

In the Barristers Disciplinary Tribunal

Between

The Bar Council

Applicant

and

Wong Kwai Sang also known as  
Raymond Wong K. S. &  
Raymond Wong

Respondent

Before :

Edward Chan SC, Anthony Chan & James  
Chiu

Date of Hearing :

11<sup>th</sup>, 12<sup>th</sup> October 2018, 2 November 2018,  
24<sup>th</sup>, 25<sup>th</sup> January 2019, 26<sup>th</sup>, 29<sup>th</sup> & 30<sup>th</sup> April  
2019

Date of Decision :

5 August 2019

Decision on Liability

Background

1. The background to this case had already been set out in our ruling of 9 January 2019 ("our Ruling") on the preliminary point raised by the Bar Council relating to the issue of whether the Respondent was entitled to adduce evidence to contradict the

decision of the District Court in DCCC 158 of 2013 on 28 November 2013 to convict the Respondent of the 9 criminal charges. The convictions were upheld by the Court of Appeal on 21 April 2015.

2. This decision should be read in conjunction with our Ruling.

3. To recap, for reasons set out in our Ruling we have decided that the Rule in **Hunter's** case applied to the present inquiry proceedings and there was no basis to justify making an exception to that Rule. Accordingly we held that the Respondent is not entitled to adduce or lead evidence to show that he was not rightly convicted or to contradict the essential finding of facts by the District Judge in DCCC 158 of 2013 which were upheld by the Court of Appeal.

4. Complaint 1 against the Respondent alleges that the Respondent had engaged in a course of conduct which might bring the profession of barristers into disrepute and/or is prejudicial to the administration of justice. The particulars of the Respondent's conducts relied on to support the Complaint were in fact the Respondent's conducts leading to his conviction of the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Charges in DCCC 158 of 2013. In general terms, the Complaint was that the Respondent propounded a false will of Au She-Cham ("Au") to obtain probate of that will which was false to the knowledge of the Respondent, and in order to get probate, the Respondent made a false affirmation purporting to support that false will in order to induce the probate registry to grant probate of that false will. The will was false because it was not signed by Au. The Bar Council further relied on the Respondent's conduct in showing the probate with the copy false will annexed to a police officer in order to induce the police officer to release the deceased Au's property to the Respondent.

5. Complaint 2 alleges that the Respondent had engaged in dishonest conduct. The particulars relied on by the Bar Council were the Respondent's conduct leading to his convictions for the 6 counts of theft, being charges 4 to 9 in DCCC 158 of 2013. The substance of these charges was that on 6 occasions the Respondent had dishonestly made use of withdraw slips purported to be signed by the deceased Au to transfer the total sum of \$15,400.00 from the joint account of Au and Cheung Wai-ming ("Cheung") to the Respondent's own bank account. The withdraw slips were in fact not signed by Au and were forged to the knowledge of the Respondent.

6. The Bar Council's case is that in respect of both complaints, the Respondent's conducts complained of were contrary to paragraph 6(b) of the Code of Conduct applicable in 2009 when the conduct took place. Paragraph 6(b) provides :

"It is the duty of every barrister not to engage in conduct (whether in pursuit of his profession or otherwise) which is dishonest or which may otherwise bring the profession of barrister into disrepute, or which is prejudicial to the administration of justice."

For Complaint 1, the Bar Council's case is that the Respondent's conduct may bring the profession of barrister into disrepute and/or is prejudicial to the administration of justice. For Complaint 2, the Bar Council's case is that the Respondent's conduct is dishonest.

#### The Bar Council's Case and Evidence

7. Mr. Tsang Wing, the administrative secretary of the Hong Kong Bar Association ("HKBA") was called to give evidence for

the Bar Council. His witness statement together with the documents which he sought to produce was duly served on the Respondent in July 2018. His evidence is largely uncontroversial. On his evidence, the Respondent was admitted as a barrister in Hong Kong on 28 December 1996 under the name of Wong Kwai Sang and his membership number with the HKBA is 9693. In the correspondence between the HKBA and the Respondent, the Respondent signed off his name as Raymond Wong Kwai Sang, Raymond Wong K. S. and Raymond Wong.

8. The HKBA was first informed of the police investigation of an offence of using a false instrument on 18 January 2011. On 25 September 2012, the Hong Kong Police Force wrote to inform the HKBA that the Respondent had been arrested for the offence of using a false instrument and theft. Meanwhile one of the Respondent's chamber mates also wrote to inform the Bar Council of the arrest of the Respondent and the search of his chambers.

9. The Respondent was in fact charged for 9 counts of offences and the details of the charges are set out at annex 3 of our Ruling.

10. The trial of the Respondent took place in the District Court and on 28 November 2013, HH Judge Pang found the Respondent guilty of all 9 charges. A copy of the reasons for decision was produced by Mr. Tsang.

11. By a letter which was received by the Bar Council on 20 December 2013, the Respondent wrote to inform the Bar Council of his conviction by the District Court and further informed the Bar Council that he was preparing to appeal against the decision.

12. The Appeal to the Court of Appeal was heard on 13

March 2015, and on 21 April 2015, the Court of Appeal dismissed the Respondent's appeal on conviction but allowed his appeal on sentence by directing that all sentences imposed by the trial Judge should be served concurrently which meant that in all the Respondent was required to serve a three and a half year sentence only. Mr. Tsang also produced a copy of the judgment of the Court of Appeal. A formal certificate of conviction was also produced.

13. Mr. Tsang also produced a copy of a sealed order by the Court of Final Appeal of 27 May 2016 dismissing the Respondent's application for leave to appeal to the CFA under rule 7(2) of the Hong Kong Court of Final Appeal Rules.

14. Mr. Tsang further produced a series of correspondence between the Bar Council and the Respondent which we do not think it necessary to list them out one by one. Many of the pre 2015 letters were in connection with the Bar Council's requests for information, such as the charge sheet, the transcript, the reasons for verdict, notice of appeal etc. from the Respondent. At one stage on 4 December 2017 the Honorary Secretary of HKBA wrote to the Respondent informing him of the Bar Council's decision to initiate disciplinary inquiries against him for failing to provide the information requested in breach of paragraph 10(a) of the Code of Conduct. For reasons which we were not told it would appear that the threat to bring inquiry proceedings for breach of paragraph 10(a) of the Code of Conduct did not materialize. As the Respondent was not charged for any breach of paragraph 10(a) of the Code of Conduct before us, we do not think that we should draw any adverse inference against the Respondent for failing to respond. In any event it would appear that eventually on 8 January 2018 the Respondent did give a response supplying most of the information sought.

15. On 14 December 2017, the Respondent wrote to the Bar Council informing the Bar Council of his intention to lodge a complaint against Mr. Yeung Yuek Chuen ("Mr. Yeung"), who was the barrister representing the Respondent in his criminal trial before the District Court and also on appeal before the Court of Appeal. The Respondent alleged that but for the negligence of Mr. Yeung, he may not have been convicted. In the same letter the Respondent said that he expected optimistically that his claim could be reasonably formulated before the end of December 2017. This was not done. Up to the last date for the Respondent to serve his closing submissions on 6 June 2019, we did not see any proper formulation of any particulars of negligence alleged against Mr. Yeung. We would record here that on 28 June 2019 the Respondent sent us *inter alia*, a draft of 4 charges against Mr. Yeung for breaches of the Code of Conduct of the Bar and for negligence in conducting his case, and he asked us to direct the Bar Council to respond to his charges. Insofar as he sought to adduce those additional documents as evidence of this inquiry we had dismissed his application for reasons we gave separately. Of course, the fact that we declined his application to adduce those documents in evidence before us could not stop him from making yet another direct complaint against Mr. Yeung to the Bar Council. We simply do not have the jurisdiction to stop the Respondent from making complaints to the Bar Council nor do we have any jurisdiction to give direction to the Bar Council to respond to the Respondent's complaints against another barrister. The Respondent has simply confused the role of the Bar Council as the complainant in this inquiry and the role of the Bar Council in considering complaints against barristers in general. We just want to note here that negligence or incompetence of Mr. Yeung as the Respondent's trial counsel was never a ground of appeal raised by the Respondent.

16. There were other correspondence between the Bar

Council and the Respondent.

17. Since the Respondent had become aware of the Bar Council's intention to bring disciplinary charges against him arising from his criminal conviction, the Respondent wrote to the Bar Council making suggestions on what procedure should be taken to investigate into any complaint against him arising out of his convictions and how the Barrister Disciplinary Tribunal ("the BDT") should be constituted (see **the Respondent's letter of 4 January 2018**). On the procedural issues, the Bar Council's stance was that it would be dealt with at the BDT hearing, and as to how the BDT should be constituted, the Bar Council would take a neutral stance (see **Bar Council's letter of 9 April 2018**). The Respondent also continued to make complaints against Mr. Yeung. The attitude of the Bar Council was that the complaint against Mr. Yeung was a separate matter and the Bar Council did not consider it appropriate to commence its investigation into the conduct of Mr. Yeung as alleged by the Respondent until after the determination and conclusion of the BDT proceedings against the Respondent (see **Bar Council's letter of 24 April 2018**).

18. The Respondent also wrote to the Bar Council making complaints against the trial Judge and also Ms. Lai, the solicitor prosecuting on *fiat*. We will deal with these complaints later in the context of the Respondent's evidence and case. It is sufficient for us to point out here that having considered all the evidence in this case, it is difficult for us to escape from the conclusion that while the Respondent may genuinely be aggrieved by the Judge's decision to convict him and the role played by prosecution counsel in his trial which resulted in his convictions, his suggestions on how the investigation of the complaints against him should be conducted, the constitution of the BDT for inquiry into the complaints against him, his complaints to the Bar Council against the Judge and Ms. Lai, were

made largely with the hope of derailing or at least delaying the BDT proceedings against him. It is difficult to believe that as a barrister, the Respondent could be ignorant of the fact that the Bar Council does not have any jurisdiction over judicial behaviour or the professional conduct of solicitors.

19. Even though one would expect his evidence to be rather uncontroversial, Mr. Tsang was cross examined very extensively by the Respondent. Apart from putting questions to Mr. Tsang on the Bar Council's response to his various letters of complaint to which Mr. Tsang as merely an employee of the Bar Council was not in a position to answer save by pointing out that the Bar Council did reply to the Respondent's letters, it was also put to Mr. Tsang that the Bar Council discriminated against the Respondent by not responding to his requests or complaints. The same was also denied by Mr. Tsang. On our part we do not see much relevance in this line of cross examination. As we have said, Mr. Tsang cannot be expected to speak on behalf of the Bar Council. In any case, from the correspondence we do not agree that the Bar Council has discriminated against the Respondent.

20. The Respondent also cross examined Mr. Tsang on the procedure for someone to withdraw money from his bank account through family members and without personally turning up to the bank to make the withdrawal. The point that the Respondent sought to make was that it was often done by the family member by just producing a withdrawal slip signed by the account holder. To that suggestion Mr. Tsang said that he did not have any experience in so doing. We fail to see the relevance of this point put by the Respondent. The finding by the Court was that the Respondent sought to transfer money from the account of Au and Cheung while to his knowledge Au was dead and in any case, the Court has found that the signature on the withdrawal slips were not signed by Au



which again was to the knowledge of the Respondent.

21. Mr. Tsang was also cross examined on his knowledge of the difference in the styles of writing Chinese characters and that sometimes characters may be used interchangeably. Again we do not see any relevance of such line of questions as the Court has clearly found that the will propounded by the Respondent and the withdrawal slips he used to transfer money were forged.

22. The Bar Council's case is simple. The facts revealed in the Respondent's conviction showed that the Respondent had propounded a forged will of Au to apply for probate of that forged will. In applying for probate, the Respondent had to file an affirmation supporting the will. As the will was forged the statement in the affirmation was also false. With the forged will, the Respondent managed to get probate which would have a copy of the will annexed for which probate was granted. To obtain some of Au's property back from the police, the Respondent produced to the police the probate with a copy of the forged will annexed. The Court found that the Respondent knew that the will he propounded was forged. It must also follow that he knew that the will he affirmed to as the will of Au was untrue and he must also know that the copy of the will annexed to the probate which he produced to the police was a false will. The trial Judge accepted the evidence of Yip Chiu Hung ("Yip") that even though on the face of the will propounded by the Respondent, Yip was one of the attesting witnesses as identified by his Identity Card number stated on the document, in fact Yip never signed on the document and he did not know Au. The other attesting witness appearing on the will propounded was the Respondent himself. Thus the Court completely rejected the Respondent's evidence on the execution of the will he propounded. Furthermore, the trial Judge rejected the Respondent's hypothesis that the forged will he propounded was

planted at Au's room by Chan Kwok Tung so as to allow such forged will to fall into the hands of the Respondent's father who would pass it on to the Respondent who would then innocently propound the forged will as the last will of Au.

23. On the facts as found by the criminal Court outlined above, the Bar Council submitted that plainly the profession of barrister has been put into disrepute. Further, the Respondent's conducts were prejudicial to the administration of justice in that the Respondent as a barrister made a false affirmation to obtain probate and the probate registry was misled into granting probate on a forged will.

24. In relation to Complaint 2, the Bar Council relied on Court's finding of facts supporting the convictions on the 6 counts of theft. The Court found that the Respondent had dishonestly obtained the transfer of monies into his own bank account for his own use from the joint account of Au and Cheung, and the withdraw slips used by him for the transfer of money were not signed by Au to his knowledge. The Court rejected the explanation given by the Respondent that the withdrawal of the monies from the joint account was for the purpose of holding the same for Au's estate because the Respondent believed that the monies in the joint account in fact belonged to Au. The Court further found that even assuming that the Respondent did not know that Au's signatures on the withdrawal slips were not signed by Au, the Respondent knew that Au was dead and he must have known that the monies in the joint account would no longer belong to Au.

25. On the facts as found by the Court in convicting the Respondent on the 6 counts of theft, the Bar Council submitted that plainly the Respondent had engaged in conduct which was dishonest in breach of paragraph 6(b) of the Code of Conduct of the Bar.

The Respondent's Case & Evidence

26. It must be said that for most of the time, the Respondent's evidence was rather confused and confusing. As we see it, his problem was that he was quite unable to distinguish his role as his own advocate when opening his case, making submissions and leading evidence from his witnesses and his role as witness when he gave evidence. On many occasions he attempted to give evidence and make speeches and submissions while he was asking his witness particularly Mr. Yeung questions in chief. Furthermore the Respondent was not clear or articulate on his stance over various issues and what contention he would seek to make out of a particular piece of evidence. In making these general comments and in assessing his evidence and submissions, we have fully taken into account the Respondent's repeated statement that in this inquiry, he was acting in person and he requested us to treat him as layman.

27. The Respondent has prepared a Respondent Bundle ("R Bundle") before us. Initially he adopted pages 352 to 788 of the R Bundle as part of his opening. He also adopted these pages as part of his evidence. In the course of his evidence he had introduced further documents as part of the evidence of his case.

28. Apart from giving evidence himself, the Respondent called 2 witnesses. It is more convenient to consider the evidence of the Respondent's witnesses first.

29. The first witness called by the Respondent is Madam Lo Kwai Foon. Shortly before Madam Lo was called, the Respondent disclosed a note purporting to be questions and answers of the evidence of Madam Lo prepared by the Respondent together with a short statement of Madam Lo concerning the character of Ms. Natalie Wong Choi Chuk, a sister of the Respondent. Many of the

questions were framed as leading questions which would not be appropriate as questions for examination in chief. Having gone through the document, we ruled that the only permissible area of Madam Lo's evidence would be those relating to the character of the Respondent. Other areas which we ruled inadmissible on account of their irrelevance include (1) the character of Au; (2) the leading question on what scholastic books (經書) Au had taught the Respondent to which the expected answer was Chinese 經書 and not the bible and she did not know the details; (3) Au's religion; (4) her understanding of the relationship between the Respondent and Chan Kwok Tung; (5) comments on the allegations of (i) Chan Kwok Tung's invitation to people to invest; (ii) his employment of others; (iii) his activities in the sale of cookies; (iv) his default in paying wages; and (v) his invitation to people to learn fung shui from him; (6) the reason for Chan Kwok Tung scolding the Respondent when he, Chan Kwok Tung, gave evidence; (7) comments on the allegations on (i) Ms. Lee Mei Wah's hatred of Wong Choi Chuk; (ii) Lee Mei Wah being unsuccessful in competing with Wong Choi Chuk for husband; (iii) the fight between Lee Mei Wah and Wong Choi Chuk; and (iv) reason for Lee Mei Wah scolding the Respondent when she gave evidence. We take the view that while these matters may arguably be said to be relevant to the issues in the criminal trial of the Respondent, all these matters were irrelevant to the issues that we have to decide in this inquiry. They are certainly not materials enough to be considered as constituting the exception to the Rule in **Hunter's Case**. As to the evidence on Madam Lo's view on the character of Wong Choi Chuk, again we do not see any relevance to any of the issues in this inquiry at all.

30. On the Respondent's character, the evidence of Madam Lo was that the Respondent was confused in his thoughts. He was nervous and was often in a neurasthenic (神經衰弱) and schizophrenic (思覺失調) state, and was very absent minded. His

house was very messy. He often forgot and lost documents. Madam Lo said she had advised the Respondent to go to see a doctor but he did not do so. Madam Lo had written a letter dated 11 December 2013 to the trial Judge to mitigate for the Respondent and that letter was also produced to us. The mitigation letter mentioned that when the Respondent was in a good psychological condition, he was a kind and caring person and was ready to help others. She also confirmed in her evidence that the Respondent has made donations to the Hong Kong Society for the Protection of Children. The Respondent also attempted to lead evidence from Madam Lo on other matters pertaining to the facts of the criminal charges and we disallowed such evidence. Madam Lo was plainly available to give evidence for the Respondent in his trial but she was not in fact called to give evidence.

31. The Respondent also subpoenaed his counsel Mr. Yeung Yuk Chuen to give evidence. Mr. Yeung deposed that at the beginning of the trial, he had instructions to apply for an adjournment on the ground that certain documents were not available on that day but his application was opposed by the prosecution. Apparently the documents in question covered those relating to the High Court action on adverse possession of the Property issued by the Respondent against Mr. Cheung. According to Mr. Yeung, Ms. Lai for the prosecution told the Judge that she did not have those documents relating to the civil action and she further said that she would not use any of those documents in the criminal trial. However when Ms. Wong Yung Fong ("Janet Wong"), the Respondent's younger sister gave evidence, she was cross examined by Ms. Lai using a witness statement made by Janet Wong in that civil action. Mr. Yeung objected to the use of the document but he was told to sit down by the trial Judge who allowed Ms. Lai to continue to cross examine Janet Wong on her statement. Mr. Yeung thought that this was procedurally unfair and wrong and he confirmed that

the Respondent genuinely felt very aggrieved by the Judge's permitting the use of the document. The point had been taken in the Court of Appeal but the Court of Appeal rejected it.

32. Sometime after the dismissal of the appeal, Mr. Yeung received instructions from the Legal Aid Service Council asking him to give a certificate under s26A to certify whether the Respondent had a reasonable chance of success on appeal to the Court of Final Appeal. However, Mr. Yeung did not actually issue that certificate because he found out that there was already a counsel's certificate issued by another barrister for that purpose. He had no further involvement with the case, and he did not hear anything further about the Respondent's further appeal. In his opinion, the point we have summarized in the preceding paragraph was a reasonable ground for the Respondent to further pursue in the Court of Final Appeal.

33. Mr. Yeung was also asked about the incident of the Judge's remark during his examination in chief referred to in paragraph 63 of our Ruling. Mr. Yeung considered that the Respondent's evidence on the details of the songs or handwriting that he learned from Au was merely collateral issues and the Respondent's answer should be conclusive. Mr. Yeung further said that the evidence of what the Respondent learned from Au only supported the Respondent's case that he and Au knew one another well, but even without that area of evidence it would be beyond dispute that Wong Choi Chuk had been the close disciple (入室弟子) of Au. Mr. Yeung also confirmed that certain lyrics of Cantonese opera were produced in the trial. Mr. Yeung's impression at the time was that the Judge did not question whether the Respondent had learned anything from Au.

34. On Mr. Yeung's evidence the defence raised in the criminal trial was not whether the mental health state of the

Respondent was such that he should not be found guilty of the offences charged. Rather the defence was that there was no dishonesty. In relation to the theft charges, according to Mr. Yeung's recollection, the Respondent's defence was that the money in the joint account was Au's money and he took it out for the funeral expenses and other religious ceremony and for the benefit of Au, and that he was genuinely discharging the obligation of the executor of Au's estate and there was thus no dishonesty.

35. In the course of the examination in chief of Mr. Yeung, the Respondent showed Mr. Yeung two brochures respectively dated 1 December 2004 and 1 December 2005 signed by Au inviting people to enroll for inter alia courses on Cantonese opera, Chinese literature and Fung Shui (see **pages 794 and 795 of R Bundle**). The organizations supplying these courses were Sunsense and Design Associates (信設計事務所) and Literature and Songs Society (西環詩曲社) (collectively referred as the "Organisation"). Mr. Yeung could only recall that the address stated on these brochures was the address of Au. While he recalled that some documents relating to Cantonese opera were produced in the trial, he could not recall if these 2 brochures were produced in the trial.

36. We note that on the face of these 2 brochures Natalie Wong (whom the Respondent told us was Wong Choi Chuk) was described as Mrs. Au of the Finance Department (財政部) and the Respondent was described as from the Cultural Department (文化部) of the Organisation. Au and Wong Choi Chuk were stated to be the partners of the Organisation. There was no explanation on why on one part of the document describing the partners of the Organisation the name was put down as Wong Choi Chuk and on the part of the document relating to the Finance Department, the name used was Mrs. Au Natalie Wong. We accept that these documents showed that (1) the Respondent had a certain part to play in the operation of

the Organisation; (2) Au and Wong Choi Chuk did operate a partnership offering courses on Chinese Opera, Chinese literature and Fung Shui; and (3) Chan Kwok Tung was a teacher of Fung Shui in the Organisation. However these documents did not show that (1) Au was necessarily a lover of Cantonese opera or was a teacher of Cantonese opera; and (2) the Respondent was a student or disciple of Au.

37. Mr. Yeung told us that he had had conferences with Wong Choi Chuk and he was never instructed that Wong Choi Chuk was Mrs. Au, nor had he ever been told that there was any marital relationship between Wong Choi Chuk and Au. According to Mr. Yeung, Wong Choi Chuk denied any marriage with Au. She was his very close disciple (入室弟子).

38. To begin with the Respondent's evidence, at pages 352 to 362 of the R Bundle the Respondent showed us what was calligraphy and some teaching material of calligraphy alleged to have been used by Au. We fail to see any relevance of these materials to this inquiry at all. At the highest this could provide some support to the suggestion that Au did teach people calligraphy or was involved in an organization teaching inter alia calligraphy.

39. Then the Respondent produced a series of letters he wrote to the Bar Council asking if he could be shown the case note of the last 10 disciplinary cases. He also made requests for the disclosure of unused material. He also asked the Bar Council to "show their case" in the complaints against him. In his letters, the Respondent took the stance that counsel for the Bar Council in this inquiry had the same duty as the prosecution counsel in any criminal case to be fair to the accused and to consider and assist the position of the accused, and he insinuated that it would be a breach of the prosecution duty if his requests were not acceded to. His request



for the case notes was not acceded to. Apparently these series of correspondence were intended to show that he had been ill-treated or discriminated against by the Bar Council. Other than the issue of whether the Bar Council has properly particularized the case against the Respondent in this inquiry, we do not think that this question of whether the Bar Council should have entertained the requests of the Respondent is relevant to the issues before us. As to the issue of particularizing the complaint, we are satisfied that this was properly done in the formal complaint of 3 July 2018 which was duly served on the Respondent together with the statement and supporting documents of Mr. Tsang.

40. The Respondent then produced a complaint dated 14 July 2017 against Ms. Lai Nga Man who prosecuted the Respondent in the criminal case. This complaint took the form of a number of interrogatories asking Ms. Lai to respond whether she agreed to the allegations made or not. This complaint was followed up by further allegations and complaints dated 13 October 2017, 18 October 2017, 22 May 2018, 28 May 2018, 28 June 2018, 8 August 2018, and 18 September 2018. Apparently these complaints were sent to the Law Society at various stages. By these complaints the Respondent alleged that Ms. Lai had been guilty of negligence in the discharge of her duties, guilty of professional misconduct in misleading the Court, misleading the expert witnesses and discriminating against the Respondent as a handicapped person. On top of these, the Respondent also produced other materials sent to the Law Society on 8 June 2018 consisting of the Prosecution Code, extracts from Archbold HK, the handwriting expert report used in the criminal trial. The Respondent also produced other complaint materials he sent and received by the Law Society on 20 August 2018, 28 August 2018, 15 October 2018 and 2 November 2018. The complaint materials contained a lot of repetitive materials on the law, the duty of prosecution and the role of experts.

41. Apparently the Law Society had written to Ms. Lai for her comments on the complaints on 25 July 2017 and Ms. Lai gave a short comment on 7 August 2017 where she referred to the fact that the handwriting expert's expertise had not been challenged in the trial and he had been cross examined at length by the Respondent's counsel. She also referred to the Law Society the reasons of the trial Judge for convicting the Respondent.

42. The Respondent produced to us further letters he sent to the Law Society in 2019. Much of the contents of those letters were harping back on the same old complaints he made against Ms. Lai. We have gone through those letters and we do not think that it is necessary to recount those letters in details.

43. We do not find it necessary to adjudicate on the merits of the Respondent's complaints against Ms. Lai. Apart from the complaint relating to Ms. Lai's use of the witness statement of Janet Wong in cross examining her when Ms. Lai had told the Court that she did not have the documents on the civil case relating to the claim for adverse possession and would not rely on those documents, none of the Respondent's other complaints against her had been relied on in the trial or in the Court of Appeal. As to the complaint on the use of the witness statement, in fact even though the point was taken by the Respondent's counsel, the Respondent had taken the liberty of personally addressing the trial Judge on the point referring also to an alleged earlier event before the commencement of the trial when he alleged that Ms. Lai had promised him not to ask any question relating to the civil action in cross examination. The Judge specifically dealt with the point in paragraphs 106 and 107 of the Reasons for Decision. The same point was taken as a ground of appeal in the Court of Appeal and was rejected by the Court of Appeal for reasons set out in paragraphs 64 to 69 of its judgment.

44. Having gone through his complaints and allegations against Ms. Lai, we do not consider these complaints whether by themselves or in combination with other complaints made before us would amount to the exceptional circumstances which would justify the reopening of his convictions and the Court's finding against him under the Rule in **Hunter's** case. Indeed if it had been necessary for us to express any view on the Respondent's complaints against Ms. Lai, our view is that there is no substance in the complaints as would justify the Court to have come to a different conclusion on the Respondent's convictions.

45. As pointed out before, on 8 February 2018 the Respondent wrote to the Bar Council lodging a complaint against HH Judge Pang Chung Ping for acting unfairly in the trial. By a letter dated 21 February 2018, the Bar Council informed the Respondent that the Bar Council did not have jurisdiction over complaints against judges.

46. The Respondent also produced an unsigned copy of another letter dated 18 June 2018 to the Chief Judge of the High Court (see **pages 748-763 of R Bundle**) making complaint against the trial judge HH Judge Pang Chung Ping. We assume that this letter was duly sent although we were not shown any acknowledgement of the receipt of the letter or any other response to the letter. The letter made 28 charges of professional misconduct against HH Judge Pang and the types of misconduct as summarized in the letter were (1) negligence; (2) omission (sic); (3) incompetence; (4) breach of ethics; (5) breach of integrity; (6) breach of professional conduct; and/or (7) creation of likelihood of bias. The substance of the complaints related to the Judge's finding that there were material discrepancies between the account given in the Respondent's recorded interviews and the evidence he gave in Court and the Judge's disbelieving the evidence of the Respondent. Relying on

inter alia the comments and diagnosis of some medical practitioners who treated the Respondent in 2016-2018 (see **paragraphs 6-10 of the letter at pages 748-750 of the R Bundle**) the Respondent criticized Judge's finding and assessment that the Respondent did not have impairment in either concentration or memory based on the Judge's observation during the trial. The Respondent criticized the Judge for professing to be a psychiatric expert in making this finding and alleged that the Judge's finding contradicted the expert opinion of 2 medical doctors and the pharmacists. We do not know the result of the Respondent's complaint.

47. We would like to point out that from paragraphs 93 and 94 of the Reasons for Decision it is clear that what the Judge held was that the agreed medical evidence did not show that during 2009 to 2010 the Respondent was suffering from mental illness or was taking mental drugs all the time and the evidence did not support that during the material times the Respondent's memory was affected by his illnesses or the drugs. We note that on appeal the Respondent appeared to rely on his medical condition and the effect of the drugs that he took as a ground to explain the discrepancy between his evidence in Court and what he said in the recorded interview in order to attack the Judge's rejection of his evidence. His point was in fact considered and rejected by the Court of Appeal in paragraphs 80 to 86 of its Judgment.

48. Before us the Respondent further sought to adduce and rely on his complaint against his barrister Mr Yeung. Following his letter to the Bar Council dated 14 December 2017 intimating to the Bar Council that there was a case for negligence and breach of duties on the part of Mr. Yeung and that he expected optimistically that the claim could be reasonably formulated within December 2017, in his letter to the Bar Council dated 26 April 2018, the Respondent alleged that before the criminal trial he had informed Mr. Yeung that he had

a history of permanent disability, viz. psychosis and that owing to his illness and the effect of the medicine Olanzapine, Valium and sleeping pills he suffered from impairment in memory. There were 7 records of interviews totaling to 14 hours and there was no time before the trial to review and discuss the interview records with Mr. Yeung. The Respondent reminded Mr. Yeung to pay attention to see if there were any points in the interview which were disadvantageous to his case. He said that Mr. Yeung using his discretion agreed with the prosecution for the production of 4 tapes. He alleged that owing to his poor memory the Judge disbelieved his evidence because of the significant discrepancies between his evidence and the interview records. He asked the Bar Council if that could be a ground for the investigation of Mr. Yeung for misconduct.

49. While we do not think that it is necessary for us to decide whether the facts as set out in the Respondent's letter of 26 April 2018 would justify a complaint against Mr. Yeung, we are of the view that even assuming that there was negligence on the part of Mr. Yeung, such negligence was not of any or any sufficient materiality to constitute an exception to the Rule in **Hunter's** case. However, if it is necessary for us to express our view, we hold the view that on the facts as alleged in the letter of 26 April 2018 we see no reason for coming to any view that the trial Judge's decision to reject the Respondent's evidence would be any different even if the tapes of the interview had not been agreed. After all the prime consideration for the admissibility of the records of the interview was whether they were voluntary. If the interviews were voluntary then the tapes could be produced. There was never any allegation that the interviews were not given by the Respondent voluntarily, nor had the Respondent instructed Mr. Yeung that at the relevant time he was not fit to give the interviews. If it was alleged that the Respondent's versions stated in the interviews were not accurate because of the poor memory at the time of the interview, it was

certainly up to the Respondent to explain that to the Court and it was up to the Judge to decide whether the explanation was acceptable.

50. Furthermore, as we have pointed out before, the Respondent had called Mr. Yeung to give evidence before us, and it was never suggested or put to Mr Yeung that he was negligent or that his conduct of the case was such that had resulted in a miscarriage of justice to the detriment of the Respondent.

51. The Respondent also produced a chronology ("the Chronology") setting out his version of the facts relating to the criminal charges (see **pages 779 to 788 of the R Bundle**).

52. Briefly the Respondent was a LLB graduate of HKU in 1993. He told us that he failed his PCLL in the City University of Hong Kong. However in 1996 he passed the English Bar Examination and by virtue of that qualification he was entitled to be called to the Hong Kong Bar in those days. He completed his pupillage in 1998 and became qualified to practise in the Bar in Hong Kong.

53. According to the Chronology Cheung approached Au to buy the Property and on 6 May 1997 Cheung and Au went to open a joint account with the Standard Chartered Bank and an amount of \$300,000 (\$100,000 cash and \$200,000 bank draft) was paid into that account by Cheung. Also on that day Cheung drew the cheque in the sum of GBP80,000.00 (being the equivalent of \$1 million). We know that that cheque was somehow dated 1996 and was never presented for payment. We also know from the judgment that the cheque was kept by Au who later on entrusted it with Chan Kwok Tung. We would like to point out here that from what was recorded as Cheung's evidence in the Reasons for Decision, Cheung only said that he paid Au \$100,000 deposit.

54. According to the Chronology the completion date was 6 August 1997 when the balance of the purchase price of \$500,000 was due and vacant possession was to be delivered. There was no explanation on how the \$500,000.- balance of the purchase price was arrived at. Again this was hardly true because from paragraph 10 of the Reasons of Decision where the Judge referred to the record kept at the Land Registration office, the assignment of the Property was dated 15 May 1997. Indeed the Respondent also produced a copy of the assignment (**at page 275 of the R Bundle**) which also confirmed that the assignment was dated 15 May 1997 and Au as vendor acknowledged receipt of the one million dollars being the full purchase price. According to the Chronology, on 6 August 1997 Wong Choi Chuk whom the Respondent alleged was then living in the Property with Au spoke to Cheung and made a protest and refused to deliver possession because there was no payment of the balance of the purchase price. As the balance of the purchase price was not paid, Wong Choi Chuk refused to deliver up possession of the Property.

55. It was alleged in the Chronology that since 6 August 1997, Cheung could not be traced and there was confirmation from Cheung's relatives and friends that he was dead. Chan Kwok Tung using his fortune telling technique also said that Cheung was dead. Our view is that whether there was anyone suggesting that Cheung was dead or not, at least it must be known to Au that Cheung was still alive as the solid evidence found by the Judge was that with the exception of a few months in 2001, Cheung had been paying \$5,000 every month into the joint account with Au. Nor could we accept that since 6 August 1997 up to 7 August 2009 the Respondent and his sister Wong Choi Chuk did entertain the genuine belief that Cheung was dead because according to the Chronology on 7 August 2009 Wong Choi Chuk instructed the Respondent to issue proceedings against Cheung for adverse possessory title of the Property. We

note from the heading of the proceedings in HCA1726 of 2009 that the defendant was Cheung Wai Ming Turbo and not the estate of Cheung Wai Ming Turbo or Cheung Wai Ming deceased. Furthermore, there was no reference to any steps having been made for the appointment of someone to represent Cheung's estate. Furthermore, even though the Bar Council took the stance that it would not rely on the civil proceedings HCA 1726 of 2009 in proving its complaints against the Respondent, we took the view that the statement in the Chronology that on 7 August 2009 Wong Choi Chuk "instructed" the Respondent to issue the High Court Proceedings was calculated to mislead, because as recorded in paragraph 1 of the decision of Chung J, that proceedings was initially issued with the Respondent as the sole plaintiff and it was only later by amendment that his mother and Wong Choi Chuk were added and made the 1<sup>st</sup> and 2<sup>nd</sup> Plaintiffs. Also we find it difficult to accept that Wong Choi Chuk could have instructed the Respondent to issue proceedings in the name of the Respondent because according to her evidence as recorded by the Judge in paragraph 48 of the Reasons for Decision, she moved out of the Property 7 years before the trial (i.e. she moved out in 2006) and under the will propounded by the Respondent Wong Choi Chuk was bequeathed with the Property and it was the Respondent's case that since Cheung never made full payment of the price, Au would have the right to recover the Property. There would have been no reason for Wong Choi Chuk to instruct the Respondent to commence proceedings on adverse possession. Even if her allegation that she was not aware of the contents of the "will" until 7 April 2010 was true (which was rejected by the Judge in paragraph 101 of the Reasons for Decision), the Respondent must know the contents of the "will". The Judge must be right in disbelieving her evidence that she was aware of the contents of the will only in April 2010. According to the Chronology, in September to November 2009, Wong Choi Chuk instructed the Respondent to apply for probate. It is difficult to conceive that she



would have done so without knowing the contents of the will for which probate was sought.

56. The Chronology also contained other details which we do not think are material to the issues that we have to decide. These details include the allegation that on the 3 occasions Wong Choi Chuk showed the Respondent the receipts and the expenses for the donations and also the religious ceremonies for Au and the allegation of disturbances to the Property since April 2010. It was also alleged that in 2011 the Respondent became aware that the address of Cheung Wai Ming was actually the same address of Chan Kwok Tung. Presumably this is intended to show that there was a conspiracy between Cheung & Chan Kwok Tung against the Respondent. Having regard to the fact that the trial took place in 2013, if there was any significance in the address at all, it was surprising that the same had not been relied on in the trial.

57. What was significant was that the Chronology confirmed that the Respondent alleged that his relationship with Chan Kwok Tung turned sour since 30 December 2009 when Chan Kwok Tung was supposed to make a refund of \$80,000 to the Respondent and Wong Choi Chuk.

58. What was not in the Chronology or in the oral evidence of the Respondent before us was his reasons for believing that since the death of Au the money in the joint account of Au and Cheung would still continue to belong to Au. The account was open as a joint account plainly with the consent of Au. There was no reasonable explanation for having a joint account to receive money from Cheung if it was intended that the money paid in should only be enjoyed by Au. It is unbelievable that as a barrister in Hong Kong, the Respondent would not have known that upon the death of Au the money in the joint account would belong to Cheung by survivorship.

Indeed the Judge had so found in paragraph 150 of the Reason for Decision.

59. The Respondent also adduced in evidence in his R Bundle some materials concerning the lyrics of Cantonese opera and Chinese literatures like poems (**pages 820 to 844**), donation acknowledgement (**page 849**) apparently for the purpose of supporting his creditability in his contention that he was the disciple of Au and that he had made donation using Au's money in November 2009. We are of the view that the materials (**pages 820 to 844**) he produced would at the most show that Au did operate a partnership teaching Chinese opera and literature and possibly that the Respondent's relationship with Au was such that he would have access to these materials. The acknowledgement of the donation was addressed to the Respondent himself and there was nothing to indicate that the donation was made in the name or for the honour of Au. We do accept that he had made the donation of \$3,000.00 as acknowledged in page 849 of the R Bundle.

60. We take it that the Chronology was adduced with the view of showing that the exception to the Rule in **Hunter's** case applies. However, as discussed in our Ruling (**§ 43 & 46**) the threshold for the exception is a strict and high one and even stricter than the criteria for admission of new evidence in the Court of Appeal under the **Ladd v Marshall** test. One of the criteria for the **Ladd v Marshall** test is that the evidence sought to be adduced must be credible. For reasons we set out above, we do not think that many of the key and material events in the Chronology are really credible. Another requirement is that it must be shown that the evidence could not have been obtained with reasonable diligence for use at trial. We have not received any explanation from the Respondent why the evidence could not have been produced earlier.

61. For reasons we have discussed earlier in this Decision, the other complaints against (1) the Bar Council for discriminatory treatment; (2) against the trial Judge; (3) against Ms. Lai of the prosecution; and (4) against the Respondent's barrister, do not either by themselves or in combination amount to the exceptional circumstances justifying the reopening of the finding of the trial Judge and the Court of Appeal.

62. The Respondent however sought to contend that his right to appeal has not been exhausted. When he gave evidence before us, he sought to say that he was not aware of the dismissal by the CFA of his application for leave to appeal to the CFA. We note that the Order of the CFA dated 27 May 2016 was served on him as part of the enclosures to the witness statement of Mr. Tsang in July 2018. The point about his right to appeal to the CFA was adumbrated in the preliminary point hearing before us in October and November 2018 and it was never then suggested that he was not aware of his own application to the CFA and the dismissal of the application. The denial of knowledge of the application when he gave evidence on 30 April 2019 was truly surprising. We reject his evidence. It seems that the Respondent was prepared to say whatever that appeared to be convenient to him at the moment in complete disregard to the truth. In this regard we also refer to the various statements he made in the Chronology discussed earlier in this Decision.

63. The Respondent adduced before us some evidence on his mental condition and materials on the side effect of certain drugs he took (**pages 850-853**). Further, although he did not say so expressly, the Respondent appeared to suggest that the Court of Appeal had allowed his appeal on sentences and he claimed that the Court of Appeal did so on its finding that the Respondent was in fact influenced by the drugs he took in committing the offences and so he

should not be considered as being guilty of the offences charged or at least he should be entitled to re-open the case on his conviction.

We say “appeared” because the Respondent’s evidence and submissions were so confused and convoluted that we sometimes found it very difficult to understand his logic and contention and we had to try our best to work out what his contention could possibly be. If our understanding of his contention is correct, then we would point out that he was wrong in his understanding of the decision of the Court of Appeal in allowing his appeal on sentences. What the Court of Appeal said in paragraph 98 of its Judgment was :

“ ... 本庭認為，申請人雖然具有犯案所需的一切行為能力、他的記憶也沒有受到任何影響，但他受到某種精神病的影響而犯案，也不是完全沒有可能的。由於這個原因，本庭認為，本案的整體刑期可下調一年至 3 年半，方法是維持每項定罪的原有刑期，但改為全部同期執行”

What is clear is that the Court of Appeal affirmed the Judge’s view that the Respondent possessed all the capacities to commit the offences and his memory was not affected by his illness or drugs. The appeal on sentence was allowed simply because the Court of Appeal felt that it was not impossible that his mental state was somewhat affected by his mental illness in committing the offences. It must be borne in mind that in so saying the Court of Appeal simply considered his mental illness as a mitigating factor in sentencing and not as something negating the *actus reus* or *mens rea* of the offences.

64. The Respondent also relied heavily on his own experience and encounter in the Yu Wai Shun Case (**DCCC 1329 of 2011**). Again the Respondent never properly formulated his contention on how his experience in this case would assist him in the present inquiry. It would appear to us that the Respondent would

contend that his experience in **DCCC 1329 of 2011** would show that notwithstanding a finding against him by a trial Judge it would be open to the Bar Council to decide against the finding of the trial Judge and he would invite us to do the same.

65. What happened in **DCCC 1329 of 2011** was that the Respondent was counsel acting for the 1<sup>st</sup> defendant in DCCC 1329 of 2011. After the trial had gone on for some 15 days, on 5 May 2011 the Respondent was informed that one co-defendant would give evidence for the prosecution and his statement was only given to the Respondent that evening. The Respondent asked for a short adjournment on the next morning to take instructions. Apparently the trial went on. Then on 17 May 2011 when it would appear that it was the turn for the defendants' case, upon the enquiry of the Judge, the Respondent informed the Court that his client was not giving evidence but he intended to call 2 witnesses and one of them would be an alibi witness. There was no alibi notice ever given. Unsurprisingly that prompted strong objection from the prosecution because of the failure to comply with the provision of the Criminal Procedure Ordinance. The Respondent told the Court that before the matter was adjourned he had informed the prosecution that the case involved some alibi evidence. That was denied by the counsel for the prosecution. There were then various arguments. It was quite apparent from the relevant part of the transcripts that at that time the Respondent was not aware of the requirement of s65D of the Criminal Procedure Ordinance to give alibi notice. Nor was he aware of the contents required of the alibi notice. After the explanation by the Judge the Respondent asked the Court for the indulgence to abridge time for the notice. The Judge eventually agreed to exercise his discretion to abridge time for the notice. However because of the time required for the prosecution to investigate on the alibi witness, the matter was adjourned for 2 days.

66. Subsequently the prosecution applied for a wasted costs order against the Respondent for the 2-day adjournment necessitated by the late alibi notice. The Respondent filed an affidavit to defend the application. In his affidavit he merely mentioned that in the morning of 17 May 2011 he received instructions from his client of his client's decision to call the alibi witness. The Judge found against the Respondent and ordered him to pay the costs for the 2-day adjournment. In giving his reasons, the Judge made the remark that there were discrepancies between his explanation given in his affidavit on the reasons for the lack of alibi notice and what he told the Court on 17 May 2011 when the alibi matter was raised. The Judge also made the observation that in his view the Respondent had failed in his duty to tell his client that if he would like to call any alibi witness, it was necessary to give the alibi notice in advance and that should not be delayed. The Judge thus referred the matter to the Bar Council to investigate to see if there was any professional misconduct.

67. The Bar Council having looked at the Judge's referral took the view that there was insufficient evidence to support an allegation that the contents of the Respondent's affidavit were not true and/or the Respondent had misled the Court whether deliberately or inadvertently. As to the failure to follow the s65D requirements, the Bar Council took the view that it did not amount to a disciplinary offence although the Bar Council had reminded the Respondent of his duty under paragraph 6(d) of the Bar Code that he had a duty to be competent in all his professional activities. The Bar Council also reminded the Respondent that it was imperative that when addressing questions from the Court, a barrister must ensure that he does so truthfully, accurately and clearly.

68. We are unable to see how the incident of the Respondent's own encounters in the **Yu Wai Shun** case would assist

him in this enquiry. Plainly the Judge referred the matter to the Bar Council to investigate if there was any professional misconduct arising from what was stated in his affidavit and what actually took place. The fact that the Judge held that the Respondent was liable personally for the wasted costs was not the subject matter of the complaint to be investigated by the Bar Council.

69. In his written closing submission, the Respondent appeared to contend that it is a question of the fact of the individual case as to whether the conduct in question would amount to bringing the profession of barristers in disrepute. We agree with this contention. We do not take the view that every criminal conviction would automatically mean that the profession has been brought into disrepute.

70. In paragraph 16 of his closing submission (**pages 934 to 936 R Bundle**), the Respondent argued that the present case was unique. He argued that the nature of this case was a combination of many types of civil matters. He said this was a case of property dispute and by that he referred to his case that Cheung had not fully paid for the Property and Au's remedies for that. The Respondent also said that this case was a family matter and by that he referred to his case that Wong Choi Chuk was the *de facto* wife of Au and was also a business partner of Au. He also characterized this case as one involving family member's funeral and post-death expenditure and as such he said that it was also a case involving religious matter. He further said that this case also involved his spending Au's money for donation and this was thus a moral matter. The Respondent argued that all these were civil matters and his incompetence in civil matters did not imply that he was incompetent in criminal matters. He argued that the ultimate question in this case was "is the future integrity affected?" To this question his answer was "My integrity and future integrity is never affected".

71. We are at a complete lost as to the logic and relevance (if any) of this part of his submission. While we do have grave reservation in the way he characterized the nature of the facts of the case of his criminal convictions, the issues in this inquiry have nothing to do with how the facts were characterized or looked at. Nor could we see how the Respondent's past, present or future integrity, would be affected by what happened in this case could be relevant to the issues that we have to decide.

72. In paragraph 20 of the Respondent's closing submission the Respondent said that he had been instructed by Au to "repudiate the contract of sale of 1997 with refund of double deposit to buyer Cheung Wai Ming". The Respondent further submitted that he had acted on such instruction. Certainly this was not said by the Respondent when he gave evidence before us. Even if such statement were made in his evidence we would have rejected such evidence. There was no act done in pursuance of such alleged instruction. From what we could see, no writ was ever issued in the life time of Au about the agreement he had with Cheung. An act to carry out Au's alleged instruction would certainly aim at the re-vesting of the Property on Au. Yet after the death of Au, what the Respondent did was to issue a writ claiming possessory title of the Property for himself, and later by amendment, for his mother, sister and himself. In any case even assuming that Au did give that instruction to the Respondent, we could not see how that could change the dishonest nature of the Respondent's conduct in propounding a forged will of Au or to use forged withdrawal slips to transfer money from the joint account of Au and Cheung after Au's death.



Conclusion on the Complaints against the Respondent

Complaint 1

73. The ultimate question for the 1<sup>st</sup> Complaint is whether the Respondent's criminal conduct in propounding the forged will of Au to obtain probate, to make a false affirmation on oath in propounding the will and to present the probate with a copy of the forged will annexed to the police to obtain the release of the Property of Au was prejudicial to the administration of justice and might bring the profession of barrister into disrepute.

74. The Respondent pointed to the fact that the estate of Au was a very small one. The Property was transferred to Cheung in Au's life time. The balance in the joint account with Cheung was about \$15,400.00 which was a very small amount. We do not have the schedule of Property annexed to the probate and thus we have no information on whether Au's estate had any other property of any value. Of course if one discounts the fact that the money in the joint account would become Cheung's money by survivorship upon the death of Au, then on the information available, one may argue that there is virtually nothing in Au's estate. The argument was that the benefit that could be derived from the crime was none or at the most very small.

75. However the use of a false will and a false affirmation to deceive the probate registry to obtain probate knowing that the will was forged is plainly dishonest and if done by a barrister, it would plainly bring the barrister profession into disrepute. The profession of barrister is a profession that requires utmost honesty and integrity from its members. The public expects nothing less. The Respondent's conduct under discussion will certainly tarnish the reputation of the profession. This is so regardless of the value of

the estate in question. In any case, the fact of the present case is worse in that it is plainly not the case that the Respondent propounded the will and made the false declaration under the belief that there was nothing in the estate. If the Respondent did believe that there was nothing in the estate, one wonders why he would take the trouble of propounding the will at all. Furthermore even though the Respondent admitted that he was not proficient in civil law, he must know that as executor he would have the power and authority to act for Au and to enforce all Au's rights that survive his death, otherwise what could be his purpose of getting probate of Au's estate at all? As the executor for Au's estate, the Respondent would be in a position to claim against Cheung for any unpaid purchase price and it is also probable that the Respondent held the belief that he could seek to reverse the sale of the Property and obtain back the Property from Cheung.

76. By comparison with the propounding of the forged will and the making and use of a false affirmation, the use of the probate with a copy of the forged will annexed to induce the police to release Au's Property to the Respondent is of lesser significance in the present case. It is nevertheless an act of dishonesty because as found by the Judge, the Respondent well knew that the copy of the will annexed was forged and it is thus a case where the Respondent should also know that probate should never have been granted to him. This would also illustrate that there is a purpose to be served by the use of the forged will in the present case.

77. The grant of probate is under the probate jurisdiction of the Court. If the Court should see fit to grant probate to an executor, the public would have the confidence that the Court must have been satisfied that it has carried out the necessary examination and the executor holding the probate was duly appointed by the deceased under his will. In the present case, the Respondent made

use of a false will to deceive the probate registry into granting probate to him. To get probate he also made a false affirmation purporting to support the will he propounded. In doing so, he also abused the trust that the Court would normally place on the face of the affirmation that the statements made therein are true. His conduct in making a false affirmation and propounding a forged will knowingly was certainly prejudicial to the administration of justice. This is again so regardless of the value of the estate in question.

78. In our view it is not a necessary ingredient of the complaint that the Respondent committed the conduct in question with the subjective desire, view, motive or intention to prejudice the administration of justice or to bring the barrister profession into disrepute.

79. Our conclusion is that Complaint 1 is proved.

#### Complaint 2

80. The gist of the Complaint is the Respondent's conviction of the 6 counts of theft of money from the joint account of Au and Cheung. The very fact that the Court has found him guilty of theft would necessarily mean that the Court was satisfied that the Respondent had acted dishonestly in the transfer of the monies to his own account. For the reasons given by the Judge, he rejected all contentions that the Respondent honestly believed that he was entitled to the transfer of the monies from the joint account. The Court of Appeal affirmed the Judge's conclusion. The Rule in **Hunter's** case applies so that it is not open to the Respondent to lead evidence before us to show that in fact he was wrongly convicted because he was in fact not dishonest.

81. In any event from all the evidence and materials put

before us, we would have come to the same conclusion as the Judge and the Court of Appeal. Regardless of whether there is any legal or moral claim by the Respondent to be reimbursed of any money he spent for Au's estate or for the benefit of Au, he must have known that the money he took from the joint account belonged to Cheung upon the death of Au. Regardless of whether he was aware of Cheung's right of survivorship or not, there could be no innocent explanation for him to use a forged withdrawal slip to obtain the transfer of the money. The Judge found that he was aware that the withdrawal slips were not signed by Au. If he thought that the money in the account would still belong to Au and he was the rightful executor, there was no reason for him not to simply present to the bank the probate and ask to be given the money as the executor of Au. There was no innocent reason for withdrawing the money in various small amounts. We would add that even if, which is not the case, Au in his life time had authorized the Respondent to withdraw money from his account, as a barrister the Respondent must know that his authority to act for Au would cease upon the death of Au. Although the amount involved was small, his conduct was definitely dishonest.

82. The gist of Complaint 2 is that the Respondent had engaged in conduct which was dishonest. Our conclusion is that the Complaint is proved. We would further add that although it is not an ingredient of Complaint 2, his conduct in stealing money from the account has also brought the barrister profession into disrepute.

83. Having found the Complaints proved, we hereby direct that a date be fixed for the hearing of (1) the question of sanction that we should impose; (2) the question of costs of this inquiry including all interlocutory applications; (3) the question of publication of our decision; (4) any application for stay of our decision; and (5) any other matter that we should deal with. We further direct that

all authorities and materials intended to be used in the further hearing must be properly bundled and submitted to this BDT at least 7 days before the next hearing. All late materials will not be admitted unless exceptional circumstances are given to justify the lateness.

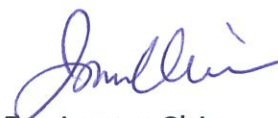
Dated this 5<sup>th</sup> day August 2019



Edward Chan SC  
Chairman



Anthony Chan  
Member



Dr. James Chiu  
Member