does that mean?

50

A. There are certain facts known to Mr Potter

In the
District
Court

Defendant's
Evidence

D.W.1
James Chia
Shih Ching
Cross-
examination

(continued)

about the people in the company and my relationship. Transferring an amount of £800 to "Tong Eng Brothers Pte Ltd - for future consultat on" is the subject matter. The client's account is myself. I am the client's account.

- Q. So at this stage, you are not particular about how your account is headed. You did not mind. In fact you asked that the £800 be on account of "Tong Eng Brothers Pte Ltd - for future consultation"? 10
- A. To my mind, Tong Eng Brothers Ltd - for future consultation and "Cessation of business" refers to the same thing.
- Q. Why were you so particular on 8th September. (Look at P17A).
- A. To me, they meant the same thing except that when the copy of the fee note was received I thought it best to follow the title in the instruction. 20

Witness stands down.

Court adjourns for lunch.

Court resumes.

DW1: (recalled) (on former oath).

- Q. Put: By 17th August, you already had it in your mind to try to stop Mr Potter and Mr Brown from testifying?
- A. No. I disagree.
- Q. After you posted the letter of the 24th July (P12) you did not receive a reply from Mr Brown? 30
- A. Yes, even up to 17th August.
- Q. As you did not receive a reply you wrote P13?
- A. Yes.
- Q. By then, instead of asking Mr Brown to credit the £800 to Tong Eng Brothers for future consultation, you asked it to be held under the subject matter "Further consultation on Section 35: Cessation Provisions of Income Tax Act"? 40
- A. Yes. It means the same thing.
- Q. If it meant the same thing to you, you would not have been so particular about the heading of the fee note?

	A.	Likewise it meant the same thing to me.	In the District Court
	Q.	I am going to the next point. I refer to Pl9. It is written by you on 20th November 80. Why did you write to Mr Brown wanting to transfer £30 to Mr Potter under the subject matter "Further consultat on on Section 35, Cessation Provision Income Tax Act"?	<u>Defendant's Evidence</u>
10	A.	The £30 was the interest earned on the Midland Bank deposit.	D.W.1 James Chia Shih Ching Cross-examination
	Q.	The interest was over how many months?	(continued)
	A.	April, May and June.	
	Q.	That would be 15% per annum?	
	A.	Yes.	
	Q.	You said the £30 was the interest earned from Midland Bank. For the purpose of exactness that is not correct?	
20	A.	I agree.	
	Q.	Because in London, you draw £500 from that account?	
	A.	Not exactly. £120 was paid in on my last day.	
	Q.	You would lose interest even on the £120 for one or two weeks?	
	A.	Yes.	
	Q.	If it is true that of the monies you withdrew from the Midland Bank, £80 went towards the lunch th t you bought on behalf of Tong Eng, why did you want to pay the full interest on the £800?	
30	A.	At that time I was working at the gross of £800.	
	Q.	Why did you work on a gross of £800 when your evidence is that you spend £80 on Tong Eng's behalf and apparently they were money of Tong Eng?	
40	A.	I could have worked taking into account the £80 but I worked at the gross of £800 and in rendering the statement of account I would round it off.	
	Q.	Why did you feel you need to pay the interest only on 20th November 80?	
	A.	My Midland Bank deposit statement were seized by CPIB. Around October when the investigation was tailing off, I wrote to Midland Bank for copies of my statements.	

In the
District
Court

Defendant's
Evidence

D.W.1
James Chia
Shih Ching
Cross-
examination

(continued)

The statements were received around early November. Looking at the June statement interest were credited by the bank for the deposits up to that point. I decided at that point to work out the interest due to the gross £800.

- Q. You knew all along that interest on the deposit account was 15%?
- A. Yes.
- Q. You knew that in December 79 by D6? 10
- A. Yes.
- Q. The £30 was the notional and not the actual interest paid by the bank?
- A. Yes.
- Q. Why do you need the bank statement to calculate?
- A. I wanted to see the bank statement. To see if the bank had credited the interest into my account for that period. When I received the copies of the bank statement, I found that the bank did so. 20
- Q. Look at P38. Looking at the pages of the bank statement, one sees the interest is credited in mid June and December of each year? You would have received the June statement even before the investigation started and you knew the interest was credited. I refer to entry on 13th June?
- A. Yes.
- Q. You would not know if interest was credited from June 80 until you receive the statement for December 80? 30
- A. Yes.
- Q. So how would the copies of the statements you asked for and you received in November assist you?
- A. I was going to look at the statement and see what amount of interest was credited up to June.
- Q. Let me to suggest to you why you sought to pay the interest on 20th November 80. When you first learned that the investigators were interested in the £800, you thought causing wrongful loss was dishonesty? 40
- A. No.
- Q. That is why you quickly transferred £800 to Mr Potter's account?

	A.	I disagree.	In the District Court
	Q.	On 14th November, you were charged with the charges in P45?	
	A.	That fact yes.	Defendant's Evidence
	Q.	You then read the Penal Code?	
	A.	No.	D.W.1 James Chia Shih Ching Cross- examination
	Q.	On reading the Penal Code, you realised causing wrongful gain was also dishonesty?	
10	A.	I disagree.	(continued)
	Q.	That is why on 20th November, you sought to return what would be the interest?	
	A.	I disagree. The interest item was shown in my letter of 20th March 80.	
	Q.	On 22nd November, having thought of a defence and knowing something of the law, you then gave P44?	
20	A.	I disagree. My counsel will bear me out.	
	Q.	Are you calling your counsel as a witness?	
	A.	For that, I must have a word with him whether he wish to do so.	
	Q.	When you asked Mr Teo to pay £800, you knew at that time (the time also saw him on the opinion) that the fees of Mr Potter has yet to be determined. To be fair to you I will repeat the question?	
30	A.	Yes. No fee note was received.	
	Q.	You did not expect to receive a fee note earlier?	
	A.	Yes.	
	Q.	You expected at that time to receive the fee note at the end of year?	
	A.	Yes.	
	Q.	You have told us and Mr Teo have said that you both regard each other as good friends?	
40	A.	Yes.	
	Q.	You also told us that in as much as he trusted you, you also trusted him?	
	A.	Yes.	

In the District Court

Defendant's Evidence

D.W.1
James Chia
Shih Ching
Cross-examination
(continued)

- Q. You also knew that Mr Teo is not a man of insubstantial means?
A. Yes.
- Q. By the time, you have known Mr Teo had shares in many land development companies?
A. I only know about Tong Eng and one or two of his other companies.
- Q. I am talking about February 80. You knew at that time Tong Eng is a very solid company? 10
A. I do not understand which is a solid company.
- Q. I mean financially sound?
A. It is a sound company.
- Q. You also knew that Tong Eng had developed a 25 storey office block called Tong Eng Building?
A. Yes.
- Q. The company also owned a housing estate called Greenbank Park? 20
A. Yes.
- Q. The company also owned other properties?
A. Yes.
- Q. You knew then the profit of the company in 1979 was estimated to be at about \$12.5 million?
A. Yes as told by Mr Teo.
- Q. Have you any reason to disbelieve him?
A. No.
- Q. You also knew that the projected profits of the company for the year 1980 will be about \$14.8 million? 30
A. Yes.
- Q. Having in mind this background, why did you ask Mr Teo to pay you £800 before Mr Potter has asked for his fees?
A. I was anxious to discharge this debt as I am responsible to Mr Potter for payment. I do not want this matter to be hanging on my head. 40
- Q. Were you anxious that in the end when the fee note came, Mr Teo would not pay you?
A. No.
- Q. Were you anxious that Tong Eng will not

	permit Mr Teo to pay you?	In the
A.	No. I was dealing with Mr Teo.	District
		<u>Court</u>
Q.	Then what caused your anxiety?	
A.	I was concerned in putting the £800	Defendant's
	in the hands of Mr Potter.	<u>Evidence</u>
	Q. Be careful. Were you concerned to	D.W.1
	put the £800 in the hands of Mr Potter	James Chia
	or do you mean you believed Mr Potter	Shih Ching
	should be paid as soon as possible?	Cross-
10	A. To me both means Mr Potter will be	examination
	paid.	
		(continued)
	Q. Do you mean that Mr Potter will be	
	paid or be paid as soon as possible?	
A.	I did not want to split hairs over	
	English language but my intention is	
	that Mr Potter be paid.	
	Q. It is not my intention to split hairs	
	with you. I just wanted to be very	
20	fair to you. If your anxiety is that	
	Mr Potter be paid as soon as possible	
	why did you not when forwarding your	
	instructions to Mr Brown ask Mr Brown	
	to give you a fee note together with	
	the opinion?	
A.	I didnot do at that time.	
	Q. Did you think about it at that time?	
A.	No.	
	Q. If you were anxious that Mr Potter be	
	paid as soon as possible, why did you not	
30	take that step?	
A.	I did not think of it at that time.	
	Q. You knew that this could be done. There	
	is nothing improper.	
A.	I have never done it before.	
	Q. Have you previously or during that period	
	ask the clerk of a Queens Counsel to	
	indicate the fees before a matter is	
	included?	
A.	I did not.	
40	Q. Look at P40. It is dated 28th April 80.	
	Did you not ask the clerk to the Queens	
	Counsel to indicate Mr Rippon's fee for	
	the Privy Council hearing before the	
	matter is completed?	
A.	Yes, I did but Mr Rippon handled the Court	
	of Appeal matter in Singapore. The	
	government had already paid his fees for	
	that period. This pending matter was a	

In the
District
Court

Defendant's
Evidence

D.W.1
James Chia
Shih Ching
Cross-
examination

(continued)

Privy Council hearing. The government wanted to allocate a certain sum for Mr Rippon's fees in the Privy Council hearing.

- Q. So when you knew the fees in advance it can be done and you knew it can be done?
- A. Yes.
- Q. At end of February, when you saw Mr Teo about Mr Potter's opinion, why did you not write to Mr Brown to forward the fee note? 10
- A. I could have done it but the fact that it was done in this fashion to my mind was not wrong.
- Q. To your mind, the £800 was an estimation of the fees?
- A. Yes.
- Q. At that time, if there was a balance and the fee is below £800 what did you intend to do with the balance? 20
- A. Leave it in Mr Potter's hands for further matters involving this company.
- Q. According to Mr Teo, you showed him a note?
- A. Yes.
- Q. Was there such a note?
- A. The note was written in my handwriting, Mr Potter's name, his address and the sum of £800.
- Q. Why was it necessary for you to write it down? 30
- A. For Mr Teo to issue a bank draft in Mr Potter's name.
- Q. When you said you told Mr Teo that you had not received the bill yet but Mr Potter should be paid and £800 would cover, it differs from what Mr Teo said in that Mr Teo said you gave him the note and said the £800 was Mr Potter's fee and you asked him to pay £800? 40
- A. I asked Mr Teo for a bank draft in the name of Mr Potter.
- Q. Was that in February or 7th March?
- A. Both days.
- Q. You said that at that time, if there were to be any balance you intended to use it to pay for further consultation?
- A. Yes.

	Q. By further consultation, you meant further consultation by Tong Eng?	In the District Court
	A. Yes.	
	Q. Mr Teo told us that after that discussion he had quite forgotten about it until the 7th March when you called to remind him that the fee should be paid and that he was to authorise a bank draft to be issued to you that day?	Defendant's Evidence
10	A. Yes.	D.W.1 James Chia Shih Ching Cross-examination
	Q. You agree to that?	
	A. Yes.	(continued)
	Q. On 14th February, Mr Potter gave his opinion. Presumably you saw Mr Teo at the end of February. By 7th March, a week, or slightly more than a week or two weeks?	
	A. I think about one week.	
20	Q. Can I take it that on 7th March you also intended that Mr Potter be paid as soon as possible?	
	A. Yes.	
	Q. Why were you so anxious that Mr Potter be paid when Mr Brown has yet to ask for his fees?	
	A. I have already answered the question.	
	Q. My question now is why were you so anxious that Mr Potter be paid when Mr Brown had not yet send the fee note?	
30	A. I was still anxious.	
	Q. On that date, you presumably had no doubt that when the fee note came, Mr Teo would pay?	
	A. Yes.	
	Q. Mr Brown did not appear to be anxious about Mr Potter's fees. Do you agree?	
	A. I cannot speak for him.	
	Q. Mr Brown has not asked for Mr Potter's fee?	
40	A. Yes.	
	Q. Nor did you expect him to ask for the fee on 23rd May?	
	A. Yes.	
	Q. Why should you be anxious?	
	A. Because I was responsible for paying.	

In the
District
Court

Q. Why did you not write to Mr Brown
on 7th March if you are anxious?
A. I did not consider that.

Defendant's
Evidence

Q. Why not?
A. I could have if I wanted to but I did not.

D.W.1
James Chia
Shih Ching
Cross-
examination

Q. I fail to understand you. You wanted
to discharge the debt as soon as possible.
You knew Mr Teo will not fail to pay and
at the other end, Mr Brown was not asking
for payment. If your only anxiety was
that the fee should be paid, is it not
natural to determine what fee was to be
paid by asking for the fee note?

10

A. I could have but I did not.

Q. You will agree that it is not unreasonable
to determine what the fee was first?

A. Yes, it will not be unreasonable.

Q. When you wanted to know Mr Rippon's fee,
you did not fail to write to Mr Rippon
about his fees?

20

A. With regard to Mr Rippon's fee, I was
asked by the accountant to ascertain from
Mr Cobbett, Mr Rippon's fee so that he
could make provision.

Q. Here you are not making provision for it,
you wanted to pay. In these circumstance,
there is all the more reason to want to
know what Mr Potter's fees were. Do
you not agree?

A. When I mentioned the fees and fee note
to Mr Teo stating that I had not received
the fee note and suggested that £800 would
be more than sufficient to cover the fee,
Mr Teo did not disagree. He agreed to
give me a bank draft.

30

Q. Why did you not first ascertain what the
fees were?

A. I did not do it.

Q. Any particular reason?

A. No.

40

Q. You said that should if there be a balance
it will be used for future consultation.
You did not make that known to Mr Teo?

A. No, I did not.

Q. And why not?

A. If there is no balance then there is no
necessity.

	Q.	You did expect a balance, didn't you?	In the District Court
	A.	I persuaded Mr Potter to accept the Inland Revenue concessionary rate.	<u>Court</u>
	Q.	You were confident of your estimation and we know it is out by £350?	<u>Defendant's Evidence</u>
	A.	I took the cautious note of taking the upper end of the amount.	D.W.1 James Chia Shih Ching
10	Q.	Were you not most incautious in asking for payment before you knew the fees?	Cross-examination
	A.	I was not.	(continued)
	Q.	You did not tell Mr Teo what you intended to do if there were to be a balance, if there was to be a balance, would you not have and I emphasise, deceived him in that respect?	
	A.	I never deceived Mr Teo.	
20	Q.	But have you an intention to handle part of the money in a way unknown to Mr Teo?	
	A.	At the point of sending the bank draft ie 10th March, I did not know whether there was going to be any balance.	
	Q.	But it was in your mind what to do with that part if there was going to be a balance?	
	A.	If there was to be a balance.	
30	Q.	You have not answered my question. (DPP repeats).	
	A.	If there was a balance it will be used on this matter.	
	Q.	But Mr Teo said he disagreed with the Opinion and went ahead with the cessation steps and it was only on 21st May, that he agreed to further consultation?	
	A.	I disagree with him.	
	Q.	Is there a reason why Mr Teo should tell an untruth which works against you?	
	A.	Mr Teo may have forgotten.	
40	Q.	Mr Teo said the subject matter of consulting Mr Potter further only arose on 21st?	
	A.	I disagree with that because if you see the minutes of the consultation meeting, several points were already raised by Mr Teo on my earlier discussion which he wanted to clarify with Mr Potter.	

In the
District
Court

Defendant's
Evidence

D.W.1
James Chia
Shih Ching
Cross-
examination

(continued)

Q. You said the points were raised by Mr Teo between February and May?

A. Yes.

Q. Why did you not instruct your counsel to ask Mr Teo whether the points raised at the conference were discussed long before you left for London?

A. Mr Teo did say that he knew I was going to London a few weeks before I left in May.

10

Q. I don't recall him saying that. Mr Teo said he knew a few days before you left?

A. Yes.

Q. It is quite crucial to the Defence that there was an understanding between you and Mr Teo that there would be further consultation. Is it not?

A. Yes.

Q. Mr Teo's evidence does not support this contention. Do you agree?

A. I will leave it to my counsel to address the court on this.

20

(Court asks the accused to answer the question).

A. Can you repeat the question?
(DPP repeats question).

A. I am telling my part of the events that happened. If Mr Teo did not say in his evidence then I got no comments to make.

Q. We are not asking you to comment. Having heard Mr Teo's evidence in chief, why did you not instruct your counsel to cross-examine Mr Teo on the point that whether the points raised in D9 were in fact raised were discussed between you and Mr Teo during the period of the discussion of the opinion at the lunch?

30

A. I left the cross-examination to my counsel.

Q. Did you tell your counsel there were one or several meeting on which the points raised in D2 were discussed between the time of the discussion and the lunch on the day you left?

40

A. I did.

Witness stands down.

For further hearing 16.10.81 at 9.30 am
Bail extended

Sd: Soon Kim Kwee

Friday, 16th October 1981
In Open Court
Before me
Sd: Soon Kim Kwee
District Judge
Subordinate Courts

In the
District
Court
Defendant's
Evidence

DAC 4624-5/80
IT 2421-2

D.W.1
James Chia
Shih Ching
Cross-
examination

PP vs James Chia Shih Ching

10

Sec 406 Cap 103 (2 counts)

(continued)

Alt.charge Sec 420 Cap 103
Sec 6(2)(a) pu Sec 94(2)
I T Act (2 counts)

Prosecuting Officer: DPP Mr Fong Kwok Jen
assisted by Mr Kelvin Lim.

Defence Counsel: Mr H E Cashin assisted by
Mr Choo Han Teck.

DW1: (recalled) (on former oath)

XXN:

20

Q. On 10th March 80 when you wrote to Mr Brown, Exhibit P8, did you have some confidence that your suggestion that the fee be £400 would be accepted?

A. I was making a persuasive attempt, I would say.

Q. I know you were trying to persuade Mr Brown. My question is if you had some confidence that Mr Brown will accept your suggestion?

30

A. Perhaps I may have.

Q. You also said in the letter that the remainder of £400 should be credited to your account?

A. Yes.

Q. Why did you not ask Mr Brown to credit the balance to the account of Tong Eng or Mr Teo?

A. Mr Brown did not know who Mr Teo or Tong Eng is.

40

Q. Would he need to know who Tong Eng or Mr Teo is to open an account for them?

A. The practice in advocate & solicitor chambers or in barrister's chambers is

In the
District
Court

Defendant's
Evidence

D.W.1
James Chia
Shih Ching
Cross-
examination

(continued)

that the account is opened in the name
of the solicitor.

- Q. How did you know of that practice?
A. From my knowledge in Singapore dealing
with solicitors in London.
- Q. But look at your letter of 24th July.
You wrote: "Kindly credit this £800 to
the account of Tong Eng Brothers Ltd"?
A. When this letter was written, Mr Brown
already knew that I was consulting Mr
Potter on behalf of Tong Eng. 10
- Q. So on 10th March, why did you not make
it clear that you were consulting Mr
Potter on behalf of Tong Eng?
A. When this letter was written, Mr Brown
already knew over the telephone conversa-
tion that it was a matter private other
than an Inland Revenue Department matter.
- Q. In P8, you said, "I attach herewith
a bank draft for £800 leaving a remainder 20
of £400 to be credited to my account which
may be utilised in the near future for
other purposes". I emphasise "my account"
and "for other purposes". Is it not
your intention that this money to be
balance to be credited to you and that it
may be used for purposes not connected
with the cessation of Tong Eng?
A. No. If we read that sentence with the
heading which is "Cessation of Business S.35 30
of the Income Tax Act," Mr Brown being a
barrister's clerk would certainly know that
could only be a client's account. Secondly,
the other purposes can only be in reference
to the above subject matter.
- Q. Are you saying your "other purposes" in
this context means the same thing as
"Future consultation in this connection"?
A. Yes, in the matter of cessation of business.
- Q. Is it not obvious that the purpose of this 40
letter is connected with the cessation of
business of Tong Eng?
A. Yes.
- Q. Is it also not obvious in the context of
this letter that "other purposes" can only
mean purposes other than the cessation of
business of Tong Eng. I will repeat my
question?

	A.	I have got your question. No. I think you have contradicted yourself.	In the District Court
	Q.	You are too well educated to have made a simple grammatical error in P8. I refer you to P12 dated 24th July. I refer you to the last part. I quote "The reason I am crediting it to "Tong Eng Brothers Ltd" is that there will be future consultation." You see you were able to state so clearly that the £800 was to be held for future consulta- tion with regard to Tong Eng. Do you agree?	Defendant's Evidence
10			D.W.1 James Chia Shih Ching Cross- examination (continued)
	A.	I disagree, to the minds of Mr Potter and Mr Brown, in July, they knew what I was referring to. I continued right through the subsequent correspondence until February 81.	
20	Q.	You have not answered my question. You cannot give evidence on behalf of Mr Potter nor Mr Brown. My question is this. (DPP repeats previous question).	
	A.	No. I do not agree.	
	Q.	Let us go back to P8. Why did you not say at the end of para 2, "a remainder of £400 to be credited to my account which may be utilized in the near future for this purpose"?	
30	A.	The use of <u>the word other</u> is my usage in reference to this subject matter.	
	Q.	One last question on this point. Are you saying, "for other purposes" refers and means the subject matter of the letter? Yes or no?	
	A.	Yes.	
	Q.	<u>Put</u> : It is clear from P8 that you wanted the £400 for yourself to be utilized for your purposes?	
40	A.	The answer is 'No', because at that time I had no other matters except this one.	
	Q.	<u>Put</u> : It is clear from P8 that there was no intention that the remainder of £400 be used for future consultation in connection with the cessation of business of Tong Eng?	
	A.	There are two points to this question. The first regards the £400. The second concerns future consultation. As to the first point, I do not know what is to be	

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District
Court

Defendant's
Evidence

D.W.1
James Chia
Shih Ching
Cross-
examination

(continued)

left over after Mr Potter's fees.
It could be nil. It could be a few
pounds. As to the second point of the
question, I was going to London in May
and I was going to take this opportunity
to discuss with him.

- Q. Being a law graduate yourself and being
in the legal profession, would I'll be
correct to say that you knew many
lawyers in Singapore? 10
- A. I do know some lawyers.
- There are some 800 lawyers. I do not
know all.
- Q. You would have many dealings with Singapore
lawyers as Senior Legal Officer of Inland
Revenue Department?
- A. Yes.
- Q. Do you agree that between lawyers, it is
not unknown for lawyers to waive fees
in connection with private matters of
another lawyer? 20
- A. I am not aware of that practice.
- Q. Have you come across or heard of any
instance where a lawyer has waived fees
in connection with private matters of
another lawyer?
- A. No. In fact I have heard that they have
charged.
- Q. Have you heard of or know of instances
where lawyers waive fees because it
concerns matters of a friend? 30
- A. I may have heard it but I am not positive
that this happens.
- Q. Would you have any reason to disbelieve
what you have heard that lawyers have
waived fees in respect of matters concerning
their friends?

Defence Counsel: If the witness had said that
he had heard lawyers had
waived fee that question is 40
permissible. But this question
presupposes that he knows lawyers
waive fee in respect of friends.
But this question presupposes
that he had heard about it
when his answer was that he
may have heard it.

DPP: I withdraw the question. I will rephrase the question.

In the
District
Court

Q. You said you may have heard. Have you or have you not heard?

Defendant's
Evidence

A. (Pause). You want me to answer 'Yes' or 'No'.

Q. Have you or have you not heard?

D.W.1
James Chia
Shih Ching
Cross-
examination

10

A. In the course of conversation with lawyers in Singapore, some of them did tell me on some occasions, they would either charge very minimal fees or no fees in certain situations.

(continued)

Q. You told us, that when you received P9 from Mr Brown telling you that the fees were waived, you felt embarrassed?

A. Yes.

Q. You also told us in evidence in chief that you thought Mr Potter waived this fees because he thought it was a matter private to yourself?

20

A. Yes. I said I was making an educated guess.

Q. To put it very simply, you thought Mr Potter waived this fees because you were a friend of his and Mr Potter had believed that it was a matter private to yourself?

A. Yes.

30

Q. Were you embarrassed because the matter was in fact not personal to yourself but was your friend's matter?

A. I was embarrassed because he had done me a favour by waiving the fees which I wanted to pay him.

Q. Would you have been embarrassed if this matter was in fact a matter personal to you?

40

A. I still would be because I do not want a free advice from Mr Potter.

Q. If you do not want free advice from Mr Potter not even for yourself, you certainly would not want free advice concerning a matter of your friend's company?

A. Yes.

Q. If that is the case, why did you accept

In the
District
Court

Defendant's
Evidence

D.W.1
James Chia
Shih Ching
Cross-
examination

(continued)

- the free advice?
- A. When I received this letter (P9) I was going to clear up this matter with him when I arrive in London which I did. I explained to him that the cessation was in fact a friend's matter. I left it to him to reconsider this earlier waiver. 10
- Q. You said you asked Mr Potter to reconsider the waiver?
- A. No! No! No! I said I left it to him to reconsider. 10
- Q. But you would have hardly have expected Mr Potter having waive his fee to charge in May in respect of his opinion or did you?
- A. It is a short time between February and May. If Mr Potter wanted to charge, he could have.
- Q. Did you expect him to charge after having waived it? 20
- A. I cannot say yes or no. I left the matter to him.
- Q. Did you not in fact by your letter P10 dated 20th March 80 accept the free advice? I refer you to para 2, "I am indeed grateful to Mr Potter, Queens Counsel, for his kind gesture"?
- A. I did subject to the raising of this point with him in May.
- Q. You kept on insisting on referring to conversation with Mr Potter which he cannot recall. Of course he cannot confirm or deny it. My question is this. Why did you not write to Mr Brown and explain the situation after receiving P9? 30
- A. I was already embarrassed and I was going to clear with him when I arrive in London.
- Q. Do you agree that the reply in P10 is not that of an embarrassed man. The "embarrassed" man thanked Mr Potter for his gesture, noted the high interest in Britain and express his delight if the £800 could be transferred to his own bank account in London? 40
- A. I disagree with you.
- Q. You could have replied and insist on full payment, could you have not?
- A. I could have but I thought an oral explanation would be more appropriate.

Q. You also did not tell Mr Teo that Mr Potter had waived his fees before you wrote Pl0?

In the District Court

A. Yes, I agree.

Defendant's Evidence

Q. Why did you not tell Mr Teo after all, he did give you his company's money?

A. I always treated it as Mr Teo's money.

D.W.1
James Chia
Shih Ching
Cross-examination

10

Q. In these circumstances, why did you not tell Mr Teo that Mr Potter has waived his fees?

A. Mr Teo from the very beginning of the brief left the entire matter to me. This is in the course of using my discretion in transferring the money to earn interest for him. I need not run back to him every time I receive a letter. In fact as the learned DPP has said, I was acting in a quasi-solicitor's position. Solicitors do not run back to their clients every time they receive letters. Or rather, I did mention this waiver to Mr Teo.

(continued)

20

Q. When you mentioned the waiver to him, did you tell him what you have done with the money?

A. Yes. I said I had placed it in my London account.

30

Q. Put: You did no such thing?

A. I did.

Q. Put: If you had done so, Mr Teo would not have believed right until the time of the investigation that the £800 was paid to Mr Potter for his opinion rendered in February?

A. Mr Teo may have forgotten the conversation.

Court: What was Mr Teo's reaction when you told him that Mr Potter had waived his fees?

40

A. He told me to carry on.

Q. What was Mr Teo's reaction towards the news that Mr Potter had waived his fees?

A. He was nonchalant.

DPP continues:

Q. Put: You did not tell Mr Teo in late February that you had not received Mr Potter's bill yet?

A. I certainly did mention there was no bill on the opinion.

In the
District
Court

Defendant's
Evidence

D.W.1
James Chia
Shih Ching
Cross-
examination

(continued)

- Q. Put: You also did not tell him that the £800 was your estimate of the fees?
A. I did in fact. I wrote it on a piece of paper.
- Q. Put: What you did tell Mr Teo after discussing the Queens Counsel's opinion is to show him a note with Mr Potter's name and the figure £800 and at the same time told him to pay the £800?
A. No. I explained that no bill had been received and the £800 would be more than sufficient to cover the opinion. 10
- Q. Put: You told him nothing more than what I referred to in my previous question?
A. I disagree.
- Q. Put: On 7th March, you called him and asked him to arrange for a bank draft of £800 for Mr Potter for his fees?
A. Yes, I asked him to give me a bank draft with Mr Potter's name. 20
- Q. Put: What you asked him to do on 7th March taken in the context of what you had told him earlier in late February was calculated to deceive him to believe that Mr Potter's fee was £800 and was due and payable?
A. I totally disagree and I never had any intention of deceiving Mr Teo which will result in my breaking up friendship with him and Dr Tan, my career, my family's name. I would never do such a thing in such a way. The bank draft was clearly in Mr Potter's name and only for him. If I wanted to deceive Mr Teo, I would have done it in other ways but not in the documented form as suggested by the learned DPP. 30
- Q. Put: Your deception was designed to dishonestly deceived Mr Teo to cause Tong Eng to give you a draft of £800?
A. No. The draft as given by the Industrial Commercial Bank could only be for Mr Potter and no one else. At that point of time, it was despatched to him. 40
- Q. Put: At the highest, you expected Mr Potter to waive his fees if he had believed it was a matter private to yourself?
A. No. The letter of the 10th shows very clearly together with the bank draft that it was to him. 50

	Q.	<u>Put</u> : That is the reason why you told Mr Brown that it was a private matter and not that it concerns a friend's company?	In the District Court
	A.	I disagree. I do not know until told last week by Mr Potter that there was such a custom of waiving fees for family matters as they termed it.	<u>Defendant's Evidence</u>
10	Q.	<u>Put</u> : You had intended to keep the £800 all to yourself?	D.W.1 James Chia Shih Ching Cross-
	A.	I disagree. I am financially sufficient. I need not go around in such a contrivance to cheat Mr Teo.	examination (continued)
	Q.	<u>Put</u> : At the lowest you knew that Mr Potter would accept £400?	
	A.	I did not as borne out in the letter of 10th March.	
20	Q.	<u>Put</u> : You had intended to keep the balance of £400 for yourself?	
	A.	I did not.	
	Q.	<u>Put</u> : It suited you when Mr Potter waived his fees and you took the whole sum for yourself?	
	A.	I did not. I think that is a preposterous suggestion.	
	<u>REXN</u> :		Re-examination
30	Q.	The learned DPP began his cross-examination on the awkwardness you felt in sending the brief to Mr Potter. Can you tell his Honour were you doing Mr Teo a favour?	
	A.	Way back when Mr Teo asked me to assist him in getting ready a brief, I was in fact doing him a favour.	
	Q.	Were you still doing him a favour when you and Mr Teo drafted the brief?	
	A.	Yes.	
40	Q.	We come to the first half of January when you were going to despatch the brief to Mr Potter. You were a Senior Legal Officer?	
	A.	Yes.	
	Q.	You have told us that you and Mr Potter were close friends, closer than the usual barrister and solicitor relationship?	
	A.	Yes, because of my dealings with him over the years.	

In the
District
Court

Defendant's
Evidence

D.W.1
James Chia
Shih Ching
Re-
examination

(continued)

- Q. Did you hold his respect as Senior Legal Officer of Inland Revenue Department?
- A. Undoubtedly so.
- Q. When you despatch the brief to him, you were not doing it as Senior Legal Officer of the department?
- A. Yes.
- Q. Did any particular fact make you awkward or embarrassed? 10
- A. I am awkward and embarrassed as I did not know how to explain this matter which I was about to despatch to him.
- Q. What was the thing that made you feel awkward?
- A. Mr Potter is a good friend of mine in that I had a high regard with his professional expertise and his relationship with myself and his partners. He had always known me as the legal officer of the department. On the other hand, the brief for Mr Teo, a good friend of mine, was already prepared. I had somehow or other to despatch the brief and the document to Mr Potter. I could not at that point of time let Mr Teo down. Looking back, I would say I was in a very unfortunate position. 20
- Q. Let us pause for a moment. Was your embarrassment because as a legal officer you were going to despatch a brief for a private client? 30
- A. Yes.
- Q. If that was the case, when did you first appreciate you were in an awkward position?
- A. When the brief was in front of me.
- Q. At what stage of time when you began to realise the awkwardness?
- A. In January.
- Q. It seems to be common ground that you despatch the brief and you spoke to Mr Brown and either despatch it before or shortly after the conversation? 40
- A. Yes.
- Q. Why did you decide to speak to Mr Brown at that time?
- A. I thought it was more appropriate to explain over the phone to Mr Brown instead of writing a letter to Mr Brown.

	Q.	You thought conversation would be easier?	In the District Court
	A.	Yes, easier for me to explain.	
	Q.	You used the word 'private matter'?	Defendant's Evidence
	A.	Yes.	
	Q.	You have heard Mr Brown giving evidence and his phrase was 'private or family matter'?	D.W.1 James Chia Shih Ching
	A.	Yes.	Re-examination
10	Q.	It is about twenty months after that conversation. I do not suppose you can remember every word you say. Can you remember if you let Mr Brown believe it was a family matter?	(continued)
	A.	I may have left that impression on him although I did not use the word 'family' but it was certainly not a government matter.	
20	Q.	Did you know at that time of the custom of barrister practising in England and elsewhere to waive fees in respect of solicitor's private or family matters?	
	A.	I was not aware.	
	Q.	Still keeping on with the awkwardness and embarrassment, we know you send a draft under cover of P8. After time after the 13th March you received P9 which says that Mr Potter did not wish to charge a fee. Does Mr Potter or Mr Brown in that letter give the reason why Mr Potter does not wish to charge?	
30	A.	There is no indication.	
	Q.	Did you not know upon receipt of that letter that it was the practice of barristers to waive fees in regard to private or family matters of solicitors?	
	A.	No. I did not know of such a practice.	
	Q.	In cross-examination this morning, you said you thought he waived this fees because of your personal friendship with him?	
40	A.	I said I made an educated guess.	
	Q.	When you received that letter, were you embarrassed to read the contents?	
	A.	I was very embarrassed in that I did not expect Mr Potter to waive this fees.	

In the
District
Court

Defendant's
Evidence

D.W.1
James Chia
Shih Ching
Re-
examination

(continued)

- Q. Was this embarrassment after your receipt of P9 more or less acute than the awkwardness or embarrassment experienced by you prior to despatch the brief?
- A. It was certainly more acute and I wanted to clear it up.
- Q. You have told us earlier when you refer to the conversation with Mr Brown before despatching the brief that you felt it easier to explain it in conversation rather than by letter. You had been asked by the learned DPP why on receipt of P9 you did not write to Mr Potter to explain that the instructions were not a matter private to you but was a friend's matter?
- A. Yes. 10
- Q. Can I ask you the same question. Why did you not write after receiving P9?
- A. I knew I was going to London in May. It would be much easier for me to explain to Mr Potter the relationship of this matter to myself and let him reconsider this matter. 20
- Q. When you said it is easier to do it face to face you mean it would be easier rather than write?
- A. Yes.
- Q. In respect of the consultation on 23rd May, what was the foremost thing in your mind? 30
- A. When I arrived in London, I was to meet Mr Potter at the appointed time. When I met Mr Potter, the foremost thing I want to do and which I did was to explain the relationship of cessation of matters in relations to myself. I told him that this matter was a matter concerning a good friend.
- Q. Alright, my learned friend has pointed out that Mr Potter cannot remember your explaining this. Why is it that you can remember this explanation so clearly? 40
- A. That was the foremost thing in my mind when the meeting with Mr Potter began. I wanted to clear it up with him.
- Q. I am going to a new topic. It concerns the shareholdings of Tong Eng. When you were preparing the brief for Mr Teo together with him, part of your scheme as can be seen from the brief was the formation of a new investment company? 50
- A. Yes.

	Q.	You mentioned in the brief and also in reply to my learned friend that the shareholders would have to be same in the new investment company as Tong Eng?	In the District Court
	A.	Yes.	<u>Defendant's Evidence</u>
10	Q.	I do not know if you want the brief before you. It is P5. Does that brief refer to one investment company or two investment companies?	D.W.1 James Chia Shih Ching Re-
	A.	(Accused looks at P5). It is stated in para 18 that one investment holding company is to be incorporated.	examination (continued)
	Q.	Now, did you know the identity of each individual shareholders of Tong Eng at that time?	
	A.	No, I did not. I knew it was only Mr Teo's family people.	
20	Q.	Did it matter who they were provided the same shareholders became the shareholders of the new investment company?	
	A.	It did not matter to me.	
	Q.	To clarify further, you knew of course that Mr Teo was a shareholder?	
	A.	Obviously, he was.	
	Q.	Did you know if his uncle was a shareholder?	
30	A.	At this point (accused points to the brief) in January, I did not.	
	Q.	Alright. And so the brief was despatched. And when the opinion arrived under cover of a letter of 13th February, Mr Potter refers to one investment company. Look at page 4 of the opinion, (i). Does it refer to one company or two?	
	A.	It talks about one.	
40	Q.	Good. When you had discussed with Mr Teo on the opinion, did Mr Teo tell you that he intended to form two investments companies sometime at the end of February?	
	A.	No, we were still talking about one investment company.	
	Q.	Now, again it is common ground that you were both unhappy about Mr Potter's opinion?	
	A.	Yes.	

In the
District
Court

Defendant's
Evidence

D.W.1
James Chia
Shih Ching
Re-
examination

(continued)

- Q. Again it is common ground that you advised nevertheless that he should start implementing the scheme that you suggested?
- A. Yes.
- Q. Do you know the legal firm of S T Kay & Company?
- A. Yes.
- Q. Did you know whether that firm was on Tong Eng's list of solicitors? 10
- A. Yes.
- Q. Did you know Miss Kay personally?
- A. Yes, I do.
- Q. Do you know if Mr Teo also knew Miss Kay personally?
- A. Yes I do.
- Q. Did you advise Mr Teo to use Miss Kay's firm?
- A. I think I suggested. I did not advise.
- Q. Thereafter did you have anything to do with the formation of the company? 20
- A. No.
- Q. Did you have anything to do with the formation of the development company?
- A. No, that was between Mr Teo and Miss Kay.
- Q. Up to about the second week in March, did you know that Mr Teo now intended to form two investment companies?
- A. No. Mr Teo did not tell me that.
- Q. Did you know that Miss Kay formed two investment companies sometime in June? 30
- A. No. I was never told.
- Q. Do you now know who formed Feature company (the development company)?
- A. I was told last week.
- Q. You were told last week?
- A. By Mr Choo Han Teck that he formed Feature and not Miss Kay. That is in 1981.
- Q. So you had no knowledge who formed any of the three companies? 40
- A. Yes.
- Q. Will you turn to D9. It is your case that D9 were notes made by you when you saw Mr Potter at the consultation of the

	A.	23rd May? Yes.	In the District Court
	Q.	Turn to sheet 106. You will see T1 and T2?	Defendant's Evidence
	A.	Yes.	
	Q.	What is the interpretation of T1 and T2?	D.W.1 James Chia Shih Ching Re-
10	A.	Before I left London, Mr Teo suggested to me that he was thinking of two investment companies. T1 and T2 refer to the two investment companies of his family.	examination (continued)
	Q.	Now, that information given to Mr Teo, did it come before or after you suggested that he consulted Miss Kay?	
	A.	After.	
	Q.	So when it was put to you in cross- examination by the learned DPP that you knew in late February or early March about the intention to form two investment companies, is that true or not?	
20	A.	No.	
	Q.	When he suggested you knew who the shareholders were at about that time, is that true or not?	
	A.	No.	
	Q.	I am going to move on to another new subject. You have told us and again it is common ground that you knew about the beginning of January that you were going to be in London in connection with a Privy Council case?	
30	A.	Yes.	
	Q.	Normally, when you were acting as the head of the Legal Department of the Inland Revenue Department, if you had an opinion which was not clear on all points, or which you disagree in part, what would you normally do? I am talking of an opinion of a London silk?	
40	A.	I would either write to him or if I am going to meet him, I would raise these points for clarification with him.	
	Q.	Let us just pause there for a moment. You will either write to him or raise it with him when you met. Do you mean you will raise with him the point which	

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District
Court

Defendant's
Evidence

D.W.1
James Chia
Shih Ching
Re-
examination
(continued)

- you thought was wrong?
- A. I would seek further clarification.
- Q. If the matter was of importance to your Department and you had received an opinion which left you in doubt or with which you disagree, would you just leave it at that or would you attempt to have it clarified?
- A. I would clarify with him immediately.
- Q. Had that been your custom ever since you became the acting Head, Legal Officer? 10
- A. Yes.
- Q. In this particular matter it is again common ground that you and Mr Teo were not happy and you both voiced your dissatisfaction over the opinion?
- A. Yes.
- Q. Now, before you met Mr Teo to discuss that opinion, had you already formed or taken a stand that you would have to clarify the opinion? 20
- A. As shown by the markings by me in the opinion, I thought we have to get further clarification from Mr Potter.
- Q. What I want to know is whether before your meeting with Mr Teo to discuss the opinion, you held the stand that you had to clarify with Mr Potter?
- A. I did.
- Q. In cross-examination, you said you suggested or told Mr Teo that you ought to get clarification from Mr Potter when you went to London? 30
- A. After the discussion with Mr Teo both of us agreed that further clarification had to be obtained from Mr Potter.
- Q. When the learned DPP was putting this case to you about an hour ago, he told you that all that you did was to show him the note and told Mr Teo to pay the £800? 40
- A. Yes, I remember.
- Q. I think your reply was that Mr Teo may not have remembered?
- A. Yes.
- Q. Now, all I want to ask you is this. Why is it that you can remember telling Mr Teo that there should be further clarification with Mr Potter?

	A.	Because I was handling this matter and he left the further clarification to me.	In the District Court
	Q.	You have not answered my question. That does not really answer my question. Listen to my question carefully. My question is why you can remember that at that conversation you told him the need for further clarification?	Defendant's Evidence
10	A.	I was going to London and I was in charge of this matter. To my mind, I am responsible for clarification with Mr Potter.	D.W.1 James Chia Shih Ching Re-examination (continued)
	Q.	It was suggested in cross-examination that the inference was that the idea of consulting Mr Potter on his opinion was as it were something which you suddenly drummed up just before you left for London. Do you remember that?	
20	A.	Yes.	
	Q.	Can you remember if you had mentioned to Mr Potter that there were going to be two investment companies instead of one when you saw him on 23rd May?	
	A.	There were going to be two investment companies.	
	Q.	Listen to my question very carefully. You will answer my question. My question is can you remember if you told Mr Potter that there were going to be two investment companies instead of one?	
30	A.	At the consultation?	
	Q.	At the consultation?	
	A.	There will be two.	
	Q.	Sorry, I have to repeat for the third time. Please listen to my question very carefully. Do you remember telling Mr Potter that there was going to be two investment companies instead of one?	
40	A.	Yes, I can remember.	
	Q.	You already told us that that information was given to you was between the time you suggested Miss Kay's name and the time you left?	
	A.	Yes.	
	Q.	Did you prepare notes for Mr Potter or questions you were going to put to him?	
	A.	Yes I did.	

In the
District
Court

Defendant's
Evidence

D.W.1
James Chia
Shih Ching
Re-
examination

(continued)

Q. Was there any significance anything to be gained by suddenly spring on Mr Teo a suggestion that you should see Mr Potter at the last minute?

A. None whatsoever.

Q. If you had intended to deceive Mr Teo and so get hold of £800 would having a consultation with Mr Potter had in any way assisted in such deception?

A. To the contrary, I would not have the consultation.

10

Q. Would you explain that answer more fully?

A. The consultation will incur further fees which I will be responsible for payment. Without the consultation the £800 will be with me.

Witness stands down.

Intld: S K K

Court' adjourns for lunch.

Court resumes.

20

DW1: (recalled for continuation of re-examination) (on former oath)

Q. During the cross-examination, the learned DPP raised the issue of whether or not it is your practice when acting for the Government and on seeking further consultation to send in advance of such meeting either papers or by letter indicating the matter which you will discuss? Do you remember that?

A. Yes.

30

Q. Have you consulted Queens Counsel in London after having had an opinion on the matter to be discussed?

A. Yes.

Q. When you had so consulted, were there occasions when you wrote to them or sent letters indicating the matter to be discussed?

A. Yes.

40

Q. Were there occasions when you did not send letters or papers indicating the matter to be discussed?

A. There were.

	Q.	On the occasions when you did not send paper or wrote, why did you not do so?	In the District Court
	A.	That would be when I was going to see counsel immediately after the first opinion given and the matter will still be fresh in the counsel's mind.	<u>Defendant's Evidence</u>
			D.W.1 James Chia Shih Ching
10	Q.	How would you view a period between February and May?	Re-
	A.	That would be immediate.	examination
	Q.	When you attended counsel, how do the consultation go?	(continued)
	A.	We would review the brief and the opinion granted by the counsel. I would either point out my observation of this opinion wherein I disagree with him and we would discuss in detail with authorities supporting the point raised. Counsel may raise further facts for clarification from me. I would try to bring him up to date. Thereafter any view points for further discussion arising out of this opinion would be discussed by us.	
20			
	Q.	Without going into details, is that how the matter went before Mr Potter on 23rd May in general?	
	A.	That was how it went.	
30			
	Q.	You recall having asked you why you had not send instructions or letter, you were referred to P40 which was the letter written by you to Mr Rippon's clerk. You were asked to explain why it was in that letter and on that occasion, you sent him documents getting up prior to your attendance and you gave an explanation and at the end of it the learned DPP said what was the difference. In both cases both Mr Potter and Mr Rippon were senior counsel and you said 'yes'. He said both involved Singapore Law and you said 'yes'. In both cases, you were acting as a solicitor. And you said 'yes'. Then you went on to say but there is a distinction but you did not tell us what that distinction was. Now, perhaps you can tell us now what the distinction was?	
40			
	A.	As the title of the letter to Mr Rippon shows, it is a hearing case and was due for hearing on 3rd June.	
50			

In the
District
Court

Defendant's
Evidence

D.W.1
James Chia
Shih Ching
Re-
examination

(continued)

- Q. Just pause there. In the first place, Mr Rippon's case was a hearing?
- A. Yes.
- Q. Read second line, second para. Is that what you sent?
- A. Yes.
- Q. Is that one of the differences you were referring to?
- A. Yes.
- Q. Have you previously sent getting up notes to counsel in advance of hearing either in an appeal case in Singapore or an appeal case in London? 10
- A. Yes.
- Q. And you know why it has to be sent?
- A. In London, before the hearing begins, counsel acting for both parties would exchange authorities before the date of hearing.
- Q. Did you sent authorities? 20
- A. In this matter?
- Q. Yes.
- A. Yes I did.
- Q. I am referring in particular to getting-up. Do you normally as a solicitor send notes on getting-up to counsel?
- A. In a hearing matter?
- Q. In a hearing matter?
- A. Yes, yes, yes.
- Q. Now, on several occasions the learned DPP when referring to P8 and the words 'other purposes' (the last two words of para 2) and again P12 the words 'future consultation', the learned DPP referred to a series of consultation. First of all looking at P8, what did you envisage you might have to consult Mr Potter on? 30
- A. The consultation which I had in Kay.
- Q. That was what you had in mind? 40
- A. Yes.
- Q. In P12, "future consultation" what had in you mind?
- A. This would be the feasibility program for Mr Potter's approval.

	Q.	Assuming Mr Potter had approved the programme, would you have envisaged anything else?	In the District Court
	A.	I do not think so.	
	Q.	So that the series consultation would only be one consultation and a letter with the feasibility studies?	<u>Defendant's Evidence</u>
	A.	Yes.	D.W.1 James Chia Shih Ching Re-
10	Q.	Now, you will recall you were asked when you received the fee note for the consultation of May 23rd, either on 5th June or 6th June, you were asked why you did not pay the £450 straight away if indeed to use my learned friend's phrase "if indeed it was your intention to pay". Can you remember that?	examination (continued)
	A.	Yes.	
20	Q.	First of all, how do you normally pay a bill?	
	A.	By a cheque through my checking account.	
	Q.	Leaving aside what happened in this particular matter, have you ever wanting to pay the bill having written to or having spoken to the person to whom you were going to pay asking him to get in touch with your bank and at the same time writing to your bank asking your bank that when Mr So and So present a certain letter, the bank is to pay £X? Have you done that?	
30	A.	Up to that point no.	
	Q.	What is the purpose of having a cheque book and the facility to draw cheques?	
	A.	That is wh t a checking account is for.	
	Q.	Exactly. Now it is pointed out by the learned DPP that nevertheless you used this very complicated method to pay Mr Brown at the end of July?	
40	A.	Yes.	
	Q.	You were asked why you could not use that mode of payment at the time you received the fee note?	
	A.	Yes.	
	Q.	Do you remember that you went to the bank and paid in £120 on the day you left London?	
	A.	No.	

In the
District
Court

Defendant's
Evidence

D.W.1
James Chia
Shih Ching
Re-
examination

(continued)

Q. Cast your mind back to £120. Where
about was the Midland Bank?

A. Along the Strand.

Q. I take it that Mr Potter's Chambers
would be in the Temple area?

A. Yes.

DPP: I am objecting to it. That it is leading.

Defence Counsel: I am not leading.

Court overrules objection.

Q. You told us the bank was in the Strand?

10

A. Yes.

Q. Did you visit Mr Potter's chambers
and then the bank or the bank before
visiting Mr Potter?

DPP: Objects to the question.

Defence Counsel withdrawn question.

Q. Did you see Mr Potter on the day
you left for Singapore?

A. Yes, I went to 4 Pump Court and I saw
Mr Brown.

20

Q. Was it in the morning or afternoon?

A. Later part of the morning.

Q. On the same day did you go to the bank
to deposit the £120?

A. Yes, I did.

Q. If you go from Swiss Cottage to Temple,
do you past the Strand?

A. The taxis would pass the Strand.

Q. Did you visit the bank and see Mr Potter
in the same journey?

30

A. Yes. I went to the bank first. From
there I walked down to 4 Pump Court.

Q. Which is at the bottom of the Strand?

A. Yes.

Q. Did you know the amount of the fee note
from Mr Brown before it was handed to
you that morning?

A. No.

Q. Did you look at the fee note whilst in
Mr Brown's office or shortly thereafter
to see the amount of the fee note?

40

	A.	Yes I saw the amount on the fee note.	In the District Court
	Q.	You must have seen it was for £450?	
	A.	Yes.	<u>Defendant's Evidence</u>
	Q.	Did you have £450 in your checking account at that time?	
	A.	No. It was less.	D.W.1 James Chia Shih Ching
	Q.	Could you therefore drawn a cheque on your checking account there and then?	Re-examination
10	A.	No. The cheque would bounce.	(continued)
	Q.	You told us that on 3rd July after your return to Singapore, you wrote to the bank asking them to transfer £450 from your deposit account to your checking account?	
	A.	Yes.	
	Q.	You told us th t in due course you received a letter dated 9th July from your bank informing you that you had now transferred £450 from your deposit account to your checking account?	
20	A.	Yes.	
	Q.	You told us the investigation started on the 9th July and that amongst other things, your Midland Bank cheque book was seized?	
	A.	All my cheque books were seized.	
	Q.	Were you able therefore to pay the fee note in the normal way by cheque after 9th July?	
30	A.	Without the Midland Bank cheque book I was unable to issue any cheques.	
	Q.	You have told his Honour that you consulted your counsel on the 19th July?	
	A.	Yes.	
	Q.	19th July is a Saturday?	
	A.	Yes.	
	Q.	You told us you saw counsel over the weekend?	
40	A.	Yes.	
	Q.	Can you tell us in brief what did you tell counsel?	
	A.	That morning of the 19th July, I was in a state of astonishment and as well as	

In the
District
Court

Defendant's
Evidence

D.W.1
James Chia
Shih Ching
Re-
examination

(continued)

depression when I saw Mr Cashin. I said the CPIB for the past four days from 9th -12th (the previous week) they interrogated me on various matters and for very long hours. At that period of time, the focus of the investigation was on the two sums which appeared in the first trial as well as other allegations of gifts to me from friends.

- Q. At that stage, did you produce any document at all? 10
A. I was not able to because all the papers had been seized.
- Q. After you had referred to the allegation of gifts received by you from friends were you asked by me about anything?
A. Mr Cashin asked me whether I was holding any sums of money as opposed to gifts on behalf of anyone. I told Mr Cashin about the Tong Eng matter and the £800. 20
- Q. You said you were advised to give back the £800?
A. Yes.
- Q. You were asked by the learned DPP whether you asked for any explanation as to why you should pay back the £800 if your intention was innocent?
A. Yes.
- Q. Why did you not ask me why I advised you to return the £800? 30
A. I was told by Mr Cashin to put the £800 back to Mr Potter's hand.
- Q. Did I say anything about the matter?
A. Yes.
- Q. What was said?
A. Mr Cashin said, 'For God sake send the money back to Mr Potter because it will look infinitely worst in your hands'.

Defence Counsel: The accused has been in the box for a whole week. I reckon 40 I will need another morning to complete my re-examination. May the matter be adjourned.

DPP: I leave it entirely in your Honour's hand.

Court grants application.

For further hearing 30th October 81.
7th November 81 and 14th November 81.
Bail extended.

In the
District
Court

Sd: Soon Kim Kwee

Defendant's
Evidence

Friday, 30th October 1981
In Open Court
Before me
Sd: Soon Kim Kwee
District Judge
Subordinate Courts

D.W.1
James Chia
Shih Ching
Re-
examination
(continued)

10

DAC 4624-5/80
IT 2421-2

PP vs James Chia Shih Ching

Sec 406 Cap 103 (2 counts)

Alt. charge . Sec 420 Cap 103
Sec 6(2) (a) pu Sec 94(2)
IT Act (2 counts)

Prosecuting Officer: DPP Mr Fong Kwok Jen
assisted by Mr Kelvin Lim.

20

Defence Counsel: Mr H E Cashin assisted by
Mr Choo Han Teck.

DW1: (recalled for continuation of re-examination)
(on former oath)

Q. I am still dealing with the 19th July. In
respect of Mr Teo's matter, did you bring
up the question of expenses?

A. Yes. It was discussed with Mr Cashin.

Q. Did you go into details at all?

A. At that stage no.

30

Q. During the cross-examination, it was put
to you that the question of expenses was
thought of by you after November of that
year. Is that true?

A. It is completely untrue.

Q. When you mentioned generally about the
expenses on 19th July, were you given
any advice about it?

A. The advice given by Mr Cashin was to settle
with Mr Teo when investigation was over
but in the meantime transfer the £800 to
Mr Potter as quickly as possible.

40

In the
District
Court

Defendant's
Evidence

D.W.1
James Chia
Shih Ching
Re-
examination

(continued)

- Q. Did you mention the fee note of £450 as part of the expenses?
A. I do not think I did because there was a host of other matters.
- Q. You were advised to place the £800 with Mr Potter without deduction of any expenses?
A. Yes.
- Q. Was any reason advanced for transferring the £800 without making any deductions?
A. The reason given by Mr Cashin was that "if you don't do it, the worst possible construction would be placed on you." 10
- Q. When did you next see the CPIB?
A. 22nd July.
- Q. In relation to the paying back of £800 to Mr Potter, did you do anything about it and if so when?
A. Yes. I took steps immediately to transfer the £800. On 21st July, I saw a close friend and requested him to deposit £500 into my Midland Bank deposit account. He agreed. On 24th, he told me that the £500 had been deposited into my Midland Bank account. I told Mr Cashin that I had carried out the transfer of funds. On 24th July, I wrote the letter to Mr Brown that he will be hearing from Mr Mahoney of Midland Bank that the £800 was waiting for him to collect. 20
- Q. You saw the CPIB from 22nd practically everyday?
A. Yes. 30
- Q. Whilst you were being investigated, did you see me?
A. I saw Mr Cashin every morning at about 7.30.
- Q. Where would this be?
A. In the office of Messrs Murphy & Dunbar before I go to CPIB. During the mornings of the discussion, I briefed him what has been covered the previous day with the officers of the CPIB. 40
- Q. When was the first time that the CPIB raised the matter about Mr Teo?
A. They touched in general on the 22nd.
- Q. When was the next time they came to this point?
A. It was on 2nd August when they went into greater detail.

	Q. The 2nd August 80 was a Saturday?	In the
	A. Yes.	District
		<u>Court</u>
	Q. Have you checked?	
	A. Yes. It was a Saturday.	Defendant's
		<u>Evidence</u>
	Q. When was the next time that you saw Mr Cashin after the 2nd August?	D.W.1
	A. On the morning of 4th August (Monday).	James Chia
		Shih Ching
	Q. On that morning, did you tell me that you had been interrogated over Mr Teo's matter in more detail?	Re-
10	A. Yes.	examination
		(continued)
	Q. Did the question of Mr Teo's knowledge of whether Mr Potter had charged for the opinion, was that discussed that morning?	
	A. Yes.	
	Q. Can you recall what you told Mr Cashin in relation to that point?	
20	A. I told Mr Cashin that the matter was brought up by me with Mr Teo on a social occasion that Mr Potter had not charged for the opinion.	
	Q. You wrote a letter on 4th August 80 (P37). Was the question of writing a letter raised on that morning?	
	A. Yes.	
	Q. Tell us why that letter came to be written?	
30	A. Mr Cashin told me that I had to inform Mr Teo that the £800 is now with Mr Potter.	
	Q. Does that account for the first para of that letter?	
	A. Yes.	
	Q. And second para. How did that come to be written?	
40	A. At that point of time, the question of going back to Mr Potter for further consultation on the feasibility programme was academic because of the investigation. Thus, it was phrased to ask Mr Teo whether he wanted the £800 back. Can I say one more thing. I did not mention about the waiver of £800 by Mr Potter, I am sorry the fees for the opinion, because I had already mentioned to him.	
	Q. Who drafted that letter?	

In the
District
Court

Defendant's
Evidence

D.W.1
James Chia
Shih Ching
Re-
examination

(continued)

- A. I did it myself.
- Q. Was the question of drafting the letter a source of discussion when you saw me?
- A. Yes. In fact, all the letters from the 24th July onwards were drafted by myself with the knowledge of Mr Cashin.
- Q. Was what was said in the letter discussed before you wrote them?
- A. Yes.
- Q. Now, there is a letter dated 18th August (P14). When that letter arrived, was it discussed? 10
- A. Yes, it was discussed with Mr Cashin and the question of expenses was brought up as well.
- Q. This letter mentioned the £450 and the £350 be allocated to the Nakhoda matter?
- A. Yes.
- Q. Did you tell Mr Cashin about the Nakhoda matter after receiving P14? 20
- A. Yes.
- Q. Did you mention if you had received a fee note in respect of the Nakhoda matter?
- A. Yes.
- Q. Did you tell me what had happened to the fee note?
- A. I said that I handed the fee note to Mr Kwee.
- Q. Of Nakhoda?
- A. Yes.
- Q. For payment? 30
- A. Yes, on about June on my return. As I am not responsible for the payment of the £350.
- Q. With regard to the suggested deduction of £450, was that discussed?
- A. Yes.
- Q. What was decided?
- A. In fact the fee note of £450 was discussed with Mr Cashin before the letter dated 4th August was written. 40
- Q. Yes what happened?
- A. When it was discussed on 4th August, I said I had to settle the fee note of £450 for Mr Teo. I asked Mr Cashin whether I should inform Mr Teo that there should be a

deduction of £450 from the £800.
Mr Cashin advised not to deduct but
to transfer the full £800 to Mr Brown.
Mr Brown can do the adjustment if
he wishes to.

In the
District
Court

Defendant's
Evidence

Q. When you received P14, what was
decided?

A. I replied to Mr Brown that he is
permitted to deduct the £450 from the
£800 but not the £350.

D.W.1
James Chia
Shih Ching
Re-
examination

Q. And what you decided to write to
Mr Brown was a subject of agreement
between you and Mr Cashin?

A. It was.

(continued)

Q. Now, as a matter of course, was there
an occasion when the letter of 4th
March and the payment of £800 to Mr
Potter, was that brought up by the
CPIB?

A. The CPIB told me that they had been
to London round the later part of August
and they showed me a copy of the letter
dated 24th July (P12). I said I wrote
the letter on instruction of Mr Cashin
to transfer the £800 to Mr Brown. I
believe they were furious with the
advice of Mr Cashin.

Q. Thereafter, as letters were received
by you from Mr Brown and Mr Potter,
were they shown to me?

A. Yes.

Q. Before you wrote to the bank or to
Mr Brown, was the contents of the letters
discussed before writing?

A. Yes, the contents were discussed before
the letters were sent.

Q. I want to refer to the fee note handed
to you on 6th June by Mr Brown. Can you
explain what happened before writing the
letter (P17) returning the fee note?

A. I mentioned to Mr Cashin that the fee
note was not properly entitled.

Q. Just pause there. When you say it was
not properly entitled, was it entitled
the same as the opinion?

A. No, it was'nt. The brief which was sent
referred to cessation of business but not
the title in the fee note.

In the
District
Court

Defendant's
Evidence

D.W.1
James Chia
Shih Ching
Re-
examination

(continued)

- Q. And what was decided to be done?
A. Mr Cashin left it to me to make the necessary corrections so that the matter will be placed in the proper perspective as the original matter.
- Q. Is there anything else you would like to raise?
A. Yes.
- Q. What else?
A. The question of expenses. I would like to say that the question of expenses has been foremost in my mind in my discussions with Mr Cashin. Even at this point when the letter of 4th August was written I consulted Mr Cashin as to whether I should raise it with Mr Teo. He said, "No, you can settle with him when investigation is over." He added, "if you were to deduct any of the expenses against the £800, the authorities will also place the worst possible construction on that matter." 10 20
- Q. It has been suggested to you that you must have a remarkable memory to wait till the end to settle the account without any records. Have you any comment on that?
A. Yes. There are very few items on the expenses. I could easily remember them. In the settlement of account with Mr Teo, I would present a round-up figure to him. A round-up figure means not to the detail of dollars and cents because of close friends and my dealings with other close friends. This is my practice. 30

(Accused returns to the dock).

Case for the Defence.

Mr Cashin: I have been in Hohore since the last time I saw your Honour. This being a long drawn case and I need to go through the notes. I am not prepared to submit now. May the case be adjourned to Saturday week. I will take two or three hours. My learned friend has no objection. 40

DPP: I am prepared to make my final submission.
Court grants application for adjournment.
For further hearing 7th November at 9.30am

Bail extended.

Sd: Soon Kim Kwee

In the
District
Court

Defendant's
Evidence

D.W.1
James Chia
Shih Ching
Re-
examination

(continued)

No. 4

DEFENCE ORAL SUBMISSION

No.4

Defence oral
submission
7th November
1981

Saturday, 7th November 1981
In Open Court
Before me
Sd: Soon Kim Kwee
District Judge
Subordinate Courts

10

DAC 4624-5/80
IT 2421-2

PP vs James Chia Shih Ching

Sec 406 Cap 103 (2 counts)

Alt. charge Sec 420 Cap 103
Sec 6(2)(a) pu Sec 94(2)
IT Act (2 counts)

Prosecuting Officer: DPP Mr Fong Kwok Jen
assisted by Mr Kelvin Lim.

20

Defence Counsel: Mr H E Cashin assisted by
Mr Choo Han Teck.

Mr Cashin: I must apologise for not been able
to tender the written submission until
now. I have four other points to make.
I shall first read the submission.
(Defence Counsel reads). (Defence
stops at P8). I stress that the
cheating alleged is on 7th March 81.
The Prosecution have to prove that

In the
District
Court

No.4
Defence Oral
Submission
7th November
1981

(continued)

the offence was committed on that day. The accused must have the intention to cheat at that time of course he might have framed the intention earlier but he must still have that intention on that day. It is common ground, that a person's intention can be gleamed from what he said before, at the time or after the event. Likewise his intention can be gleamed from his conduct before, at the time and after the event. Indeed we ourselves will be looking at events before, at the time and after the event. Again so far as the events previous to the 7th March are concerned, it is perfectly clear that the idea of taking advantage of the tax advantage of a re-construction was that of Mr Teo. It is not something drummed up by the accused. Again, it was Mr Teo who approached the accused. Admittedly, it was the accused's idea to get a Queens Counsel but on that no one has suggest that to be dishonest. Again the fact that the opinion received was a "Yes - No" opinion was not the doing of the accused. Now I am going to read the evidence relating to the suggestion of the £800.

(Defence Counsel reads P8). (Defence Counsel pauses at P10). Mr Teo's version is a potted one. It cannot be that after discussing the opinion together and both the accused and Mr Teo concluding that the opinion was a 'Yes' and 'No' answer, and then out of the blue the accused produced a note showing a fee of £800. It simply does not stand to reason. Mr Teo must have realised that the note is not a bill. It seems unbelievable that Mr Teo should not have said "Has he told you" or something like that. (Defence Counsel continues to read from P.10 under heading 'Events on the 7th March'. Defence Counsel stops at end of P.10). I suggest it cannot be read into that evidence any inducement or deception. The evidence of Mr Teo in the examination in chief referred to the £800 as fees. There is nothing to show the £800 is for the opinion only. I think this is very highly significant. It is only in re-examination that he says it. (Defence Counsel reads P.11). (Defence Counsel reads P.12). I suggest the accused version is more probable. (Defence Counsel pause at P.19). In the accused's past

consultation with Queens Counsel, he was acting for the Government and the Queens Counsels know that they would be paid. But in Mr Teo's matter, for the first time, the accused was wearing a new hat of guess - advocate & solicitor for the first time in seeking Queens Counsel's advice. It is not that he doubts Mr Teo's ability to pay. What he is doing is to ensure that in this private matter, he has the money in hand. Hence the anxiety. It is a perfectly normal anxiety. Any solicitor will take the money in hand. If it is a deception to ask for a fee in advance, then the whole of the profession must be guilty from time to time. (Defence Counsel finishes reading his written submission). During the Prosecution's case, they never produce or make any reference to D7. That was the letter written on 6th July 81. When the accused wrote to Midland Bank asking for £450 to be transfer from the saving account to the checking account. I am not for a moment suggesting anything ulterior but the significance had been missed out. The significance of the letter is this. On 6th June the accused was given a fee note for the further consultation and it was for the identical sum of £450. The learned DPP asked the accused why he did not pay the £450 while in London, he answered that he did not have £450 in his saving account. On his return to Singapore, he wrote to the bank asking them to transfer the very £450 to his checking account. In my submission, it is clear his intention was to pay the £450 to Potter but for the start of the investigation but for the investigat on on 9th July. The bank wrote on 9th July to say he had transferred the money. In the meantime, on 9th July, the accused had ceased his payment including his cheque book. So he was unable to pay Potter the £450 as he had clearly planned to do. This discloses the accused had no intention of cheating at all. The £800 was put back into Mr Potter's hands to show that the accused had not intended to use had no intention. If your Honour accepts that the accused was acting on counsel's advice after 19th July then the conduct of the accused after that date should not be given any significance particularly the letter written to Teo in August. If the accused intended to cheat why on earth should he ask Teo for a draft in Potter's name thereby making it infinitely difficult for him to get hold of the money. Only Potter could make use of the draft. If what the Prosecution say is correct

In the
District
Court

No.4
Defence Oral
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7th November
1981

(continued)

In the
District
Court

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Defence Oral
Submission
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1981

(continued)

that he wanted to cheat Teo or his company. The fact that he had asked for a draft shows he had no intention of cheating at all. The next point I wish to make has reference to the charge. What is the point of putting the money in Potter's hand when it is not going to benefit the accused. The whole scheme is absurd. There can be no gain by Potter or no loss because Potter was not going to use the money. The last point I wish to make is this. It is for the Prosecution to prove that the accused cheated. When Teo first talked to the accused about the cessation provision, the accused was the Senior Legal Officer of the Inland Revenue Department. He was respected and there was nothing to suggest he was nothing than he was a capable officer. His bond ended on July 80. I am not suggesting the accused intended to leave service but there are many instances that the thought of going into private practice was in his mind. I am suggesting that he had advised Teo and Nakhoda to cement the good relations he already had so that if he left service, his friends would rally round him. Is it conceivable that the accused would want to cheat the very persons who could help him when he goes into private practice? If one look at his financial standing, his salary and had reached the top job in his department, is it likely that anyone would risk everything for a mere £800? If he is accused of cheating a sum of ½ million dollars, I cannot put forward this argument. I have left this to the last as I think it is the most important point. I would ask your Honour to discharge the accused.

For further hearing 14th November 81
at 9.30 am
Bail extended.

Sd: Soon Kim Kwee

In the
District
Court

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Defence Oral
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DPP: The accused could not explain why the advice were given. The question is what his instructions to the counsel were. He could have lied to us as much as he had lied to his counsel. It must be realised that the accused has considerable legal experience. Yet he does not know the reasons.

(continued)

Mr. Cashin: I must point out that in respect of the transfer of the £800 the accused said that I advised him to do so as the holding of the money would look worst for him. 10

DPP: On that point, I asked him why the holding of the £800 would look infinitely worst. He has not been able to give an explanation. All he said was he was acting on counsel's advice. That was the most convenient way out by hiding behind counsel's advice. 20

Court adjourns for 10 minutes.

Court resumes.

No.5
Conviction,
Plea of
Mitigation
and Sentence

No. 5

CONVICTION, PLEA OF MITIGATION
AND SENTENCE

Court: Accused is found guilty of the charge and is convicted.

Previous Conviction: Nil

Mitigation: (Mr Cashin) 30

The investigation started on 9th July. The accused was suspended from office and has received no pay for the last 15 months. A conviction of this nature has a far more devastating effect on a professional like the accused than on a non-professional. He will not be able to follow his chosen career. This case has attracted a lot of publicity, the accused has suffered very heavily long before conviction. 40

Sentence: 1 day imprisonment and fine
\$3,000 in default 3 months
imprisonment.

In the
District
Court

Intld: S K K

No.5
Conviction,
Plea of
Mitigation
and Sentence

Defence Counsel: In anticipation of your
Honour findings, I have
been instructed to prepare
a notice of appeal.
May I ask for bail to be
extended.

(continued)

10

Court: Application is not granted.

Intld: S K K

The other two cases to fix for mention on
21st November 81, 9.00 am, Court 26.

Sd: Soon Kim Kwee

TRUE COPY
Sd: Soon Kim Kwee
District Judge

20

No. 6
PROSECUTION SUBMISSIONS

No.6
Prosecution
Submissions
3rd October
1981

PP v JAMES CHIA SHIH CHING
DAC NO. 4624-25 OF 1980

OPENING ADDRESS

1. The accused was a senior civil servant
with the Inland Revenue Department. He was
legally qualified and was head of the Legal
Department of the Tax Office.

30

2. In 1977 or thereabouts, the Accused came
to know one Dr Tan Poh Lin, a banker and the
deputy chairman of the Industrial Commercial
Bank. In due course and through Dr Tan he
became friends with one Mr Teo Tong Wah.
Mr Teo was a director of Tong Eng Brothers Pte

In the
District
Court

No.6
Prosecution
Submissions
3rd October
1981

(continued)

Ltd (the company). Tong Eng Brothers Pte Ltd. was incorporated in 1960 by Mr Teo Thye Chor, (the father of Mr Teo Tong Wah), and his brother Mr Teo Thye Hong. By the relevant time, Mr Teo Thye Chor had passed away and Mr Teo Tong Wah, his brother and sisters held one-half of the equity shareholding with the other half held by Mr Teo Thye Hong and his family.

3. Mr Teo Tong Wah will tell the court that in 1976 his company embarked on a building project which we now know as Tong Eng Building at Cecil Street. The project was completed in 1979 and some of the office units were sold. The management of Tong Eng Brothers Pte Ltd foresaw that largely as a result of the development of Tong Eng Building the company will in 1979 and 1980 realise substantially more profits than it had hitherto. The company being incorporated before 1969, it may under certain circumstances seek advantage of the cessation provisions of the Income Tax Act should it cease its operations. The management of the company including Mr Teo was aware of this and having in mind the substantial increase in profits which is likely to accrue in 1979 and 1980 began to consider whether they should seek advantage of these provisions. 10 20

4. By October 1979, Mr Teo knew the Accused well and he spoke to the Accused and asked him whether the company can seek advantage of the cessation provisions. In December 1979, the Accused suggested to Mr Teo that his company should consult a Queen's Counsel and he asked Mr Teo to prepare a brief for this purpose. Mr Teo told the Accused that he nor any employee of the company has the expertise to prepare such a brief and he asked the Accused to prepare it. The Accused agreed. 30

5. Around Christmas in 1979, the Accused showed Mr Teo a brief he had prepared and after going through the brief, Mr Teo agreed with it. 40

6. Evidence will be led from Mr Wan Fook Hoy, the Deputy Commissioner of Inland Revenue that on 22 Nov 79 the Accused took from the Inland Revenue registry, the tax file on Tong Eng Brothers Pte Ltd. He did not return the file till the 2 Jan 80. The inference the prosecution will urge is that this is not unconnected with the brief which the Accused was at that time preparing for the company. He has at that time no dealings in an official capacity with the taxation of the company. 50

7. The prosecution will also call Mr D C Potter and his clerk, Mr Anthony Brown. Mr Potter was on several occasions in the past consulted by the Tax Office and he and Mr Brown were known to the Accused.

In the
District
Court

8. On 14 Jan 80, the Accused wrote to Mr Brown enclosing the brief for Mr Potter's opinion. Mr Potter gave his opinion on 14 Feb 80.

No.6
Prosecution
Submissions
3rd October
1981

(continued)

10 9. The Accused saw Mr Teo and explained to him the Queen's Counsel's opinion. Mr Potter has cautioned that there are some difficulties which need to be overcome before Tong Eng Brothers can seek relief under the cessation provisions. The Accused expressed his disagreement with the QC and Mr Teo himself felt unable to agree fully with the QC's advice. During that meeting the Accused also told Mr Teo that Mr Potter's fees was £800 and gave him a note to that effect though this note has since been lost by Mr Teo.

30 10. On 7 Mar 80 in the afternoon the Accused called Mr Teo and told him that he was going to the Industrial Commercial Bank. He did so to remind Mr Teo that the company has yet to settle the Queen's Counsel's fees. As a result, Mr Teo believing the matter to be of some urgency called Dr Tan Poh Lin and arranged with him to prepare a bank draft for Mr Potter in the sum of £800 and to debit the company's current account with ICB. Evidence will be led that at this juncture, Mr Potter's fees had yet to be determined and were not due nor payable.

40 11. We have no direct evidence that the Accused collected the bank draft himself but certainly it came into his hands. He posted the draft to Mr Brown. A copy of the debit memorandum which accompanies the draft was recovered from him by Mr Yong Ser Hiong, the Deputy Director, CPIB, during the investigations. By a letter dated 10 Mar 80, the Accused wrote to Mr Brown as follows :-

"Dear Tony,

RE: CESSATION OF BUSINESS SECTION 35 OF
THE INCOME TAX ACT

I am in receipt of the opinion of Mr Charles Potter a week ago on the above.

I believe the average fees charged by

In the
District
Court

No.6
Prosecution
Submissions
3rd October
1981

(continued)

Mr Potter is £400 with zero VAT.
I attach herewith a bank draft for
£800 leaving a remainder of £400 to
be credited to my account which may be
utilised in the near future for other
purposes.

Thank you.

Yours sincerely,

JAMES S C CHIA "

12. Mr Potter will give evidence that he
thought that the opinion concerned a family
matter of the Accused and it has been his
practice for many years of not charging a
solicitor any fee in any matter concerning
his family. In accordance with this practice
he decided against charging in this matter.
His clerk, Mr Brown accordingly wrote to the
Accused as follows :-

10

"Dear Mr Chia,

CESSATION OF BUSINESS SECTION 35 OF THE
INCOME TAX ACT

20

I thank you for your letter of 10th
March 1980 enclosing your cheque for
£800.

I have credited your account with
this full figure because Mr Potter
does not wish to charge anything for
the opinion in the above matter.

I hope you are keeping well and look
forward to seeing you again soon.

30

Yours sincerely,

TONY BROWN "

13. On 20 Mar 1980 the Accused replied to
Mr Brown's letter of 13 Mar. He wrote as
follows :-

"I thank you for your letter of 13 Mar 80
on the above.

I am indeed grateful to Mr Potter, QC,
for his kind gesture.

In view of the high interest rates
prevailing in Britain, I would be
delighted if you could kindly transfer

40

the £800 to my external deposit account in Midland Bank Limited, 82 Strand Branch, 82 Strand London, WC2R OEH. My deposit number is 23027554 under the name of S.C.J. Chia. Kindly effect the transfer before 1st April.

In the District Court

No.6
Prosecution Submissions
3rd October 1981

10 I enclose herewith 2 photographs of Mr Potter taken by me when he was in Singapore in October. Kindly forward it to him.

(continued)

Thank you. "

In accordance with the Accused's instructions, Mr Brown credited the bank draft into the Accused's deposit account with the Midland Bank.

20 14. Mr Teo will give evidence that he and his company did not know Mr Potter had waived his fees and were unaware that the Accused had credited the company's bank draft into his (the Accused's) bank account.

30 15. Though it is not directly relevant to the prosecution's case, I should nevertheless mention that towards the end of May and early June, 1980, the Accused went to London to attend the Privy Council in connection with a tax proceeding. Just before he left for London, he suggested to Mr Teo that he should take this opportunity to consult Mr Potter in conference to clarify certain points in Mr Potter's opinion. Mr Teo agreed to his suggestion. The Accused saw Mr Potter for an advice in conference on the 23 May 80 and he returned to Singapore on or about the 7 June 80.

40 16. Mr Yong Ser Hiong will give evidence that investigations began on the 9 July 80. On that day, the Accused was asked by him to assist the Bureau in their investigations. The investigations were multi-faceted and it was only on 22 July 1980 that the Accused was questioned by him on matters connected with the present charges.

17. On 24 July 80, the Accused wrote to Mr Brown :-

"Dear Tony,

I have written to Mr Mahoney, Manager of Midland Bank, Strand Branch, The Strand, to transfer £800 from my account number

In the
District
Court

No.6
Prosecution
Submissions
3rd October
1981

(continued)

23027554 to you. Kindly credit this £800 to the account of "Tong Eng Brothers Limited - for future consultation". Kindly call Mr Mahoney immediately. I have given your phone number to him- I attach a letter of authority for you to show to Mr Mahoney. The reason I am crediting it to "Tong Eng Brothers Limited" is that there will be future consultation. Please do it immediately. Send all letters to my home address.

10

Sincerely,

JAMES CHIA "

18. On the 4 August 80 he wrote to Mr Teo Wah and said :-

"Dear Tong Wah,

RE: BRIEF AND OPINION BY MR POTTER, QC

I refer to the £800 which I was holding for you against the possibility of instructing Mr Potter, QC, further.

20

Please note that the £800 is in Mr Potter's hand. Do you wish it to be returned to you in Singapore in which case I will so advise Mr Potter, QC.

Waiting to hear from you soonest.

Thank you.

Yours sincerely. "

19. Mr Brown was on leave in the latter part of July 1980 and did not see the Accused's letter of 24th July till 18 August 80. On seeing the letter, he replied to the Accused saying :-

30

"Dear Mr Chia,

I have just returned to my chambers from holiday and find your letter addressed to me. Adrian has obtained the cheque from your department made payable to Mr Potter and this has been paid into Mr Potter's account.

40

May I suggest that instead of putting this against Tong Eng Brothers Ltd for

future consultation that we use this money to settle two accounts which I handed to you when you were over here for £350 in the name of Nakhoda Investments and £450 for advising in conference on the 23 May under Tong Eng Brothers Pte Ltd.

I hope you are keeping well.

Kind regards.

Yours sincerely. "

In the
District
Court

No.6
Prosecution
Submissions
3rd October
1981

(continued)

10

Nakhoda Investments is unconnected with Tong Eng Brothers. The Accused replied to Mr Brown on 26 Aug 80 and asked him to set off the £450 being the fees for advising in conference on 23 May 80 in respect of Tong Eng Brothers Pte Ltd against the £800 which he had caused to be transferred into Mr Potter's account. There were further correspondence between the Accused and Mr Brown. I will not refer them in my address.

20

20. The prosecution will ask the court to view the Accused's conduct after investigations had begun, and urge that he has contrived to influence matters which are subject matter of the charges.

Sd: Fong Kwok Jen
FONG KWOK JEN
DEPUTY PUBLIC PROSECUTOR

3 Oct 81

30

No. 7
DEFENCE SUBMISSIONS

P.P. v. JAMES CHIA

No.7
Defence
Submissions
7th November
1981

The Charge

"You, James Chia Shih Ching are charged that you, on or about the 7th March 1980, in Singapore, cheated Tong Eng Brothers Private Ltd. by deceiving the company into believing that a sum of £800 was due and payable to one D C Potter, Queen's Counsel, as legal fees for work rendered

40

In the
District
Court

No.7
Defence
Submissions
7th November
1981

when you knew that such sum was not in fact determined nor due and payable and thereby dishonestly induced the company to deliver to you a bank draft for £800 which it would not do if it were not so deceived and thereby committed an offence punishable under Section 420 of the Penal Code. "

Section 420

"Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment for a term which may extend to seven years, and shall also be liable to fine."

10

20

Section 415

"Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to "cheat". "

30

Essentials of cheating as defined in S.415

The definition of cheating contains two parts. First comes the main part "Whoever, by deceiving any person ..." - words which actually apply to the whole section.

Then comes the first part "fraudulently or dishonestly induces the person so deceived to deliver any property to any person or to consent that any person shall retain any property."

40

Then comes second part, which is an alternative to sub-part 1 i.e. "or intentionally induces...mind, reputation or property. "

Then comes the closing words, "is said to cheat".

The authors of the Code say:
"We propose to make it cheating
to obtain property by deception in
all cases where property is
fraudulently obtained; that is to
say, in all cases where the intention
of the person who has by deceit
obtained the property was to cause
a distribution of property which
the law pronounces to be a wrongful
distribution, and in no other case
whatever. However immoral a deception
may be, we do not consider it as an
offence against the rights of property
if its object is only to cause a
distribution of property which the
law recognizes as rightful....

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1981

(continued)

We propose to punish as guilty of
cheating a man who, by false representa-
tions obtains a loan of money, not
meaning to repay it; a man who, by
false representations, obtains an advance
of money, not meaning to perform the
service or to deliver the article for
which the advance is given; a man who,
by falsely pretending to have performed
work for which he was hired, obtains
pay to which he is not entitled.

In all these cases there is deception.
In all, the deceiver's object is
fraudulent. He intends in all these
cases to acquire or retain wrongful
possession of that to which some other
person has a better claim, and which that
other person is entitled to recover by law.
In all these cases, therefore, the object
has been wrongful loss. In all, therefore,
there has, according to our definition,
been cheating."

S.415 sets out two separate classes of acts

"In the definition of cheating in sec.415
there are set forth two separate classes
of acts which the person deceived may be
induced to do. In the first place he may
be induced to deliver any property to any
person or to consent that any person shall
retain any property. In order to constitute
the offence of cheating the person who
induces another to do this class of acts
must fraudulently or dishonestly induce
the person deceived to do that kind of
act. The second class of acts set forth
in the section is the doing or omitting

Pg1110-
"The Law
of Crimes"
by
Ratanlal

In the
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Court

No.7
Defence
Submissions
7th November
1981

(continued)

to do anything which the person
deceived would not do or omit to do
if he were not so deceived. In order
to constitute the offence of cheating
with regard to this class of acts the
person who induces another to do them
must intentionally induce him to do them.
In the first class of cases the inducing
must be fraudulent or dishonest. In
the second class of acts the inducing
must be intentional. "

10

Ingredients of S.415

Pg 1111
The Law
of Crimes
by
Ratanlal

This section requires -

1. Deception of any person.
2. (a) Fraudulently or dishonestly inducing that person

(i) to deliver any property to any person; or

(ii) to consent that any person shall retain any property, or

20

- (b) intentionally inducing that person to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property.

Pg 1112
"The Law
of Crimes"
by
Ratanlal

In order to bring a case within the meaning of cheating, it is not sufficient to prove that a false representation had been made, 30 but it is further necessary to prove that the representation was false to the knowledge of the accused and was made in order to deceive the complainant.

It is not necessary that the false pretence should be made in express words, if it can be inferred from all the circumstances attending the obtaining of the property. Fraudulent intent is absolutely essential. An illegal demand if not fraudulent does not amount 40 to cheating.

Pg 3551
"Penal Law
of India"
Vol.4 by
Gour

The points requiring proof under S.420 are :-

- (1) That the accused cheated another person

(2) That he thereby induced -

(a) delivery of property to any person, which property did not belong to the accused, or
...

(3) That he did so dishonestly.

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District
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Burden of Proof

(continued)

Pg 3552
"Penal
10 Law of
India"
Vol 4
by Gour

"It is for the prosecution to show clinchingly that at the time the accused entered into the transaction, he had no intention to pay the money and that he was actuated by a dishonest intention to cheat the complainant."

Principle of S.420

Pg 3534
"Penal
20 Law of
India"
Vol 4
by Gour

"This section provides for an aggravated case of cheating generally defined in Sec.415. It has been there seen that that definition contemplates either (a) delivery of prope ty, or (b) the doing of any other act or omission as a consequence of cheating which again may be effected by inducement brought about (i) fraudulently, or (ii) dishonestly, or (iii) intentionally.... "

Ingredients of S.420

30

"The ingredients of the offence under Sec.420 are that the person deceived delivered to someone a valuable security or property, that the person so deceived was induced to do so, that such person acted on such inducement in consequence of his having been deceived by the accused and that the accused acted fraudulently or dishonestly when so inducing that person.

40

In order to constitute an offence of cheating, it must be established that the accused deceived the complainant dishonestly inducing him to part with any property in his favour which he would not have parted but for the deception played on him. It is thus obvious that dishonest intention on the part of the accused at the time of making the representation to the complainant on the basis of which complainant parts with his property is an essential ingredient of the offence. In other words, mens rea on the

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Court

part of the accused must be established before he can be convicted of an offence of cheating.

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Defence
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7th November
1981

The offence of cheating under Sec.420 of the Penal Code as defined in Sec.415 of the Code has two essential ingredients, viz (1) deceit, i.e. dishonest or fraudulent misrepresentation to a person, and (2) the inducing of that person thereby to deliver property. "

(continued)

10

Scope and Applicability of S.420

"The offence of cheating is made up of two ingredients, namely: (1) deception of any person, and (2) fraudulently or dishonestly inducing th t person to deliver any property to any person or to consent that any person shall retain any property. All deceptions do not amount to cheating. In order to constitute cheating the deception must be with a dishonest or fraudulent intent. Before a person can be held guilty of the offence under Sec.420, I.P.C., it must be established that at the time when the accused made the alleged representation he made it falsely and with the intention to deceive. For establishing an offence under this section it is necessary that there should be direct connection between the false representa- tion and the delivery of property for the doing of something by the person deceived. It is also necessary that the act or the omission complained of should cause or is likely to cause danger or harm to the person in body, mind, reputation or property. An application for loan with false particulars is not likely to cause any damage to the property of the bank. In order to constitute an offence under this section there should be a dishonest intention on the part of the accused which must precede or accompany the act of dishonesty. The mere breach of contract cannot give rise to a criminal prosecution. Cheating amounts to inducing the victim to enter into a bargain which he would not enter into if he knew the real facts. "

20

30

40

" For a conviction for an offence under Sec.420 of the Code, it is essential to establish the criminal intention of the accused, at the time the offence is said

50

to have been committed."

In the
District
Court

" In order to bring a case within the ambit of Sec.420 it is necessary to establish criminal intention at the time of the alleged bargain. The fact that the petitioner denies in Court the transaction altogether and refuses to return the money does not necessarily show that he had a criminal intent from the beginning. "

No.7
Defence
Submissions
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1981

10

(continued)

The Evidence

Teo Tong Wah said in Evidence -in-Chief:-

"DPP: Has your company consulted Q.C. before?

A: No.

DPP: Have you yourself consulted Q.C. before?

A: No.

20

DPP: So when accused suggested that Q.C. be consulted and you agreed, did you discuss how this was to be done?

A: He said that a brief of the company's history has got to be done and I requested him to do it for us. So around December he produced a written brief and read it to me. That was around Christmas in 1979. It took place in my house. We read the brief together.

30

J: Accepted the brief?

A: I accepted the contents of the brief.

DPP: Prior to that did you tell him about the history of your company and its operations?

A: Yes.

DPP: After you've agreed to the contents of the brief did he say what he was going to do?

40

A: He said he wanted to send it out by post.

DPP: When did you and the accused discuss the matter?

A: Shortly after receiving Q.C.'s opinion. He came to my house and read the opinion to me.

DPP: What month was this?

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Court

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(continued)

- A: February 1980.
- DPP: Basically you knew the Q.C. cautioned against the proposal?
- A: The impression I got was that Q.C.'s opinion was Yes and No. To me it was a Yes and No answer.
- DPP: Did you agree with him?
- A: I'm a layman. I had my own view the cessation operation can be carried out.
- DPP: What did James Chia say? 10
- A: He did not fully agree.
- DPP: After he read the Q.C.'s opinion to you was anything else said?
- A: He gave me a written note with £800 and Q.C.'s name written on it. He told me to pay the £800.
- DPP: Q.C.'s name is Potter.
- A: Yes.
- DPP: What happened to that note?
- A: I lost it subsequently. 20
- DPP: Did you pay the Q.C.'s fees?
- A: Yes, by bank draft.
- DPP: It was shortly after he received the opinion he gave you the note and asked you to pay the £800.
- A: Yes.
- DPP: Did he tell you what this £800 was for?
- A: For payment to Q.C. for his fees.
- DPP: After this did you take action on the note? 30
- A: I mislaid it and forgot about it "

Events on the 7th March

"J.C. called me that day after lunch. He said he was going to Dr. Tan Poh Lin's office later and requested me to get a bank draft for the Q.C. ready so that he can pick it up from Dr. Tan's office later, which I did accordingly. I rang Dr. Tan and authorised him to debit Tong Eng Brothers for the equivalent of £800. It was Dr. Tan's suggestion, or I told

40

him, that we give him a letter of authority.

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District
Court

The letter of authorization was prepared by my Financial Controller, Richard Tan. "

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1981

"DPP: You called Dr. Tan to issue the bank draft. Is that what you would have done normally?

(continued)

10

A: No.

DPP: Why did you do that on the 7th March 1980.

A: First, the accused told me that he was going to Dr. Tan's office. Secondly, the timeit was nearly closing time that's why I called Dr. Tan instead of some other bank officer.

20

DPP: That was the last you had to do with the £800.

A: Yes. "

Cross-Examination of Teo

"HEC: Would you agree with me that you never believed for a moment that the accused wanted to steal the money from you or keep the £800 for himself.

A: No.

30

HEC: Investigation started on July 9th. If there was no investigation and the accused had finished the programme and that you should get final clearance from Q.C. would you have agreed that this was a good thing?

A: I was not interested in the legal technicality of the matter.

40

HEC: Supposing there was no investigation, and if the accused had sent the programme to Q.C. and Q.C. sends it back approved, would you have objected?

A: No I would not have objected.

HEC: Equally if the accused had come to you at the end of it all and say that "Look there's a consultation £450, programme £200,

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District
Court

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1981

postage \$70, taxi fares, lunch
for Potter, tins of Chinese tea
... total bill comes to £850.
I have in hand £800 because
Potter waived his fees in the
first in tance, you still owe me
£50, would you have paid him?

A: Yes.

(continued)

HEC: Would you have paid him even if
he told you then for the first
time that Q.C. had not charged
the first time?

10

A: Yes.

HEC: This was a small sum as between
you

(DPP objects)

HEC: Do you think this a big sum to
accused?

A: It's not that big a sum for him
also. "

20

Re-Examination of Teo reveals:

"A: after opinion from Q.C. we decided
to form the companies. This
was around end of February to
end of May. Actual incorporation
was around June or July.

DPP: You said in March 1979 you
never believed that accused was
going to steal your money.

A: Yes I never believed that.

30

DPP: The bank draft was paid to Mr.
Potter.

A: Yes.

DPP: For the opinion which he gave
you in February.

A: Yes. "

The evidence of James Chia in Examination-in-
Chief:

"When I received the opinion which was
around late February I read the
opinion first and made those queries
on the opinion. Then I had a
discussion with Teo. After the
discussion I raised the question of
payment....I said he had to pay for

40

10 the opinion given by Potter. I handed to Teo Potter's name and address and a figure of £800. It was in my handwriting. (When I handed him this slip of paper) I mentioned that I've not received the bill yet but we must pay for the opinion and I said that £800 should be sufficient to cover this opinion.

In the District Court
No.7
Defence Submissions
7th November 1981

(continued)

HEC: Can you tell His Honour how you arrived at £800?

A: From my dealings with Potter, the charges he billed IRD varies from £250 to £750 - average would be £400. Mr Teo's matter is a private matter. I took the precaution of doubling it.

20 HEC: What do you mean by private matter?

A: As opposed to a Government matter.

HEC: Did you believe at the time when you put down the figure of £800 that you could get a concessionary rate?

A: No.

30 HEC: At the time you asked for £800 can you tell His Honour with any degree of certainty as to what fees Potter would charge?

A: No.

HEC: Why did you want it now instead of waiting till end of 1980?

A: I was anxious to discharge Potter's debt whatever it was. "

Cross-Examination of James Chia on the £800 reveals:

40 "DPP: Why did you ask Teo to give you £800 before Potter asked for his fees?

A: I was anxious to discharge this debt as I'm responsible to Potter for payment. I do not want this matter hanging on my head.

DPP: What were you anxious about? That Teo will not pay you?

In the
District
Court

No.7
Defence
Submissions
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1981

(continued)

- A: No.
- DPP: Were you anxious that Tong Eng Brothers would not permit Teo to pay you?
- A: No. I was dealing with Teo.
- DPP: What caused your anxiety?
- A: I was concerned in putting the £800 into the hands of Potter.
- DPP: Were you concerned in putting the £800 into the hands of Potter or that you were anxious that Potter's fees were paid as soon as possible. 10
- A: To me both means that Potter will be paid. I don't want to split hairs over the English language but to me this means that Potter would be paid.
- DPP: If your anxiety is that Potter be paid as soon as possible why did you not then ask for the fee note to be given to you with the opinion? 20
- A: I did not think about it.
- DPP: You knew this could be done.
- A: I've never done this before.
- DPP: Have you not asked the clerk to Potter whether he could give you a note of the fees in advance? 30
- A: No I did not.
- DPP: Look at P40 -
- A: Yes, I did but Rippon handled the Court of Appeal matter in Singapore. The Government already paid his fees on this. This pending matter was a Privy Council hearing and the Government wanted to allocate a certain sum for Mr. Rippon's fees. 40
- DPP: So if you want to know the fees in advance it can be done and you knew it can be done.
- A: Yes.

	DPP:	Why did you not at the end of February write to Brown to forward the fee note soonest?	In the District Court
			<u> </u>
	A:	I could have done it but the fact that it was done in this fashion to my mind was not wrong.	No.7 Defence Submissions 7th November 1981
10	DPP:	To your mind the £800 was an estimation?	(continued)
	A:	Yes.	
	DPP:	At that time, if you knew there was a balance what did you intend to do with it?	
	A:	Leave it in Potter's hands for further matters involving this company.	
	DPP:	According to Teo you showed him a note. Was there such a note?	
20	A:	The note was written in my handwriting with Mr. Potter's name and the sum of £800.	
	DPP:	
	A:	For Teo to issue a bank draft in Potter's name.	
	DPP:	Where your evidence differs from Teo's evidence was that you told him that you have not received the bill yet but he must be paid for the opinion and £800 would be sufficient.	
30	A:	Yes.	
	DPP:	Teo says you gave him a note with £800 written on it with the Q.C.'s name and you told him to pay the £800. Agree?	
	A:	Teo said there was a name and there was a figure.	
	DPP:	But he said you asked him to pay £800.	
40	A:	I asked Teo for a bank draft to pay Potter.	
	DPP:	Was that in February or 7th March?	
	A:	Both, February and 7th March.	
	DPP:	You say that at that time that if there was to be any balance you had intended any balance to be used for	

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(continued)

further consultation.

A: Yes.

DPP: By that you meant further
consultation concerning Tong
Eng Brothers Pte. Ltd.

A: Yes.

DPP: Teo tells us that after the
meeting he forgot about the
matter until the 7th March when
you called him and reminded him
about the bank draft. 10

A: Yes.

DPP: Potter rendered his opinion on
14th February - you saw him
end of February - a week lapsed
since you first asked Teo for
£800. Can I take it that on
the 7th March you were also
anxious that Potter be paid?

A: Yes. 20

DPP: Why were you so anxious that
Potter be paid when Brown has
yet to ask for his fees?

A: The reason is the same.

DPP: Could you repeat the reason?

A: I was anxious.

DPP: Why were you anxious? Brown had
yet to ask for the fees.

A: I was still anxious.

DPP: You had no doubt that on that
day if the fee note came Teo
would pay? 30

A: Yes.

DPP: Brown did not appear anxious
for Potter's fees.

A: I cannot speak for him.

DPP: Why were you anxious?

A: Because I was responsible for
payment.

DPP: Why did you not write to Brown
for fee note on the 7th March? 40

A: I did not. I could if I wanted
but I did not.

10 DPP: I fail to understand you. In the District Court
You knew that the debtor would not fail to pay and that Brown would not ask for payment. If your only anxiety is that the fees be paid as soon as possible, was it not your duty to determine what the fee was to begin with? No.7 Defence Submissions 7th November 1981

A: I could have but I did not. (continued)

DPP: You would agree that it was not unreasonable to determine what is due?

A: Yes, it would not be unreasonable.

20 DPP: When you wanted to know the question of Rippon's fees you did not fail to write to his clerk for an indication.

A: With regard to Rippon's fees, I was asked by the accountant to ascertain from Corbett so that he could make provision for it.

30 DPP: Here we are not only making provisions for it, you wanted to pay the fees. In these circumstances there is all the more reason to want to know what the fees were, do you agree?

A: Is that a quest on?

DPP: You've not been listening (repeats).

40 A: Although I did not receive the fee note when I suggested to Teo that £800 would be more than sufficient to cover the fees, Teo did not object; he agreed he would give me a bank draft.

DPP: Even before you suggested to Teo why did you not write and ask for the fee note?

A: I did not do it.

DPP: Any particular reason?

A: No.

50 DPP: You said that you intended that if there should be a balance it would be for future consultation. Did you not make that known to Teo?

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(continued)

A: No, I did not.

DPP: Why not? It was his money you know.

A: If there's no balance there's no necessity.

DPP: You did expect a balance didn't you?

A: I persuaded Mr Potter to accept the Inland Revenue concessionary rate.

10

DPP: You're remarkably confident in your estimation though we know now that your estimation was out by £300.

A: At that time I took the precautionary note of taking the upper end of the amount.

DPP: But you were not incautious in asking for payment before you knew the fees.

20

A: No I was not.

DPP: You did not tell Teo what you intend to do with the balance if there was a balance. Did you not in fact deceive him?

A: I never deceived him.

DPP: But you have the intention to handle part of the money in a way unknown to him, have you not ?

A: At that point of sending the bank draft I did not know whether there was going to be any part left.

DPP: But it was in your mind what to do with that part if there was a balance.

A: If there was a balance! If there was a balance then it would be used in this matter. "

Cross-Examination of Potter reveals:

40

"HEC: Letter of 10th March indicates he was prepared to pay your fees.

A: Yes.

HEC: Whatever average fees might mean. Would you not think that a fair

meaning of this letter must be: 'I don't know what your average fee is but here's £800.' If you charge £400 then there's a balance. It is a request to charge the average fee.

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A: Yes, if that's an interpretation I would not dissent.

(continued)

10

HEC: That would follow that the writer did not know what fee was going to be charged.

A: As a matter of custom I would be very surprised if he knew what fees were going to be charged.

20

HEC: J.C. had never been in practice in Singapore. Would you agree that it's quite possible that he would not know that it would be a normal practice for barristers not to charge fees on family or private matters. Are you aware of ever having a conversation with the accused in which you told him of the custom?

30

A: I'm quite certain I never had a conversation with the accused in which I told him of this custom.

HEC:If that £800 was in fact a draft from Tong Eng Brothers, may I suggest that it would be for other purposes of Tong Eng Brothers?

40

A: ...the only evidence that I can give is that I signed the endorsement on the document given me. I cannot say that at that time I did not put my mind to it butif it is put to me, it is a matter of interpretation, and it is capable of interpretation that as a matter of construction, for matters under the heading "Cessation of Business", ...it would also be for other matters but what I cannot accept is that it is for anything other than my advice. "

Cross-Examination of Brown reveals:

"HEC: Mr Potter told us that where a

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(continued)

solicitor had indicated that where a matter is a private one or his family one, it is his custom not to charge fees.

A: Yes - any member in our chambers would do the same.

HEC: Do you know whether the accused knew of this practice?

A: I don't think so. I don't know.

HEC: Letter of 10th March, 'I believe 10
the average fees...'. When you read that, can you tell us that these fees which Potter normally charges the Singapore Inland Revenue Department?

A: When I read the letter I certainly thought J.C. thought in his mind that that was the average fee Potter charged.

(Earlier on)

20

HEC: Am I right in believing that your chambers acted for Inland Revenue Department of England?

A: Very much so.

HEC: Again, in England because of your connections there, concessionary rates were given.

A: That is so. With Government work, be it England, Singapore, Africa, we would not charge the same 30
scale of fees as we would charge the private sector; because over the years you realise you're dealing with public money.

HEC: Over the years you came to know J.C., can I ask you whether J.C. would get to know that there was a concessionary rate to Singapore Government?

A: I don't know whether he knew or 40
did not know there were concessionary rates.

HEC: So if I say he knew, you could not deny it.

A: No, I could not. "

Cross-Examination of Potter on this point confirms:

In the District Court

"HEC: J.C. would probably know there were concessionary rates given to Singapore Government.

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A: I'm certain that he would know for this reason. I've been engaged in litigation in Singapore in Oct 79 and J.C. with others had visited London two years earlier. I do remember quite vividly that Peter Rees, who is now a Junior Minister, and I were jointly advising the Republic, and Rees subsequently dropped out, and I remember, either in 1976 or 1979, or some date in between, J.C. asked me if I would be willing to travel to Singapore. I gathered from his tone that he thought I was unwilling to travel. I am not very fond of travelling but I do remember mention of level of fees and J.C. saying that the level of fees might be less than the private sector and my learned opponent's. "

(continued)

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SUBMISSION ON LAW AND EVIDENCE

It is not until Your Honour has decided on the evidence is it possible to apply the law. I will therefore deal with the evidence first.

40

What was done on the 7th or 10th March 1980 is really not in dispute. Both prosecution and defence agree that the accused handed a note with Mr. Potter Q.C.'s name upon it together with the sum of £800. The accused goes on to say that he also put Potter's address in the note. This is denied by Teo but the issue is a small one and of no moment. In both examination-in-chief and cross-examination Teo has stated that he thought that the payment of £800 was for Potter's fees. See pages 8, 9, 10 and 11 of this Submission. It was only in re-examination that Teo stated that he thought the £800 was for the opinion.

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It is submitted that of course he had the opinion in mind but generally he did not expect to get the advice for free and that the

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evidence elicited under cross-examination shows that he expected to and would have paid for the accused's out-of-pocket expenses in connection with obtaining the opinion and other legal advice. It is particularly clear from the long question posed by counsel for the accused with regard to whether Teo would have paid something in excess of £800 if there had been no investigation that Teo was not particularly concerned that the £800 should be earmarked for the opinion alone. 10

In any event it is not really what was in Teo's mind that matters. It is what was the intention of the accused at the time that counts. From the evidence in examination-in-chief and cross-examination, it is perfectly clear that the accused believed that he was obtaining a sum which was the upper end of a bracket for payment of the opinion, the exact amount of which could not possibly be known by him on the 7th of March 1980. It is also clear from the accused's evidence that he had absolutely no intention of keeping any balance if balance there were from the £800 and that he intended to hold such balance against other fees when they became due and out-of-pocket expenses incurred by him in connection with the obtaining of the advice. 20

The position is analogous to that of a solicitor who asks his client to let him have money to account of his fees. It would be monstrous if such a request by a solicitor should be construed as being cheating his client simply as, in the words of the charge, "such sum was not in fact determined nor due and payable....". 30

It is freely admitted that although the work had been done, as no fee note had yet been rendered in the strict sense nothing was due and payable. So far as the accused was concerned it is clear that he regarded the situation as one where because the opinion had been rendered fees were payable although not yet demanded. The accused has made it clear that as this was a private matter as opposed to a Government matter, he did not want Potter to feel that there was any likelihood of his, Potter, not being paid. 40

So far as the events on the 7th March are concerned, therefore, the only intention that can be gleaned from the evidence is all in favour of the accused. However, it is admitted that one can look to after events to determine 50

and resolve what was the accused's intention on the 7th March. Nothing can be more conclusive of his intention than the letter that he wrote on the 10th of March 1980.

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10

This letter, construed in any way that one may like, is clearly a letter to persuade Potter to charge fees at the concessionary rate for his opinion. Only the evidence of Potter, Brown and the accused will be relevant in the construction of that letter.

(continued)

Evidence of Brown:

Q: Look at P8 - Some shorthand notes.

A: Yes. They are mine.

Q: Accused wrote - what do you gather from these words "credit £400 to be utilised etc."

20

A: On receipt of this letter, I took the words to mean that James Chia thought we had an account in our chambers for James Chia and that this sum be credited to this account for future work. "

Q: Look at P9.

A: Yes, it is my reply.

Q: Can you tell us when a decision was taken to waive the fees.

30

A: On receipt of James Chia's letter I had a word with Potter and Potter, because it was common practice, would not make a charge and Potter says - 'No I don't want to charge.'

Q: When the letter of 10th March was sent, it enclosed a bank draft payable to James Chia. Is that a copy of the bank draft - P11?

A: Yes.

Q: Look at P8

40

A: Letter from James Chia of 10th March was an unusual letter to receive, but I thought counsel out here in Singapore are not familiar with Counsel's administration in chambers. It caused me a number of problems because I now had a cheque for £800 which we don't have a client's account and I was really wondering what to do with the cheque. In fact I kept the cheque on my own desk for

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a few days in the hope that I could hear from James Chia again which I did subsequently. But what I hoped I'd hear was that it was for future work. Then the money he had sent could be utilised.

Q: So when you wrote 'I've credited your account' it was a notional crediting.

(continued) A: Yes. That's right, I did nothing except kept the cheque in front of me. There was no banking in or anything like that.

10

Evidence of Potter:

Q: Look at P8.

A: Note that it was stated. The majority of our clients are in the City of London. They would telephone. But anyone outside London it would be difficult for him to suggest what my fees were. I can't say whether this is usual or unusual. Though unusual in my particular case is I believed though not particular the English Bar. On the other hand, payments for non-specified work that is for briefs to be delivered in future is in my opinion very exceptional in London chambers.

Evidence of Accused:

(As set out at pages 12 and 13 of this Submission).

In my submission it is clear beyond any reasonable doubt that all three are right in construing the letter as one attempting to persuade Potter to charge the concessionary rate.

30

It is also clear from the words -

"...leaving a remainder of £400 to be credited to my account which may be utilised in the near future for other purposes"

that the accused clearly intended that the money should be held by Potter against further work in connection with this matter.

40

Evidence of Potter:

(As set out at pages 19 and 20 of this Submission)

Evidence of Brown:

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Q: Would you agree that the average fee would be about £400.

A: Yes, a very rough average.

Q: Despite the ones produced by DPP.

A: Yes, in this pile, there's some matters in 1977 and the situation in England in 1977 is different from that in 1981.

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(continued)

10 Q: Roughly speaking £400 is the average fees charged by Potter to Singapore Inland Revenue Department.

A: Yes.

Q: They range from £250 to £750.

A: Yes.

Q: Look at P27C - £75 - it's hardly for an opinion.

20 A: No, it is advice by letter to James Chia. My guess is that it's a short letter but I can't say for sure.

Q: Look at P8 - look at first sentence. £400 - not far off.

A: Not wildly off.

Q: Last line - 'credit to my account'. When you saw that, what did you think?

A: For future work.

Q: That he would follow it up with something?

A: Yes.

Examination-in-Chief of Accused:

30 Q: When you talk about remainder of £400 were you hoping that the persuasion would result in a remainder.

A: Yes.

Q: Have you any idea how barristers receive money?

A: No.

Q: Did you know - the practice of advocates and solicitors in Singapore?

A: Yes.

40 Q: Do advocates and solicitors in Singapore receive fees for account for work to be done?

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- A: They do.
- Q: Do you know how they deal with it?
- A: They would put it into a clients' account.
- Q: P8 - 'credit to my account'. What did you intend with those words?
- A: A 'clients' account' with Potter in my name.
- Q: When you asked him to credit your account did you have any intention of cheating Teo?
- A: None whatsoever.
- Q: 'Other purposes' - what did you mean?
- A: About time when this letter was written, I knew I was going to London and I was going to take the opportunity to discuss this matter with Potter.
- Q: Further consultation.
- A; Yes.

10

Cross-Examination of Accused:

- Q: When you wrote Brown on 10th March 1980 did you have some confidence that he will accept your suggestion of fees at £400? 20
- A: I was making a persuasive attempt, I would say.
- Q: (Repeats)
- A: Perhaps I may have.
- Q: The remainder of £400 should be 'credited to my account'. Why did you not ask Brown to credit the account of Tong Eng Brothers or Teo Tong Wah? 30
- A: Brown did not know who Teo or Tong Eng Brothers is.
- Q: Would he need to know?
- A: The practice is that an account is opened in the name of the advocate and solicitor.
- Q: How do you know that?
- A: My knowledge in Singapore dealing with solicitors in London.
- Q: Look at your letter of 24th July - 'credit the account of Tong Eng Brothers - for future consultation'P12. 40

	A:	When this letter was written Brown already knew that I was consulting Potter on behalf of Tong Eng.	In the District Court
	Q:	On the 10th March why did you not make it clear that you were consulting on behalf of Tong Eng Brothers?	No.7 Defence Submissions 7th November 1981
10	A:	When this letter was written Brown already knew that, over the phone conversation, it was a matter 'private' - other than an Inland Revenue matter.	(continued)
	Q:	'My account' - in the whole context of the whole sentence - P8. Emphasis on 'my account' and 'other purposes' - is it not your intention that this money be credited to you and be used by you not connected with the cessation of Tong Eng Brothers?	
20	A:	No. If we read that sentence with the cessation of business - Income Tax Act, Brown being a barrister's clerk certainly knows that, that can only be a clients' account. Secondly, 'other purposes' can only have reference to the above subject matter.	
	Q:	Are you saying that 'other purposes' in this context means one and the same thing as 'future consultation'?	
	A:	Yes, in a matter of cessation of business.	
30	Q:	Is it not obvious that the purpose of this letter is connected with the cessation of business of Tong Eng Brothers?	
	A:	Yes.	
	Q:	Is it not obvious in the context of this letter that 'other purposes' must mean purposes other than business of Tong Eng Brothers?	
40	A:	No. I think my learned friend has contradicted himself.	
	Q:	Mr Chia, you are too well educated to make a simple grammatical error in P8. I refer you to P12. "...there will be future consultation." It is so clear in P12. Do you agree?	
50	A:	I disagree, to the minds of Potter and of Brown - in July they knew what I was referring to and it continued right through the subsequent correspondence right through February-March (?) of 1981.	

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(continued)

Q: (Repeats) Do you agree?

A: No.

Q: Let's go back to P8. Why did you not say 'for this purpose'.

A: The use of the word 'other' is my usage in reference to this subject matter.

Q: Are you saying that for 'other purposes'can mean the subject matter of the business.

A: Yes.

10

Q: I put it to you that it was clear from P8 you wanted the £400 for yourself to be utilised for your purposes.

A: No, because at that time I had no other purposes - no other matters except this one.

Q: It is clear from this letter that there was no intention that the remainder of £400 be used for future consultations in connection with the cessat on of business of Tong Eng Brothers.

20

A: There are two parts to this question. As to the first part, I did not know what was to be left over after Potter's fees. It could be nil. It could be a few pounds. As to the second part which is future consultation, I was going to London in May, and I was going to take this opportunity to discuss with him.

Here again it is perfectly clear that the accused has evinced an intention to let Potter keep the money against future advice which he might have to give.

30

The net value of the intention to be gleaned from this letter that the accused had at the time he wrote it must be that he intended Potter to have the money, pay himself such fees as he thought the opinion deserved and that Potter should hold on to the balance in case he was called upon for further advice in connection with this matter.

The matter really ends the e. The letter of the 10th March clearly speaks as to the intention that the accused had on the 7th of March. This charge therefore must fail on that account alone.

The charge also fails because nowhere has the prosecution adduced evidence to show that the accused did cheat Tong Eng Brothers Pte. Ltd. on the 7th of March or that he intended to.

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So far as the charge is concerned, the deception has been spelt out as being that the accused deceived the company into believing that a sum of £800 was due and payable to Potter as legal fees for work rendered when he knew that such sum was not in fact determined nor due and payable and thereby dishonestly induced the company to deliver to him a bank draft for £800.

(continued)

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It is difficult to submit on this point, the reason being that the charge raises an issue as being a fact when it is clear from the evidence that this never was nor could ever be the deception. The fact that Potter had done work for Teo and/or his company is beyond all doubt. The fact that at the time the accused and Teo both thought that Potter would eventually have to be paid is beyond all doubt. The fact that no bill or fee note had yet been delivered was known to the accused and appears to have been known to Richard Tan, the Financial Controller of Tong Eng Brothers Pte. Ltd. It is unclear from the evidence whether Teo knew if a bill or fee note had been rendered. But surely no one is going to suggest that the accused believed at that time that no payment was due to Potter at all. It is the custom of the profession (solicitor) both in Singapore and elsewhere to call for fees before bills have been rendered to account. Potter has stated that he thought it would be prudent for solicitors to obtain fees from clients in advance and I think it fair to say that every practising solicitor in Singapore would agree.

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However friendly Teo and the accused were, it is clear that what was in the accused's mind was that he wanted to assure Potter that the fees were in hand. There is not one iota of evidence to show that if the accused had told Teo that no bill had yet been received from Potter that he wanted to have money in hand estimated to cover any possible bill and that he wished to pay such sum of money to Potter in advance that Teo would undoubtedly have agreed to do so. If you, Your Honour, believe this, then there can be no question of there having been any deception at all.

It is also quite clear from the evidence

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of the accused that the accused was not aware of the custom amongst Barristers in England or solicitors in Singapore not to charge their friends in certain circumstances. It would be beyond all reason to infer knowledge of this sort when there is no evidence on which to base it as forming an argument to show that the accused had the intention to deceive. It is, as it were, altogether too remote a conjecture to carry any weight at all.

10

The charge also reads -

"...which it would not do if it were not so deceived..."

The evidence is to the contrary. To a question put by counsel for the accused to Teo, Teo made it clear that he would have paid if everything had been explained to him.

In his submission in replying to that of counsel for the accused at the No Case to Answer stage, the learned DPP relied heavily on the letter of the 4th of August 1980 and later correspondence to try to show that the accused had a guilty conscience and was trying to put things right. In my submission, it is perfectly clear that everything that the accused did from the 19th of July 1980 onwards was done after consultation with his counsel and therefore bespeaks not at all of any intention whatsoever.

20

A further point made by the learned DPP both in his Answer to the submission of No Case to Answer and through cross-examination of the Accused was that the consultation of the 23rd May 1980 for which Potter charged £450 was done "on an ad hoc basis", to use the learned DPP's words, the suggestion being that the accused suddenly thought of it and not, as he claimed, that it was planned with Teo sometime before. If it is really true that Teo did not know of the coming consultation, why should the accused go ahead and have such a consultation and thereby incur fees which would have to be paid. If the prosecution's idea is that the accused intended to cheat, then all that the accused would be doing would be producing more and more paper work from which it would be perfectly clear that money was due to Potter. It is submitted that the very idea of the meeting being an ad hoc off-the-cuff meeting goes against the whole theory of the accused attempting to cheat Teo and his company. Aside from this, the evidence, it is submitted, is to the contrary and it is

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perfectly possible that Teo now cannot or will not recall the accused's discussion with him in March and April with a consultation in view because, as he has said often enough, he was leaving the entire matter in the hands of the accused, whereas as far as the accused was concerned, it would be something to the forefront of his mind and one of which he would of course recall the prior meetings with Teo in order to get the facts necessary for the further consultation.

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(continued)

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It must have been perfectly clear to the accused that, in the words of Teo, it was a "Yes No" opinion, and that he ought to clarify the opinion either by asking for further written advice or at a consultation. As he knew he was going to be in London it was clearly going to be easier for him to explain at a consultation. He also wanted to meet Potter in order to clear up the embarrassing situation he had found himself in with regard to Potter waiving his fees.

In any event the consultat on itself whether it was an ad hoc one or otherwise cannot go at all towards the intention that the accused had to deceive Teo in the matter claimed in the charge on the 7th of March 1980

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Sd: H.E.Cashin

7/11/81

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PROSECUTION FINAL
SUBMISSION

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FINAL SUBMISSION

10 One unique feature of this case is
that with the exception of 3 formal
witnesses, M/s Yong Ser Hiong, Michael Seet
and Richard Tan, witnesses whose evidence
is not in dispute, all the other witnesses
count themselves as friends of the Accused.
Your Honour will recall Mr Potter's evidence
that he knew the Accused fairly well and
certainly better than other professional
clients. Mr Brown also knew the Accused
well and he regarded him as a friend. Most
importantly without doubt the most crucial
20 witness Mr Teo Tong Wah (TTW) when asked
by the learned Defence Counsel whether he
considered the Accused his friend, replied
without hesitation, "Yes. I still consider
him as a friend." Thus from these witnesses
persons who knew the Accused and regarded
him as a friend, persons who have no reason
to accuse him of any wrong doing, that
evidence comes that the Accused is guilty of
the offence. It is in this context that I
urge Your Honour to view the evidence against
30 the Accused especially the evidence of Mr Teo
Tong Wah.

There are 2 main issues in the cheating
charge. The 2 questions are :-

- 1) Did he deceive Tong Eng Brothers Pte Ltd
(TEB) into believing that Potter's
fees was determined at £800 and was due
and payable?
- 2) Did he dishonestly induce TEB to deliver
to him a bank draft for £800?

40 DECEPTION OF TONG ENG BROTHERS

It is not in dispute that up to 7 March 80
Potter and Brown have yet to decide on the fees
which should be charged for the Opinion given
in February. Brown gave evidence that a firm
decision on the fees was taken only after he
had received P.8 the letter of 10 March 80.
It was at that stage that the decision was made

to waive the fees and he replied accordingly on 13 March 80.

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10 TTW's evidence was that TEB was indeed deceived by the Accused. He gave evidence that when the Accused saw him with Potter's Opinion probably in late February 80 after having gone through the opinion with him, the Accused gave him a written note with £800 written on it together with the Queen Counsel's name. He was told by the Accused to pay £800. My learned friend in his cross-examination suggested to Mr Teo that the Accused told him to the effect that the fees were yet to be determined and he asked for £800 as he believed that this should cover the fees. And his reply was quite categorical, he said "I do remember after reading the Opinion, the Accused gave me a note and ask me to pay £800. He did not indicate any other thing."

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TTW said that on 7 March 80, the Accused called him on the phone sometime after lunch and told him that he was going to Dr Tan Poh Lin's office and he was asked to get the bank draft ready for the QC's fees. The Accused also said that he would pick up the bank draft.

30 TTW was categorical throughout his evidence that he believed all along that the £800 was given to the QC for his fees. In cross-examination he was asked the following questions :-

Q: You said £800 would be payment to QC for his fees?

A: Yes.

Q: You did not intend that the amount was for the Accused?

A: Definitely not.

40 Q: You did intend to pay Potter?

A: Yes.

Q: So far as you were concerned when Dr.Tan gave the draft to the Accused, it was only a process by which the Accused could pay Potter?

A: Yes.

And in re-examination, I asked the question :-

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Q: As far as you and your company was concerned the bank draft was paid to Potter?

A: Yes.

Q: And it was paid to Potter for the Opinion he gave you in February?

A: Yes.

(continued)

From TTW's evidence there is no doubt at all that he as a Director of TEB and as a result of what the Accused did and said to him, he believed that the £800 was paid to Potter for his Opinion rendered in February 80. He was acting under this deception when he arranged for the bank draft to be given to the Accused. It is also obvious that he did not know that the fees were waived. Referring to the letter P.37 dated 4 Aug 80 from the Accused, he said 'I did not understand the letter because I thought the £800 was paid to QC Potter and there was also no possibility of further instructions to Potter". In examination in chief he also said that if the Accused had collected the draft and sent it to Potter who then waived his fees, he would expect Potter to send it back to Singapore and the draft to be returned to him by the Accused. 10 20

My learned friend in his address placed much emphasis on TTW's affirmative reply to his question whether if the Accused had gone to him at the end and told him of the expenses he (the Accused) had paid would he have reimburse the Accused. The question is irrelevant, it misses the point completely. The Accused did no such thing. The allegation in the charge is that he knew the fees was not determined and therefore not due and payable. He then deceived TTW a director of TEB into believing that the fees was £800 and was due and payable and it was under this deception that TTW arranged for TEB to give him a draft. The issue is whether the Accused deceived TTW and thereby TEB and not whether TTW would agree to reimburse the Accused if asked. 30 40

DISHONESTLY INDUCED THE COMPANY

The next question is whether the Accused acted dishonestly when he induced TEB to deliver to him the bank draft. Your Honour would be very familiar with the meaning of Dishonesty. I shall refer to it briefly nevertheless.

Section 24 Penal Code provides when one does anything with the intention of expecting wrongful gain to one person and wrongful loss to another person is said to do that thing dishonestly.

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When TEB gave the Accused the draft for £800, at that point of time, the payment need not have been made as the fees were yet to be determined and certainly was not due and payable. The payment was made under the deception that the fee was determined at £800 and was due and payable. By this payment it has suffered a wrongful loss of the £800 and certainly it has lost the use of that sum. TEB therefore sustained a wrongful loss.

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The Accused on the other hand acquired a wrongful gain. At the very least he had the intention of wrongfully gaining £400 out of the £800 as is clearly shown in his letter P.8 of 10 March 80.

When one reads the last sentence of P.8, the Accused's intention was that out of £800, £400 thereof be credited to his account which may be utilised in the near future for other purposes.

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The Accused's insistence that P.8 does not disclose dishonest intention on his part cannot be accepted. He was given ample opportunity to explain what he meant by his sentence namely "I attach herewith a bank draft of £800 leaving the remainder of £400 to be credited to my account which may be utilised in the near future for other purposes." The natural construction of this sentence and indeed the only possible construction is that the Accused intended that the balance at least of £400 be credited to his account and be used for other purposes which has nothing to do with TEB's proposed cessation of business. This certainly is not a case of the Accused using the wrong expression. He is well educated and legally qualified even having a Master of Law from Harvard.

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One must contrast also the terminology which he used in P.8 with his letter P.12 which he wrote after he knew that he was being investigated on the subject matter of this charge. One sees quite clearly from P.12 that the terms used leaves one in no doubt whatsoever that the £800 which he repaid was to be credited to the account of Tong Eng Brothers Ltd for future

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consultations in connection with the company. The Accused's continued insistence that the words "for other purposes" in P.8 mean one and the same thing as for this purpose clearly shows his lie.

ANXIETY TO PAY POTTER

To try to re-inforce his insistence that he did not act dishonestly, the Accused gave evidence that he was entrusted with the job of seeing through the cessation of business to TEB and because he saw himself in the position of a solicitor responsible for the payment of the barrister he has instructed, he wanted to discharge the debt because he held himself responsible for Potter's fees. (In this background I should recall his evidence that he did not expect to receive the fee note for the Opinion of February 80 till the end of that year). This was the only reason he gave why he should be prompt in asking TTW to pay the bill even before he knew what the fee would be. Throughout his cross-examination, he was unable to explain why he was so anxious to pay the fee. He said in cross-examination that he trusted TTW completely and he knew that TEB was financially sound. He knew that TEB's profits for 1979 was in the region of \$12.5 million and the expected profits for 1980 would be in the region of \$14.8 million. He had no doubts on the ability or willingness of TTW and TEB to pay Mr Potter's fees. He knew that Mr Potter himself was not asking for his fees. In these circumstances, one can see no reason for his anxiety and certainly he was unable to furnish any in his evidence.

If indeed he was anxious to pay Mr Potter's fees, he was unable to explain why he did not first determine what the fees may be before asking for payment. Your Honour will recall his letter to Mr Rippon QC P.40 where he asked Mr Rippon's clerk to indicate the fees. This is what most people would do and which he did in the case of Mr Rippon. He was unable to explain why he did not do so in the TEB matter.

One should also look at his evidence as to why he did not clearly and in no uncertain terms tell Mr Brown the person who was seeking advice. Your Honour will recall the evidence of Mr Brown who thought that this was a matter personal to the Accused, and that was the reason for the subsequent waiver of fees. The Accused in his evidence said that he told Mr Brown that this was

a private matter. Despite ample opportunity to explain why he should use this vague and ambiguous term, he has failed to do so. He can give no reason why or what his difficulties were in telling Mr Brown that the subject matter referred to in the Opinion concerned a friend's company. Your Honour will recall I asked him these questions :-

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- 10 Q: You could have written to Mr Brown saying that it concern your good friend's company?
- A: To prevent any raising of query from Mr Brown I spoke on the phone.
- Q: If you had so written to Brown what queries could Mr Brown have?
- A: I wouldn't know. I was anticipating query from Mr Brown so I thought a phone call was the best solution.
- 20 Q: What query should you have anticipated?
- A: I am just guessing because I would not know what Mr Brown would raise. What is my relation with this company? That would be one of the queries.
- Q: That, you could have explained by saying that the company is my friend's company.
- A: The mode of explanation I thought best was by phone call.
- 30 Q: But certainly over the phone you did not tell Brown that it was your friend's company.
- A: I said it was a private matter.
- Q: And that is a vague mode of description of the actual subject matter between yourself and the company.
- A: To my mind that was the best mode of explanation at that time.
- 40 Q: But even through the phone you cannot bring yourself to tell Brown that it was your friend's company.
- A: That word "private" covers the situation.
- Q: It does but it gives rise to misconceptions that it concerns your family's matters.
- A: Mr Brown would not raise the point further. If that was the case Mr Brown should have raised it.
- Q: We know why Brown did not raise it, he took it that "private" refers to your own private matters.

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(continued)

A: If you look at the brief closely you will probably know.

Q: Save that he would not know who the shareholders of TEB were, the awkwardness was only a difficulty brought upon by yourself.

A: The word "private" covers such situations.

Court: Q: Why don't you be more specific and say so.

A: I do not really know what goes on the mind of Mr Brown.

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From these series of answers which he gave both to Your Honour and to myself, the Accused I would urge was completely evasive. There is absolutely no reason why he could not have told Mr Brown what connection he has with TEB. And he certainly has failed to give any explanation to your Honour. Bearing this in mind together with his failure to give an explanation why he should ask TTW for the fees immediately on receipt of the Opinion, it is not unreasonable to draw the inference that the Accused knew of the practice that barristers do not charge for matters concerning the solicitor's own private affairs (and he was regarded by Potter and Brown as a solicitor). He therefore knew that if the fees were in fact to be waived, he would end up with, not just £400 out of the £800 but with the whole sum. This in fact was what happened.

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REASON ACCUSED HELD ON TO THE £800

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The Accused in his evidence whilst denying that he cheated TTW and thereby TEB could hardly deny that he kept the £800 after Potter waived his fees. To furnish an explanation why he held on to the money, he gave evidence that he had intentions of holding on to the money to meet expenses he expected to incur on behalf of TTW and it was his intention all along to render accounts at the end of the day. To make his explanation plausible, he also had to say that the matter was an on-going matter as there would be little reason for him wanting to hold on to the money otherwise and this he did. Your Honour will recall the Accused's evidence that at the end of the discussion with TTW on the QC's Opinion, he said that he told TTW that he would need to consult Potter further. The gist of his evidence is that the advice in conference with Potter on 23 May was

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part of this scheme of things. He went further to say that even after May there would be further consultations with Potter as he would need to prepare the programme for Potter's approval.

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10 This is in direct contradiction with TTW's evidence. TTW's evidence was that the consultation with Potter was not of an on-going nature. It is also not TTW's
10 evidence that the Accused mentioned to him having gone through Potter's Opinion on that day in late February that Potter would have to be consulted further. TTW stated in Court that he knew the QC cautioned against the proposal in his Opinion but he disagreed with the QC and believed that the cessation should be carried out. Because
20 TTW did not agree with Potter's Opinion, he then went ahead with the formation of the companies necessary to carry through the cessation of TEB's business.

(continued)

30 When asked in cross-examination whether the Accused suggested to him after going through the Opinion that it would be necessary to clarify further with Potter, his reply was "I don't remember but Opinion should say Yes or No, if not it is not much use to me". It is also his evidence that the advice in conference on 23 May was very much an
30 impromptu decision. He told us of the lunch he had with the Accused the day the Accused left for London and that was on the 21 May. The Accused suggested that he should further clarify with Potter on his opinion and he agreed.

40 On the Accused's return from London he discussed with TTW again and it is TTW's evidence that subsequent to that he and the Accused did not discuss the possibility of instructing Mr Potter further. One can see from TTW's evidence that Potter was engaged to advise on a particular point and it was not the intention to engage him in a series of on-going consultations.

50 Potter's evidence and Brown's evidence very much support TTW's that the discussion in May was of an ad hoc nature. You will recall Mr Potter saying that he did not know the subject matter of the discussion till after lunch. Certainly no papers were sent to him in advance and the discussion was of a wide ranging nature. Mr Brown who was his clerk and keeps appointments for Mr Potter, did not know of the subject matter

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of the discussion till after the discussion and even then he did not know it was connected with the Opinion rendered in February. The Accused was head of the legal section of the Tax Office. He has much experience in instructing QCs and indeed if he had planned the May discussion well in advance, one would have expected him to send papers in advance to Mr Potter as he did in the case with Mr Rippon. One would even at least have expected him to tell Mr Brown and Mr Potter in advance the subject matter of the discussion. He did not do so and he has failed to give us any plausible reason in this court for not so doing. To buttress his lies he even tried to assert that he called Brown from Singapore before he left for London to arrange the conference on 23 May and it was only in cross examination that he retracted this assertion when I drew to his attention to the fact that he made no such calls to London during that period.

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Of the incidental expenses which he said he expanded on behalf of TEB, the only items which were of any significant figure were the tea leaves which he gave to Potter, Brown and Taylor and the lunch. He claims that the tea leaves cost him \$150 but there is no documentary support that he in fact paid that amount for the tea leaves. As for the lunch though he could have received a bill for it he did not produce any bill in court. In fact in so far as all the incidental expenses he said he incurred on behalf of TEB, he kept no record of them, and as can be seen he asserted that he has a good memory, this does not square with his evidence that he called Brown in May when in fact he did not. It is unbelievable why if he had in fact intended to render accounts he would not have kept records of such expenditure. The very fact that he did not tell Mr Potter that he gave the lunch on behalf of TEB and he did not tell Potter and Brown that the tea leaves were gifts from TEB shows quite clearly that at no time did he do these things on behalf of TEB.

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There was another expenditure which he claims he paid on behalf of TEB namely the £450 being the fee for advice in conference. He could furnish no good reason in this court why he did not pay this fee note when he was in London. The £800 was held in his account in London and indeed if it was his intention to use that sum to meet the expenses, there was no reason for him to delay the payment of the £450. I asked him these questions:

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10 Q: You have £800 in London which you say you were holding on behalf of TEB and you kept the money to pay for incidental expenses. During the period in London you had on many occasions drawn on your account and even on the day before you left you visited the bank for the 4th occasion and put in £120. My question is this: If you had indeed held on to the £800 for incidental expenses, you would have settled the £450 there and then in London.

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A: I can only say that Mr Brown did not insist on payment which I would do if he did.

20 Q: It is not for Mr Brown to insist. When these incidentals do arise, you did not make any effort to pay this sum from the money you say you were holding.

A: The incidentals at that time were the lunch and transport which I did out of the £200 drawn on 23 May. The fee note was brought back to Singapore by me for settlement later. The incidentals incurred in Singapore up to that point of time would be a debt owed by Mr Teo to me. Taking all these together I would render a statement to him.

30 This was the explanation he gave in cross-examination for his failure to settle the fees for £450 in London. In re-examination, he gave a totally different reason. His explanation in re-examination, and I would add that was 3 days later on the 16th, he said that he went to his bank in The Strand before he went to Mr Potter's office which was at the other end of The Strand, and as he did not know the fees before receiving the fee note he could not issue a cheque as he did not have £450 from the checking account. His explanation in re-examination is entirely different from that which he gave in cross-examination. The explanation also raises more questions than it answers. We know that The Strand is not a very long road. It is less than a mile long running from Trafalgar Square to Chancery Lane. If it was his intention to pay the £450, why did he not first go to Mr Potter's Chambers and give Mr Brown a cheque having determined the fees and then go to his bank to transfer sufficient funds from his deposit account to his checking account to meet the cheque.

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Not only that, even after his return to Singapore he did not pay the fee note. He claimed that D7 was written for the purposes of settling the fees for £450. It cannot be so. If it was for the purposes of settling the fees, why did he, when he wrote to Mr Brown on 24 July (P12), not mention the outstanding fees at all? He paid the £450 only on the suggestion of Mr Brown after investigations have begun.

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(continued)

Failure to render accounts

Furthermore, his conduct in not rendering accounts when he transferred the £800 to Mr Potter's account is inexplicable in the light of his explanations to Your Honour. You will recall his evidence when I asked him why he should pay the sum of £800 to Mr Potter's account 2 days after he was asked by the Investigator on this matter. His reply was that the letter of 24 July (P.12) was written on the instructions of his counsel and he said that these instructions were given to him when he consulted his counsel on the 19th and 20th July which is even before the Investigator asked him anything on this score. He cannot explain why he should raise this matter with his counsel if his hands were clean. Your Honour will recall that he can also not explain why he should pay the full amount to Mr Potter's account when according to his own evidence he expended some of this sum on behalf of TEB. Furthermore why had he to pay £800 to Mr Potter's account, why not pay it back to Mr Teo. These are questions which the Accused could not furnish any answer, save to blame it on counsel's advice. I asked him :-

Q: So what difference does it make whether you hold it on behalf of Mr Teo or Mr Potter? Why did you transfer the £800 to Mr Potter's account?

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A: Before the 24th July letter was despatched my discussion with Mr Cashin was to transfer back to Mr Potter's account.

Q: What is the rationale for doing such a thing?

A: The rationale as I said earlier on is the advice of Mr Cashin to prevent impropriety raised by the CPIB.

Q: No impropriety was alleged against you on this until 22 July when you were questioned by Mr Hong Ser Hiong. Why should you attach any impropriety to this £800 during your

discussion with your counsel on 19th and 20th July?

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A: That was the advice to me by counsel.

Q: Why should you have raised this question of £800 with your counsel on 19th and 20th? If your hands are clean what have you to worry about this £800?

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A: I had discussed this matter with Mr Cashin and I can only say I am acting on advice.

(continued)

Q: (Accused's statement shown to him). It was only on 22 July that you were asked questions by Mr Yong Ser Hiong regarding the £800.

A: Yes.

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Q: It was only 22 July that you were asked question by Mr Yong Ser Hiong regarding this £800. Why should you instruct your counsel on 19th and 20th July about this £800.

A: I discussed with him over what happened over the years of my dealings and Mr Cashin advised me to transfer it back to Mr Potter.

Q: Up to that time no question of impropriety could arise as the sum of £800 was not raised?

A: The point was not raised.

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Q: If the sum of £800 was not raised and your hands are clean, why should you be so fearful of the sum in your account.

A: I certainly was not fearful of holding this sum in my hands but this was my counsel's advice.

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As one can see from the Accused's answers, he can furnish no good reasons why he should want to pay the £800 into Mr Potter's account. If his action here was inconsistent with his innocence it was equally so in his letter of 4 Aug 1980 to Mr TTW (P.37). He was given ample opportunity in cross examination to explain why he did not by that letter render a statement of account to Mr Teo if indeed that was his intention for holding on to the £800. He again can furnish no good reasons, save to blame on counsel's advice.

Q: P.37. Do you agree that there is no mention in this letter that you have incurred expenses on behalf of TEB?

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- A: This letter was addressed to Mr Teo's residence. I would agree there was no mention of the fee note.
- Q: Or any other expenses?
- A: I agree.
- Q: If you could write to Mr Teo such a letter could you not have easily rendered a statement of account?
- A: The investigation was still on. I was advised not to get in touch with Mr Teo. The expenses and the statement of account were raised during my discussion with Mr Cashin and his advice was to settle the matter later, when the investigation is over with Mr Teo. A few days before this letter was written at one of the interviews with CPIB there was an allegation by one of the officers of the Bureau that I cheated Mr Teo. I discussed with Mr Cashin and we agreed to put the picture right with Mr Teo. 10 20
- Q: And you, did you put the picture right by writing this letter?
- A: The first paragraph of P.37. This was with respect that there will be future consultations with Mr Potter telling him of the £800. The second paragraph I asked him whether he wanted the £800 back or to be returned to him in Singapore. The point raised during the interview was that they believed Mr Teo did not know the fee was waived. I said that I did mention to him on one of the social meeting that gave rise to the letter. 30
- Q: You were persistent that you were holding this £800 against expenses and at the appropriate time to render a statement of account. You told us on 4 Aug you knew the allegation against you was that you cheated Mr Teo of this sum. Was that not the proper time to put records straight by rendering a statement of accounts with Mr Teo, carbon copied to the CPIB if need be? 40
- A: I had raised the matter during my discussion with Mr Cashin. His advice was the money belonging to Mr Teo and "the sooner you get the money out of your hands, this will put you in a better position as to show no impropriety between you and Mr Teo." 50

	Q:	You said earlier that you were advised against getting in touch with Mr Teo. You knew the allegation was that you cheated Mr Teo. Is that not the proper time to come up with the truth. If indeed that is the truth?	In the District Court
	A:	That is why I wrote this letter.	No.8 Prosecution Final Submission 7th November 1981
10	Q:	But then throughout the investigation nobody would know you were holding the £800 for expenses incurred on behalf of the TEB?	(continued)
	A:	Mr Teo certainly knew there were expenses incurred.	
	Q:	Mr Teo may well know there were expenses incurred by you but he would not know you took the £800 for expenses?	
20	A:	During my whole relationship with Mr Teo he trusted me which he stated in court and he will know that I would deal with this matter to the best of my ability and that would include all expenses incurred on his behalf.	
	Q:	On my original question you still have not given us a reason apart from what you said was your counsel's advice why you did not render an account on 4th August.	
30	A:	I raised this issue with my counsel and his advice was do it later when investigation is over.	
	Q:	Did you ask him what was the reason for the advice.	
	A:	My counsel Mr Cashin is experienced in dealing with the CPIB. At that time I trusted him and his advice was to the best of my interest. I followed his advice.	
	Q:	Did you ask Mr Cashin the reason.	
	A:	No I did not because I trusted him.	
40	Q:	With your legal training and legal background I find it difficult to accept that you would take Mr Cashin's advice without asking him the reason for such advice.	
	A:	Mr Cashin has been an advocate and solicitor for more than 30 years. The reason why I saw him was for him to advise me and if I am not going to carry out his advice then I should not have consulted him.	

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Q: I believe that you suggested to Mr Cashin that you ought to render an account to Mr Teo.

A: Yes.

Q: And he said No according to you?

A: Yes.

Q: He did not give any reason for this?

A: I cannot recall but it did not register with me.

Q: And neither did you ask for the reason? 10

A: Yes I think so.

Q: You did not render a statement of accounts because of Mr Cashin's advice without knowing his reasons?

A: Yes.

One can see from the Accused's answers throughout this line of examination that he cannot explain the reasons for his failure to render the statement of account, and the natural inference that I believe is the truth is that he did not think of this line of defence at that time in August 1980. This is more apparent when one looks at it in the context of the statement he gave to CPIB through counsel in November of that year. By this I refer to P.43, P.44 and P.45. He was unable to explain why this fact which is so crucial to his defence (to show that he had no dishonest intention) was not mentioned in his statement through counsel to the CPIB, especially in view of the warning given to him by the recorder Mr Koh Hung Meng. 20 30

He was asked :-

Q: Would I be correct in saying that in statement P.44 which you forwarded through counsel no mention was made that you were keeping the £800 against expenses you would incur on behalf of TEB or TTW?

A: Yes. This is not stated.

Q: Why did you not say that in your statement? 40

A: My counsel and I would settle the matter with Mr Teo when the whole investigation is over.

Q: Is it your case that you did not have the intention to deceive Mr Teo?

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A: Undoubtedly so.

Q: And it is your defence that your intention was to hold this £800 against the expenses you may incur on behalf of Mr Teo?

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A: Yes.

(continued)

10 Q: On 14 Nov you were warned by Mr Koh Hung Meng to state any facts which you intended to rely on in court. Is that correct?

A: Yes.

Q: Anyway did you not state on 14 Nov, 10 days later when the statement was sent, you also failed to mention your defence.

A: Yes.

20 Q: You know by the time you gave the statement P.44 you were aware of the warning given by Mr Koh Hung Meng?

A: Yes.

Q: That being the circumstances is there any reason why you did not mention your defence that you were holding the £800 against expenses you would incur?

30 A: The settlement of expenses between me and Mr Teo as advised earlier on by Mr Cashin, the settlement would be rendered by me when the time for settlement came that is when the investigation is over. At the time of writing the P.44 we were solely concern on the question of putting this £800 in the proper perspective.

Further Questions

Q: Presumably you told counsel you have been warned to state your defence?

A: Yes.

40 Q: And your defence in this court is that you have no dishonest intention and your intention was to hold the £800 against expenses?

A: Yes.

Q: Did you ask your counsel why that fact should not be shown in P.44?

A: No I did not ask.

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Q: You did not ask his reason for the advice?

A: Yes.

Further Questions:

Q: To your mind would that not be the more logical thing to do. Tell them that all along you were holding the £800 against expenses?

A: The investigations started on 9th July. The first few days of investigations involved the sum of £1,000 which were charges brought against me. During these days I tried to explain, did my best to convince them that the £1,000 and £220 are not what they tried against me. When one did, again and again, I reached a state during the investigation where no amount of explanation was accepted by them. When the issue of £800 was raised, I told them I was holding it on behalf of Mr Teo. I believe that they were not convinced that is what they appear to me.. To my mind was no necessity to carry on convincing them if they did not believe me. I decided at that point whatever allegations they were going to make against me I am prepared to face them in court. 10 20

Q: The fact that you were charged by Mr Koh Hung Meng clearly shows that they were unconvinced of your intentions. 30

A: Clearly they were not convinced about the £1,000 and £220. I had to go on trial and I was acquitted.

Q: The fact that Mr Koh Hung Meng charged you clearly shows th t CPIB was not convinced of your intention.

A: It appears so.

Q: The warning in P.45 is not that you should convince them of your intentions but you should state in your defence for the court and not for CPIB. Do you agree? 40

A: Yes.

Your Honour will recall that I continued to cross examine the Accused at some length why he failed to state his defence in his statement and he can give no reason apart from claiming that he was acting on counsel's advice and he did not know the reason for such advice.

10 This I should say is most unusual for somebody who is legally qualified and with the experience of the Accused. The real reason is that this defence is contrived. He never intended to hold the £800 against expenses and what he stated in court was something conjured up by him after November 1980. If his intention was to hold the £800 against expenses he had ample opportunity to mention the fact to Mr Teo in the letter of 4 August 1980 (P.37) and certainly he could not have failed to mention it in P.44 which was given by him in answer to the charge and after he was warned by Mr Koh Hung Meng.

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(continued)

Accepted Waiver of Fees

20 Another matter connected with the issue whether the accused deceived TEB and thereby dishonestly induced the Company to give him the bank draft is why he should accept the waiver of fees by Mr Potter. In his evidence in chief, the accused gave evidence that he was embarrassed when Mr Brown wrote him in P9 waiving the fees. He could not explain in Court why he should be embarrassed and if indeed he was embarrassed, why he should accept the free advice. This arose out of his evidence that there was a misunderstanding between him and Mr Brown in that whilst he
30 did not tell Mr Brown that the matter was private to himself, that was the impression that Mr Brown perceived and he said that he thought the fees were waived because Mr Potter thought that this was a matter private to himself. I asked him these questions :-

16 Oct Q: You thought that Mr Potter waived his
a.m. fees because you were a friend of his and he had believed that this is a matter private to yourself?

40 A: Yes.

Q: Were you embarrassed because the matter was in fact not personal to yourself but was in fact a friend's matter?

A: I was embarrassed because he has done me a favour by waiving the fees which I wanted to pay him.

Q: Would you have been embarrassed if this matter was in fact a matter personal to yourself?

50 A: I still would be because I do not want a free advice from Mr Potter.

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(continued)

- Q: If you do not want free advice from Mr Potter, not even for yourself, you certainly would not want free advice on a friend's business matter. Would that be correct?
- A: Yes, that is correct.
- Q: If that is the case, why did you accept the free advice?
- A: When I received this letter P9, I was going to clear up the matter when I arrive in London, which I did, and explain to him that this cessation of business was in fact a friend's matter and I left it to him to reconsider this earlier waiver. 10
- Q: You said you asked Mr Potter to reconsider his earlier decision?
- A: I said I left it to him.
- Q: But you could have hardly expected him, having waived his fees, to charge in May for his February opinion or did you? 20
- A: There is a short time between February and May and if Mr Potter wanted to charge he could have.
- Q: But did you expect him to?
- A: I could not say yes or no but I left the matter to him.
- Q: Did you not by your letter P10 on 20 March accept the free advice? I refer to paragraph 2 of P10: "I am indeed grateful to Mr Potter QC for his kind gesture." 30
- A: I did subject to the appraising of this point with him.
- Q: Why did you not write Mr Brown and explain the situation to him after receiving P9?
- A: I was already embarrassed and I was going to clear it up with him when I arrive in London.
- Q: Do you agree that the reply in P10 is not that of an embarrassed man. The embarrassed writer in P10 thanked Mr Potter for his kind gesture, noted that the interest rate is very high in London and expressed his delight if the £800 could be transferred to his bank account to earn interest. 40
- A: I disagree.

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13th Oct
a.m.

Q: After the discussion you had with TTW,
did TTW and his family then set up the
company structure which would permit the
cessation of TEB?

A: No. He went on to form the companies.

Q: He really formed 3 companies?

A: I won't know. That is between him and his
solicitors.

10

Q: But is it not true that without forming
these companies, he cannot cease the
operations of TEB?

A: What are the companies he formed?

Q: Namely Cecil Investment to be owned by
TTW and his family, T.H.Teo Holdings to
be owned by TTW's uncle and Feature
Development jointly owned by the 2 families.
How could you advise on the cessation
without knowing the formation of these
companies because without these companies
TEB cannot cease operation?

20

A: The 2 companies I knew as shown in the
feasibility study.

Q: You are referring to D9 second paragraph?

A: I know those are the 2 companies as in
D10A and B. As to the shareholders I
don't think he told me.

Q: Look at paragraph 18 and 19 of P5. TTW
told us Cecil Investment and T H Teo
Holdings were to be holding companies and
Feature Development were to be development
company. In paragraph 18 P5 you said
that it was the intention to set up an
investment holding company.

30

A: Yes.

Q: Paragraph 19 of P5 you referred to a
property development company and that is to
take over the land development arm of TEB?

A: Yes.

40

Q: Paragraph 20 of P5 refers to the share-
holders of the 2 companies envisaged in the
brief. How can you not know who the
shareholders will be?

A: I knew who the shareholders are when I
wrote the brief in December.

Q: You agree that Cecil Investment and T H Teo Holdings were to assume the functions of the investment holding company envisaged in P5 except that by February 1980 there were 2 investment companies?

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A: When this brief was written in December 79 the companies were not formed yet. They were formed much later.

10 Q: Formation started after opinion from Potter was received?

(continued)

A: Yes.

Q: But you are saying you don't know who the shareholders of the 3 companies were when they were formed. As a result of your instructions written in December you knew then and therefore you must know now.

20 A: Paragraph 20 of the brief P5 refers to shareholders in TEB. When the 2 companies were started in March I did not assist in the incorporation of the companies. It was done between TTW and Miss Kay.

Q: How can you advise TEB how to cease its operations without knowing how TEB will be restructured?

A: That was what we were going to ask Potter.

30 Q: You are going to ask Potter that you have intention of doing it and whether it is alright with Potter?

A: Yes, I would say that this is correct. When these companies were formed in 1980 I believe TTW said one was for his side and the other was for his uncle's side.

Further Questions

Q: In other words you knew who the shareholders were?

A: Yes. I am now explaining the period of time in which I am focussing my mind upon.

40 Q: The formation of the companies were very much part and parcel of the cessation of TEB? Without the companies there can be no cessation?

A: Yes, I agree.

Your Honour will see how evasive this witness was in that line of cross-examination and it was

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(continued)

only with much difficulty that I was able to establish that he knew about the 3 companies and who the shareholders of the 3 companies were despite his earlier denial that he had no such knowledge.

Amended Fee Note

Your Honour will recall the exhibit P17A where the accused amended the receipted fee note given by Mr Brown. Your Honour will recall that this all started with his letter P12, the letter of 24 July to Mr Brown. I would note that in the letter he quite clearly wanted the £800 he was repaying to be credited to the account of "Tong Eng Brothers Ltd - For future consultation". The evidence was that Brown took some time in replying to P12 because he was on leave and it is the accused's evidence that as he did not receive a reply from Brown to P12, he wrote again on 17 August P13. I note that he now changes the scheme of things and wanted the £800 to be credited for the subject matter "Further consultation on section 35: cessation provisions of Income Tax Act". Mr Brown replied to P12 (before receiving P13) in P14 suggesting that the £800 be used to settle 2 outstanding accounts one of which has nothing to do with Tong Eng Brothers. The accused replied to Brown in P15 agreeing that part of the £800 be used to settle the fees for the advice in conference in respect of TEB and in P16 Brown sent the accused the receipted fee note P16A which the accused caused certain amendments to be made. The accused could not explain in court why he caused the receipted fee note to be amended in the manner in which he wanted in P17A. If it is his evidence that he wanted the subject matter to be consistent with the title giving to the opinion, then one can only question that reason, for Brown when giving his receipted fee note, was only following the subject matter given him by the accused on 23 May and also his letter of 12 July. If the accused is a meticulous person wanting records to be correct all the way, then why did he tell Brown when in London that the advice in conference concerned Tong Eng Brothers and not to be headed "Cessation of business - section 35". Furthermore, what objection can he have to the words in the receipted fee note "to this company" in the sentence "There is still £350 in credit to this company for work which is to be done in the future.". After much difficulties he could not but agree with me that by his amendments in P17A he has removed all references in the receipted fee note that he was in this subject

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10 matter not the client of Mr Potter but only acting as an agent for Tong Eng Brothers. I would venture to say his difficulty in giving an adequate reason in Court for the amendments is because it was his intention when making these amendments to try to make himself out to be a client of Mr Potter in the hope thereby that Potter would not be able to testify against him. I can see no other reasons for the amendments and he has failed to give us any reason for so doing.

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Interest

20 The accused has also failed to explain in this Court why he should as late as 20 Nov 80 attempted to transfer a further £30 to Mr Potter. I refer to P19. Your Honour will note that this in fact is not the actual interest earned by the £800 in his account for he drew from that account to the extent of £500 when he was in London in May. He was quite unable to explain what he sought to do by P19. His explanation that he needed to check with the bank to see that such interests were in fact credited to his bank account cannot be correct for the simple reason that this £30 only represents the interest which would have been earned and not the interest which was in fact earned. One should not forget that it was on 14 Nov he was informed by Mr Koh Hung Meng that he may be charged for the offence of cheating and also of CBT in relation to the subject matter of the present charges. The only reason as I see it why he should suddenly remember the interest which the £800 would have earned is because after being served with the charges, he suddenly came to realise that wrongful gain is also dishonesty and if he had in fact used the £800 to earn interest for himself, that is wrongful gain. He thereby sought to repay the £30 representing the interest which would be earned.

50 To summarise, the accused in this court, I would urge, has not been honest when giving his evidence. He was in fact proven to be lying in many instances. It is extremely difficult, it would in fact be incredulous to say that TTW has deliberately given false evidence against him. Mr Teo trusted him very much as a friend and has no interest whatsoever in seeing the accused being accused of any wrong doing, if in fact he was innocent. The accused thereupon had cleverly proven his defence round Mr Teo's evidence and alleged that

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(continued)

Mr Teo was mistaken. Your Honour has heard Mr Teo on the stand. He gave evidence in a very forthright manner. His evidence is that on that day in late February when the accused showed him the note with Mr Potter's name and the £800 written down and asked him to pay the £800, the accused did not tell him that he has yet to receive the bill from Mr Potter and that the £800 was what he thought Mr Potter's fees might be. It is also not Mr Teo's evidence that there were discussions to consult Mr Potter further that day. This question did not arise until 21 May, the day the accused was going to leave for London when an impromptu decision was taken to clarify Mr Potter's opinion with him in conference. Mr Teo's evidence is quite clear. When saying this in Court, he was apparently quite disappointed with Mr Potter's opinion. He said it was a yes-no opinion. He said an opinion should say yes or no, if not it is of no use to him. He gave evidence that he disagreed with Mr Potter and took steps to carry out the intentions of TEB to cease business notwithstanding that opinion. It is quite clear that the matter is not an on-going matter. Mr Teo had no intentions nor did the accused express any intention to him that Mr Potter be engaged in an on-going consultation. If the accused did not deceive Mr Teo, he would not have written the letter of 10 March, P8, in the manner which he did. It is quite clear from the letter, at the very lowest, he intended to keep £400 out of the whole sum. If the accused did not deceive TEB by deceiving TTW into giving him the bank draft for £800, when Mr Potter waived his fees, he would have asked for the return of the bank draft. He would not have asked for the £800 to be placed in his account to earn interest. He would not have, when in London, withdrew £500 out of that account when he only had £91 before the £800 was credited. The actions of the accused once he knew investigations were being conducted into this subject matter is not that of an innocent man. He did not come up with the truth. The truth was that he was guilty of the offence. That is why he wrote to Mr Potter on 24th July, 2 days after he was questioned by Mr Yeong Ser Hiong, seeking to transfer £800 into Mr Potter's account. He would not have amended the fee note. He would, in fact, have paid the £450 when in London and not do it only on the suggestion of Mr Brown. If he had told TTW that Potter had waived his fees, TTW would not believe (right until he was informed by

the investigators) that the bank draft was paid to Potter's for his opinion rendered in February.

In the District Court

10 In conclusion, I would urge the Court that the accused has not in any way cast any reasonable doubt on the prosecution's case. His evidence on the contrary shows very much that he was guilty of the offence and not only that, he had sought to influence the evidence by his conduct after investigations had begun.

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(continued)

Sd: Illegible

DPP
7 Nov. 81

No. 9

GROUNDS OF DECISION

No.9
Grounds of
Decision
20th May
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SUBORDINATE COURTS

SINGAPORE

20 MAGISTRATE'S APPEAL NO 209/81

COURT NO 9 IN DAC 4624 & 4625/80

JAMES CHIA SHIH CHING VS PUBLIC PROSECUTOR

GROUNDS OF DECISION

30 The accused, James Chia Shih Ching, age 37, Senior Legal Officer, Inland Revenue Department, faced three charges under the Penal Code (Chapter 103). The third charge was framed in the alternative to the first two charges. The three charges read as follows :-

"You, James Chia Shih Ching,
are charged that:

1. you on the 10th March 1980, in Singapore, being entrusted with dominion over a sum of £400 attempted to commit criminal breach of trust of this sum and thereby committed an offence punishable under Section 406 read with Section 511 of the Penal Code.

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and

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2. you on the 20th March 1980, in Singapore, being entrusted with dominion over a sum of £800 committed criminal breach of trust of this sum and thereby committed an offence punishable under Section 406 of the Penal Code.

Alternatively

(continued)

1. You, James Chia Shih Ching,

are charged that you, on or about the 7th 10
March 1980, in Singapore, cheated Tong
Eng Brothers Private Ltd by deceiving the
Company into believing that a sum of
£800 was due and payable to one D C Potter,
Queen's Counsel as legal fees for work
rendered when you knew that such sum was
not in fact determined nor due and payable
and thereby dishonestly induced the
Company to deliver to you a bank draft
for £800 which it would not do if it 20
were not so deceived and thereby committed
an offence punishable under Section 420
of the Penal Code. "

The accused claimed trial to the charges.

The essence of the evidence as produced
by the Prosecution is as follows. On 29th
April 1970, the accused joined the Legal Section
of the Inland Revenue Department as a legal
officer. On 1st May 1979, he was promoted to 30
the post of Senior Legal Officer to head the
Legal Section. As Senior Legal Officer, he
had occasions to instruct Queen's Counsel on
behalf of his Department concerning advice and
litigation. One of the chambers which the
accused had instructed was that of Mr Michael
Nolan, Queen's Counsel. In the course of his
dealings with the said chambers, the accused
befriended Mr Donald Charles Potter (P.W.1)
and Mr Joseph Anthony Brown (P.W.2), chief 40
clerk of the said chambers.

In 1978, the accused was introduced by
Dr Tan Poh Lin (P.W.8), Deputy Chairman of
the Industrial and Commercial Bank to Mr Teo
Tong Wah (P.W.7) a director of Tong Eng
Brothers Pte Ltd. The accused and Mr Teo Tong
Wah (hereinafter referred to as "Mr Teo")
became close friends.

Tong Eng Brothers Private Limited

(hereinafter referred to as "Tong Eng Brothers") completed the development of a building called Tong Eng Building at the end of 1979. It was then realised that arising from this fact, the profits of Tong Eng Brothers would be quite substantial both for the end of 1979 and the year 1980. The Board of Directors of Tong Eng Brothers believed that if the company were to cease operations in 1981, tax could be avoided for either 1979 or 1980 in view of the cessation provisions in the Income Tax Act (Chapter 141).

In the District Court

No.9 Grounds of Decision 20th May 1982

(continued)

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Around October 1979, Mr Teo informed the accused of his company's decision intention to cease operation and conferred with him on the operation of the cessation provisions. The accused told Mr Teo that it could be done. Mr Teo and the accused discussed the matter again subsequently. This time, the accused advised Mr Teo that his company should consult a Queen's Counsel. This advice was accepted. When the accused said that a brief of the company's history and operations had to be prepared for the purposes of consulting the Queen's Counsel, Mr Teo requested the accused to assist in the preparation of the brief as his company's legal officer was new.

30
Around Christmas of that year, the accused produced a brief (Exhibit P5) in Mr Teo's house and both of them went through the brief together. Mr Teo agreed with the brief. The accused indicated that he would send the brief to the Queen's Counsel by post.

40
In January 1980, the brief which was sent by the accused reached the chambers of Mr Michael Nolan. One of the silks in this chambers was Mr Donald Charles Potter (P.W.1). The chief clerk of the Chambers was Mr Joseph Anthony Brown (P.W.2). In the course of accepting briefs and instructions from the Inland Revenue Department, Singapore, Mr Potter came to know the accused fairly well. The accused became a friend of Mr Brown too as a result of his dealings on behalf of the Inland Revenue Department with Mr Nolan's Chambers.

50
On 14th February 1980, Mr Potter gave his Opinion (Exhibit P7) (hereinafter referred to as "the Opinion") and it was sent to the accused. Shortly after receiving Exhibit P7, the accused went to Mr Teo's house. The accused

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read the Opinion to Mr Teo. The latter's reaction to the Opinion in Exhibit P7 was that it was a 'Yes' or 'No' answer and he felt that the cessation of operation of his company could be carried out. The accused on his part did not fully agree with the Opinion of Mr Potter. After reading the Opinion to Mr Teo, the accused handed to the latter a note with the name 'Potter' and the figures '£800' written on it. While handing over the note, the accused said that the £800 was for payment to the Queen's Counsel for his fees and told Mr Teo to make the payment. Mr Teo subsequently mislaid the note.

10

On the afternoon of 7th March 1980, the accused telephoned Mr Teo and informed him that he would be going to Dr Tan Poh Lin's office later that day and asked Mr Teo to obtain a bank draft for Mr Potter's fee so that he (the accused) could collect it from Dr Tan Poh Lin's office. Accordingly, Mr Teo telephoned Dr Tan Poh Lin and asked him to authorise the debiting of the account of Tong Eng Brothers for £800 and that the accused would be going to his office to collect the bank draft. As a result, a bank draft in the sum of £800 for Mr Potter was prepared.

20

On 10th March 1980, the accused wrote a letter (Exhibit P8) to Mr Brown. The text of the letter was as follows :

30

"Dear Tony,

RE: CESSATION OF BUSINESS
SECTION 35 OF THE INCOME TAX ACT

I am in receipt of the opinion by Mr Charles Potter a week ago on the above.

2. I believe the average fee charges by Mr Potter is £400 with zero VAT. I attach herewith a bank draft for £800 leaving a remainder of £400 to be credited to my account which may be utilized in the near future for other purposes.

40

Thank you.

Yours sincerely

JAMES S C CHIA "

Mr Brown had on 18th January 1980 made a note in his diary that the instruction (Exhibit P5) was a matter personal to the accused. At that time, no firm decision was taken to waive the fees. When Mr Brown received Exhibit P8, he consulted Mr Potter on the question of the charging of fees. As Mr Potter was under the impression that the Opinion rendered concerned a "private matter" or "family matter" of the accused, he decided to waive the fees. In consequence of that, Mr Brown wrote a letter (Exhibit P9) to the accused. The text of that letter reads :

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(continued)

"Dear Mr Chia,

Cessation of Business
Section 35 of the Income Tax Act

I thank you for your letter of 10th March 1980 enclosing your cheque for £800.

I have credited your account with this full figure because Mr Potter does not wish to charge anything for the Opinion in the above matter.

I hope you are keeping well and look forward to seeing you again soon.

Yours sincerely,

Tony Brown

"

When Mr Brown received the bank draft from the accused together with the accused's request in P8 to credit £400 into his (accused's) account, he could not carry out the accused's request as barristers do not keep a client's account. As such, the bank draft was not banked in and Mr Brown merely kept the draft with him.

Upon receiving Exhibit P9, the accused wrote a letter (Exhibit P10) to Mr Brown on 20th March 1980. The text of the letter is as follows :

"RE: CESSATION OF BUSINESS UNDER SECTION 35
OF THE INCOME TAX ACT

1. I thank you for your letter of 13 Mar 80 on the above.

2. I am indeed grateful to Mr Potter, QC, for his kind gesture.

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3. In view of the high interest rates prevailing in Britain I would be delighted if you could kindly transfer the £800 to my external deposit account in Midland Bank Limited, 82 Strand Branch, 82 Strand London, WC2R OEH. My deposit account number is 23027554 under the name of S.C.J.Chia. Kindly effect the transfer before 1st April.

(continued)

4. I enclose herewith two photographs of Mr Potter taken by me when he was in Singapore in October. Kindly forward it to him. 10

Thank you. "

In accordance with Exhibit P10, Mr Brown had the sum of £800 paid into the accused's bank account in London on 28th March 1980.

Before 7th March 1980 and 21st March 1980, steps were taken to form three companies with a view to cease the operations of Tong Eng Brothers. In April 1980, Tong Eng Brothers had second thoughts about ceasing its operation. However, this was not disclosed to the accused. 20

On 21st May 1980, the accused had lunch with Mr Teo. On that day, the accused was scheduled to leave for London on official duties. He informed Mr Teo that he would be seeing Mr Potter and would clarify the Opinion rendered. 30

On 23rd May 1980, the accused gave lunch to Mr Potter. After lunch, the accused saw Mr Potter in conference for at least an hour. The accused sought advice on two matters, namely, matters concerning Nakhoda Investments and the Opinion rendered by Mr Potter concerning Tong Eng Brothers. The discussion on Tong Eng Brothers was general in nature. Immediately after the conference, the accused gave to Mr Brown the name of the two matters discussed namely, Nakhoda Investments and Tong Eng Brothers and asked for what the fees was. Mr Brown had the two fee notes typed. Mr Brown fixed the fee for Nakhoda Investments at £350 whilst the fee for Tong Eng Brothers was £450. The fee notes were handed to the accused. At that time, Mr Brown was unaware that the matter of Tong Eng Brothers discussed in the conference was the same matter as the Opinion rendered by Mr Potter. 40 50

On 7th June 1980, the accused returned to Singapore. He then visited Mr Teo and went through the steps to be taken in ceasing the operations of Tong Eng Brothers with the latter.

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On 9th July 1980, the Corrupt Practice Investigation Bureau interviewed the accused. On 22nd July 1980, the accused was questioned about the matter concerning the £800.

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(continued)

10 On 4th August 1980, the accused wrote a letter (Exhibit P37) to Mr Teo. The text of the letter is as follows :

"Dear Tong Wah,

RE: BRIEF AND OPINION BY MR POTTER Q.C.

20 I refer to the £800 which I was holding for you against the possibility of instructing Mr Potter Q.C. further. Please note that the £800 is in Mr Potter's hand. Do you wish it to be returned to you in Singapore in which case I will so advise Mr Potter Q.C.

Waiting to hear from you soonest.

Thank you. "

30 When Mr Teo received this letter, he could not understand the first paragraph for two reasons. Firstly, as far as he was concerned, the £800 had been paid to Mr Potter as fees. Secondly, he did not discuss with the accused the possibility of consulting Mr Potter further after the accused's return from London.

On 24th July 1980, the accused wrote a letter (Exhibit P12) to Mr Brown. In his letter, the accused stated that he had written to the Midland Bank in London to transfer a sum of £800 from his account to Mr Brown. He requested the latter to credit the £800 to the account of "Tong Eng Brothers Ltd - for future consultation". The accused told Mr Brown to act immediately.

40 On 18th August 1980, Mr Brown replied to Exhibit P12. In his letter (Exhibit P14) Mr Brown informed the accused that the sum of £800 had been transferred to Mr Potter's account. He suggested that instead of putting the sum against Tong Eng Brothers for future consultation, it should be utilized to settle the two fee notes in respect of Nakhoda Investments and Tong Eng Brothers.

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(continued)

In the meantime, on 17th August 1980, the accused wrote another letter (Exhibit P13) to Mr Brown reiterating his request to have the £800 transferred to Mr Potter's account.

On 26th August 1980, the accused replied to Exhibit P14 by way of Exhibit P15 giving his consent for part of the £800 to be used to settle the fee note of £450 in respect of Tong Eng Brothers and that the balance of £350 be credited to Mr Potter's account. In respect of the fee note concerning Nakhoda Investments, the accused stated that a sum of £350 is on its ways in settlement of that note.

10

On 29th August 1980, Mr Brown despatched a receipted fee note for £450 to the accused. The said receipted fee note (Exhibit P16A) is as follows :

PROFESSIONAL FEES of
Mr D. C. POTTER Q.C.

20

VAT Registration No. 243795830

4 PUMP COURT,
TEMPLE,
LONDON, EC4Y 7AN

James S.Chia Esq.,
Advocate,
70 Branksome Road,
Singapore, 1543

29.8.80

Your ref.

Mr. Teo

30

ZERO RATED

TONG ENG PTE. LIMITED

1980

May 23 Advising in Conference
(3.00-4.30 p.m.)

£450.00

CHEQUE
RECEIVED WITH THANKS
30 JUL 1980

[There is still £350 in credit to this company for work which is to be done in the future]

40

On 8th September 1980, the accused wrote to Mr Brown in which he enclosed a copy of Exhibit P16A with amendments made by him and requested that a fresh receipt in the form of the copy attached be issued. The receipted fee note Exhibit P16A as amended by the accused is as follows :

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10 VAT Registration No.243 7958 30

4, PUMP COURT
TEMPLE,
LONDON, EC4Y 7AN

James S.Chia Esq.,
Advocate
70 Branksome Road,
Singapore, 1543

29.8.80

Your Ref.

Mr.--Fee

20

ZERO RATED

CESSATION OF BUSINESS: SECTION 35
~~FONG-ENG-PTE--LIMITED~~

1980

May 23 Advising in Conference
(3.00 - 4.30 p.m.) £450.00

CHEQUE
RECEIVED WITH THANKS
30 JUL 1980

30

[There is still £350 in credit
~~to this Company~~ for work which
is to be done in the future]

On 18th September 1980, a fresh receipted fee note was sent to the accused.

40

On 20th November 1980, the accused wrote a letter (Exhibit P19) to Mr Brown. The accused said that a draft of £30 will be sent to Mr Brown and requested the latter to credit the said sum to Mr Potter for the subject matter: Further consultation on Section 35, Cessation Provision Income Tax Act. Mr Brown was not aware of what the £30 referred to; he was very puzzled. Mr Brown informed the accused by means of a letter dated 27th November 1980 (Exhibit P20) that Mr Potter

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has instructed him not to accept the £30 as Bar etiquette did not allow the Chambers to accept money in excess of work previously done.

On 19th January 1981, Mr Brown again wrote to the accused (Exhibit P21). He reminded the accused that a sum of £350 which was the accused's money was being held in Mr Potter's account and asked whether it would be better for the sum to be returned to the accused since proceedings against the accused were pending. When no reply to this letter was received, Mr Brown wrote another letter on 2nd February 1981 (Exhibit P22). He informed the accused that in view of the charges that had been brought against the accused, Mr Potter had decided that between him and the accused, the fees in respect of Nakhoda Investments were entirely released and as such the £350 in Mr Potter's account would be paid into the accused's account in London unless the accused is heard from within fourteen days. The accused responded to this letter by way of a telegram (Exhibit P23). In it, the accused asked Mr Potter to retain the £350. On 1st March 1981, the accused wrote a letter to Mr Brown stating that he did not think it right to release Mr Potter of the fees due and stated that a bank draft of £350 was on its way in settlement of the fees due in respect of the Nakhoda Investments matter. The accused asked Mr Potter to continue to retain the £350.

At the close of the Prosecution's case I examined the evidence adduced carefully. I found that the following facts had been established:

- (1) On 14th February 1980, Mr Potter rendered the Opinion (Exhibit P7) pursuant to the instructions (Exhibit P5) prepared by the accused;
- (2) On a day in February 1980 shortly after the Opinion (Exhibit P7) had been received, the accused handed a note to Mr Teo. The note had the figure "£800" and the name of Mr Potter written on it. The accused told Mr Teo to pay £800;
- (3) On 7th March 1980, the accused asked Mr Teo to authorise a bank draft for £800 to be made out to Mr Potter;
- (4) As on 7th March 1980, the fee for the Opinion (Exhibit P7) had not been determined by

Mr Brown. In fact it was only after receiving the letter (Exhibit P8) dated 10th March 1980 from the accused that a decision on the fee was made; the decision being that no fee would be charged. As such no fee note had been issued before 7th March 1980. In the circumstances, the fee for the Opinion was not due and payable;

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10 (5) As on 10th March 1980, when the accused (continued)

wrote Exhibit P8, it is clear that the accused had not been notified of the fees for the Opinion. The accused stated in his letter that he believed the average fee of Mr Potter is £400 with zero VAT and assumed that Mr Potter would charge the average fee of £400 for the Opinion. Thus although the accused was forwarding a draft for £800, he expected the fee to be £400, thus leaving a balance of £400;

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(6) On 7th March 1980, Mr Teo who was acting on behalf of Tong Eng Brothers authorised a bank draft of £800 in favour of Mr Potter to be handed to the accused. This was done pursuant to the accused's representation to Mr Teo that the fee of £800 had to be paid to Mr Potter for the Opinion;

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(7) The nature and structure of the second paragraph of the letter dated 10th March 1980 (Exhibit P8) reflect the thought in the accused's mind concerning the fee Mr Potter would charge for the Opinion. It shows that in the accused's view, a fee of £400 will be charged for the Opinion rendered. Thus, although the accused was forwarding a bank draft for £800, he expected the fee to be only £400. It is also to be noted that the accused instructed the balance be credited to his account. Furthermore, it is significant that the accused stated in the letter that the balance "may be utilised in the near future for other purposes". The two words "other purposes" read with the words "my account" clearly meant work concerning matters other than the matter concerning the cessation of business of Tong Eng Brothers. This would mean that the balance of £400 which belonged to Tong Eng Brothers may be used to pay for matters other than the cessation of business of Tong Eng Brothers;

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(8) Mr Teo in his evidence (at page 70 of the Notes of Evidence) stated clearly what he expected the accused to do if Mr Potter had

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waived the fees for the Opinion. His expectation, which is a reasonable one, was that Mr Potter would send the bank draft back to Singapore and in turn the accused would return the draft to his company. The essence of this is that upon the fees being waived, the accused was expected to have the money returned to Mr Teo or his company. The facts showed that the accused did not react in this expected fashion. When he was informed about the waiver of the fees, he not only failed to inform Mr Teo of this but instead on his own instructed Mr Brown to have the £800 belonging to Tong Eng Brothers deposited in his own personal account in London without the knowledge of Mr Teo; and

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(9) The accused had given directly or indirectly to Mr Potter and Mr Brown the impression that the subject matter of the Opinion concerned a private or family matter of the accused. It was on this basis that Mr Potter decided to waive the fees as it was customary for a barrister to waive the fees in respect of work done involving the private and family matter of an instructing solicitor.

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In the light of the above facts, I was satisfied that a case against the accused had been made out in respect of the alternative charge which if unrebutted would warrant his conviction. Accordingly, the accused was called to enter upon his defence on the alternative charge.

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The accused elected to give evidence on oath. He stated that Mr Teo was his neighbour and that Mr Teo as well as Dr Tan were in his inner circle of friends.

On a few occasions in September or October 1979, Mr Teo sought confirmation from the accused concerning the application of the cessation provisions of the Income Tax Act. The accused regarded Mr Teo's approach to him on this matter as a personal one and not on behalf of Tong Eng Brothers because the matter was always brought up at social functions. Had Mr Teo informed the accused that he was enquiring as a director of Tong Eng Brothers, he would certainly decline to express an opinion and would have advised him to seek advice from his own accountants.

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Around December 1979, the accused suggested to Mr Teo that if he was pressing

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10 ahead to make use of the cessation provision for his company, he should seek the opinion of a Queen's Counsel. The accused explained that for that purpose, instructions had to be prepared Mr Teo agreed to have the legal officer of his company to prepare the instructions. Subsequently, Mr Teo requested the accused to prepare the instructions instead. As a result, the accused together with Mr Teo prepared the instructions which were despatched to Mr Potter in January 1980.

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20 On receipt of the Opinion (Exhibit P7) the accused perused it and found it to be rather unsatisfactory. He felt that certain points must be raised with Mr Potter and that he had the impression from the covering letter (Exhibit P6) and the Opinion that Mr Potter was inviting him for further clarification. The accused then discussed the Opinion with Mr Teo. The accused pointed out the portions of the Opinion which were not satisfactory. Mr Teo was unhappy about the Opinion.

30 Subsequent to the discussion, the accused met Mr Teo on several occasions and in February and March he informed Mr Teo that he would be clarifying the Opinion with Mr Potter. Mr Teo agreed to this. The accused stated that from his past experience, he expected the fee note for the Opinion to arrive towards the end of 1980. After discussing the Opinion with Mr Teo, he handed a note written by him to Mr Teo. In this note were written the name of Mr Potter, the address and a figure "£800". In handing over the note, the accused said, "I have not received the bill yet but we must pay for the opinion rendered by Mr Potter. £800 should be sufficient to cover his opinion". The accused stated that the fee charged by Mr Potter in respect of work done for his department varied from £250 to £750. The average fee was £400 which was about half of the normal rate charged. The fees charges were on concessionary rates. As the Opinion was not a matter concerning his department and as he did not think of getting concessionary rate for Mr Teo, he doubled the fee and arrived at the estimation of £800.

50 On 7th March 1980, the accused telephoned Mr Teo and asked him to authorise the issue of a bank draft of £800 to be used in Mr Potter's name. On that day, he collected a bank draft of £800 from the Industrial and Commercial Bank.

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On 10th March 1980, he wrote and sent a letter (Exhibit P8) together with the bank draft to Mr Potter.

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When the accused received the letter marked Exhibit P9, he was embarrassed that Mr Potter was waiving his fees because he thought that the waiver was done as a special favour to him. The accused was not aware of the practice of London barristers in waiving fees in respect of private or family matter of solicitors.

(continued)

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The accused stated that he did not think that he had told Mr Teo about the waiver of fees as the Tong Eng Brothers matter was not complete and was going to render a statement of account after the whole matter was completed.

On 20th March 1980, the accused wrote Exhibit P10 to Mr Brown instructing him to transfer the £800 to his account as the interest rate in London at that time was 15% and he was putting the £800 to earn interest for Mr Teo. Once the £800 was placed in the accused's account, he had control over it.

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On 22nd May 1980, the accused arrived in London on official duties. On the next day he took Mr Potter out for lunch. The lunch and transportation cost about £80. He gave Mr Potter, Mr Brown and Mr Taylor a box of China tea each as he felt obligated to the kind gesture of Mr Potter in waiving the fee. He was doing so on behalf of Mr Teo. After lunch, Mr Potter and the accused had a conference on the programme for the reconstruction of Tong Eng Brothers.

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On 7th June 1980, the accused returned to Singapore. On the third week of that month, the accused discussed the advice which Mr Potter gave. He told Mr Teo that there were certain procedures and steps which had to be carried out. During the discussions, they brought out the feasibility study which they had prepared. They were incomplete. The accused intended to complete the studies and send them to Mr Potter for his approval. The approval by Mr Potter would have meant the incurring of fees. When the studies were approved, and the programme was carried out by Mr Teo, the accused would tender his statement of account to Mr Teo. He would have credited the accused with £800 and interest

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earned. On the debit side, he would have shown the fee of £450 for the conference, the fee for the approval of the programme and expenses incurred in respect of postage incurred, the tea, the lunch, taxi fare, telephone calls to London and other ancilliary expenses.

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10 On 9th July 1980, the investigation on the accused commenced. On the following Monday, he was hospitalised. That weekend the accused on being discharged from hospital met his counsel. Throughout the investigation, the counsel advised him on the steps he had to take to put matters in order. From 24th July onwards, the letters written by the accused to Mr Brown were on the advice of his counsel. The letter to Mr Teo was also written on the counsel's advice. So also was the payment of
20 £800 to Mr Potter.

(continued)

The accused denied that he ever had the intention to cheat Mr Teo or Tong Eng Brothers of any money.

After the accused had given his testimony, the Defence closed its case.

I examined with great care the evidence given by the accused. After doing so, the following observations were made:

30 (i) In his examination-in-chief (Notes of Evidence page 121) the accused was asked if he had informed Mr Teo of Mr Potter's decision as stated in Exhibit P9 to waive the fee for the Opinion. The accused answered that he did not think that he did. However, a short while later, the accused stated that between the time he received Exhibit P9 and the time he went to London, he met Mr Teo many times and he remembered that on several occasions, he did mention the said letter to him. There
40 was clearly a reversal of the stand taken by the accused. In cross-examination, when the accused was questioned on the same matter, the accused reversed his stand again not once but twice. This can be seen from the following extract (Notes of Evidence, page 241):

"Q: You also did not tell Mr Teo that Mr Potter had waived his fees before you wrote P10?

A: Yes, I agree.

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- Q: Why did you not tell Mr Teo?
after all, he did give you his
company's money.
- A: I always treated it as Mr Teo's
money.
- Q: In these circumstances, why did you
not tell Mr Teo that Mr Potter had
waived his fees?
- A: Mr Teo from the very beginning of
the brief left the entire matter to 10
me. This is in the course of using
my discretion in transferring the
money to earn interest for him. I
need not run back to him every time
I receive a letter. In fact as the
learned DPP had said, I was acting
in a quasi-solicitor's position.
Solicitors do not run back to their
clients every time they receive
letters. Or rather, I did mention 20
this waiver to Mr Teo.
- Q: When you mentioned the waiver to
him, did you tell him what you have
done with the money?
- A: Yes. I said I had placed it in my
London account.
- Q: Put: You did no such thing?
- A: I did.
- Q: Put: If you had done so, Mr Teo
would not have believed right until 30
the time of the investigation that
the £800 was paid to Mr Potter for
his opinion rendered in February?
- A: Mr Teo may have forgotten the
conversation. "

It is interesting and significant to note
from this extract that initially he again
stated that he did not notify Mr Teo of the
waiver of fees and in fact was in the process
of giving his reasons why he had not done so 40
when all of a sudden, he uttered "Or rather,
I did mention this waiver to Mr Teo." The
rapidity and the radical nature in which the
accused changed his stand was rather amazing.
This characteristic of the manner in which
the accused had given his evidence clearly
showed that he is not a reliable and truthful
witness.

(ii) In cross-examination, the accused was
asked by the learned DPP (Notes of Evidence,

page 188) :

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"Q: It is your case that you did not have the dishonest intention to deceive Mr Teo of £800?

A: Undoubtedly so.

Q: It is your defence that your intention all along was to hold the £800 against expenses you would incur on behalf of Mr Teo or Tong Eng Brothers.

A: Yes, on behalf of Mr Teo. "

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On the next day of hearing, the accused's evidence on this point was different as can be seen from the following extract of the cross-examination (Notes of Evidence, page 199) :

"Q: You also agreed that the Defence you gave in this Court is that you had no dishonest intention as your intention was to hold the £800 against expenses?

A: I do not agree with the second part. What was stated in P44 with regard to £800 was to complete the sequence of event up to the transferring of £800 back to Mr Potter. That is why the £800 was raised up at that stage.

Q: Do you recall answering "Yes" to my question, "Your defence in this Court was that you had no dishonest intention and your intention was to hold the money against expenses?"

A: Yes, I said that. But the second part is not my defence.

Q: You are now changing your evidence?

A: I am qualifying it. The expenses was brought up by Mr Fong and also Mr Cashin to rebut the inference which was made in the opening address. That was why the explanation on the expenses were brought up. As to the facts why the expenses were not stated in P44 which was made with counsel's advice, the facts were known to my counsel and why it was not stated, I can only assume it was not relevant to the original and even less so to the present charge.

Q: You said the expenses was brought up in examination-in-chief to rebut the letters subsequent to 13th March?

A: Yes.

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Q: You said that in P44, the incidental expenses were not stated?

A: Other than the £450.

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Q: You are changing the statement?

A: No! No! It is there. "

These two extracts demonstrate once again the unreliability of the accused's evidence.

(continued)

(iii) The accused stated that from his experience in the dealings he had previously, the average fee which Mr Potter charged was £400. The fees which Mr Potter charged were at a concessionary rate which was accorded to the Singapore Government which was about 50% of the normal rate charged. In respect of the Opinion rendered by Mr Potter, it was not a Government matter and therefore the accused stated that in estimating the fee to be paid for the Opinion, he took the precaution of doubling the average fee; thus he estimated the fee to be £800. In this respect, the accused explained that he did not think of getting a concessionary rate for Mr Teo. This was stated by him in his examination-in-chief (Notes of Evidence, page 117). The learned Defence Counsel then questioned the accused on the letter he wrote to Mr Brown on 10th March (Exhibit P8). The accused stated that the first sentence in paragraph two of the said letter was inserted because the average fee charged by Mr Potter was £400. The accused then went on to explain that the second sentence in that paragraph was inserted as he was persuading Mr Potter to charge in respect of the Opinion the same concessionary rate accorded to the Singapore Government. He added, "when I talked about the remainder of £400, I was hoping that my persuasion would result in a remainder". In cross-examination, the accused once again reiterated that he was persuading Mr Brown to charge only £400 for the Opinion. Therefore, the accused's evidence initially that he was not persuading Mr Potter to charge a concessionary rate for the Opinion was contradicted by Exhibit P8 as well as his subsequent evidence.

(iv) Mr Teo told the Court that on the day the accused left for London he had lunch with the accused. It was then that the accused told him that he would be clarifying the Opinion with Mr Potter and he agreed to it. To rebut this piece of evidence, the accused stated that when he and Mr Teo discussed the

Opinion, Mr Teo was not happy about the advice. The accused told him that he would be in London in May and would seize the opportunity to discuss the matter further with Mr Potter. Mr Teo agreed to this. The accused stated that he had the conference with Mr Potter on 23rd May 1980. Earlier in the week, when he was still in Singapore, he telephoned Mr Brown to make the appointment. He denied that he had made the appointment only when he was in London. When he was cross-examined on this point, the accused stated that he thought he did telephone Mr Brown. He agreed that he presumably made the call from either his office or his house. When the accused was confronted with the fact that the phone bill of his office for the month of May 1980 showed that there was no phone call to Mr Brown, the accused agreed that he did not call Mr Brown from his office. The learned DPP then proceeded to suggest to the accused that he had made no trunk call to Mr Brown from his house, the accused's reaction was very significant. This can be seen from the following extract (Notes of Evidence, page 153) :

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"Q: I have just have confirmation from the Telecoms that no trunk call was made from your home in May 1980. So you could not have called Mr Brown from your home here.

A: I do not wish to labour on this point but there was an appointment made, whether in Singapore or London.

Q: Do you disagree with me that no trunk calls were made by you from your home to London in May 1980?

A: I would not.

Q: We have seen the office bill. You have also not denied you did not call Mr Brown from your home. You do not deny calling Mr Brown from your office.

A: I do not dispute whether the call was made in Singapore or London.

Q: Please answer the question.

A: I cannot say. It happened so long ago.

Q: You rather not answer my question?

A: I will not dispute. If the bill says there was no phone call, I would accept it. "

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This extract not only shows his demeanour in Court as a witness but also shows that his evidence was broken down by the cross-examination

(v) On perusing the evidence of the accused, it was impossible not to be struck by the fact that in many instances, the accused was evasive in answering questions put to him. One glaring example of this appears from the following extract when he was under cross-examination :

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"Q: You heard Mr Teo saying in Court that after your return from London, there was no possibility of instructing Mr Potter further. Do you agree?

A: I do not think he said that.

Q: I will rephrase it. Mr Teo's evidence is that on your return from London, when you discussed the conference, you did not discuss the possibility of consulting Mr Potter further. This would go against your evidence that you told Mr Teo that it is necessary to consult Mr Potter further?

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A: I went through the points I discussed. I said we have to set up according to Mr Potter's discussion. On having done all that, we will have to despatch it to Mr Potter for his final approval.

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Q: Are you saying that what Mr Teo said in Court is not true?

A: I can only say that this was mentioned to him by me.

Q: But certainly your evidence on this cannot co-exist with Mr Teo's evidence. One must be true and the other must be untrue. Do you agree?

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A: I can only say that I did tell him that.

Court to accused:

Q: You have not answered the learned Deputy's question. You said that you told Mr Teo that you will have to send the programme to Mr Potter for approval while Mr Teo said there was no discussion about the possibility of consulting Mr Potter further. The

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point which the learned Deputy is asking is whether you agree that either your version is true or Mr Teo's version is true?

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(The accused laughs)

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Court to accused:

10 I do not see why you are laughing.
There is nothing funny.
Do answer the question as to whether
you agree with the learned Deputy
that one version must be true and
the other false?

A: I agree. "

(continued)

20 Further examples of such a characteristic can be found in the cross-examination at pages 201-204 of the Notes of Evidence when the accused was questioned about the reason why he had not stated in his statement (Exhibit P44) that he was holding the £800 against expenses incurred by him. Yet more examples can be found at pages 230-232 of the Notes of Evidence. It is significant to note that the characteristic of being evasive was also exhibited by the accused when he was re-examined by his own counsel. This can be seen from the following extract (Notes of Evidence, pages 253-255) :

30 "Q: What I want to know is whether before your meeting with Mr Teo to discuss the opinion, you held the stand that you had to clarify with Mr Potter?

A: I did.

Q: In cross-examination, you said you suggested or told Mr Teo that you ought to get clarification from Mr Potter when you went to London?

A: After the discussion with Mr Teo both of us agreed that further clarification had to be obtained from Mr Potter.

40 Q: When the learned DPP was putting this case to you about an hour ago, he told you that all that you did was to show him the note and told Mr Teo to pay the £800?

A: Yes, I remember.

Q: I think your reply was that Mr Teo may not have remembered?

A: Yes.

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- Q: Now, all I want to ask you is this. Why is it that you can remember telling Mr Teo that there should be further clarification with Mr Potter?
- A: Because I was handling this matter and he left the further clarification to me.
- Q: You have not answered my question. That does not really answer my question. Listen to my question carefully. My question is why you can remember that at that conversation you told him the need for further clarification? 10
- A: I was going to London and I was in charge of this matter. To my mind, I am responsible for clarification with Mr Potter.
- Q: It was suggested in cross-examination that the inference was that the idea of consulting Mr Potter on his opinion was as it were something which you suddenly drummed up just before you left for London. Do you remember that? 20
- A: Yes.
- Q: Can you remember if you had mentioned to Mr Potter that there were going to be two investment companies instead of one when you saw him on 23rd May? 30
- A: There were going to be two investment companies.
- Q: Listen to my question very carefully. You will answer my question. My question is can you remember if you told Mr Potter that there were going to be two investment companies instead of one? 40
- A: At the consultation?
- Q: At the consultation?
- A: There will be two.
- Q: Sorry, I have to repeat for the third time. Please listen to my question very carefully. Do you remember telling Mr Potter that there was going to be two investment companies instead of one?
- A: Yes, I can remember. " 50

That the accused was evasive can clearly be gauged from the underlined portions of this extract. The trait of evasiveness has demonstrated the unreliability of the accused's evidence.

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10 (vi) The accused stated that as his dealings with Mr Potter had all along been on official business, he felt the awkwardness of informing Mr Potter that the instructions he had despatched for advice to be given was not an official matter. He thought that the appropriate way to convey to clarify his relationship with the matter was to do so over the telephone conversation with Mr Brown. Why did he not write a short note clarify that the matter concerned his friend's company? He replied that he thought that it was more appropriate to give the explanation on the telephone so as to prevent Mr Brown from querying about his relationship with Tong Eng Brothers. It is strange that the accused should have been reluctant to put the explanation in writing. Be that as it may, it must be appreciated that even when he spoke to Mr Brown, he did not state that the matter concerned the company of his friend. Instead, he told Mr Brown that it was a private matter. He agreed that had he stated to Mr Brown that it was his friend's matter, then he would have stated his relationship with the matter more specifically than by describing the matter as "private matter". In fact the accused admitted that he may have left the impression on Mr Brown that it was a family matter although he did not use the word "family" in relation to the matter. In my view, the accused chose not to put his relationship with the matter in writing and chose to describe it in an ambiguous manner together with the fact that the accused was asking for a concessionary rate points to the irresistible conclusion that the accused knew fully well that by describing the matter as a private matter, he would lead Mr Brown to misconstrue it to mean that the matter was personal to him. As subsequent events showed, Mr Brown was under the impression that it was a matter personal to the accused and in consequence and on that basis the fee for the Opinion was waived.

(continued)

(vii) The evidence shows that the accused had asked Mr Teo for a bank draft for £800 to be sent to Mr Potter in payment of the fees for the

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Opinion. The accused had done so despite the following facts :

- (i) The fee note had not been received;
- (ii) The accused did not expect Mr Brown to sent the fee note until 9 - 12 months after the Opinion was rendered; and
- (iii) The accused did not know the fee to be charged by Mr Potter as it was the first time he had consulted Mr Potter other than a governmental matter. 10

The accused explained that he had asked Mr Teo to pay the fees then because he was anxious that Mr Potter be paid immediately whatever it was. What was the cause for this anxiety? The accused stated that the main reason was that he was personally responsible to Mr Potter for the payment of the fees. He declared, "I do not want this matter to be hanging on my head". In this connection, it must not be forgotten that the accused and Mr Teo are good friends and they had mutual trust. Furthermore, the accused was fully aware that Mr Teo was of considerable financial standing. Why then was the accused so determined to discharge his responsibility so urgently? The accused was rightly asked the following questions (Notes of Evidence, page 225) : 20

"Q: Were you anxious that in the end when the fee note came, Mr Teo would not pay you? 30

A: No.

Q: Were you anxious that Tong Eng will not permit Mr Teo to pay you?

A: No. I was dealing with Mr Teo.

Q: Then what caused your anxiety?

A: I was concerned in putting the £800 in the hands of Mr Potter. "

In the end, the accused did not furnish the answer as to why he had wanted Mr Teo to immediately settle the fee which had yet to be determined. The accused was asked why is it that when he was despatching the instructions to Mr Potter he did not ask that a fee note be forwarded together with the Opinion if indeed he was so anxious to pay the fee. He said that he did not because he did not think of it 40

at that time. When it was asserted that the accused knew it could be done and that it was not improper to do so, the accused answered, "I have never done it before." He also claimed that he had not previously or during that period done such a thing. The accused was then confronted with his letter (Exhibit P40) to Mr Rippon Q.C. In paragraph three of that letter, the accused asked for an indication of Mr Rippon's fee in respect of a matter concerning the Inland Revenue Department. Faced with this document, the accused agreed that he had done so. Why did he not do the same in this case? The accused stated that he could have done it but the fact that that was done in this fashion to his mind was not wrong. The point to note is that even if indeed the accused was anxious in discharging his responsibility, he could have first ascertained the amount of fees before asking Mr Teo for it. The following extract reveals that although he was anxious that the fee be paid and that he did not think it was unreasonable to first ascertain the fee, he did not do so (Notes of Evidence, page 228) :

"Q: Why did you not write to Mr Brown on 7th March if you are anxious?

A: I did not consider that.

Q: Why not?

A: I could have if I wanted to but I did not.

Q: I fail to understand you. You wanted to discharge the debt as soon as possible. You knew Mr Teo will not fail to pay and at the other end, Mr Brown was not asking for payment. If your only anxiety was that the fee be paid, is it not natural to determine what fee was to be paid by asking for the fee note?

A: I could have but I did not.

Q: You will agree that it is not unreasonable to determine what the fee was first?

A: Yes, it will not be unreasonable.

Q: When you wanted to know Mr Rippon's fee, you did not fail to write to Mr Rippon about his fees?

A: With regard to Mr Rippon's fee, I was asked by the accountant to ascertain from Mr Cobbett Mr Rippon's

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fee so that he could make provision.

Q: Here you are not making provision for it. You wanted to pay. In these circumstances, there is all the more reason to want to know what Mr Potter's fees were. Do you not agree?

A: When I mentioned the fees and fee note to Mr Teo stating that I had not received the fee note and suggested that £800 would be more than sufficient to cover the fee, Mr Teo did not disagree. He agree to give me a bank draft.

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Q: Why did you not first ascertain what the fees were?

A: I did not do it.

Q: Any particular reason?

A: No. "

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From this extract, it can be seen that the accused not only failed to give any reason for not ascertaining the fee before asking Mr Teo to pay £800, he had once again demonstrated the trait of not answering a question unequivocally. In the circumstances I rejected the accused's claim that he had asked for the fees to be paid at that stage as he was anxious to discharge his debt.

(viii) The accused alleged that if there was a balance from the £800 forwarded by way of bank draft the fee for the Opinion is less than £800, he would utilize it to pay for fees incurred in future consultations. The accused agreed that he did not inform Mr Teo of the use of the balance would be put to. Why did he not do so? The accused explained that that he did not as there would be no need to inform Mr Teo concerning the utilization of the balance if there was no balance. The falsity of this explanation is borne out by the fact that when the fees were waived, the accused did not inform Mr Teo that there was in fact a balance of £800 which he was holding for future consultation until 4th August 1980 when he wrote Exhibit P37 after investigation on him had begun.

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(ix) The accused stated that when he learned from Mr Brown that Mr Potter was waiving the fees for the Opinion, he felt very embarrassed. He stated that he was unaware of the practice in London for a barrister to waive fees in respect of private matters of solicitors and in

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fact only learned of it when Mr Potter informed the Court of it. At the time the fee was waived, he made "an educated guess" that Mr Potter had waived the fee as a special favour as a friend as Mr Potter had thought that the Opinion concerned the accused's private matter. That was the reason for his embarrassment. He did not want free advice. He was determined to clear that point with Mr Potter at the earliest opportunity. If the accused was indeed unwilling to accept free advice and was determined to put the facts straight at the earliest opportunity then his subsequent conduct did not reflect his thinking on the matter at all. The facts clearly show that the accused swiftly reacted to the news of the waiver by writing a letter to Mr Brown. However, it was not to inform Mr Brown that there was a misunderstanding concerning his relationship with the matter at hand. The accused stated that he did not do so as he had thought it would be more appropriate and easier to make an oral explanation when he visited London two months later. This explanation is not an illuminating or acceptable one as it lacks simple logic. Instead of correcting the alleged misunderstanding by way of the letter, the accused accepted the waiver of fees and expressed his gratitude to Mr Potter for his kind gesture. Not only that, he instructed Mr Brown to transfer the £800 into his London account. Furthermore, as a follow-up, the accused gave a lunch treat to Mr Potter and bought three boxes of Chinese tea costing \$150 for presentation to Mr Potter, Mr Brown and Mr Taylor as a manifestation of his obligation to Mr Potter for waiving the fee. Are these truly the actions of a man who was very embarrassed over the waiver of fees and misunderstanding; who was determined to clear the misconception urgently so that Mr Potter could reconsider the decision to waive the fee? The answer, in my opinion, must be a definite "No".

(x) The accused had alleged that the lunch he gave to Mr Potter and the tea which he presented to Mr Potter and two of his staff were on behalf of Mr Teo in view of the kind gesture of the waiver of fees he had done. If indeed he was doing so on behalf of Mr Teo, it is indeed strange and inconceivable that he had not even informed Mr Teo of these gifts before or after they were made. After all, he

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(continued)

was going to seek re-imbusement for such items from Mr Teo. The accused and Mr Teo had lunch on the day the accused was departing for London but the accused made no disclosure of the gifts which he allegedly bought for presentation on Mr Teo's behalf. In respect of the Chinese tea, I am of the view that if the accused was presenting them on behalf of Mr Teo, it would be perfectly normal and proper for the accused to inform the recipients of these gifts that they were gestures of appreciation from Mr Teo or Tong Eng Brothers. This the accused failed to do.

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(xi) The accused asserted that in his letter marked as Exhibit P8, he was requesting that the balance of £400 be kept in a client's account to be utilized to pay fees for future consultation on the cessation of business of Tong Eng Brothers. On examining this letter, it is obvious that the important words to note in this regard are "for other purposes". What is the natural meaning of this phrase? The accused stated that the phrase refers to the subject matter of the letter, that is, the cessation of business. If that was indeed his intention, he being a person who is legally qualified would surely have no difficulty in conveying that meaning by the usage of appropriate phrases such as "for future consultation on the above" or "for further consultation on the above". This is supported by two facts. Firstly, the words "on the above" were used by him in paragraph one of the letter. Secondly, in the two letters written by the accused after the investigation on him had commenced and in respect of the holding of money by Mr Potter on account, the phrases "for future consultation" and "further consultation" were utilised in Exhibit P12 and P13 respectively. That being the case it is only reasonable to infer that the phrase "other purposes" as used in Exhibit P8 must have been intended to convey its plain meaning, that is, matters other than the one involving Tong Eng Brothers. Events subsequent to the writing of Exhibit P8 fortify this conclusion. When the fee for the Opinion was waived, the fact that he had it transferred to his own personal account without the concurrence or knowledge of Mr Teo goes to show that the accused had no intention of using the money to pay for any future consultat on respecting Tong Eng Brothers. The accused explained that his intention of transferring the money to his account was that as the bank interest rate was

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high in London, he made the transfer so as to earn interest for Mr Teo. However, the falsity of this claim is evident from the following facts. Firstly, the accused himself acknowledged the effect of the transfer of £800 to his account. He declared, "Once it is paid into my account, I had control over the £800". Secondly, if indeed the motive for his act was as proper, noble and honest as he claimed it to be, he would have made it known to Mr Teo what he had done. Thirdly, when the fee note of £450 concerning the conference in London was handed to the accused, he did not pay the fee when there was a full £800 in his bank account which he allegedly held specifically for such a purpose. When he was questioned in cross-examination as to why he did not make such a payment in London, he answered that Mr Brown did not insist on payment; had Mr Brown insisted on it being paid then, he would have done so. It is inexplicable that the accused who had deemed it an urgent task to pay the fee for the Opinion when it was not even fixed should in regard to the fee for the conference adopt the attitude that even though the amount of fee is known and the fee note was issued he would only pay if Mr Brown had insisted that it be paid then. Fourthly, when the accused subsequently had the £800 transferred to Mr Potter's account for "future consultation", he did not direct that the outstanding fee £450 for the conference be deducted from the £800. It is indeed worthy of note that it was in fact Mr Brown who proposed that instead of holding the £800 against Tong Eng Brothers for future consultation while there were two outstanding fee notes, the money should be used to settle the two debts. It was in consequence of Mr Brown's proposal that the accused agreed to the settlement of the fee note of £450 against the sum of £800 transferred to Mr. Potter.

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(continued)

On reviewing the evidence presented before the Court, it can be said that the key witnesses for the Prosecution are three in number, namely, Mr Teo, Mr Potter and Mr Brown; for the Defence, there is the evidence of the accused. The three key Prosecution witnesses are friends of the accused. In particular, Mr Teo who can be considered to be the most important witness for the Prosecution, is a very close friend of the accused. There was no reason whatsoever for them to bear false witness against the accused. Indeed, even the accused and the Defence have not

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(continued)

thought it fit to allege that they have lied in Court. The Court cannot find anything from their demeanour and their evidence to make their truthfulness and reliability suspect. On the contrary, there was absolutely no doubt in the Court's mind that they are witnesses on whom the Court can rely. Can the same be said of the accused? The accused's demeanour as a witness is glaringly in sharp contrast with that of the said three Prosecution witnesses.¹⁰ His evidence is fraught with contradictions and discrepancies on material aspects, not forgetting his propensity to be evasive when answering questions. These are precisely the very qualities closely associated with an untruthful and unreliable witness. From the observations discussed earlier, it was plain that the accused was not a truthful and reliable witness.

In the eyes of the Defence, the most important point was that there were certain circumstances in this case that made it unlikely that the accused had committed the offence as charged. It was contended that the accused was of financial means; he was holding the highest post in his department and commanding a good salary; and it was submitted that a sum of £800 was a small amount to the accused. "Is it likely that anyone would risk everything for a mere £800"?, the learned Defence Counsel asked. It is true that the evidence points to the fact that the accused is of financial means. However, it is also a fact that although it may well be that a sum of £800 may not be a fortune to the accused, nonetheless that sum is not as little as what the learned Defence Counsel would have us believe even having regard to the accused's financial standing. Furthermore, without entering the realm of philosophy on the complex question of human behavioural patterns, it suffices to state that the strength of the evidence pointing to the accused's guilt is such that it overwhelms the argument that it is unlikely that the accused could have committed the offence by reason of his wealth and position.

Having considered carefully the evidence adduced before the Court, I held that the Defence had not created a reasonable doubt in the Prosecution's case. Accordingly, I found the accused guilty of the charge and convicted him.

After hearing the mitigation made on behalf of the accused, the Court sentenced the accused to one day imprisonment and a fine of \$3,000, in

default, three months imprisonment.

The accused now appeals against the conviction only.

Dated this 20th day of May, 1982

Sd: Soon Kim Kwee
SOON KIM KWEE
DISTRICT JUDGE

/tt

In the
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Court

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(continued)

No. 10

NOTICE OF APPEAL

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IN THE HIGH COURT OF THE REPUBLIC OF
SINGAPORE

MAGISTRATES' APPEAL NO: 209 OF 1981

DISTRICT COURT NO.9

CASE NO: DAC 4624 and 4625 of 1980

Between

James Chia Shih Ching Appellant

And

Public Prosecutor Respondent

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To: THE HONOURABLE THE JUSTICES OF THE
HIGH COURT IN SINGAPORE

NOTICE OF APPEAL

The Appellant James Chia Shih Ching hereby gives notice of appeal against the order of Conviction on the above mentioned case on the 14th day of November 1981.

Dated the 16th day of November 1981.

Sd: Murphy & Dunbar
Solicitors for the Appellant

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The address for service of the abovementioned Appellant is 1901 Hong Leong Building, Raffles Way, Singapore 0104.

In the
High Court

No.10
Notice of
Appeal
16th November
1981

In the
High Court

No. 11

PETITION OF APPEAL

No.11
Petition of
Appeal
10th June
1982

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

Magistrates Appeal No.209 of 1981)
DAC 4624 & 4625 of 1980)

Between

James Chia Shih Ching Appellant

And

Public Prosecutor Respondent

To: The Honourable the Justices of the High Court of Singapore. 10

The Petition of James Chia
Shih Ching

Showeth as follows :-

1. Your Petitioner was charged :-

- (a) That your Petitioner on the 10th March 1980, in Singapore, being entrusted with dominion over a sum of £400 attempted to commit criminal breach of trust of this sum and thereby committed an offence under section 406 read with section 511 of the Penal Code; 20
- (b) That your Petitioner on the 20th March 1980, in Singapore, being entrusted with dominion over a sum of £800 committed criminal breach of trust of this sum and thereby committed an offence punishable under section 406 of the Penal Code;

Alternatively,

- (c) That your Petitioner, on or about the 7th March 1980, in Singapore, cheated Tong Eng Brothers Private Ltd. by deceiving the company into believing that a sum of £800 was due and payable to one D.C.Potter, Queen's Counsel, as legal fees for work rendered when your Petitioner knew that such sum was not in fact determined nor due and payable and thereby dishonestly induced the company to deliver to your Petitioner a bank draft for £800 which it 40

would not do if it were not so deceived and thereby committed an offence punishable under sect on 420 of the Penal Code;

In the
High Court

No.11
Petition
of Appeal
10th June
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(continued)

10 and at the trial in the 9th District Court your Petitioner was called upon to enter his defence only on the alternative charge, and at the close of the defence your Petitioner was convicted and sentenced to one day's imprisonment and fined \$3,000-00.

2. Your Petitioner is dissatisfied with the judgment on the following grounds :-

(A) That the learned trial Judge erred in law and in fact in finding at the close of the prosecution case that a prima facie case had been established which if unrebutted would warrant your Petitioner's conviction;

20 (B) The learned trial Judge failed to appreciate :-

(1) That the alternate charge alleged that the deception of which your Petitioner was charged occurred on or about the 7th day of March 1980 and not later;

30 (2) That the alternate charge alleged that your Petitioner induced the company to deliver to your Petitioner a bank draft for £800, whereas it was made out in the name of Mr D.C. Potter QC (PW.1) and handed to your Petitioner for onward forwarding to Mr. D.C.Potter QC;

(3) That on or about the 7th day of March 1980 it was known to Mr. Teo (PW.7) that Mr. D.C.Potter QC had rendered an opinion for which fees would be due and payable;

40 (4) That it was not known to your Petitioner what the amount of fees due to Mr. D.C. Potter QC was;

(5) That there was no prosecution evidence of deception on the part of your Appellant on the 7th day of March 1980 or on the days immediately following but there was prosecution evidence to the contrary of Mr. D.C.Potter QC and

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from his clerk Mr. Brown (PW.2)
and that it was clear :-

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(continued)

- (i) That your Petitioner was obviously trying to persuade by letter dated the 10th of March 1980 (Exhibit P8) Mr. Brown and/or Mr. Potter to charge a sum as fees equivalent to what your Petitioner believed would be payable for an opinion obtained from Mr. Potter for the Government of Singapore; 10
- (ii) That your Petitioner believed that barristers in England kept client's accounts in the same way as advocates and solicitors do in Singapore;
- (iii) That your Petitioner wanted to put into Mr. Potter/Mr. Brown's hands a sum of money sufficient to cover Mr. Potter's fees; and 20
- (iv) That such balance should be retained in Mr. Potter's clients' account to your Petitioner's credit for future work in connection with the same matter.
- (C) The learned trial Judge was wrong in law and in fact in finding that a fee for the opinion was not due and payable on the 7th of March 1980. 30
- (D) The learned trial Judge erred in law and in fact in failing to appreciate that because your Petitioner held the belief that barristers kept clients' accounts it was prudent for him to obtain payment by the company of a sum sufficient to cover in your Petitioner's opinion the amount which Mr. D.C.Potter QC might charge for his fees. 40
- (E) The learned trial Judge erred in law and in fact in failing to appreciate that it is common practice amongst solicitors who do keep clients' accounts to ask for fees in advance before such fees have been earned or the exact amount is known.
- (F) That the learned trial Judge failed to give sufficient weight to Mr. Potter QC's

evidence that he had "known cases where the fee cheque comes with the brief".

In the
High Court

10 (G) The learned trial Judge erred in law in believing that because Mr. D.C. Potter QC had not yet decided on the amount of his fees that it was a dishonest deception on the part of your Petitioner to ask for fees in advance.

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(continued)

(H) The learned trial Judge erred in coming to the conclusion that your Petitioner was not a reliable and truthful witness.

20 (I) The learned trial Judge in finding that it was a characteristic of your Petitioner to be evasive based his findings for such belief without examining the evidence of the prosecution which itself was sufficient to show that your Petitioner had no dishonest intention, had not intended to deceive and had not intended on the 7th of March 1980 to benefit either himself or Mr. Potter by a deceit.

3. Your Petitioner prays that the said judgment be reversed by this Honourable Court.

Dated this 10th day of June 1982

30 Sd: Murphy & Dunbar
Solicitors for the Appellant

To: The Registrar,
Supreme Court,
Singapore.

And to:

The Attorney-General,
Singapore.

CERTIFICATE OF RESULT OF APPEAL

In the
District Court

MAGISTRATE'S APPEAL No. 209

OF 19 81

IN THE HIGH COURT IN SINGAPORE

No.12
Certificate
of result of
Appeal
20th October
1982

IN THE MATTER OF SUBORDINATE COURT NO. 9

Arrest/~~Summons~~ Case No. DAC 4624 & 4625

of 19 80

James Chia Shih Ching

Appellans.

AND

Public Prosecutor

Respondent.

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IN accordance with the provisions of Section 250(1) of the Criminal Procedure Code I hereby certify that the Appeal of James Chia Shih Ching against the conviction and sentence of Soon Kim Kwee Esquire District Judge/Magistrate was called on for hearing on the 20th day(s) of October 19 82 before the Honourable The Chief Justice and after reading the case stated by the said District Judge/Magistrate and transcript of the evidence and adjudication the conviction and sentence and after hearing Mr H E Cashin Counsel for the Appellant and Mr Loke Yoon Kee, Deputy Public Prosecutor Counsel for the Respondent.

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It was ordered that the Appeal be dismissed.

Given under my hand and the Seal of the Supreme Court this 20th day of October . 19 82.



Asst. Registrar

IN THE PRIVY COUNCIL

No. 66 of 1984

O N A P P E A L
FROM THE HIGH COURT OF SINGAPORE

B E T W E E N :

JAMES CHIA SHIH CHING Appellant

- and -

LAW SOCIETY OF SINGAPORE Respondent

RECORD OF PROCEEDINGS

PART I

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Solicitors for the Appellant Solicitors for the Respondent