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Agency and partnership law [2016]

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3. AGENCY AND PARTNERSHIP LAW

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AGENCY LAW

Creation of agency

3.1 The question of whether an agency relationship existed between the issuing bank and the nominated bank in the context of a documentary credit transaction arose in *Grains and Industrial Products Trading Pte Ltd v Bank of India*.[1] In brief, Indian Bank issued a letter of credit in favour of Grains and Industrial Products Trading Pte Ltd ("GRIPT") which incorporated the terms of the Uniform Customs and Practice for Documentary Credits 600 ("UCP 600"). The Bank of India ("BOI") was nominated to accept a presentation of documents and to effect payment on the letter of credit. Documents complying with the specifications under the letter of credit were tendered by GRIPT to BOI in good time. BOI did not pay the contract price but, eventually, transmitted the documents to Indian Bank a month after receipt, by which time the letter of credit had expired. Indian Bank rejected the documents and declined to honour the letter of credit. The Court of Appeal affirmed the decision of the High Court that Indian Bank was liable to do so. Under the terms of UCP 600, the issuing bank's liability to honour the credit at its maturity was triggered once the beneficiary made a complying and timely presentation to the nominated bank. Indian Bank claimed against BOI for an indemnity in respect of its liability to GRIPT. The question, as far as is relevant for present

1 [2016] 3 SLR 1308.

purposes, was whether BOI was the agent of Indian Bank for the purposes of the receipt of the documents.

3.2 The Court of Appeal was not unanimous on this particular issue. The majority of judges, comprising Sundaresh Menon CJ and Andrew Phang Boon Leong JA, held that BOI was an agent of Indian Bank. Menon CJ (delivering judgment on behalf of Phang JA and himself) stated:[2]

> … A nominated bank *can* be an agent of the issuing bank to the extent of the issuing bank's mandate. The agency relationship *will* arise in so far as the nominated bank *accepts* the authority granted by the issuing bank for it to transact with the beneficiary on its behalf …
>
> An agency relationship will be found when a nominated bank acts on the issuing bank's mandate because when it does so, it has the power to affect the issuing bank's rights and liabilities as against the beneficiary on matters so authorised …
>
> [emphasis in original]

3.3 Although BOI did not "accept" the nomination in the sense of honouring or negotiating the credit, the majority of judges found that the "separate matter of it receiving the documents when these were presented by the beneficiary" amounted to BOI acting on and, thus, accepting its nomination.[3] Accordingly, by its conduct, BOI was "properly constituted as the agent of Indian Bank for the purposes of receiving the documents".[4] The majority of judges had accepted, at least apparently, that the mere fact that BOI had to *receive* the documents presented by the beneficiary was sufficient to constitute it an agent of the Indian Bank for that purpose.

3.4 In contrast, Chan Sek Keong SJ took the view that there was no agency on the facts as BOI did not "act on its nomination". It did not honour or negotiate the documents presented and, therefore, did not perform any of the acts that it was "mandated" to do under the documentary credit.[5] His Honour stated:[6]

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2 *Grains and Industrial Products Trading Pte Ltd v Bank of India* [2016] 3 SLR 1308 at [69]–[70].

3 *Grains and Industrial Products Trading Pte Ltd v Bank of India* [2016] 3 SLR 1308 at [79].

4 *Grains and Industrial Products Trading Pte Ltd v Bank of India* [2016] 3 SLR 1308 at [80].

5 *Grains and Industrial Products Trading Pte Ltd v Bank of India* [2016] 3 SLR 1308 at [211].

6 *Grains and Industrial Products Trading Pte Ltd v Bank of India* [2016] 3 SLR 1308 at [189].

> … The rights and obligations of a nominated bank and the issuing bank are governed by and flow from the articles set out in UCP 600. The articles operate as contractual provisions between the parties to the letter of credit which has incorporated them. The articles make no mention of agency, and it is suggested that agency reasoning is not necessary to their operation as contractual provisions.

3.5 The divergence in views appeared to be centred on what precisely BOI, as the nominated bank, was "authorised" to do, and the point at which the nominated bank "acted" on this authority. According to James Byrne *et al*[7] ("Byrne"), whose commentary is considered "one of the leading treatises on the construction of UCP 600",[8] "[t]he essence of the role of a nominated bank is that it is authorised to hono[u]r its obligation, or to pay, incur a deferred payment undertaking, accept or negotiate".[9] Whilst this was how Chan SJ saw the authority conferred by Indian Bank on BOI,[10] the majority of judges were prepared to accept that the nominated bank's "authority" could mean *acceptance of a presentation of documents* (that is, the *physical* act of receipt) by the beneficiary *without* the nominated bank *honouring* the credit.[11]

3.6 Clearly, the majority of judges were, with respect, somewhat more generous in their conception of the scope of the nominated bank's authority. Arguably, this may translate into too *low* a threshold for the imposition of an agency relationship between the issuing bank and the nominating bank. This is especially since Art 12 of UCP 600 placed the decision whether to honour or negotiate the credit (what the nominated bank was "authorised" to do) squarely within the discretion of the nominating bank itself.

3.7 All the judges were agreed that, as a matter of *law*, agency is a consensual relationship characterised by the agent's power to affect the principal's legal position.[12] As the majority of judges noted, "[a]t its core, agency connotes an agent being granted power or authority to affect the

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7 James E Byrne, Vincent M Maulella, Soh Chee Seng, & Alexander V Zelenov, *UCP 600: An Analytical Commentary* (Institute of International Law & Practice, 2010).

8 *Grains and Industrial Products Trading Pte Ltd v Bank of India* [2016] 3 SLR 1308 at [51].

9 James E Byrne, Vincent M Maulella, Soh Chee Seng, & Alexander V Zelenov, *UCP 600: An Analytical Commentary* (Institute of International Law & Practice, 2010) at p 173.

10 *Grains and Industrial Products Trading Pte Ltd v Bank of India* [2016] 3 SLR 1308 at [196].

11 *Grains and Industrial Products Trading Pte Ltd v Bank of India* [2016] 3 SLR 1308 at [73].

12 *Grains and Industrial Products Trading Pte Ltd v Bank of India* [2016] 3 SLR 1308 at [79] and [179].

principal's legal relations *as against third parties*" [emphasis added]. In the present case, however, the principal's liability to the beneficiary was not dependent on any act of the nominated bank, but wholly on the acts of the beneficiary (that is, the third party) itself. Thus:[13]

> … If the issuing bank nominates a bank in accordance with UCP 600, then as between the beneficiary and the issuing bank, Art 7(a) of UCP 600 provides that the latter's liability is engaged *as long as the beneficiary makes a valid and complying presentation to the nominated bank* … [emphasis added]

3.8 In the circumstances, it is, with respect, difficult to appreciate how a nominated bank, invited on the terms of UCP 600, could have been an "agent" as defined. The majority of judges had made reference to the following statement in *Canadian Agency Law*,[14] with emphasis placed on the word "agent":

> Agency is the relationship that exists between two persons when one, called the agent, is considered in law to represent the other, called the principal, in such a way as to be able to affect the principal's legal position by the making of contracts or the disposition of property.

3.9 With respect, the emphasis should perhaps have been placed on the manner in which the agent is able to "affect the principal's legal position", and that is, according to Fridman, "by the making of contracts or the disposition of property". It does not appear that BOI, as the nominated bank, was conferred any authority to contract with the beneficiary, GRIPT, on Indian Bank's behalf as such; indeed, the majority of judges had held that it was the *letter of credit*, issued by Indian Bank itself, that gave rise to the relationship between GRIPT and Indian Bank. As Byrne noted, "[u]nder the UCP, a nominated bank is independent of the applicant, issuer, or another nominated bank. It acts, if it acts, on its own behalf and in its own interest."[15] The finding of an agency relationship between the banks, therefore, sits somewhat uncomfortably with the nature of their relationship as defined by UCP 600.

13 *Grains and Industrial Products Trading Pte Ltd v Bank of India* [2016] 3 SLR 1308 at [55].

14 G H L Fridman, *Canadian Agency Law* (LexisNexis, 2009) ch 1, at p 4.

15 James E Byrne, Vincent M Maulella, Soh Chee Seng, & Alexander V Zelenov, *UCP 600: An Analytical Commentary* (Institute of International Law & Practice, 2010) at p 516.

Apparent authority

3.10 The *locus classicus* on what amounts to apparent authority is Diplock LJ's statement in *Freeman & Lockyer v Buckhurst Park Properties (Mangal) Ltd*:[16]

> [Apparent authority is established in a] legal relationship between the principal and the contractor created by a representation, made by the principal to the contractor, intended to be and in fact acted upon by the contractor, that the agent has authority to enter on behalf of the principal into a contract of a kind within the scope of the 'apparent' authority, so as to render the principal liable to perform any obligations imposed upon him by such contract. To the relationship so created the agent is a stranger. He need not be (although he generally is) aware of the existence of the representation but he must not purport to make the agreement as principal himself …

3.11 It is, therefore, the principal's *representation* to the contractor that provides the basis of his liability. In order that the principal is made liable, the evidence must necessarily be sufficient to justify this conclusion. In *Viet Hai Petroleum Corp v Ng Jun Quan*[17] ("*Viet Hai Petroleum*"), the High Court accepted that a business card that gave the alleged agent's designation as "Chief Operation Officer" was, *if genuine*, a representation from the employer-principal that the agent was indeed appointed as such. Therefore, the authenticity of the business card is crucial, for otherwise, the representation cannot be said to have originated from the principal. The court made reference to *Martin v Britannia Life Ltd*[18] ("*Martin*"), a decision of the English High Court, and to the New South Wales case of *Heperu Pty Ltd v Morgan Brooks Pty Ltd (No 2)*[19] ("*Heperu*"), in support of this proposition. Specifically, the court noted that in both of these cases, the business card bore, as would be typical, the principal's logo and address, as well as the agent's designation and telephone and fax numbers. In *Viet Hai Petroleum*, the alleged agent had handed to the contractor a name card that similarly "bore [the principal's] logo, its address, [the agent's] designation and his contact numbers".[20] The court appeared to have extrapolated from this that, hence, "[t]here was no reason for [a contractor] to doubt the authenticity of [the agent's] card".[21]

3.12 With respect, the factual contexts in those earlier decisions should be noted. In *Martin*, it was common ground that the principal

16 [1964] 2 QB 480 at [503].
17 [2016] 3 SLR 887.
18 [1999] All ER (D) 1495.
19 [2007] NSWSC 1438.
20 *Viet Hai Petroleum Corp v Ng Jun Quan* [2016] 3 SLR 887 at [36].
21 *Viet Hai Petroleum Corp v Ng Jun Quan* [2016] 3 SLR 887 at [36].

had supplied the agent with the business card. It was, therefore, not in dispute that the principal had made the representation contained in the card. In *Heperu*, there were *other* significant facts that supported the conclusion that the principal had held the agent out as authorised.[22] The conclusion that the principal had held out the agent as having apparent authority was, therefore, not founded solely on the business card alone. Seen in context, then, these cases do not stand for the general proposition that business cards, in the absence of affirmative proof of their authenticity, amount to adequate representation for the purposes of establishing apparent authority.

3.13 Nevertheless, the context of the High Court's judgment must itself be emphasised. The resolution of this particular issue was made necessary by the principal's submission of *no case to answer*. In the circumstances, all that was necessary was for the plaintiff third party to establish a *prima facie* case of apparent authority.

Agency by estoppel

3.14 The representation on which apparent authority rests is said to "operate as an estoppel"[23] so that the principal is precluded from denying the authority of the agent to bind him. This is generally accepted. Indeed, as a matter of nomenclature, Fridman would consider apparent authority as one and the same as "agency by estoppel".[24] Fridman, however, saw no need to further assimilate the doctrine of apparent authority within any substantive doctrine of estoppel. In his view:[25]

> [A]cceptance of the proposition that apparent authority depends on the application of the idea of estoppel is not precluded by the possibility that the version of estoppel relevant to and appropriate for the doctrine of apparent authority is not necessarily the same as that applicable in other contexts.

22 See especially *Heperu Pty Ltd v Morgan Brooks Pty Ltd (No 2)* [2007] NSWSC 1438 at [69]–[73].

23 *Freeman & Lockyer v Buckhurst Park Properties (Mangal) Ltd* [1964] 2 QB 480 at 503, *Rama Corp Ltd v Proved Tin and General Investments Ltd* [1952] 2 QB 147 at 149.

24 G H L Fridman, "Variations on the Theme of Authority" (2006) 22 JCL 105 at 110; see also W Seavey, "The Rationale of Agency" (1920) 29 Yale LJ 859 at 873.

25 G H L Fridman, "Variations on the Theme of Authority" (2006) 22 JCL 105 at 110; see also *Bowstead & Reynolds on Agency* (Peter G Watts gen ed) (Sweet & Maxwell, 20th Ed, 2016) at para 8-028; Roderick Munday, *Agency: Law and Principles* (OUP, 2010) at para 4.48.

3.15 In *The Bunga Melati 5*,[26] the Court of Appeal weighed in on the question of whether the doctrine of apparent authority ought to be properly placed within the larger doctrine of estoppel. The facts in brief are as follows. The plaintiff had delivered bunkers to the defendant's ships for which it had not been paid. The contracts for these bunkers were negotiated through bunker brokers, who would connect the buyers with the vendors. However, unbeknownst to the plaintiff, the party who dealt with the brokers was not the defendant, but Market Asia Link Sdn Bhd ("MAL"), a supplier of bunkers. The defendant had approved MAL as a "registered bunker vendor", and had purchased significant amounts of bunker fuel from MAL. The plaintiff asserted that MAL was at all times acting as the defendant's agent, and that it had actual and/or apparent authority from the defendant to contract with the plaintiff. It will be recalled that these arguments failed before the High Court. It was further contended that the defendant was estopped from denying the authority of MAL as it had known that MAL had been representing itself as the defendant's agent to suppliers. This argument also failed, and the plaintiff appealed, pursuing only the point on estoppel.

3.16 The plaintiff's appeal was, therefore, premised on there being a distinction between the concepts of apparent authority on the one hand, and agency by estoppel, or sometimes referred to as "estoppel by representation",[27] on the other. The Court of Appeal, however, opined that the "difference between agency by estoppel and apparent authority is not … that apparent".[28] In the court's view, the jurisdiction to impose liability on someone (the principal) for the acts of another who is unauthorised is predicated on the "unconscionability" that results from "some act or omission on the part of the principal that leads to the third party acting or continuing to act in a particular way to his detriment or suffering hardship".[29] Given this common premise, the court suggested that, even with apparent authority, the inquiry should be undertaken within the traditional framework for estoppel. And, this would require satisfaction of the elements of representation, reliance, and detriment.[30]

3.17 Whilst there is undoubtedly some "kinship" between apparent authority and agency by estoppel, the two doctrines may not be activated by the same elements nor is their respective reach exactly coterminous. Lord Diplock's definition of "apparent authority"[31] suggests that apparent authority depends not only on a *positive* representation by

26 [2016] 2 SLR 1114.
27 Roderick Munday, *Agency: Law and Principles* (OUP, 2010) at para 4.48.
28 *The Bunga Melati 5* [2016] 2 SLR 1114 at [8].
29 *The Bunga Melati 5* [2016] 2 SLR 1114 at [12].
30 *The Bunga Melati 5* [2016] 2 SLR 1114 at [12].
31 See para 3.10.

the principal as to the authority of the agent, but also on there being at least the appearance of an agency relationship between the principal and his alleged agent. Neither of these, it would seem, is necessary to establish agency by estoppel. In *Spiro v Lintern*[32] ("*Spiro*"), the decision that is credited with first applying the concept of estoppel to agency cases and which was referred to by the Court of Appeal, the English Court of Appeal premised its decision on the following principle:[33]

> [I]f A sees B acting in the mistaken belief that A is under some binding obligation to him and in a manner consistent only with the existence of such an obligation, which would be to B's disadvantage if A were thereafter to deny the obligation, A is under a duty to B to disclose the non-existence of the supposed obligation.

3.18 Comparing this exposition of the estoppel principle with Lord Diplock's explanation of apparent authority, three possible points of divergence are suggested. First, it is unnecessary, for the purposes of estoppel, that the mistaken impression under which the plaintiff contractor was labouring should have originated from the defendant himself. Rather, it is the defendant's *inaction*, despite an awareness of the plaintiff's mistaken belief and in circumstances where he would reasonably be expected to have disabused the plaintiff of his belief, that gives rise to the estoppel. The Court of Appeal would not, however, consider this to be a difference of any substance at all. This is because the principal's inaction can only found estoppel if the principal is under an obligation or duty to act. Thus:[34]

> [A]lthough [the principal] has made no affirmative representation, by his omission or failure to correct the misapprehension when the law regards him as being bound to do so, he is taken to have represented that the misapprehended state of affairs is in fact true.

3.19 Secondly, the estoppel principle applies even in cases involving *undisclosed principals*, where the plaintiff would have dealt with the agent as principal. Indeed, in *Spiro*, the plaintiff had been wholly unaware that the "agent" was acting for anyone other than herself. In contrast, the doctrine of apparent authority, on Lord Diplock's statement of law, applies where the agent did "not purport to make the agreement as principal himself".[35] The Court of Appeal did not deal with this as a possible point of difference. Though, if the doctrine of apparent authority is indeed so circumscribed, it will mean that its scope of application is generally somewhat narrower and more specific than estoppel.

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32 [1973] 1 WLR 1002.
33 *Spiro v Lintern* [1973] 1 WLR 1002 at 1011.
34 *The Bunga Melati 5* [2016] 2 SLR 1114 at [13].
35 See para 3.10.

3.20 The third point is that liability on the part of the alleged principal is dependent on evidence of some disadvantage or detriment suffered by the plaintiff in reliance on the mistaken impression that the defendant principal had permitted to subsist by his inaction. Detrimental reliance is essential for genuine estoppel to arise.[36] Yet, as Munday observed, "in very many agency cases the courts require only an alteration of position, and not evidence of a detriment suffered."[37] Indeed, Fridman also noted that "[t]he necessity to prove unconscionable conduct and the relation of the quantum of detriment to the available relief are not characteristics of … the doctrine of apparent authority".[38] In seemingly assimilating the doctrine of apparent authority within the broader doctrine of estoppel, the Court of Appeal might be taken to suggest that detriment should be established, even for apparent authority cases. This, with respect, is significant indeed.

3.21 As the present case was argued on the basis of estoppel, it was essential for the evidence to disclose that the defendant knew that the plaintiff was operating under a misapprehension as to the facts. As the plaintiff was unable to establish this knowledge, the appeal was dismissed.

PARTNERSHIP LAW

Dissolution of partnership

3.22 For the second year running, the main partnership law case concerned the effect of limitation on a deceased partner's claim. This arose in *Lai Hoon Woon v Lai Foong Sin*[39] ("*Lai Hoon Woon*"), which was otherwise mainly concerned with trust law and the validity of a will executed by one Lai Thai Lok (the "Deceased"). Since 1985, the Deceased and his second son, the first defendant, had been partners in a neighbourhood department-store business (the "Boon Lay Shop"). After another son withdrew in 1993, their partnership shares were in the ratio of 51:49 respectively. The partners conducted the business on premises in Boon Lay, the leasehold of which they acquired in 1993 as tenants-in-common in the same proportions. There had been family-related disputes between the two partners for some years. On the day of the

36 *Hong Leong Singapore Finance Ltd v United Overseas Bank Ltd* [2007] 1 SLR(R) 292 at [170], *George Whitechurch Ltd v Cavanagh* [1902] 1 AC 117 at 135.

37 Roderick Munday, *Agency: Law and Principles* (OUP, 2010) at para 4.42; see also *Bowstead & Reynolds on Agency* (Peter G Watts gen ed) (Sweet & Maxwell, 20th Ed, 2016) at para 8-024.

38 G H L Fridman, "Variations on the Theme of Authority" (2006) 22 JCL 105 at 109.

39 [2016] SGHC 113.

Deceased's passing in 2003, the first defendant unilaterally updated the business registration records at the Accounting and Corporate Regulatory Authority to show that the Boon Lay Shop was held in his sole name. Years later, in 2012, the plaintiff, who was the executor of the Deceased's estate, sought, *inter alia*, an order requiring the first defendant to register the Deceased's 51% interest in the Boon Lay property in the plaintiff as executor. In addition, the plaintiff sought an account of the profits of the Boon Lay Shop for the period beginning with the Deceased's death. It is the latter claim which is of interest under partnership law.

3.23 In the High Court, Kannan Ramesh JC (as he then was) rejected on the facts the first defendant's arguments that he had purchased the Deceased's 51% interests in the Boon Lay Shop and the associated leasehold property in 1993.[40] Accordingly, at the time of his death in 2003, the Deceased was a 51% partner in the Boon Lay Shop business. Since that time, the business had been operated by the first defendant for his sole benefit. The plaintiff as executor had, therefore, claimed an account of the profits. However, this claim was rejected by the court on the basis that it was time-barred under s 6 of the Limitation Act.[41]

3.24 In the absence of a contrary agreement, a partnership is dissolved by the death of a partner: s 33(1) of the Partnership Act.[42] There was no suggestion of a contrary agreement in this case: the firm had been dissolved by death. However, in these proceedings, the Deceased's estate did not seek a winding-up, but simply claimed post-dissolution profits: these are dealt with under s 42 of the Partnership Act, which has been held to pertain only to revenue profits. Where a partner dies and the surviving partner(s) continues the business without any final settlement of accounts with his estate, the latter is entitled, absent contrary agreement, to elect to receive either: (i) a share of the post-dissolution profits which is attributable to the use of the deceased partner's share of the firm's assets; or (ii) interest at 5% per annum on such share of the assets. The rationale underlying s 42 is that, until winding-up or other settlement of accounts, a deceased partner's estate still has an interest in the partnership property and so is entitled to be compensated for any ongoing use of his "share" of the assets to generate profits. Calculating the amount of such attributable profit share can raise complex issues;[43] hence, the simpler option of using a fixed interest rate is available. In this case, given the court's finding that the Limitation Act applied, quantification issues did not have to be addressed.

40 *Lai Hoon Woon v Lai Foong Sin* [2016] SGHC 113 at [228].
41 Cap 163, 1996 Rev Ed.
42 Cap 391, 1994 Rev Ed.
43 See, *eg*, *Sandhu v Gill* [2006] 2 WLR 8.

3.25 The question of limitation in relation to claims specifically under s 42 does not appear to have been considered before in Singapore or in England. The High Court held that the relevant provision of the Limitation Act was s 6(2), rather than s 6(1), albeit that under both the limitation period is the same, that is, six years. Section 6(1)(*a*) applied to an outgoing partner's (or his estate's) claim for his share of the partnership *property*. Such claim was deemed to be one for a debt under s 43 of the Partnership Act; hence, the contractual limitation period applied: see *Chiam Heng Hsien v Chiam Heng Chow*[44] ("*Mitre Hotel*"). But a claim under s 42 was different: it was for a share of post-dissolution *profits* and s 43 and, thus, s 6(1)(*a*) had no application. Hence, the court held that s 6(2) – which sets a time bar on actions for an account – applied to this claim.

3.26 The court did not agree with the Indian authority of *Nagarajan v Hotz*,[45] on which the plaintiff had relied. That case held that, under the Indian equivalent of s 42, the "cause of action continues from day to day" and was not subject to limitation at all. With respect, the Indian decision is not necessarily wrong, but is distinguishable. The relevant limitation period in the Indian Limitation Act, 1908[46] applied to claims for an account of the "profits of a dissolved partnership". The Indian court held that this related only to the pre-dissolution period. Thus, there was no Indian limitation period which applied to s 42 claims at the time. In Singapore, on the other hand, s 6(2) is clearly apt to cover s 42 claims.

3.27 Nevertheless, a question remains as to how s 6(2) applies to a s 42 claim. That subsection bars an account "brought in respect of any matter that arose more than six years before commencement of the action". The firm was dissolved in 2003 and the writ was served more than six years later (that is, in 2012). The court held that s 6(2) applied to bar the claim completely.[47] His Honour cited *Knox v Gye*,[48] which had been approved by the Court of Appeal in *Mitre Hotel*. *Knox v Gye* has been said to have established a "general rule" that the limitation period in an action for an account between partners or ex-partners is six years after dissolution. In *Knox v Gye*, some ten years after a partner's death, his estate sought an account for his share in a debt which had been due to the firm before, but was only received by the surviving partner five years after, the dissolution. The House of Lords held that the claim became time-barred six years after the dissolution; part of the reasoning

44 [2015] 4 SLR 180, discussed in (2015) 16 SAL Ann Rev 87 at 97.
45 [1954] AIR PH 278.
46 9 of 1908.
47 *Lai Hoon Woon v Lai Foong Sin* [2016] SGHC 113 at [264].
48 (1871) LR 5 HL 656.

was that the sum due could and should have been captured by an account of the assets of the partnership, had one been taken as at dissolution. For limitation purposes, the "matter" giving rise to the account was the dissolution itself. Further, the late receipt of the debt did not reset the limitation clock; if it did, there would be no finality.

3.28 With respect, however, it is arguable that, in relation to s 42, limitation only starts to run once the relevant profits have accrued: that is, the "matters" subject to the account are those accruing profits. The profits relevant to s 42 only begin to accrue after dissolution: they are not profits of the partnership but of a post-partnership business, against which the former partner has a statutory claim. This is so even though one factor in that claim, that is, the former partner's share of the assets, refers back to the state of affairs at dissolution. It is hard to see the logic of limiting a claim for post-dissolution profits to a period of six years after dissolution when some of those profits may only be earned after such deadline: one cannot claim what does not yet exist. It is submitted, therefore, that *Knox v Gye* is distinguishable from this case. If so, the time bar would apply not simply six years after dissolution, but only to those post-dissolution profits which arise more than six years before the suit is brought. On that basis, the profits arising between 2006 and 2012 in *Lai Hoon Woon* may have been relevant under s 42.

3.29 But even if there was no applicable time bar, the plaintiff's claim under s 42 would have faced formidable practical difficulties. Assuming that he opted for the 5% interest alternative, he would still have had to establish the quantum of the Deceased's "share of the assets". That share, it has been held, is to be determined as at the dissolution date, which may be challenging after such a period. Further, the allowance which is generally accorded to a continuing partner for managing the post-dissolution business may have mounted up over the unusually long period in this case.

3.30 On a different point, in both *Mitre Hotel* and the present case, the Limitation Act was enforced against a claim by a deceased partner's estate. Yet, the estate in *Mitre Hotel* ended up with nothing, whereas in this case, the estate regained the Deceased's share of the leasehold property. The explanation for the difference is that in *Lai Hoon Woon*, the asset in question was not "partnership property" at all – despite being held by the partners in exactly the same proportions as their partnership shares. One or more partners may hold an asset used in the firm's business without it being partnership property, and this may be true even where the asset is jointly owned by all the partners in the same ratio as their partnership shares. Normally, an issue of separate property arises when one or more of the partners owned the asset before joining the partnership. It is a question of fact and intention whether such asset was contributed to the firm upon admission, and thereby became

partnership property, or remained as separate property. But a similar issue can also arise when an asset is first acquired from an outsider during the course of the partnership. In that case, there is a rebuttable presumption, under s 20(1) of the Partnership Act, that "[a]ll property … acquired … for the purposes and in the course of the partnership business [is] partnership property …" It does not appear that any claim was made in *Lai Hoon Woon* that the Boon Lay leasehold was partnership property, even though it was in fact purchased during the course of the partnership.[49] Had such claim been made and established, the result may well have been different, as the plaintiff estate's claim to a share of the partnership property would seemingly have been time-barred, as in *Mitre Hotel*.

49 *Lai Hoon Woon v Lai Foong Sin* [2016] SGHC 113 at [38].