Ong Jane Rebecca v Lim Lie Hoa (also known as Lim Le Hoa and Lily Arief Husni) and Others
[2003] SGHC 126

Case Number : OS 939/1991, INQ 1/2002

Decision Date : 13 June 2003

Tribunal/Court : High Court

Coram : Phang Hsiao Chung AR

Counsel Name(s) : Andre Arul (Arul Chew & Partners) for the plaintiff; Khoo Boo Jin and Daniel Tan (Wee Swee Teow & Co) for the first defendant; C Arul and Ooi Oon Tat (C Arul & Partners) for the second defendant; Vinodh S Coomaraswamy and Chua Sui Tong (Shook Lin & Bok) for the third and fourth defendants.

Parties : Ong Jane Rebecca — Lim Lie Hoa (also known as Lim Le Hoa and Lily Arief Husni); Sjamsudin Husni (also known as Ong Siauw-Tjoan); Ong Siauw Ping; Ong Keng Tong

1 This is an inquiry conducted pursuant to a judgment dated 16 July 1996.

2 The Plaintiff (Jane Rebecca Ong) is the wife of the Second Defendant (Ong Siauw Tjoan @ Sjamsudin Husni). They were married in 1982 and have 3 children. In 1988, the Plaintiff commenced divorce proceedings against the Second Defendant. A decree nisi has been obtained but not made absolute.

3 The First Defendant (Lim Lie Hoa, also known as Lim Le Hoa and Lily Arief Husni) is the mother of the Second Defendant. The First Defendant's husband, and the Second Defendant's father, was one Ong Seng King (also known as Ong Seng Keng, Ong Keng Seng, Ong King Seng and Arief Husni) (the "Deceased"). The Deceased was a wealthy Indonesian businessman with assets in a number of different jurisdictions. He died intestate in Jakarta, Indonesia, on 22 October 1974 at the age of 49 years. According to a petition for letters of administration filed by the First Defendant in the High Court of Singapore (Probate No 8 of 1975), the Deceased was resident in Singapore but domiciled in Indonesia at the time of his death.

4 The petition for letters of administration in Probate No 8 of 1975 was granted on 17 January 1975. As granted, the petition identified the First Defendant, the Second Defendant and the Third Defendant (Ong Siauw Ping @ Slamat Husni) as the only next of kin of the Deceased. The Third Defendant was the Deceased's and First Defendant's son, and the Second Defendant's brother. As both the Second and Third Defendants were then minors, the letters of administration were granted to the First Defendant as administrator and to one Lim Lie Fong as co-administrator with her.

5 By an Order of Court dated 8 September 1975, the First Defendant and Lim Lie Fong were granted leave to amend the petition for letters of administration to include a reference to an "unborn child" as a next of kin of the Deceased. This was in fact a reference to the Fourth Defendant (Ong Keng Tong), who was born on 27 June 1975.

6 By an Order of Court dated 24 July 1978, the letters of administration granted to the First Defendant and Lim Lie Fong were revoked, and the letters of administration were instead granted to the First Defendant as administrator and to the Second Defendant as co-administrator with her. As, at law, administrators and co-administrators bear the same roles and responsibilities, I will refer to both the First and Second Defendants and Lim Lie Fong as "administrators".

7 On 29 June 1989, the Second Defendant executed a Deed of Release in which he purported

to acknowledge receiving from the administrators of the Deceased's estate the sums of £1,018,000 and US$150,000 in full and final settlement of his interest in the estate, and purported to discharge and release the administrators of the estate of their duties and obligations.

8 On 29 August 1991, the Second Defendant executed a Deed of Assignment and a Power of Attorney in favour of the Plaintiff. Under the Deed of Assignment, the Second Defendant assigned to the Plaintiff "one-half of all his entitlement to the distributive share of the residuary estate of [the Deceased] and all other rights (if any) in or to the said Estate". The Power of Attorney conferred on the Plaintiff powers, *inter alia*, to demand and sue the representatives of the Deceased's estate for the Second Defendant's share in the residuary estate and was declared to be "irrevocable".

9 On 21 September 1991, the Plaintiff's solicitors commenced this action by way of an originating summons. By an Order of Court dated 4 April 1994, the proceedings were ordered to be continued as if the matter had been begun by writ. In her Statement of Claim, the Plaintiff claimed the following relief:

(1) that the Deed of Release be set aside or declared unenforceable as against the Second Defendant and the Plaintiff;

(2) that the First Defendant pay the sums of £519,000 and US$75,000 to the Plaintiff; and

(3) that various accounts be taken and inquiries be made to determine the assets of the Deceased's estate, the whereabouts of those assets, and the amounts due to the Plaintiff under the Deed of Assignment.

10 In a judgment dated 16 July 1996, Chao Hick Tin J declared the Deed of Release executed on 29 June 1989 to be void and unenforceable. His Honour further directed that an inquiry be held to determine:

(1) the assets of the estate of the Deceased and their whereabouts;

(2) the share of the Second Defendant in the estate;

(3) the amount or amounts which have been received by the Second Defendant from the estate;

(4) the amount still due to the Second Defendant from the estate as on 29 August 1991; and

(5) the quantum of the Plaintiff's share in the estate under the Deed of Assignment.

11 The First and Second Defendants appealed against these orders. By a written judgment dated 16 April 1997 (reported as *Lim Lie Hoa v Ong Jane Rebecca* [1997] 2 SLR 320), the Court of Appeal dismissed the First and Second Defendants' appeals with costs.

12 The Plaintiff, the First Defendant and the Second Defendant were the only parties to this action up to 21 February 2002. By an Order of Court dated 22 February 2002, the Third and Fourth Defendants were added as parties to this action on their own application.

Preliminary Issues

13 Before dealing with my findings on the inquiry, I think it is appropriate to deal with two

discrete preliminary issues that have a bearing on the outcome of this case.

The Fourth Defendant's Parentage

14 First, both the Plaintiff and the Second Defendant attempted to introduce evidence to suggest that the Fourth Defendant was not a son of the Deceased. The object of this exercise was to enlarge the Second Defendant's share of the Deceased's estate by shutting out the Fourth Defendant from his claim as a beneficiary.

15 I did not allow the Plaintiff and the Second Defendant to embark on this line of inquiry. Nor did I allow any cross-examination on this matter. In my opinion, an investigation into the Fourth Defendant's parentage clearly fell outside the scope of the inquiry ordered pursuant to the judgment dated 16 July 1996.

16 Although the Plaintiff did allege, at paragraph 11(1)(b) of her Statement of Claim filed on 13 April 1994, that the Fourth Defendant was "not entitled as a beneficiary as he [was] not a lawful issue of [the Deceased]", this allegation was made merely to support her contention that the First Defendant had acted in breach of trust and/or in breach of her fiduciary duties as an administrator or trustee. At the trial, the Plaintiff did not seek any relief in the nature of a declaration as to whether the Fourth Defendant was a beneficiary of the Deceased's estate. In her Defence filed on 25 April 1994, the First Defendant denied the Plaintiff's allegation at paragraph 11(1)(b) of the Statement of Claim. In his Defence filed on 15 June 1995, the Second Defendant stated that this allegation was "not admitted". When Chao Hick Tin J ordered the inquiry on 16 July 1996, the Fourth Defendant had not even been made a party to this action. It was therefore inconceivable that His Honour could have intended the inquiry to encompass matters that would have been adverse to the rights of the Fourth Defendant, such as an investigation into the Fourth Defendant's parentage. On the contrary, Chao J described the Fourth Defendant as "another younger brother of the second defendant" at page 8 of His Honour's unreported judgment dated 16 July 1996.

17 The Plaintiff and the Second Defendant also faced an evidential problem. Section 114 of the Evidence Act (Cap 97, 1997 Ed) provides as follows:

> **Birth during marriage conclusive proof of legitimacy**
>
> 114. The fact that any person was born during the continuance of a valid marriage between his mother and any man, or within 280 days after its dissolution, the mother remaining unmarried, shall be conclusive proof that he is the legitimate son of that man, unless it can be shown that the parties to the marriage had no access to each other at any time when he could have been begotten.

18 The Deceased died on 22 October 1974. The Fourth Defendant was born on 27 June 1975, well within 280 days after the marriage between the First Defendant and the Deceased was dissolved by the latter's death. By virtue of section 114 of the Evidence Act, this was to be treated as conclusive proof that the Fourth Defendant was a legitimate son of the Deceased, unless it can be shown that the First Defendant and the Deceased "had no access to each other" at any time when the Fourth Defendant could have been begotten. There was no admissible evidence of this nature adduced by either the Plaintiff or the Second Defendant to justify embarking on such an investigation. It was not sufficient for them to make bare allegations, whether by themselves or through acquaintances, that the First Defendant and the Deceased did not appear to be on good terms with each other at the time when the Fourth Defendant was conceived. They had to show that the First Defendant and the Deceased "had no access to each other" at all material times.

19 In Probate No 8 of 1975, the First Defendant declared the Fourth Defendant to be a next of kin and beneficiary of the Deceased. Letters of administration were granted to the First and Second Defendants on the basis that the Fourth Defendant was one of the Deceased's three sons. The Second Defendant consented to acting as a co-administrator on that basis. The Second Defendant also signed a power of attorney for an application for resealing the Singapore grant of letters of administration in Hong Kong. In that power of attorney, the Second Defendant acknowledged the Fourth Defendant to be a "natural and lawful son" and "next of kin" of the Deceased who was entitled to a share in the Deceased's Hong Kong estate. The Second Defendant's allegations about the Fourth Defendant's parentage were therefore clearly suspect.

Law governing the distribution of the Deceased's estate

20 The second issue relates to the proper law governing the distribution of the Deceased's estate. To save costs, the parties agreed that for the purposes of the inquiry, the law governing the distribution of intestate estates in Hong Kong would be treated as identical to the law governing the distribution of intestate estates in Singapore. No agreement was reached on the law governing the distribution of intestate estates in any other jurisdiction. Nor was any foreign lawyer called to give oral evidence on the law governing the distribution of intestate estates in any jurisdiction.

21 At paragraph 9 of her affidavit of evidence in chief filed on 8 March 1999 for the inquiry (the "First Defendant's affidavit of evidence in chief"), the First Defendant took the position that:

(1) the distribution of the Deceased's immovable property was to be governed by the law of the country where the immovable property in question was situated; and

(2) the distribution of the Deceased's movable property was to be governed by the law of the country where the Deceased was domiciled, i.e. Indonesian law.

22 On that basis, the First Defendant asserted that:

(1) the Deceased's immovable property in Singapore and Hong Kong was to be distributed in the following manner: half to the First Defendant and one-sixth to each of the Second, Third and Fourth Defendants; and

(2) the Deceased's immovable property in Indonesia and movable property wherever situated were to be distributed in the following manner: five-eighths to the First Defendant and one-eighth to each of the Second, Third and Fourth Defendants, assuming that "2 other natural children of [the Deceased]" (whom the First Defendant identified to be "Ong Siauw Fung" and "Ong Siauw Lung") were not to be taken into account for the purposes of the distribution of the Deceased's estate.

23 No evidence was led on who Ong Siauw Fung and Ong Siauw Lung were. I assumed that they were not legitimate children of the Deceased because:

(1) the First Defendant, while describing the Second, Third and Fourth Defendants as "my 3 children", described Ong Siauw Fung and Ong Siauw Lung as "2 other natural children of [the Deceased]"; and

(2) Ong Siauw Fung and Ong Siauw Lung were excluded from the distribution of the Singapore assets.

As section 3 of the Intestate Succession Act (Cap 146) defines "child" as a legitimate or adopted child, illegitimate children are excluded from a distribution under the Intestate Succession Act.

24 The First Defendant's counsel made the following points in his written submissions:

(1) As the deceased died domiciled in Indonesia, under section 4 of the Intestate Succession Act (Cap 146), the distribution of the Deceased's estate would be determined by:

(a) Indonesian law in respect of all movable assets; and

(b) Singapore law in respect of immovable assets in Singapore and Hong Kong.

(2) The First Defendant had obtained the advice of Indonesian solicitors on the Indonesian law of intestate succession with specific reference to the Deceased's estate. The advice of her Indonesian solicitors, Messrs Nasution Soedibjo Maqdir & Partners, was exhibited in her affidavit of evidence in chief for the inquiry. None of the other parties had challenged paragraph 9 of the First Defendant's affidavit of evidence in chief during their cross-examination of the First Defendant. Neither did they challenge the advice of the First Defendant's solicitors.

(3) The Plaintiff and the Second Defendant had no basis to challenge the First Defendant's position on Indonesian law because the Plaintiff's own Indonesian solicitors gave identical advice.

(4) Both the Plaintiff's and the First Defendant's Indonesian solicitors agreed that under the Indonesian law of intestate succession, the Second Defendant was only entitled to a 12.5% share of the estate. Likewise, the Plaintiff's accountants, PriveWaterhouseCoopers ("PWC") accepted that under Indonesian law, the Second Defendant was only entitled to a 12.5% share in the Deceased's estate.

(5) As there was no dispute on the issue of distribution under Indonesian law, it was unnecessary for an Indonesian solicitor to testify in person at the inquiry.

(6) Neither the Plaintiff nor her witness, Jerome Walton, had any personal knowledge or expertise as regards Indonesian law. They were therefore not in a position to dispute the advice given by the Plaintiff's and the First Defendant's Indonesian solicitors or to speculate on the reasoning that led to the advice.

25 Counsel for the Plaintiff and the Second Defendant took the view that the Intestate Succession Act governed the distribution of the Deceased's estate wherever the assets may be situated. In his written submissions, counsel for the Third and Fourth Defendants stated that the Third and Fourth Defendants accepted that "the Singapore law of intestate succession should apply to the assets of the Estate wherever situated", and that accordingly, under the Intestate Succession Act, the Second Defendant was entitled to a one-sixth share of the Deceased's estate.

26 The common law rules on choice of law in intestate succession are set out in *Dicey and Morris on The Conflict of Laws* (13th edition, 2000) ("*Dicey and Morris*") at pages 1026 to 1027. The relevant rules are as follows:

RULE 132 – The succession to the movables of an intestate is governed by the law of his domicile at the time of his death.

RULE 133 – The succession to the immovables of an intestate is governed by the law of the

country where the immovables are situated (*lex situs*).

27 In contrast, section 4 of the Intestate Succession Act states:

Law regulating distribution

4.-(1) The distribution of the movable property of a person deceased shall be regulated by the law of the country in which he was domiciled at the time of his death.

(2) The distribution of the immovable property of a person deceased shall be regulated by *this Act* wherever he may have been domiciled at the time of his death.

28 Read in isolation, section 4(2) of the Intestate Succession Act would appear to be inconsistent with the corresponding common law rule on choice of law in intestate succession. However, section 4 of the Intestate Succession Act must be read with section 5 of the same Act. It is section 5 that identifies the "property" which is to be distributed in accordance with the Act. Section 5 of the Intestate Succession Act states:

Property of an intestate to be distributed

5. If a person dies intestate after the commencement of this Act, he being at the time of his death –

(a) domiciled in Singapore and possessed beneficially of property, whether movable or immovable, or both, situated in Singapore, or

(b) domiciled outside Singapore and possessed beneficially of immovable property situated in Singapore,

that property or the proceeds thereof, after payment thereout of the expenses of due administration as prescribed by the Probate and Administration Act shall be distributed among the persons entitled to succeed beneficially thereto.

29 Reading sections 4 and 5 together, it would appear that:

(1) the rules for distribution set out in section 7 of the Intestate Succession Act will apply to the distribution of movable and immovable property situated in Singapore if the deceased person was domiciled in Singapore;

(2) the said rules for distribution will apply to the distribution of immovable property situated in Singapore even if the deceased was domiciled outside Singapore; and

(3) the Intestate Succession Act is silent on the distribution of property situated outside Singapore, and the distribution of such property would fall to be determined under the common law rules on choice of law in intestate succession.

30 Section 4 of the Intestate Succession Act was considered and applied in *MTT ARSAR Meyammai Achi v V Valliammai also known as Arunachalam Valliappan Valliyammai Achi*, OS 659/1992, HC, unreported judgment dated 31 August 1996. In that case, C R Rajah JC held, with respect to the Singapore estate of a deceased person who was domiciled in India, that:

(1) the distribution of the deceased person's immovable property in Singapore would be

governed by the provisions of sections 4(2), 5 and 7 of the Intestate Succession Act; and

(2) as section 4(1) of the Intestate Succession Act stipulated that the law regulating the distribution of the movable property of a deceased person shall be the law of the country of his domicile at the time of his death, the deceased person's movable property in Singapore would be distributed according to the law in India.

31 In the circumstances, I am of the view that:

(1) the Deceased's immovable assets in Singapore are to be distributed in accordance with section 7 of the Intestate Succession Act;

(2) by virtue of the parties' agreement that the laws governing the distribution of intestate estates in Hong Kong and Singapore would be treated as identical, the Deceased's immovable assets in Hong Kong are also to be distributed in accordance with section 7 of the Intestate Succession Act; and

(3) the Deceased's immovable assets in Indonesia and the Deceased's movable assets wherever situated are to be distributed in accordance with the Indonesian law governing intestate succession.

32 The matter does not end there. The next question is whether the First Defendant has satisfactorily proved the Indonesian law governing intestate succession. As regards proof of foreign law in the English courts, *Dicey and Morris* states (at page 221):

RULE 18 – (1) In any case to which foreign law applies, that law must be pleaded and proved as a fact to the satisfaction of the judge by expert evidence or sometimes by certain other means.

(2) In the absence of satisfactory evidence of foreign law, the court will apply English law to such a case.

33 *Dicey and Morris* discusses the mode of proof of foreign law in the following terms (at page 225):

It is now well settled that foreign law must, in general, be proved by expert evidence. Foreign law cannot be proved merely by putting the text of a foreign enactment before the court, nor merely by citing foreign decisions or books of authority. Such materials can only be brought before the court as part of the evidence of an expert witness, since without his assistance the court cannot evaluate or interpret them.

No precise or comprehensive answer can be given to the question who, for this purpose, is a competent expert. A judge or legal practitioner from the foreign country is always competent. But in civil proceedings, there is no longer any rule of law (if indeed there ever was) that the expert witness must have practised, or at least be entitled to practise, in the foreign country.

34 This statement on the mode of proof of foreign law must however be qualified by sections 40 and 47 of the Evidence Act (Cap 97, 1997 Ed), which provide as follows:

Relevancy of statements as to any law contained in law books

40. When the court has to form an opinion as to a law of any country, any statement of the

law contained in a book purporting to be printed or published under the authority of the government of the country, and to contain any such law, and any report of a ruling of the courts of the country contained in a book purporting to be a report of the rulings, is relevant.

Opinions of experts

47.-(1) When the court has to form an opinion upon a point of foreign law or of science or art, or as to the identity or genuineness of handwriting or finger impressions, the opinions upon that point of persons specially skilled in such foreign law, science or art, or in questions as to the identity or genuineness of handwriting or finger impressions, are relevant facts.

(2) Such persons are called experts.

35 Sections 60, 61, 62(1)(d) and 62(2) of the Evidence Act are also instructive on the mode of proof of foreign law. They state:

Facts admitted need not be proved

60.-(1) No fact need be proved in any proceeding which the parties thereto or their agents agree to admit at the hearing or which before the hearing they agree to admit by any writing under their hands, or which by any rule of pleading in force at the time they are deemed to have admitted by their pleadings.

(2) The court may, in its discretion, require the facts admitted to be proved otherwise than by such admissions.

Proof of facts by oral evidence

61. All facts, except the contents of documents, may be proved by oral evidence.

Oral evidence must be direct

62.-(1) Oral evidence must in all cases whatever be direct –

...

(d) if it refers to an opinion or to the grounds on which that opinion is held, it must be the evidence of the person who holds that opinion on those grounds.

(2) The opinions of experts expressed in any treatise commonly offered for sale and the grounds on which such opinions are held may be proved by the production of such treatise if the author is dead or cannot be found or has become incapable of giving evidence or cannot be called as a witness without an amount of delay or expense which the court regards as unreasonable.

36 The net effect of these provisions may be summarised as follows:

(1) The court may receive as evidence of foreign law "any statement of the law contained in a book purporting to be printed or published under the authority of the government of the country, and to contain any such law" and "any report of a ruling of the courts of the country contained in a book purporting to be a report of the rulings" (see section 40 of the Evidence Act).

(2) The court may receive as evidence of foreign law the opinions of "experts" or "persons specially skilled in such foreign law" (see section 47 of the Evidence Act).

(3) A fact (such as a point of foreign law) need not be proved if the parties agree to admit to it at the hearing, or agree to admit to it in writing before the hearing, or are deemed by any rule of pleading to have admitted to it by their pleadings. The court may, in its discretion, nevertheless require the facts admitted to be proved otherwise than by such admissions. (See section 60 of the Evidence Act.)

(4) A fact (such as a point of foreign law) may be proved by oral evidence, but the opinion of an expert must generally be proved by the direct oral evidence of the expert (see sections 61 and 62 of the Evidence Act). Generally, a written opinion of an expert may be proved without calling the expert to give oral evidence only if the requirements of section 62(2) of the Evidence Act are satisfied.

37 The First Defendant cannot claim to be a person specially skilled in the Indonesian law of intestate succession. Her evidence on Indonesian law as set out at paragraph 9 of her affidavit of evidence in chief was clearly based on advice that she had received. As the Indonesian law of intestate succession was a question of fact, the First Defendant's repetition of the advice given by her Indonesian solicitors clearly offended the rule against hearsay. The First Defendant's personal opinion on Indonesian law had no probative value whatsoever. It was therefore irrelevant that she was never cross-examined on this point.

38 The letters sent by the First Defendant's and the Plaintiff's Indonesian solicitors also did not constitute admissible evidence on the Indonesian law of intestate succession. Those letters did not satisfy the requirements of either section 40 or section 62(2) of the Evidence Act. The contents of the letters were clearly hearsay.

39 Aside from the issue of admissibility, I also had reservations as to whether the letters presented a complete and accurate picture of the Indonesian law of intestate succession as applied to the facts of this case. To begin with, the parties did not disclose their instructions to their respective Indonesian solicitors. None of the letters made any reference to Ong Siauw Fung and Ong Siauw Lung, even though the First Defendant described them as "natural children" of the Deceased. Were the Indonesian solicitors informed of their existence? Would the advice of the Indonesian solicitors have been different if the Indonesian solicitors were aware of their existence?

40 The letter dated 19 April 1993 from the Plaintiff's Indonesian solicitors stated that "[p]ursuant to Articles 852 and [illegible] of Indonesian Civil Code, if a person died intestate the deceased's property has to be distributed equally among his/her spouse and children". Yet, it went on to conclude that the First Defendant was entitled to 62.5% of the Deceased's estate, while each of the Second, Third and Fourth Defendants was entitled to receive 12.5% of the Deceased's estate. The letter provided no explanation whatsoever as to why the solicitors concluded that:

> 50% of the estate must be distributed firstly to Mrs Arief Husni as her share in matrimonial property.
>
> The balance will be divided equally among Mrs Arief Husni and her 3 children. Each gets 25%.

41 Similarly, the letter dated 30 August 1991 from the Plaintiff's Indonesian solicitors did not provide any explanation, by reference to Indonesian legislation or legal precedents, as to the basis for

the solicitors' advice.

42 The letter dated 3 September 1997 from the First Defendant's Indonesian solicitors also did not provide any explanation for the conclusion that under the Indonesian Civil Code, the First Defendant would receive half of the Deceased's estate "as her part in the marital joint asset", and that the remaining half of the estate would be distributed equally between the First, Second, Third and Fourth Defendants. What was more significant about this letter was that it contained the caveat: "As you may aware that a heir may clearly stating or to decide to refuse of his/her part(s) upon the asset." This qualification raised the possibility that the apportionment set out in the letter could be varied. The amended petition in Probate No. 8 of 1975 stated that each of the Second, Third and Fourth Defendants was "entitled to 1/6 share" in the Deceased's estate. The First Defendant signed and reaffirmed the Amended Petition. Her affidavit affirming the Amended Petition attested to the truth of the contents of the Amended Petition. As the distribution of the Deceased's Singapore movable assets was to have been governed by the Indonesian law on intestate succession, did the First Defendant's statement in the Amended Petition that each of the Second, Third and Fourth Defendants was "entitled to 1/6 share" in the Deceased's estate constitute a clear statement of the First Defendant's intention to vary her entitlement to the Deceased's estate under Indonesian law? As the Hong Kong grant was a resealing of the Singapore grant, did this constitute an adoption of the position under the Singapore grant? Were these matters brought to the attention of the First Defendant's Indonesian solicitors when their advice was sought? Were there similar statements made by the First Defendant in her applications for letters of administration in jurisdictions other than Singapore and Hong Kong?

43 All things considered, I did not consider the letters from the First Defendant's and the Plaintiff's Indonesian solicitors to be reliable evidence on Indonesian law as applied to the specific facts of this case. The reliability of the Indonesian solicitors' advice would depend on the instructions that they had been given. There was no evidence on what those instructions were, or whether the information that the Indonesian solicitors had been given was complete and accurate. Further, the Indonesian solicitors concerned had expressed opinions without explaining the underlying legal bases for their conclusions.

44 The parties did not at any time agree to admit the position under Indonesian law. There were no pleadings filed for the purposes of the Inquiry. The Plaintiff did not state in her affidavits that she accepted the First Defendant's assertions on the distribution of the Deceased's estate under Indonesian law.

45 PWC prepared a report dated 21 March 2000 (the "PWC report") on behalf of the Plaintiff for the inquiry. Although paragraph 2.5 of the PWC report seemed to support the First Defendant's assertion on Indonesian law, the PWC accountants who prepared the report were clearly not persons who were qualified to express an opinion on Indonesian law. If paragraph 2.5 of the PWC report was prepared in reliance on advice from Indonesian solicitors, it would offend the rule against hearsay. As the Plaintiff did not supervise the preparation of the PWC report or dictate its contents, paragraph 2.5 of the PWC report could not be treated as an admission by the Plaintiff, much less an admission that would have absolved the First Defendant from proving the Indonesian law of intestate succession under section 60 of the Evidence Act.

4 6 *Dicey and Morris* deals with the burden of proof of foreign law in the English courts in the following terms (at page 232):

> The burden of proving foreign law lies on the party who bases his claim or defence on it. If that party adduces no evidence, or insufficient evidence, of the foreign law, the court applies English

law.

47 The First Defendant defended the inquiry on the basis that Indonesian law applied to the distribution of the Indonesian assets and the movable assets wherever situated. No other party took this position. The First Defendant therefore bore the burden of proving how the estate should be distributed under the Indonesian law of intestate succession.

48 Having regard to the circumstances, I was of the view that there was no satisfactory evidence on the Indonesian law of intestate succession. As such, notwithstanding my decision that Indonesian law applied to the distribution of the Deceased's immovable assets in Indonesia and movable assets wherever situated, I was compelled to apply Singapore law as set out in section 7 of the Intestate Succession Act to the distribution of the Deceased's entire estate. In the circumstances, the First Defendant was entitled to half of the Deceased's estate, while each of the Second, Third and Fourth Defendants was entitled to one-sixth of the Deceased's estate.

Methodology

49 I deal next with the methodology adopted for deciding the inquiry. The judgment dated 16 July 1996 provided a framework for the conduct of the inquiry when it listed the five matters to be determined at the inquiry.

Determining the assets of the Deceased's estate and their whereabouts

50 The judgment first requires the court to identify the assets of the Deceased's estate and ascertain their whereabouts. There are 2 relevant dates for this exercise, namely, the date the Deceased died (22 October 1974) and the date the Second Defendant assigned half of his "distributive share of the residuary estate" to the Plaintiff (29 August 1991). The court first has to identify all assets belonging to the Deceased as at the time of his death. All assets declared by the First Defendant to belong to the Deceased would fall within this category. The court also has to determine whether the other assets alleged by the Plaintiff to belong to the Deceased were in fact beneficially owned by the Deceased at the time of his death, or were derived from other assets that were beneficially owned by the deceased at the time of his death. The Plaintiff bears the burden of proving that such assets belonged to the Deceased at the time of his death, or were derived from other assets belonging to the Deceased at the time of his death. What is crucial at this stage of the inquiry is to identify the pool of assets belonging to the Deceased as at the time of his death.

51 Having identified all of the Deceased's assets as at the date of his death, the court has to follow through what happened to each asset up to 29 August 1991 or the date on which the asset was disposed of (for instance, by sale), expended or distributed, whichever is earlier. This is necessary to ensure that there is no double-counting of assets that were converted into other assets. Where an asset belonging to the Deceased's estate is converted into another asset (for instance, where property is sold for cash, or where cash is used to acquire property), the latter is to be added to, and the former is to be subtracted from, the notional pool of assets available for distribution. The court also has to take into account any capital appreciation (or depreciation) of the Deceased's assets and any income due to the Deceased's estate between the date of the Deceased's death and 29 August 1991. Where income (such as rent or bank interest) is earned through an undistributed asset, the money earned forms part of the Deceased's estate. However, once an asset is distributed to a beneficiary, any capital appreciation of, or income earned from, the asset would belong solely to the beneficiary. As the First Defendant managed the Deceased's estate and controlled its finances at all material times, she bears the burden of proving that a particular asset has in fact been distributed to a particular beneficiary and the date of such distribution.

52 Thus, for the purposes of determining the Second Defendant's share in the Deceased's estate, the notional pool of assets available for distribution to the beneficiaries would comprise:

(1) the Deceased's assets as at the time of his death, less those that had been converted to other assets as at 29 August 1991;

(2) other assets as at 29 August 1991 to which the Deceased's assets had been converted (except those that had been converted to yet other assets as at 29 August 1991); and

(3) all income earned from assets belonging to the Deceased's estate between the date of his death and 29 August 1991,

less the money utilised to pay the debts and expenses of the Deceased's estate as at 29 August 1991. In identifying the notional pool of assets available for distribution, the fact that an asset may have been distributed to a beneficiary as at 29 August 1991 is to be disregarded, as the object of this exercise is to determine the full extent of the Deceased's estate before any distribution takes place. However, once a particular asset has been distributed to a beneficiary, any capital appreciation of, or income earned from, the asset after the asset has been distributed is not to be added to the notional pool of assets available for distribution.

Determining the Second Defendant's share in the Deceased's estate

53 The judgment next required the court to determine the share of the Second Defendant in the estate. There are two steps in this exercise. First, the court would have to value each asset in the notional pool of assets available for distribution.

54 The value of a cash asset would prima facie be its value as at the date the Deceased died. If there is evidence that the cash was deposited in an interest bearing account (for instance, with a bank or financial institution), any interest earned would be treated as income belonging to the Deceased's estate. The court cannot presume that all cash assets would necessarily attract interest.

55 A non-cash asset that is realised for cash before it is distributed would be valued as at the date the asset was realised for cash. This is so regardless of whether the asset was sold before, on or after 29 August 1991. Prior to distribution, each beneficiary would own an undivided share in the non-cash asset corresponding to his or her entitlement under the relevant law on intestate succession. The value of that undivided share is crystallised only on the date the asset is realised for cash. Prima facie, the value of a non-cash asset would be its market value net of any expenses reasonably incurred in realising the asset. That being said, the administrators are trustees, and not insurers, of the Deceased's estate. They are only required to act with due diligence and care in the management of the estate. Thus, if a particular asset cannot be realised at its market value despite the exercise of due diligence and care on the part of the administrators, that asset must be valued at the sum that was actually realised. If the Plaintiff contends that a non-cash asset was realised below market value, she bears the burden of proving the market value of the non-cash asset as at the date the asset was realised. As the First Defendant managed the Deceased's estate and controlled its finances at all material times, she bears the burden of proving the expenses incurred in realising the asset, that such expenses were reasonably incurred, and, if the asset was realised at less than market value, that the administrators had exercised due diligence and care in realising the asset concerned.

56 The proceeds from the realisation of a non-cash asset would be treated in the same manner

as a cash asset belonging to the estate. Thus, if the proceeds were deposited in an interest bearing account before distribution, any interest earned would be treated as income belonging to the Deceased's estate. Likewise, the net income (after deducting any expenses properly incurred) earned from income-generating non-cash assets, such as tenanted properties, would be treated in the same manner as a cash asset belonging to the estate.

57 A non-cash asset that is transferred to a beneficiary as a distribution to the beneficiary would be valued as at the date of the transfer. Prima facie, the value of the non-cash asset would be its market value net of any expenses reasonably incurred in the transfer. As the First Defendant managed the Deceased's estate and controlled its finances at all material times, she bears the burden of proving that the asset was in fact transferred to that beneficiary as a distribution to that beneficiary, the market value of the asset as at the date of the transfer, the expenses incurred in the transfer, and that such expenses were reasonably incurred.

58 A non-cash asset that is not realised for cash or transferred to a beneficiary will be valued as at the date of the inquiry.

59 Second, the court would have to determine the total value of all the assets in the notional pool of assets available for distribution, and subtract the debts incurred by the Deceased which remained unpaid at the time of his death and all expenses reasonably incurred by the Deceased's estate up to 29 August 1991. The balance represents the notional value of the Deceased's estate that is available for distribution as at 29 August 1991 (the "notional value"). This notional value would include the value of non-cash assets that are not realised for cash or transferred to a beneficiary as at the date of the inquiry (the "unrealised assets"). As the First Defendant had failed to prove the Indonesian law on intestate succession to the satisfaction of the court, the Second Defendant's share in the estate would have to be determined in accordance with Singapore law as set out in section 7 of the Intestate Succession Act. Accordingly, as at 29 August 1991, the share of the Second Defendant in the estate would comprise:

(1) one-sixth of the notional value; or

(2) one-sixth of the notional value less the value of the unrealised assets, and a one-sixth share of the unrealised assets.

60 In undertaking this exercise, a distinction must be drawn between the First and Second Defendants' capacities as administrators and as beneficiaries. In this inquiry, the court is required to determine the Second Defendant's share of the estate as a beneficiary. The court must therefore determine an appropriate value for each asset belonging to the Deceased's estate, having regard in particular to its market value and any obstacles that would prevent the administrators from realising the asset at its market value. It is not the function of this court to determine whether the First and Second Defendants had breached their duties as administrators. It would be open to any of the beneficiaries of the estate to bring separate proceedings against the First and Second Defendants for any alleged or perceived breach of their duties as administrators of the Deceased's estate, subject of course to any defences that may be available to the First and Second Defendants. In determining the Second Defendant's entitlement as a beneficiary, no account should be taken of any sums for which the Second Defendant might be personally liable to the other beneficiaries for his acts or omissions as an administrator.

61 A possible consequence of the valuation of the Deceased's estate in this manner is that the estate's assets in the actual possession, custody or control of the administrators (or, strictly speaking, the First Defendant) might not be sufficient to satisfy the claims of all the beneficiaries of

the estate. However, this did not justify a devaluation of each beneficiary's share of the Deceased's estate. If the administrators had sold an asset at a gross undervalue, the court would be abdicating its responsibility to determine the Second Defendant's share of the estate if the court accepted that grossly low sale price as conclusive of the value of the asset. Likewise, the court would be abdicating its responsibility if it allowed the First Defendant to treat payments that were clearly not attributable to the estate as the estate's expenses. It is always open to the administrators to seek the court's directions on how to satisfy the competing claims of different beneficiaries to the remaining assets. When that happens, the court may decide to investigate the reasons for the apparent shortfall, and may well decide to set aside some or even all previous distributions to the beneficiaries, with a view to redistributing the estate's assets. The object of this inquiry is to determine the Second Defendant's share as a beneficiary of the Deceased's estate, and consequently, the Plaintiff's entitlement as assignee of "one-half of all [the Second Defendant's] entitlement to the distributive share of the residuary estate of [the Deceased]". The issue of enforcement of the Plaintiff's entitlement is a separate matter altogether.

Determining the amount or amounts received by the Second Defendant

62 The judgment dated 16 July 1996 next required the court to determine the amount or amounts which had been received by the Second Defendant from the Deceased's estate. According to a schedule provided by the First Defendant, the Second Defendant received 16 payments amounting to a total of S$1,137,610, £490,161.39, US$150,000 and NZ$447,000 in the period from October 1980 to June 1989. The court would have to verify whether the payments that were allegedly made to the Second Defendant were in fact made, and if so, determine, in relation to each payment, whether it should be characterised as:

(1) a distribution to the Second Defendant from his entitlement under the estate;

(2) a loan to the Second Defendant (and if so, whether the loan originated from the estate or the First Defendant);

(3) a gift to the Second Defendant from the First Defendant;

(4) a reimbursement for expenses incurred by the Second Defendant on behalf of the estate or any of the other Defendants; or

(5) an advance for expenses to be incurred by the Second Defendant on behalf of the estate or the First Defendant.

Determining the amount still due to the Second Defendant as at 29 August 1991

63 The judgment dated 16 July 1996 next required the court to determine the amount still due to the Second Defendant from the estate as at 29 August 1991. This amount would be the difference between:

(1) one-sixth of the notional value; or

(2) one-sixth of the notional value less the value of the unrealised assets, and a one-sixth share of the unrealised assets,

and the amounts assessed by the court to constitute distributions to the Second Defendant and loans from the estate to the Second Defendant that remained unpaid.

Determining the quantum of the Plaintiff's share in the estate

64 Finally, the judgment dated 16 July 1996 required the court to determine the quantum of the Plaintiff's share in the estate under the Deed of Assignment dated 29 August 1991. Under the Deed of Assignment, the Plaintiff was entitled to "one-half of all [the Second Defendant's] entitlement to the distributive share of the residuary estate of [the Deceased]". Paragraph (3) of the recital in the Deed of Assignment further stated that "The [Second Defendant] has agreed to sell and the [Plaintiff] has agreed to buy one-half of all the [Second Defendant's] share and interest in the residuary estate of the [Deceased]." Thus, what the Second Defendant assigned to the Plaintiff was half of his one-sixth share in the Deceased's estate, and not just half of what remained undistributed as at 29 August 1991 (as contended by counsel for the Third and Fourth Defendants). As the Second Defendant could not assign more than what he owned, the amount that he assigned was necessarily limited by the extent of his remaining interest in the estate as at 29 August 1991. It therefore followed that under the Deed of Assignment, the Plaintiff was entitled to:

(1) one-twelfth of the notional value; or

(2) one-twelfth of the notional value less the value of the unrealised assets, and a one-twelfth share of the unrealised assets,

subject to a cap equivalent to the amount still due to the Second Defendant from the estate as at 29 August 1991.

65 The Plaintiff would also be entitled to interest on the cash sum due to her as at 29 August 1991 under section 12 of the Civil Law Act (Cap 43, 1999 Ed). However, the sums due to the Plaintiff would have to be set off against the interim payments that she had received prior to the hearing of the inquiry.

The Accountants' Reports

66 It follows from the methodology described that I do not agree with the approaches adopted by the Plaintiff's accountants (PWC), the First Defendant's former accountants (Arthur Andersen, hereafter referred to as "AA") and the First Defendant's present accountants (Deloitte & Touche, hereafter referred to as "D&T") for determining the quantum of assets available for distribution as set out in their respective reports prepared for the inquiry. I need say no more about the different approaches adopted in the accountants' reports.

The Estate's Assets

67 For the purposes of this inquiry, it will be convenient to deal with the estate's assets and alleged assets according to the jurisdictions in which they were located. The main jurisdictions were Singapore, Hong Kong, Malaysia and Indonesia. The remaining assets will be grouped together under the rubric "Other Jurisdictions".

The Singapore Assets

68 According to the estate duty schedule annexed to the Singapore grant of letters of administration, the Deceased owned the following assets, valued at a total of $4,062,088, at the time of his death:

(1) Freehold land and houses at No 45/47 Robinson Road valued at $2,762,000;

(2) Freehold land and house at No 4 Chatsworth Park valued at $836,000;

(3) Current account with United Commercial Bank valued at $15,398.43;

(4) Current account with Algemene Bank Nederland NV valued at $25,940.61;

(5) Fixed deposit with United Commercial Bank valued at $76,130.14;

(6) 11 shares in Ong Seng King Realty Co (Pte) Ltd at $100.00 each, valued at a total of $1,100;

(7) Deposit with Ministry of Finance – Trade Division (Immigration) valued at $250,000;

(8) Current account with The Hongkong & Shanghai Banking Corporation valued at $631.82;

(9) Deposit with Ministry of Education valued at $10,000; and

(10) Amount due from Ong Seng King Realty Co (Pte) Ltd valued at $84,887.

69 The estate duty schedule also stated that the Deceased's Singapore estate owed debts of $682,424.05 and paid estate duty amounting to $1,890,653.03.

No 45/47 Robinson Road

70 No 45/47 Robinson Road was sold to one Mr Kho Teng Kwee @ Alex Korompis for $8,000,000 pursuant to a sale and purchase agreement dated 8 August 1980. The property was not valued prior to the sale. The completion took place on 21 October 1980. At the time of completion, the First Defendant alone executed the conveyance, as the Second Defendant was away in London. Subsequently, on 11 April 1981, the First and Second Defendants, as administrators of the Deceased's Singapore estate, applied by way of Originating Summons No 197 of 1981 for the court's approval of the sale and for them to be empowered to execute the conveyance. This application was made to remove uncertainty as to whether title had passed under the conveyance executed by the First Defendant alone. This application was granted by the High Court on 24 April 1981.

71 Notwithstanding the court's approval of the sale at $8,000,000, the Plaintiff took the view that the property was worth more. Mr Wong Kum Sek ("Mr Wong"), a property valuer engaged by the Plaintiff, gave evidence that as at October 1980, the Open Market Value of No 45/47 Robinson Road was $8,500,000, using the comparative sales method of valuation. Despite the assertion that he had used the comparative sales method of valuation, Mr Wong did not provide any sales data to support his valuation. During cross-examination, Mr Wong conceded that at the time when he valued the property, he was aware that it had been sold for $8,000,000 in October 1980. Curiously, Mr Wong made no reference to this sale in his valuation report. He was also unable to provide an explanation for this omission. Mr Wong also conceded that a reasonable valuer could have valued the property at $8,000,000 in October 1980. The following passages from his evidence during cross-examination illustrate this:

Q: Do you accept that a reasonable valuer, valuing 45/47 Robinson Road as at October 1980, could justifiably have valued it at S$8 million?

A: As I said, $8 million, $8.5 million, the difference of $0.5 million, people will buy. It all depends on whether he has the feel of the willingness of the market to purchase.

Q: Are you saying that a valuer who valued 45/47 Robinson Road as at October 1980 must be wrong?

A: I wouldn't say other valuers must be wrong, but $8 million and $8.5 million in a big estate, does not make a difference. He could well put it at $8 million or $8.5 million.

72 I found Mr Wong's statement that "$8 million and $8.5 million in a big estate, does not make a difference" somewhat disconcerting. It gave me the impression that Mr Wong had no qualms about erring on the side of generosity in his valuation because he was valuing "a big estate". In any event, having regard to Mr Wong's concession that a reasonable valuer could have valued the property at $8,000,000 in October 1980, it could not be said that the administrators' failure to obtain a valuation of the property prior to the sale led to the sale of the property at an undervalue. Further, the High Court had granted approval for No 45/47 Robinson Road to be sold at $8,000,000, albeit after the initial conveyance in October 1980. In the circumstances, I would assess the value of the property at $8,000,000.

73 At paragraph 48 of the First Defendant's affidavit of evidence in chief, the First Defendant stated that the estate received a total of $7,166,859.92 as the proceeds of sale of the property. She claimed that this sum was received in two instalments of $1,543,314.91 on 22 October 1980 and $5,623,545.01 on 24 October 1980. The First Defendant also referred to a document described as a "completion account" exhibited at page 455 of the same affidavit.

74 I have my doubts as to the veracity of the so-called "completion account". It stated that the sum due to the estate at the time of completion of the sale was only $6,412,537.46, because:

(1) option money of $50,000 had been paid earlier;

(2) redemption monies amounting to $1,543,314.91 were payable to "DBS" (presumably the mortgagee bank);

(3) various sums amounting to a total of $46,708.47 were to be added; and

(4) various sums amounting to a total of $40,856.10 were to be deducted.

However, the so-called "completion account" was contradicted by the First Defendant's admission that the estate received a total of $7,166,859.92.

75 The estate received a further sum of $50,000 as the deposit paid for the option to purchase dated 4 August 1980, which the purchaser exercised on 8 August 1980. So the estate actually received a total of not less than $7,216,859.92 in respect of the sale of No 45/47 Robinson Road. There was no evidence led to explain the difference of $783,140.08 between the $8,000,000 sale price and the sum of $7,216,859.92 that was indisputably received by the estate. The redemption amount stated in the so-called "completion account" could not have been accurate, given that the estate received not less than $7,216,859.92 from the sale. There was also no evidence that No 45/47 Robinson Road was mortgaged at the time of the sale. On the contrary, in a letter dated 4 December 1974 from the solicitors for United Commercial Bank to the solicitors for the administrators (exhibited at page 672 of the First Defendant's affidavit of evidence in chief), the bank's solicitors stated that although their clients held the title deeds relating to No 45/47 Robinson Road, their clients "have no interest in the title deeds". I think it is reasonable to infer that the property was unencumbered as at 4 December 1974. The legal expenses incurred in connection with the sale appeared to have been dealt with separately as part of the estate's expenses. In the absence of an

explanation for the glaring shortfall of $783,140.08, the estate must be deemed to have received the full sum of $8,000,000 as the proceeds of the sale of No 45/47 Robinson Road.

Rental Income for No 45/47 Robinson Road

76 The First Defendant conceded that the estate had received rental income amounting to a total of $1,604,681 from various tenants of parts of No 45/47 Robinson Road. According to the AA report dated 5 March 1999, this rental was accumulated from 1974 to 1980, and was reflected in a cashbook maintained by the estate's solicitors, Messrs Lee & Lee.

77 PWC noted at paragraph 3.11 of its report that "there were certain periods in which no tenancy agreement was available". On that basis, PWC concluded that the documents that they had been provided with were incomplete and "assumed that in respect of the period where tenancy agreements were not available, the property continued to be rented out". On that basis, PWC estimated the rental income received by the estate to be $1,935,169. At the inquiry, PWC revised the estimate downwards to $1,876,145.80.

78 The discovery process in this case has been long and extensive. The Plaintiff went so far as to obtain Anton Piller orders against the First Defendant, pursuant to which numerous documents were seized. If no other tenancy agreements surfaced despite such extensive discovery, it begged the question whether there were any other tenancy agreements (apart from those already disclosed) to begin with. There was really no basis for PWC to make the assumption that "in respect of the period where tenancy agreements were not available, the property continued to be rented out". In the circumstances, I would assess the total rental income from No 45/47 Robinson Road at $1,604,681.

No 4 Chatsworth Park

79 No 4 Chatsworth Park was sold to City Developments Ltd at the price of $5,249,737.50 pursuant to a conditional contract dated 30 December 1988. Before completing the sale, the administrators obtained a valuation of the property from Bernard Valuers & Real Estate Consultants Pte Ltd. The valuation report dated 24 February 1989, which appears to have been signed by a licensed appraiser, stated the market value of the property to be $3,840,000. The administrators also applied by way of Originating Summons No 237 of 1989 for the conditional contract to be "confirmed with such modification (if any) as the Court shall think fit", and for he administrators to be empowered to execute the conveyance of the property. On 17 March 1989, the High Court made an order confirming the conditional contract without any modifications and authorising the administrators to execute the conveyance. The High Court made a further order on 28 April 1989 granting leave to amend the description of the property in the Schedule to the Order of Court dated 17 March 1989.

80 Mr Wong gave evidence for the Plaintiff that as at December 1988, the Open Market Value of No 4 Chatsworth Park was $5,600,000, using the comparative sales method of valuation. Once again, he did not provide any sales data to support this valuation, although he claimed during cross-examination that he "must have some data to base on for [his] workings". Mr Wong carried out his valuation on 15 July 1999, more than 10 years after the property had been sold. By then, the original building had been demolished. Mr Wong therefore qualified his report by stating that "the value of the property was in its land".

81 In essence, the Plaintiff was inviting the court to prefer Mr Wong's ex post facto valuation, which was made more than 10 years after the sale had taken place and for which no supporting data was provided, over the High Court's approval of the sale at $5,249,737.50, which approval was

supported by a contemporaneous valuation of the property at $3,840,000. There was no evidence whatsoever that the High Court's approval of the sale was procured by fraud. The Plaintiff's submission was therefore preposterous and doomed to fail.

82 At paragraph 60 of the First Defendant's affidavit of evidence in chief, the First Defendant stated that the estate received, as sale proceeds for the property, a sum of $4,706,471.94 on 5 May 1989 and a sum of $531,258.26 on 11 May 1989. I presumed that one of these sums included the amount of $524,973.75 paid by the purchaser to the administrators' solicitors and held by the latter as stakeholders. The two sums amounted to a total of $5,237,730.20. The First Defendant provided no explanation for the shortfall of $12,007.30 from the sale price of $5,249,737.50. In the circumstances, the estate must be deemed to have received the full sum of $5,249,737.50 as the proceeds of sale of No 4 Chatsworth Park.

Current Account with United Commercial Bank

83 The Plaintiff accepted that the amount available for distribution under the Singapore current account with United Commercial Bank was $15,398.43. Nevertheless, the Plaintiff's counsel went on to submit, in relation to this account, that the First Defendant had made two transaction deposits of $250,000 on 20 November 1974 and one withdrawal of $39,860.20 on 29 November 1974. He relied on a document found at page 8465 of the Plaintiff's Bundle of Documents Volume 34. The same document had been disclosed by the First Defendant at page 819 of her affidavit of evidence in chief.

84 It was not open to the Plaintiff's counsel to make this submission in blatant disregard of the rule in *Browne v Dunn* (1893) 6 R 67. The rule in *Browne v Dunn* provides that any matter upon which it is proposed to contradict the evidence in chief given by a witness must normally be put to him so that he may have an opportunity of explaining the contradiction. It is a rule of practice intended to ensure procedural fairness in litigation. While the mere failure to cross-examine does not necessarily mean that adverse inferences must be drawn against the "defaulting" party (as there may be other explanations for this failure), the absence of cross-examination enables the evidence in question to be regarded with a greater degree of assurance than otherwise might have been the case. (See *Liza bte Ismail v Public Prosecutor* [1997] 2 SLR 454 at paragraphs 65, 68 and 69.) Further, while the rule does not mean that every point should be put to a witness, if the point sought to be made goes to the heart of the matter, it should be put to the witness. (See *Dr Lo Sook Ling Adela v Au Mei Yin Christina* [2002] 1 SLR 408 at paragraph 40.) The Plaintiff had the opportunity to cross-examine the First Defendant on the document at page 8465, but did not do so. No explanation was given for this omission. The First Defendant had given unequivocal evidence at paragraph 71 of her affidavit of evidence in chief that the balance in the account as at 27 March 1975 was $15,398.43. The Plaintiff's counsel's assertion that the First Defendant had operated, and withdrawn money from, the account in November 1974 suggested that there had been more money in the account. As this would have been a material issue, the assertion should have been put to the First Defendant during cross-examination.

85 I would add that the evidence did not support the Plaintiff's counsel's submission at all. At the bottom of the document at page 8465 were the words "LEDGER UNITED COMMERCIAL BANK HONG KONG". At the top of the document were the Deceased's name and the address "24 Ice House St. 5/F. Hong Kong". It would therefore appear from the face of the document that it did not relate to the Singapore current account with United Commercial Bank. On the contrary, there was a letter dated 4 December 1974 from the solicitors for United Commercial Bank to the solicitors for the administrators (exhibited at page 672 of the First Defendant's affidavit of evidence in chief) which stated that "as at September 1974 the deceased had a credit balance of $15,398.43 to his credit" in the Singapore current account.

86 An examination of pages 813 to 826 of the First Defendant's affidavit of evidence in chief will show that the document at page 8465 was in fact one of a series of bank statements pertaining to the Deceased's overdraft account with United Commercial Bank in Hong Kong. The following table reproduces the entries on page 8465:

CHEQUE NO.	WITHDRAWALS	DEPOSITS	DATE	BALANCE
			31 OCT 74	5,205,943.87 OD
		250,000.00 TR	20 NOV 74	4,955,943.87 OD
		250,000.00 EC	20 NOV 74	5,205,943.87 OD
	39,860.20 IN		29 NOV 74	5,245,804.07 OD

The movement of the balance in the overdraft account suggests that only the first of the two entries of HK$250,000 made on 20 November 1974 was a deposit entry. The second entry was in fact a reversal of the first entry by the bank, as it brought the overdraft balance back to what it was before the balance was reduced by the first entry. Looking at the transaction codes "TR" and "EC" that were marked against the two entries, it would appear that the first entry was a "transfer" that the bank had erroneously credited to the Deceased's overdraft account, necessitating an "error correction" as evidenced by the reversal entry on the next line. The withdrawal of HK$39,860.20, which was accompanied by the transaction code "IN", would appear to be the bank's deduction of interest on the overdraft. This resulted in an overdraft balance of HK$5,245,804.07. PWC accepted that the estate was liable to pay United Commercial Bank of Hong Kong a sum of HK$5,245,804 in respect of the Deceased's overdraft. In any event, as the Singapore grant of letters of administration was resealed in the High Court of Hong Kong only on 17 August 1977, the First Defendant could not have been responsible for the entries of 20 and 29 November 1974 in the bank statement. The Plaintiff's counsel's submission was therefore clearly misconceived, if not made in bad faith. In the circumstances, I would assess the value of the Singapore current account with United Commercial Bank at $15,398.43.

Current Account with Algemene Bank Nederland NV

87 According to the estate duty schedule annexed to the Singapore grant of letters of administration, the estate had a current account number 1079 with Algemene Bank Nederland NV valued at $25,940.61. This was confirmed by a bank statement dated 30 June 1974 from the bank to the Deceased (see page 689 of the First Defendant's affidavit of evidence in chief). Pursuant to the administrators' instructions, the bank placed the said sum in a fixed deposit for one year with effect from 7 November 1974. Had the fixed deposit been held to maturity on 7 November 1975, it would have attracted interest at the rate of 9.5% per annum for the first year. However, the entire sum was withdrawn on 11 July 1975 and paid to the Commissioner for Estate Duties. Thus, this sum did not attract any interest.

88 The Plaintiff claimed that the Deceased had deposited a further sum of $3,000,000 with Algemene Bank Nederland NV for which the First Defendant was liable to account. This claim was based on a letter dated 8 August 1975 exhibited at page 699 of the First Defendant's affidavit of evidence in chief. A plain reading of this letter shows that the sum of $3,000,000 had been transferred to the Deceased's current account on 19 June 1968. The Deceased's current account showed a balance of only $25,940.61 as at 30 June 1974, when the Deceased was still alive. It was therefore clear that save for a balance of $25,940.61, the sum of $3,000,000 in the current account had been dealt with by the Deceased while he was still alive. In the circumstances, I would assess the value of current account number 1079 with Algemene Bank Nederland NV at $25,940.61 as at the time of the Deceased's death. The administrators were not accountable for the remainder as the remainder was never in their possession, custody or control.

Deposit with Ministry of Finance

89 According to the estate duty schedule annexed to the Singapore grant of letters of administration, the Deceased had placed a deposit of $250,000 with Ministry of Finance. According to a letter dated 7 March 1975 from the Secretary of the Review Committee (Immigration), the Deceased made this deposit "for permanent residence" on 7 June 1967. At paragraph 78 of her affidavit of evidence in chief, the First Defendant stated that the deposit was "placed with the Ministry of Finance on 7 June 1971 for a period of 20 years at an interest of 3% per annum" to enable the First, Second and Third Defendants and the First Defendant's parents to gain entry into Singapore. The First Defendant admitted to receiving interest of $7,500 per year in the June of each year from 1976 to 1981. She also stated that "[t]he fixed deposit expired on June 1991 and the sum of S$250,000.00 was paid into the [estate's] DBS account". On the First Defendant's own evidence, the deposit with the Ministry of Finance would have earned the estate interest of $7,500 per year from June 1975 to June 1991, or a total of $127,500 over 17 years. In the circumstances, I would assess the value of the deposit with the Ministry of Finance (inclusive of interest) at $377,500 as at 29 August 1991.

Shares in Ong Seng King Realty Co (Pte) Ltd

90 Ong Seng King Realty Co (Pte) Ltd had issued 12 shares at $100 per share. According to the estate duty schedule annexed to the Singapore grant of letters of administration, the Deceased owned 11 of the 12 shares in Ong Seng King Realty Co (Pte) Ltd, valued at a total of $1,100. At the time the company was wound up, the company's only asset was cash amounting to $4,496.41 in a bank account, and the company had no debts (see page 451 of the First Defendant's affidavit of evidence in chief). At the final meeting of the company on 20 October 1983, the company approved the payment of $3,000 as liquidators' remuneration (see page 448 of the same affidavit). This left a balance of $1,496.41 available for distribution to the shareholders. Accordingly, the Deceased's 11 shares in Ong Seng King Realty Co (Pte) Ltd should have been worth $1,371.71 (which is 11/12 of $1,496.41).

Other Cash Deposits and Current Assets

91 The values of the following assets listed in the estate duty schedule annexed to the Singapore grant of letters of administration were not disputed:

(1) Fixed deposit with United Commercial Bank valued at $76,130.14;

(2) Current account with The Hongkong & Shanghai Banking Corporation valued at $631.82;

(3) Deposit with Ministry of Education valued at $10,000; and

1. Amount due from Ong Seng King Realty Co (Pte) Ltd valued at $84,887.

Accordingly, these assets are assessed at their values as stated in the estate duty schedule.

92 The First Defendant stated at paragraph 39 of her affidavit of evidence in chief that she adopted the "revised accounts" prepared by AA that were exhibited at pages 385 to 415 of her affidavit as her evidence for the inquiry. According to Appendix 3-C of the "revised accounts", the estate's bank account had an opening balance of $100,577 in 1974. After taking into account various receipts and payments from 1974 to 1991, the estate's bank account had a closing balance of $8,530 in 1991. At paragraph 85 of her affidavit of evidence in chief, the First Defendant identified the closing balance of $8,530 as belonging to the "Estate's DBS Account". At paragraph 44 of the same affidavit, the Defendant identified this account as a Development Bank of Singapore ("DBS") account number 01-02519-8. There was no evidence that the opening balance of $100,577 was a transmutation of any other asset belonging to the Deceased. Accordingly, I would assess the value of the estate's DBS bank account at $100,577 as at the time of the Deceased's death.

93 Appendix 3-C of the "revised accounts" also disclosed the following additional assets:

(1) Other receipts "based on Lee & Lee's cashbook" for the period 1974 to 1980 amounting to a total of $31,738; and

(2) Other receipts "based on Administratrix's cashbook" for the period 1974 to 1980 amounting to a total of $263,553.

These assets are assessed at their values as stated.

The Alleged Assets

94 The Plaintiff alleged, in her counsel's closing submissions, that the following should also be treated as assets belonging to the Deceased's estate:

(1) Properties in the name of the First Defendant that were purchased prior to the death of the Deceased, namely:

(a) 31 Ford Avenue;

(b) 17 Leng Kee Road;

(c) 251 Tanglin Road;

(d) 73-N Cairnhill Mansion;

(e) 69 Cairnhill Mansion;

(f) 16 East Sussex Lane; and

(g) 20-D Norfolk Road;

(2) Properties in the name of the First Defendant or "parties related to her" that were purchased after the death of the Deceased, namely:

(a) #18-01 East Tower, Horizon Towers;

(b) #10-02 Lucky Tower;

(c) Unit 30D Block A, Leonie Tower;

(d) #17-02 Beverly Hill; and

(e) #07-02 The Claymore, 27 Claymore Road;

(3) 19 Balmoral View;

(4) 19A Balmoral View; and

(5) 2,000 shares in Tunas (Pte) Ltd.

Properties in First Defendant's Name purchased prior to Deceased's Death

95 There were seven properties that were purchased in the name of the First Defendant prior to the death of the Deceased, namely:

(1) 31 Ford Avenue (purchased on 8 June 1971);

(2) 17 Leng Kee Road (purchased on 25 September 1969);

(3) 251 Tanglin Road (purchased on 28 March 1970);

(4) 73-N Cairnhill Mansion (purchased on 29 March 1967);

(5) 69 Cairnhill Mansion (purchased on 30 March 1968);

(6) 16 East Sussex Lane (purchased on 21 August 1968); and

(7) 20-D Norfolk Road (purchased on 13 May 1968).

96 The Plaintiff and the Second Defendant alleged that these properties should be treated as belonging to the estate for the following reasons:

(1) The First Defendant did not provide documentary evidence to support her assertions that she had used her personal funds (such as her savings and money given to her by her parents) or had obtained personal loans to acquire these properties.

(2) Income earned from the rental of these properties had been assessed in the name of the Deceased. The income tax payable on such income was also paid by the Deceased's estate.

(3) According to pages 2474 and 2485 of the Plaintiff's Bundle of Documents Volume 9, the cash books of the Deceased's estate showed that the expenses relating to 16 East Sussex Lane were paid for by the Deceased's estate and not the First Defendant.

(4) According to page 2653 of the Plaintiff's Bundle of Documents Volume 9, the cash books of the Deceased's estate showed that the property tax for 73N Cairnhill Mansion was paid by the Deceased's estate.

(5) The Deceased listed his residential address as "73N Cairnhill Road, Singapore 9" in his Singapore identity card. 73N Cairnhill Mansion was the Deceased's former residence while 20-D Norfolk Road was the residence of the Deceased's mother.

(6) The Second Defendant had testified that:

(a) the First Defendant did not have any money of her own (apart from what she received from the Deceased);

(b) the Second Defendant's maternal grandparents were poor; and

(c) the Deceased was not generous to the First Defendant during his lifetime.

It was therefore unlikely that the First Defendant's family were able to provide her with the funds to acquire the properties. It was also unlikely that the First Defendant had funds of her own to acquire the properties.

(7) During cross-examination, the First Defendant said that the Deceased only gave her huge sums of money in 1969 or 1970. Even if the presumption of advancement operated, it would not cover the properties acquired before 1969.

(8) It was unlikely that a man of the stature and wealth of the Deceased would have owned only two pieces of property in Singapore. It was more likely than not that the Deceased was using the First Defendant as a nominee for the acquisition of properties in Singapore. This was reinforced by the fact that the First Defendant had admitted that she was a housewife during the lifetime of the Deceased.

97 The seven properties in question were acquired in the name of the First Defendant some three to six years before the Deceased's death. There was no evidence whatsoever that the Deceased had ever asserted an interest in any of these properties. The properties would form part of the Deceased's estate only if the First Defendant held them on trust for the Deceased. The Plaintiff and the Second Defendant bore the burden of proving that these properties were held by the First Defendant on trust for the Deceased. To satisfy this burden, the Plaintiff and the Second Defendant would have to prove that the Deceased provided the funds used to acquire the properties. The Plaintiff and the Second Defendant did not provide any direct evidence to show that the Deceased had paid for the properties in question.

98 As the properties concerned were acquired more than 20 years before the commencement of this action, it was understandable why the First Defendant was unable to provide documentary evidence to support her assertions that she had used her personal funds or had obtained personal loans to acquire these properties. Given the long passage of time, no adverse inference can reasonably be drawn against the First Defendant on account of her failure to provide such documentary evidence. Nor can the First Defendant be faulted for minor discrepancies in her recollection as to the precise source of funds for each property or as to when the Deceased had made gifts of money to her. The parties were married in 1956 and had two sons early in the marriage (in February 1957 and April 1959). The marriage was in its eighteenth year when the Deceased suddenly died in 1974. At paragraph 6 of her affidavit of evidence in chief, the First Defendant had stated unequivocally that the Deceased had made "numerous gifts of money" to her and that she was "very well provided for financially". There was no reason to disbelieve these statements. The First Defendant would have accumulated substantial savings of her own from the Deceased's gifts by 1968,

when the first of the seven properties in question was purchased.

99 The submission made by the Second Defendant's counsel that the First Defendant had "qualified" her evidence by stating that "the Deceased only gave her huge sums of money in the year 1969 and/or 1970" was misleading. In the relevant passages from her evidence during cross-examination, the First Defendant had maintained that the Deceased would give her money whenever she saw him, which was once a month or once in a fortnight. She agreed that these sums could exceed $50,000. Her reference to "1969 or 1970" was made in answer to a question about when she received one or more cheque payments of about $100,000 from the Deceased.

100 I had grave reservations about the veracity of the Second Defendant's evidence on the First Defendant's finances at the time the seven properties were purchased. To begin with, when the seven properties were acquired from 1968 to 1971, the Second Defendant was a child of no more than 11 to 14 years of age. On what basis could he claim to be acquainted with his parents' finances during the period from 1968 to 1971? During cross-examination, the Second Defendant reluctantly conceded that he had no personal knowledge at all of how his parents arranged their personal finances. The Second Defendant's willingness to make such unsupported self-serving statements, coupled with the material differences between his evidence for the trial and his evidence for the inquiry, reinforced my impression (from observing the Second Defendant) that he had no qualms about tailoring his evidence to suit his purposes.

101 The fact that the Deceased's estate may have paid income tax, property tax or other expenses relating to the properties was, at best, evidence that the administrators (in particular, the First Defendant) had misapplied estate funds to discharge the First Defendant's personal expenses. It bears repeating that the Deceased never asserted an interest in the seven properties during his lifetime. Nor did the First Defendant ever declare that she held the properties on trust for the Deceased. In their correspondence and dealings with the tax authorities (then known as the Inland Revenue Department), the estate's solicitors and accountants had consistently maintained that the seven properties in question belonged to the First Defendant. A letter dated 23 May 1975 from the Inland Revenue Department to the estate's solicitors suggests that the Inland Revenue Department accepted the submission that the properties registered in the First Defendant's name did in fact belong to her. That letter enclosed the Deceased's revised income tax assessments for the years of assessment 1967 to 1974. Under those revised assessments, no reference was made to 17 Leng Kee Road while:

(1) 4 Chatsworth Park and 45/47 Robinson Road were collectively grouped under the heading "Husband's"; and

(2) the properties at 31 Ford Avenue, 251 Tanglin Road, 73-N Cairnhill Mansion, 69 Cairnhill Mansion, 16 East Sussex Lane and 20-D Norfolk Road were collectively grouped under the heading "Wife's".

102 The fact that rental income from these properties was assessed in the Deceased's name merely showed that the First Defendant and the Deceased had been jointly assessed for income tax in each of the years 1967 to 1974. It did not constitute evidence that the rental income belonged to the Deceased or his estate. Under section 51 of the Income Tax Act (Cap 141, 1970 Ed), the income of a married woman living with her husband was, for the purposes of the Act, deemed to be the income of the husband, and was to be charged in the name of the husband and not in her name, unless she elected to be chargeable in her own name on her earned income. This provision, which treated the First Defendant's rental income as the Deceased's income solely for the purpose of computing income tax, did not make the Deceased or his estate the party earning the rental income,

much less the owner of the properties in question. It was also telling that the Commissioner of Estate Duties did not treat these seven properties as belonging to the Deceased, even though he had been informed of their existence and of the First Defendant's claim to ownership of the properties.

103 The fact that the Deceased listed his residential address as "73N Cairnhill Road, Singapore 9" in his Singapore identity card, and resided at 73N Cairnhill Mansion for some time, did not lead to the conclusion that the Deceased owned 73N Cairnhill Mansion. It is not unusual for a person to reside at an address relating to a property that he does not own. Likewise, the fact that the Deceased's mother resided at 20-D Norfolk Road did not lead to the conclusion that the Deceased owned the property.

104 Unlike the Plaintiff and the Second Defendant, the court is not predisposed to speculating whether a man of the Deceased's stature and wealth would have acquired properties in Singapore other than those registered in his name at the time of his death. Even if the Deceased wished to acquire other properties in Singapore, there was no reason why he could not have acquired them in his own name. There was no credible reason why the Deceased would acquire, or provide the funds to acquire, the seven properties in the name of the First Defendant if he wished to retain the beneficial interest in those properties. What benefit did the Deceased stand to gain from using the First Defendant as a nominee to purchase the properties?

105 As the Plaintiff and the Second Defendant have failed to discharge the burden of proving that the Deceased provided the funds to acquire the properties, there can be no question of the First Defendant holding the properties on trust for the Deceased's estate. Accordingly, I find that the seven properties did not belong to the Deceased's estate. I also find that the expenses incurred by the estate in relation to the seven properties were not legitimate estate expenses. Accordingly, such expenses should not be deducted from the notional pool of assets available for distribution.

106 Even if the Deceased had provided the funds for the acquisition of the seven properties, the presumption of advancement would have operated to make the properties gifts to the First Defendant. In *Yeo Gim Tong Michael v Tianzon* [1996] 2 SLR 1, where a husband bought a piece of land for his wife and then claimed that the land was intended for mutual benefit when the marriage broke down, the Court of Appeal held that as there was no evidence to support the husband's argument, the presumption of advancement operated and the land was to be treated as a gift to the wife. In *Teo Siew Har v Lee Kuan Yew* [1999] 4 SLR 560, the Court of Appeal observed that the current judicial approach towards the presumption of advancement was to treat it as an evidential instrument of last resort where there was no direct evidence as to the intention of the parties rather than as an oft-applied rule of thumb. The Court of Appeal also noted that whether the presumption will apply in a particular case would have to depend on the facts and circumstances of the case.

107 Returning to the case at hand, the seven properties were purchased in a span of four years from 1968 to 1971. Yet, until his death on 22 October 1974, the Deceased never asserted an interest in any of the seven properties. There was no credible reason why the Deceased would have purchased the properties in the name of the First Defendant if he wished to retain a beneficial interest in the properties. It could not be to avoid the risk of his creditors getting at the properties, for, as the Court of Appeal observed in *Teo Siew Har v Lee Kuan Yew*, that could only be done if he intended to give the properties to his wife. Thus, even if the funds for the acquisition of the properties had been provided by the Deceased, as there was no evidence at all of the Deceased's intention to retain a beneficial interest in the properties, the presumption of advancement would operate to make the properties gifts to the First Defendant. As such, I find that the seven properties did not belong to the Deceased's estate.

#18-01 East Tower, Horizon Towers

108 According to the First Defendant's affidavit of evidence in chief, #18-01 East Tower (or Block B), Horizon Towers was purchased in the name of the First Defendant on 21 December 1981 for $890,000, and was paid for as follows:

(1) $267,000 came from the First Defendant's Bank of China overdraft account number 14654;

(2) $89,000 came from the First Defendant's Kwangtung Provincial Bank overdraft account number 6980; and

(3) the remaining $534,000 came from Kwangtung Provincial Bank term loan account number 128/83/4.

109 The Plaintiff's counsel submitted that PWC had seen bank documents which showed that "monies from the Estate's Hong Kong bank accounts were transferred to these personal accounts in 1983 to 1984 to reduce the outstanding loan/overdraft balances". However, the Plaintiff provided no particulars whatsoever of the "Estate's Hong Kong bank accounts" from which the funds were allegedly transferred to these three accounts. Nor did the Plaintiff provide any particulars of the amounts allegedly transferred.

110 I have carefully studied the documents compiled by PWC to support the allegation that "monies from the Estate's Hong Kong bank accounts were transferred to these personal accounts in 1983 to 1984 to reduce the outstanding loan/overdraft balances". The majority of the documents were statements of account relating to the above-mentioned overdraft and term loan accounts. There was nothing in the statements of account to suggest that funds from the "Estate's Hong Kong bank accounts" were deposited in these three accounts. Apart from:

(1) a credit advice addressed to the First Defendant relating to Kwangtung Provincial Bank account number 021-0-007535-6 which showed a telegraphic transfer of $49,999.90 from Sin Hua Trust Savings & Commercial Bank;

(2) an advice of remittance addressed to the Third Defendant relating to Bank of China account number 011-0-015531-0 which showed a cable transfer of $173,240 from Sin Hua Trust Savings & Commercial Bank Ltd, HK by order of the First Defendant; and

(3) a debit memo addressed to the First Defendant which showed a remittance of $100,000 to the Second Defendant's Kwangtung Provincial Bank account number 021-0-007110-5,

none of the documents relied on evidenced transfers of funds from the estate's Hong Kong bank account with Sin Hua Trust Savings & Commercial Bank. There was also no evidence that these funds from Sin Hua Trust Savings & Commercial Bank were ultimately paid into any of the three bank accounts from which funds were disbursed to pay for the acquisition of #18-01 East Tower, Horizon Towers. There was therefore no documentary evidence to support the Plaintiff's allegation "monies from the Estate's Hong Kong bank accounts were transferred to these personal accounts in 1983 to 1984 to reduce the outstanding loan/overdraft balances".

111 However, during cross-examination by the Plaintiff's counsel, the First Defendant appeared to agree that #18-01 East Tower, Horizon Towers was a "trust property" (see page 57 line 18 of the notes of evidence for the inquiry). During re-examination, when the First Defendant was

asked whether #18-01 East Tower, Horizon Towers was an "estate property", she answered, "No." Strangely, she went on to volunteer that the property "belongs to the company" (see page 95 lines 18 to 24 of the notes of evidence for the inquiry).

112 There are two possible explanations for the First Defendant's apparent agreement that #18-01 East Tower, Horizon Towers was a "trust property". First, she might have misunderstood the question and did not fully appreciate the implications of her answer. Second, she might have admitted that the property was in fact purchased with money belonging to the Deceased's estate. I think that the first explanation is the more likely of the two possible explanations. One would have to examine the context of the First Defendant's answer to determine which was the more probable explanation.

113 When the First Defendant was first asked whether #18-01 East Tower, Horizon Towers was purchased using trust funds, she readily answered, "No." She explained that she had borrowed 80% of the funds from the bank and paid for the other 20% with her own money. The First Defendant took the view that she had a "50% share in the trust", and as such, the money in the estate's Hong Kong bank account with the Sin Hua Trust Savings & Commercial Bank was trust money mixed with her "own money from the trust". When the First Defendant used funds from the Sin Hua Trust Savings & Commercial Bank account, she drew from her "50% share" of the "trust money". The First Defendant did not say that her personal funds from other sources were mixed with the estate's funds, whether in the estate's Sin Hua Trust Savings & Commercial Bank account or in any other account in her name.

114 The First Defendant was then asked certain questions about the sale of #18-01 East Tower, Horizon Towers. None of these questions suggested that #18-01 East Tower, Horizon Towers was a "trust property". Then came the crucial question and answer:

> Q: Since it was a trust property, did you obtain a valuation report on it prior to sale?
>
> A: I agree that it was a trust property and I have a 50% share in the trust property. The money was not taken from Ong Siauw-Tjoan.

115 While it seemed clear from the context of the question that the "trust property" referred to by the Plaintiff's counsel was #18-01 East Tower, Horizon Towers, it was also clear that the First Defendant did not answer his question at all. The First Defendant, who gave evidence through a Malay interpreter, said that she agreed that "it" was a "trust property" and that she had a "50% share" in the "trust property". She immediately went on to say that "The money" was not taken from the Second Defendant. In the light of her earlier evidence that she did not use trust funds to acquire #18-01 East Tower, Horizon Towers, it was unlikely that she was referring to #18-01 East Tower, Horizon Towers when she spoke of the "trust property". She had just given evidence on "trust money" in the estate's Hong Kong bank account with Sin Hua Trust Savings & Commercial Bank. Read in the context of her earlier evidence, I thought that the "trust property" that the First Defendant referred to as "it" was probably "The money" in the estate's Hong Kong bank account that was "not taken from Ong Siauw-Tjoan" and in respect of which the First Defendant had a "50% share".

116 In the circumstances, I find that #18-01 East Tower, Horizon Towers did not belong to the Deceased's estate.

#10-02 Lucky Tower

117 According to the First Defendant's affidavit of evidence in chief, #10-02 Lucky Tower

was purchased by Lim Lie Hoa Realty Pte Ltd on 29 July 1980 for the sum of $550,000. Of this, $530,000 was paid as follows:

(1) $55,000 came from the First Defendant's personal funds with the Bank of Singapore; and

(2) $475,000 came from a mortgage with OCBC Bank.

The remainder of $20,000 was still owing to the developer when the property was sold for $770,000 on 9 January 1981.

118 There was no evidence that funds from the Deceased's estate were used to acquire #10-02 Lucky Tower. As the property was acquired more than 10 years before the commencement of this action, it was understandable why the First Defendant was unable to provide documentary evidence relating to the sources of funds for the acquisition of the property. Given the long passage of time, no adverse inference can reasonably be drawn against the First Defendant on account of her failure to provide such documentary evidence. In the circumstances, I find that #10-02 Lucky Tower did not belong to the Deceased's estate.

Unit 30D Block A, Leonie Tower

119 According to the First Defendant's affidavit of evidence in chief, Unit 30D Block A, Leonie Tower was purchased by Lim Lie Hoa Realty Pte Ltd on 23 October 1980 for the sum of $800,000, and was paid as follows:

(1) $420,000 came from a mortgage from the Bank of China;

(2) $80,000 came from OCBC Bank account number 026494-001; and

(3) $300,000 came from the sales proceeds of #10-02 Lucky Tower.

120 There was no evidence that funds from the Deceased's estate were used to acquire Unit 30D Block A Leonie Towers. As the property was acquired more than 10 years before the commencement of this action, it was understandable why the First Defendant was unable to provide documentary evidence relating to the sources of funds for the acquisition of the property. Given the long passage of time, no adverse inference can reasonably be drawn against the First Defendant on account of her failure to provide such documentary evidence. In the circumstances, I find that Unit 30D Block A Leonie Towers did not belong to the Deceased's estate.

#17-02 Beverly Hill

121 According to the First Defendant's affidavit of evidence in chief, #17-02 Beverly Hill was purchased by the First Defendant on 10 October 1984 for the sum of $1,120,000, and was paid as follows:

(1) $112,000 came from the First Defendant's Bank of China overdraft account number 14654;

(2) $660,000 came from the First Defendant's Kwangtung Provincial Bank overdraft account number 7535, and this sum was secured by a mortgage on the property; and

(3) the remaining $348,000 was paid with a Bank of China cheque.

122 The Plaintiff's counsel submitted that PWC had sighted bank documents which showed monies from the estate's Hong Kong bank accounts being deposited into the First Defendant's Bank of China overdraft account number 14654. The Plaintiff provided no particulars whatsoever of the estate's Hong Kong bank accounts from which the funds were allegedly transferred. Nor did the Plaintiff provide any particulars of the amounts allegedly transferred.

123 The documents relied on in support of this allegation were the same documents that I referred to at paragraph 110 of this judgment. With the exception of a credit advice addressed to the First Defendant relating to Kwangtung Provincial Bank account number 021-0-007535-6, which showed a telegraphic transfer of $49,999.90 from Sin Hua Trust Savings & Commercial Bank, there was no evidence that funds from the estate's Hong Kong bank account with Sin Hua Trust Savings & Commercial Bank were used for the acquisition of this property.

124 While I am prepared to accept that a sum of $49,999.90 which originated from funds belonging to the estate was deposited in the First Defendant's Kwangtung Provincial Bank overdraft account number 7535, and that funds from that overdraft account were used to acquire #17-02 Beverly Hill, it did not follow that the estate thereby acquired an interest in the property. The First Defendant was not just a trustee but also a beneficiary of the Deceased's estate. As a beneficiary, she would have been entitled to receive money from the estate as a distribution to herself. There was no evidence that this sum of $49,999.90 exceeded her entitlement. The First Defendant clearly did not intend to hold the property on trust for the estate. There was no basis for me to find that the First Defendant held this property, or any part of it, on trust for the estate. As the property was acquired more than 6 years before the commencement of this action, it was understandable why the First Defendant was unable to provide more documentary evidence relating to the sources of funds for the acquisition of the property. Given the long passage of time, no adverse inference can reasonably be drawn against the First Defendant on account of her failure to provide such documentary evidence. In the circumstances, I find that #17-02 Beverly Hill did not belong to the Deceased's estate.

#07-02 The Claymore, 27 Claymore Road

125 According to the First Defendant's affidavit of evidence in chief, #07-02 The Claymore, 27 Claymore Road was purchased by Ong & Lim Enterprise Pte Ltd ("Ong & Lim") on 30 August 1995 for the sum of $5,065,000, and was paid as follows:

(1) $506,500 came from Ong & Lim's Kwangtung Provincial Bank current account number 021-0-008081-3; and

(2) $4,696,343.76 came from a mortgage with Kwangtung Provincial Bank.

126 As the property was purchased after 29 August 1991, it clearly could not form part of the notional pool of assets available for distribution to the beneficiaries as at 29 August 1991. Further, there was no evidence at all that funds from the Deceased's estate were used to acquire the property. In the circumstances, I find that neither #07-02 The Claymore nor the funds that were used to acquire it belonged to the Deceased's estate.

19 Balmoral View

127 According to the First Defendant's affidavit of evidence in chief, 19 Balmoral View was purchased on 9 January 1982 in the name of the Second Defendant for the sum of $750,000. The property was paid for as follows:

(1) $337,500 came from the First Defendant's Bank of China overdraft account number 14654;

(2) $75,000 came from "FNBC cheque no. 008716";

(3) $115,070 came from the First Defendant's Kwangtung Provincial Bank overdraft account number 6980; and

(4) $225,000 came from the Second Defendant's Kwangtung Provincial Bank overdraft account number 7229.

The stamp and legal fees for the acquisition of this property were also paid from the Second Defendant's Kwangtung Provincial Bank overdraft account number 7229. During cross-examination by the Plaintiff's counsel, the First Defendant agreed that the monies used by the Second Defendant to purchase this property were distributions from the estate.

128 The Plaintiff's counsel submitted that PWC believed that funds from the First Defendant's accounts with Bank of China and Kwangtung Provincial Bank belonged to the estate. The documents relied on in support of this allegation were the same documents that I referred to at paragraph 110 of this judgment. None of these documents evidenced transfers of funds from the estate's Hong Kong bank account with Sin Hua Trust Savings & Commercial Bank to any of the bank accounts from which funds were disbursed to pay for the acquisition of 19 Balmoral View.

129 According to paragraph 146 of the First Defendant's affidavit of evidence in chief:

(1) 19 Balmoral View was transferred to Ong & Lim in July 1989 for the sum of $500,000;

(2) the proceeds of the transfer were utilised as follows:

(a) $189,688.41 was used to issue a draft of £61,063 in favour of National Westminster Bank plc to settle the Second Defendant's debts to National Westminster Bank plc;

(b) $2,000 was used to issue a cashier's order in favour of Messrs Haridass Ho & Partners;

(c) $1,082.75 was used to issue a cashier's order in favour of Messrs Shook Lin & Bok; and

(d) $257,228.84 was used to issue a cashier's order in favour of the Second Defendant; and

(3) the payments of £61,063 and $257,228.84 were not reflected as a distribution to the Second Defendant.

Nothing was said about the remaining $50,000 of the consideration for the transfer of the property.

130 The Plaintiff's and the Second Defendant's counsel did not cross-examine the First Defendant on her evidence that the sums of £61,063 and $257,228.84 were not reflected as a distribution to the Second Defendant. Nevertheless, the Plaintiff's counsel submitted that the Second Defendant confirmed receiving the proceeds of the sale of this property in the form of NZ$447,000, and that this sum was treated as a distribution of the estate to the Second Defendant. On that basis, he submitted that 19 Balmoral View was an estate asset that the Second Defendant was holding as a nominee until it was transferred to Ong & Lim. He also made an absurd submission that Ong & Lim "would also be an Estate asset being the purchaser of 19 Balmoral Road".

131 Having regard to the rule in *Browne v Dunn* (1893) 6 R 67, it was not open to the Plaintiff's counsel to submit that the proceeds of the sale of 19 Balmoral View to Ong & Lim were treated as a distribution to the Second Defendant. Further, the evidence did not support this submission at all. The passages relied on by the Plaintiff's counsel (see page 246 of the notes of evidence at lines 5 to 15) merely showed that:

(1) The Second Defendant thought he received the proceeds of sale in New Zealand dollars;

(2) The Second Defendant saw 2 entries in exhibit L-16 at page 859 of the First Defendant's affidavit of evidence in chief relating to a total of NZ$447,000; and

(3) The Second Defendant accepted that he had received the full proceeds of the sale from 19 Balmoral View.

132 I would add that the Second Defendant's evidence that he thought he received the proceeds of sale in New Zealand dollars is suspect. Among the documents exhibited at pages 1000 to 1007 of the First Defendant's affidavit of evidence in chief were:

(1) a copy of a debit advice dated 31 October 1989 from Kwangtung Provincial Bank evidencing a debit of $450,000 from Ong & Lim's account number 021-0-008081-3 for the issue of demand draft number 11546 in favour of National Westminster Bank plc, cashier's order number 042554 in favour of Messrs Haridass Ho & Partners, cashier's order number 042555 in favour of Messrs Shook Lin & Bok and cashier's order number 042556 in favour of the Second Defendant;

(2) an application for a demand draft (reference D/D No: 11546 dated 31 October 1989) in favour of National Westminster Bank plc for £61,063, equivalent to $189,688.41 (inclusive of commission amounting to $100); and

(3) a cheque deposit slip dated 4 November 1989 showing a deposit of a "KPB" cheque number 042556 for the sum of $257,228.84 in the Second Defendant's bank account number 021-0-007229-3 with Kwangtung Provincial Bank.

There was no evidence that the sums of £61,063 and $257,228.84 were treated as distributions to the Second Defendant.

133 As there was no evidence that funds belonging to the Deceased's estate were used to acquire 19 Balmoral View, I find that this property did not belong to the Deceased's estate.

19A Balmoral View

134 19A Balmoral View was purchased by the Third Defendant on 18 February 1982 for the sum of $757,000. In correspondence with the Inland Revenue Department, the Third Defendant (or the First Defendant signing on behalf of the Third Defendant) stated the sources of funds for the purchase were a legacy of $307,000 from the Deceased and an overdraft of $450,000 obtained from a bank on 20 June 1983. The Plaintiff's counsel submitted that this property should be treated as an asset belonging to the Deceased's estate because:

(1) there was no record of any distributions to the Third Defendant from the Deceased's estate around or before 18 February 1982; and

(2) as such, the property must have been purchased with funds belonging to the

Deceased's estate that were released by the First Defendant to the Third Defendant.

135 The Third Defendant was a beneficiary of the Deceased's estate. There was no evidence that the alleged legacy of $307,000 used by the Third Defendant to acquire the property exceeded the Third Defendant's share of the Deceased's estate. There was no dispute that the estate paid a sum of $307,000 to the Third Defendant. The Third Defendant stated in correspondence with the Inland Revenue Department dating as far back as September 1985 that he regarded the payment as a distribution to him. The administrators' failure to record the payment of $307,000 as a distribution to the Third Defendant did not make it any less a distribution to the Third Defendant. It merely reflected negligence on the part of the administrators. In the circumstances, I find that 19A Balmoral View did not belong to the Deceased's estate.

2,000 shares in Tunas (Pte) Ltd.

136 According to a Return of Allotment of Shares lodged with the Registry of Companies and Businesses, a total of 2,000 shares in Tunas (Pte) Ltd were allotted to the First Defendant on 24 November 1979. These shares had a nominal value of $1,000 each. As such, the amount paid or due and payable by the First Defendant to Tunas (Pte) Ltd upon the allotment of the 2,000 shares was $2,000,000.

137 According to two signed share transfer forms dated 2 October 1981, the First Defendant transferred:

(1) 1,990 "fully paid" shares in Tunas (Pte) Ltd of $1,000 each under certificate numbers 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25 and 26 to one Mr Tong Djoe in consideration of a payment of $1,990,000; and

(1) 10 "fully paid" shares in Tunas (Pte) Ltd of $1,000 each under certificate number 27 to one Mr Tng Kheng Chuan in consideration of a payment of $10,000.

138 The Plaintiff claimed that the 2,000 shares in Tunas (Pte) Ltd were assets belonging to the Deceased's estate. The precise basis for this allegation was not entirely clear, because the Plaintiff did not provide any evidence to show that the funds used to acquire these shares originated from the Deceased's estate. PWC had "assumed" that the First Defendant held the 2,000 shares in Tunas (Pte) Ltd on trust for the Deceased's estate because they had not seen any documents to support the First Defendant's allegations as to how the shares were acquired.

139 At paragraph 164 of her affidavit of evidence in chief, the First Defendant made the following statements:

(1) The First Defendant did not make any investment in Tunas (Pte) Ltd. Instead, she had loaned approximately HK$500,000 and S$190,000 of her personal funds to Mr Tong Djoe at his request.

(2) When the First Defendant asked Mr Tong to repay the loan, Mr Tong did not do so, but instead issued 2,000 shares of $1,000 each in Tunas (Pte) Ltd to her on 18 August 1980.

(3) On 29 October 1981, the First Defendant "returned" the shares to Mr Tong as she "did not trust or believe him".

140 During cross-examination, the First Defendant alleged that:

(1) Mr Tong Djoe gave her the shares in Tunas (Pte) Ltd even though she told him that she did not want the shares;

(2) She "did not receive a single cent" from her disposal of the shares;

(3) She did not use monies belonging to the Deceased's estate to acquire the shares; and

(4) She did not understand English and had appended her signature to the share transfer forms dated 2 October 1981 without understanding the contents of those documents

141 The Plaintiff did not adduce evidence to discredit the First Defendant's testimony on the acquisition and disposal of the 2,000 shares in Tunas (Pte) Ltd. In particular, there was no evidence that the First Defendant had used the estate's funds to acquire the 2,000 shares in Tunas (Pte) Ltd. The Plaintiff bore the burden of proving that the shares were acquired using the estate's funds. As the Plaintiff had failed to discharge this burden, I find that the 2,000 shares in Tunas (Pte) Ltd did not belong to the Deceased's estate.

Singapore Estate Expenses

142 According to the AA report, the estate paid a total of $4,325,053 in respect of the following expenses:

(1) Office expenses paid to Lee & Lee $44,456

(2) Estate duty (less refund) $1,074,762

(3) Legal fees $116,652

(4) Income and property tax $1,341,335

(5) Interest $738,076

(6) Salaries ($77,978) and CPF ($14,027) $92,005

(7) Sundry expenses $4,178

(8) Travelling expenses $35,341

(9) Chung Heng Engineering Works (renovation works) $27,000

(10) Tineh Engineering (renovation works) $32,773

(11) Tunas (Pte) Ltd (agent's commission) $89,993

(12) Miscellaneous $190,456

(13) Donations $202,205

(14) Building maintenance $153,726

(15) Water and electricity $108,011

(16) Payroll tax $1,364

(17) Audit and accountancy fee of Goh Tan & Co $14,206

(18) Cowan & Co (pest control) $1,500

(19) Refund of rent / deposit $26,425

(20) Gratuity $1,215

(21) Singapore Telecom (telephone expenses) $17,859

(22) Lim Lie Hoa (reimbursements) $11,515

143 At paragraph 3.12 of the PWC report, PWC agreed with AA's computation of the expenses except in relation to two items, namely:

(1) Travelling expenses, which PWC contended should be reduced to $30,251; and

(2) Donations, which PWC contended should not be treated as an estate expense at all.

Travelling Expenses

144 There were 2 entries in the Estate's cash book which gave rise to the dispute concerning travelling expenses. These entries were found at page 2685 of the Plaintiff's Bundle of Documents Volume 9. The first entry, for a payment of $50, bore the description: "Lim Lie Hoa – cancellation of round the world tour for Keng Tong". The second entry, for a payment of $5,090, bore the description: "Travelling Expenses – Air-ticket for round the world tour". The First Defendant did not satisfy me that these expenses were incurred for the benefit of the estate. Accordingly, these expenses, amounting to a total of $5,140, should not have been charged to the Deceased's estate.

Donations

145 According to the AA report, the estate made donations amounting to a total of $202,205 ($20,100 in 1979, $42,000 in 1980, $125,041 in 1989 and $15,064 in 1991). Notwithstanding the First Defendant's allegation that the recipients of the donations were aware that the donations were made in the name of the Deceased's estate, the receipts acknowledging the donations invariably named the First Defendant as the donor without any qualification as to the capacity in which she made the donations. The First Defendant did not show how the estate would benefit from the making of these donations. I did not see how these donations could reasonably be treated as legitimate estate expenses. Accordingly, the donations should not have been charged to the estate.

Income and Property Tax

146 According to the AA report, a total of $1,341,335 was paid by the estate in respect of income tax and property tax. AA stated that of this sum, $707,253 related to the estate's income tax while the balance of $634,082 related to property tax payable on the estate's properties. AA's statement that the estate was liable to pay income tax amounting to $707,253 would appear to be evidenced by nine Income Tax Demand Notes, one each in respect of each of the Years of Assessment 1967 to 1975. The sums payable under the Income Tax Demand Notes were as follows:

(1) Year of Assessment 1967 $31,578.75

(2) Year of Assessment 1968 $23,754.68

(3) Year of Assessment 1969 $6,100.08

(4) Year of Assessment 1970 $33,317.55

(5) Year of Assessment 1971 $103,494.98

(6) Year of Assessment 1972 $146,056.79

(7) Year of Assessment 1973 $162,274.09

(8) Year of Assessment 1974 $117,594.07

(9) Year of Assessment 1975 $83,082.09

Total $707,253.08

147 The income tax paid by the estate under some of these Income Tax Demand Notes included income tax on rent from properties belonging to the First Defendant. The letter dated 23 May 1975 from the Inland Revenue Department to the estate's solicitors (referred to at paragraph 101 of this judgment) showed that:

(1) In Year of Assessment 1968, the rent from the First Defendant's properties amounted to $13,764 or 19.6% of the total income of $70,111 assessed on the estate.

(2) In Year of Assessment 1969, the rent from the First Defendant's properties amounted to $26,801 or 78.3% of the total income of $34,242 assessed on the estate.

(3) In Year of Assessment 1970, the rent from the First Defendant's properties amounted to $31,752 or 34.6% of the total income of $91,812 assessed on the estate.

(4) In Year of Assessment 1971, the rent from the First Defendant's properties amounted to $35,108 or 16.4% of the total income of $214,553 assessed on the estate.

(5) In Year of Assessment 1972, the rent from the First Defendant's properties amounted to $58,460 or 20.0% of the total income of $292,294 assessed on the estate.

(6) In Year of Assessment 1973, the rent from the First Defendant's properties amounted to $82,116 or 26.0% of the total income of $316,335 assessed on the estate.

(7) In Year of Assessment 1974, the rent from the First Defendant's properties amounted to $40,295, and the estate was assessed to be liable for income tax of $9,009.20 on this income.

148 Apart from this letter, there was no evidence adduced to show that the estate had paid income tax in respect of the First Defendant's properties. In the circumstances, the income tax paid by the estate in respect of the rent from the First Defendant's properties is assessed at $118,345.15, calculated as follows:

Year of Assessment	Income tax payable	Proportion of income tax attributable to rent from First Defendant's properties	Income tax paid by Deceased's estate in respect of First Defendant's properties
1968	$23,754.68	19.6%	$4,655.92
1969	$6,100.08	78.3%	$4,776.36
1970	$33,317.55	34.6%	$11,527.87
1971	$103,494.98	16.4%	$16,973.18
1972	$146,056.79	20.0%	$29,211.36
1973	$162,274.09	26.0%	$42,191.26
1974	$117,594.07	$9,009.20	$9,009.20
Total			$118,345.15

149 Exhibit "L-10" of the First Defendant's affidavit of evidence in chief included the Notices of Assessment of the estate's income tax for the Years of Assessment 1975 to 1982. It was clear from these documents that the rent from the First Defendant's properties ceased to be assessed as part of the Deceased's income after his death.

150 For the reasons set out at paragraphs 101, 102 and 105 of this judgment, the income tax payable in respect of the rent from the First Defendant's properties should not have been charged to the estate, but should have been borne by the First Defendant personally. Accordingly, the amount chargeable to the estate in respect of income and property tax should be reduced by $118,345 to $1,222,990.

Other Expenses

151 The estate had also paid certain other expenses relating to properties belonging to the First Defendant. In particular, the following items were spotted by me or drawn to my attention:

(1) "Lim Lie Hoa – Water & Light – 20D, Norfolk Rd" for the sum of $3,015 (see page 2478 of the Plaintiff's Bundle of Documents Volume 9);

(2) "Lim Lie Hoa – tel rental – 20D, Norfolk Rd" for the sum of $5,750 (see page 2482 of the Plaintiff's Bundle of Documents Volume 9);

(3) "Lim Lie Hoa – Water & Light – 20D, Norfolk Rd" for the sum of $1,855 (see page 2504 of the Plaintiff's Bundle of Documents Volume 9);

(4) "Lim Lie Hoa – Overseas Calls – 20D, Norfolk Rd" for the sum of $3,780 (see page 2504

of the Plaintiff's Bundle of Documents Volume 9);

(5) "Lim Lie Hoa – Water & Light – 20D, Norfolk Rd" for the sum of $2,295 (see page 2512 of the Plaintiff's Bundle of Documents Volume 9);

(6) "Lim Lie Hoa – Overseas Calls – 20D, Norfolk Rd" for the sum of $8,820 (see page 2536 of the Plaintiff's Bundle of Documents Volume 9);

(7) "Lim Lie Hoa – Water & Light – 20D, Norfolk Rd" for the sum of $2,121 (see page 2536 of the Plaintiff's Bundle of Documents Volume 9);

(8) "Lim Lie Hoa – fixtures of 16, E. S. L." for the sum of $850 (see page 2474 of the Plaintiff's Bundle of Documents Volume 9);

(9) "Lim Lie Hoa – Water & Light – 16 E. S. L." for the sum of $2 (see page 2482 of the Plaintiff's Bundle of Documents Volume 9); and

(10) "Lim Lie Hoa – Property Tax of 73N, C. Mansion" for the sum of $1,303 (see page 2653 of the Plaintiff's Bundle of Documents Volume 9).

152 As these expenses, amounting to a total of $29,791, related to properties belonging to the First Defendant, they should not have been charged to the estate. There was no evidence to suggest that these expenses were incurred on behalf of the estate. Accordingly, the expenses to be charged to the estate should be reduced by the sum of $29,791.

Value of Deceased's Estate in Singapore

153 Having regard to the matters set out at paragraphs 70 to 93 of this judgment, the value of the notional pool of Singapore assets available for distribution is assessed at $15,842,146.21, calculated as follows:

	Asset	Value of Asset (S$)
1	Proceeds of sale of No 45/47 Robinson Road	8,000,000.00
2	Rental income for No 45/47 Robinson Road	1,604,681.00
3	Proceeds of sale of No 4 Chatsworth Park	5,249,737.50
4	Current account with United Commercial Bank	15,398.43
5	Current account with Algemene Bank Nederland NV	25,940.61

	Asset	Value of Asset (S$)
6	Fixed deposit with United Commercial Bank	76,130.14
7	11 shares in Ong Seng King Realty Co (Pte) Ltd	1,371.71
8	Deposit with Ministry of Finance – Trade Division (Immigration)	377,500.00
9	Current account with The Hongkong & Shanghai Banking Corporation	631.82
10	Deposit with Ministry of Education	10,000.00
11	Amount due from Ong Seng King Realty Co (Pte) Ltd	84,887.00
12	Estate's DBS bank account	100,577.00
13	Other receipts "based on Lee & Lee's cashbook" for the period 1974 to 1980	31,738.00
14	Other receipts "based on Administratrix's cashbook" for the period 1974 to 1980	263,553.00
	Total	15,842,146.21

154 Having regard to the matters set out at paragraphs 142 to 152 of this judgment, the legitimate expenses of the Deceased's estate in Singapore are assessed at $3,969,572, calculated as follows:

	Expense	Amount of Expense (S$)
1	Office expenses paid to Lee & Lee	44,456
2	Estate duty (less refund)	1,074,762
3	Legal fees	116,652
4	Income and property tax	1,222,990

	Expense	Amount of Expense (S$)
5	Interest	738,076
6	Salaries and CPF	92,005
7	Sundry expenses	4,178
8	Travelling expenses	30,201
9	Chung Heng Engineering Works (renovation works)	27,000
10	Tineh Engineering (renovation works)	32,773
11	Tunas (Pte) Ltd (agent's commission)	89,993
12	Miscellaneous	190,456
13	Donations	0
14	Building maintenance	153,726
15	Water and electricity	108,011
16	Payroll tax	1,364
17	Audit and accountancy fee of Goh Tan & Co	14,206
18	Cowan & Co (pest control)	1,500
19	Refund of rent / deposit	26,425
20	Gratuity	1,215
21	Singapore Telecom (telephone expenses)	17,859
22	Lim Lie Hoa (reimbursements)	11,515
	Less: expenses relating to First Defendant's properties	-29,791
	Total	3,969,572

155 In the circumstances, the value of the Deceased's estate in Singapore is assessed at $11,872,574.21, calculated as follows:

$15,842,146.21 - $3,969,572 = $11,872,574.21

The Hong Kong Assets

156 The Singapore grant of letters of administration was resealed in the High Court of Hong Kong on 17 August 1977. According to the provisional estate duty schedule annexed to the Hong Kong grant, the Deceased owned the following assets, valued at a total of HK$8,888,699.42, at the time of his death:

(1) American Express traveller's cheques (US$300) valued at HK$1,500;

(2) Other travellers' cheques (US$1,000) valued at HK$5,000;

(3) Balance on current account with Alegemene Bank Nederland NV valued at HK$1,490;

(4) Balances on fixed deposit accounts with United Commercial Bank (with accrued interest) valued at a total of HK$5,370,645.17;

(5) 1,900 shares in Ramayama Financial Ltd at HK$100 each, valued at a total of HK$190,000;

(6) Deceased's interest in the firm Grand Trading Co valued at HK$703.89;

(7) Deceased's interest in the firm Orliandokco valued at HK$487,360.36;

(8) Mercedes Benz car under registration number AS8069 valued at HK$2,000;

(9) Rural Building Lot No 385 (No 17 Shouson Hill Road West) valued at HK$1,500,000;

(10) 1/97th part or share of and in Kwun Tong Island Lot No 218 (Yuet Wah Mansion, Flat B on 1st Floor, No 53 Yuet Wah Street) valued at HK$110,000;

(11) Inland Lot No 7579 (No 24 Ice House Street) valued at HK$1,130,000; and

(12) 4/474th parts or shares of and in DD 379 Lot 748A (Pearl Island Villa Flats 5 and 7 on 1st Floor of Block F4) valued at HK$90,000.

157 The estate duty schedule also stated that provisional deductions of HK$5,245,804.07 should be made against the Deceased's Hong Kong estate, leaving a net provisional principal value of estate of HK$3,642,895.35.

The Undisputed Assets

158 PWC and AA agreed in their respective reports that the following assets listed in the estate duty schedule should be accorded the following values:

(1) American Express and other traveller's cheques valued at HK$6,039;

(2) Balance on current account with Alegemene Bank Nederland NV valued at HK$1,490;

(3) Balances on fixed deposit accounts with United Commercial Bank (with accrued interest) valued at a total of HK$5,370,645.17;

(4) 1,900 shares in Ramayama Financial Ltd at HK$100 each, valued at a total of HK$190,000;

(5) Deceased's interest in the firm Grand Trading Co valued at HK$704;

(6) Deceased's interest in the firm Orliandokco valued at HK$673,020;

(7) Mercedes Benz car under registration number AS8069 valued at HK$15,000; and

(8) 4/474th parts or shares of and in DD 379 Lot 748A (Pearl Island Villa Flats 5 and 7 on 1st Floor of Block F4) valued at HK$205,000.

159 PWC and AA also agreed in their respective reports that the following assets belonging to the Deceased that were not listed in the estate duty schedule should be accorded the following values:

(1) Bulldozer valued at HK$17,491;

(2) Avoonsco – Account with Deutsche Bank (DM579.16) valued at HK$1,246;

(3) The Deceased's household goods and personal effects at No 17 Shouson Hill Road West valued at HK$1,000; and

(4) The Deceased's balance with Wells Fargo Bank valued at HK$20,427.

No 17 Shouson Hill Road West

160 No 17 Shouson Hill Road West was a residential property occupying 22,290 square feet of land. The property was purchased by the Deceased on 28 July 1970 for the sum of HK$880,000. By a tenancy agreement dated 20 June 1979, the property was tenanted to Philip Morris Asia Incorporated ("Philip Morris") for a period of three years at a sum of HK$23,500 per month. According to paragraph 102 of the First Defendant's affidavit of evidence in chief, this tenancy commenced on 20 June 1979. According to the sale and purchase agreement pursuant to which the administrators sold the property, this tenancy commenced on 1 August 1979.

161 By a letter dated 22 April 1980, Philip Morris complained about various defects in the property which it considered to be its landlord's obligation to rectify. In the same letter, Philip Morris offered, as an alternative, to purchase the property "as is" at a price of HK$2,350,000. Philip Morris' letter was addressed to the First Defendant's then Hong Kong solicitor, Mr Simon Pun of Deacons. By a letter dated 28 April 1980, Mr Pun rendered the following advice to the First Defendant:

> Although the property market nowadays is pretty bad, we still consider the price offered by your tenant is a bit on the low side. One of our clients is interested to purchase your property at about HK$3 Million. Please let us know whether you are interested to sell the same to our client at the price of HK$3 Million subject to he existing tenancy.

162 Pursuant to a sale and purchase agreement dated 26 June 1980, the First and Second Defendants, as administrators, sold the property to Wayette Investments Limited ("Wayette") at the price of HK$4,000,000. The sale and purchase agreement stated that the purchase was to be

completed on or before 31 July 1980. The property was not valued prior to this sale.

163 On 16 September 1980, Wayette mortgaged the property in order to secure banking facilities to the extent of HK$4,500,000. On 24 January 1986, Wayette sold the property to Telawide Limited for the sum of HK$9,500,000. The property was redeveloped in the late 1980s to two low-rise blocks with a total of 11 units, collectively known as Joy Garden. The occupation permit for Joy Garden was issued in 1989, and the total floor area of its units was 35,000 square feet.

164 The Plaintiff claimed that the property was worth HK$15,750,000 when the administrators sold it in 1980. Mr Paul Varty ("Mr Varty"), a Hong Kong Chartered Surveyor engaged by the Plaintiff, opined that the sale price of HK$4,000,000 was "significantly below the value which should have been achieved at that time which ... should have been in the order of HK$10.5 m to HK$15.75m". Mr Varty assessed the value of the property using the residual valuation method of property valuation, which took into account the development potential of the property. He stated during cross-examination that he did not make use of the comparative sales method of property valuation because in his research, he "could not find any suitable comparable sales" and "was not aware of any suitable comparable transactions involving sites with redevelopment potential of this nature".

165 Joy Garden, the development undertaken on the property, had a gross floor area of approximately 35,000 square feet. Mr Varty considered this to be a "reasonable scale and density of development". Mr Varty applied an "accommodation value" of HK$300 to $450 per square foot to this gross floor area to arrive at the valuation of HK$10,500,000 to HK$15,750,000. Mr Varty defined "accommodation value" as "the value of a site expressed as dollars per square foot of the potential gross floor area that is possible to be developed on the site". Mr Varty gave the following explanation for how he calculated an accommodation value of about HK$1,400 for No 24 Ice House Street:

> I have adopted sales price of HK$2,400 to HK$2,600 per square foot for the completed building. These figures are obtained from my research and my personal knowledge of transactions at that time for comparable property. From the sales price, to reach accommodation value, we must subtract development costs, which include construction costs, finance costs, professional fees and other related expenses. I have adopted figures of between HK$600 to HK$700 per square foot for the development costs. These figures are based on statistical evidence from quantity surveyors, knowledge of bank interest rates at that time and my personal knowledge and experience. In addition, we must deduct an allowance for developer's risk and profit, which for this type of property at this time in Hong Kong, was generally about 20% of the total investment (i.e. the total development cost and the land cost). What a developer would do is to take the sales price of the completed building. In this case, I have used HK$2,400 to HK$2,600 per square foot. Using HK$2,400 first, we then deduct the development costs at say HK$600 per square foot and the 20% developers' risk and profit on this figure, i.e. $120. This leaves us with HK$1,680 per square foot for land cost and developer's profit on that investment. This equates to HK$1,400 (HK$1,680 divided by 1.2) with profit of HK$280 per square foot. Therefore, the accommodation value is HK$1,400 per square foot of potential gross floor area which can be built on the site.

166 Mr Varty provided the following variables for the calculation of the accommodation value for No 17 Shouson Hill Road West:

> (1) In mid-1980, high quality residential property was selling at between HK$1,400 to HK$1,500 per square foot.
>
> (2) The total development costs for high quality low rise residential property in Hong Kong in

the second quarter of 1980 was approximately HK$800 to HK$900 per square foot.

(3) The developer's profit would have been approximately 25%.

167 When these variables are applied to the formula used by Mr Varty to calculate the accommodation value for No 24 Ice House Street, the calculated accommodation values would only be in the range of HK$220 to HK$400 per square foot:

(1) [HK$1,400 – (HK$900 x 1.25)] ÷ 1.25 = HK$220

(2) [HK$1,500 – (HK$800 x 1.25)] ÷ 1.25 = HK$400

These calculated accommodation values were significantly lower than the HK$300 to HK$450 that Mr Varty had applied to reach his valuation of HK$10,500,000 to HK$15,750,000. Applying these calculated accommodation values to a gross floor area of 35,000 square feet, one would reach a valuation of only HK$7,700,000 to HK$14,000,000.

168 There is another reason why I think Mr Varty's valuation using the residual valuation method was unduly optimistic. The Rating and Valuation Private Domestic Price Indices compiled by the Hong Kong Rating and Valuation Department showed fluctuations in property prices expressed as a percentage of their prices in the fourth quarter of 1979. On 24 January 1986, Wayette sold the property in an undeveloped form to Telawide Limited for the sum of HK$9,500,000. According to Mr Varty, the index figure for Types D and E properties (i.e. properties over 99.9 square metres in area) was 108 in the second quarter of 1980 and 103 in the first quarter of 1986. So property prices in the second quarter of 1980 would generally be approximately 108/103 times the property prices in the first quarter of 1986. As the administrators sold No 17 Shouson Hill Road West (which was a Type D and E property) in the second quarter of 1980, its value would only have been in the region of about HK$9,961,165, calculated as follows:

HK$9,500,000 ÷ 103 x 108 = HK$9,961,165

169 For these reasons, I hesitate to accept Mr Varty's valuation of the property at HK$10,500,000 to HK$15,750,000. There was a certain degree of subjectivity and speculation involved in his assessment of the accommodation value. If the court can arrive at a significantly lower figure for the accommodation value for 17 Shouson Hill Road West even after applying the variables supplied by Mr Varty to the formula used by him to calculate the accommodation value for No 24 Ice House Street, what assurance does the court have as to the reliability of the variables supplied by him?

170 I also question whether, on the facts, any developer would have paid the administrators a sum representative of the true development potential of the property when it was sold in June 1980. When the property was sold in June 1980, it came with a tenancy with a remaining term of about 24 to 25 months. The tenant had demanded that the landlord carry out certain costly repairs to the premises. Wayette held the property for about 5.5 years before it sold the property to Telawide Limited at a price that approximated the value of the property using the residual valuation method. This would appear to suggest that as at June 1980, there was no ready market for the property at prices that would have recognised the development potential of the property. The market value of a property is the price that a willing buyer would pay to a willing seller for the property, and not a theoretical value that the property could fetch if there was a developer who was willing to pay a price that was representative of the development potential of the property. The evidence did not suggest that there was such a willing developer in the market as at June 1980.

171 On 16 September 1980, Wayette mortgaged the property in order to secure banking facilities to the extent of HK$4,500,000. It is reasonable to assume that the bank would not have provided such facilities unless it was fully secured by the mortgage. As such, the property must have been worth at least HK$4,500,000 in September 1980. The Rating and Valuation Private Domestic Price Indices showed that the prices of Types D and E properties were on a steady uptrend from the fourth quarter of 1979 to the first quarter of 1981. According to the indices exhibited in Mr Varty's affidavit of evidence in chief, the index figure for Types D and E properties was 108 in the second quarter of 1980 and 120 in the third quarter of 1980. So property prices in the second quarter of 1980 would generally be approximately 108/120 times the property prices in the third quarter of 1980. A direct application of the indices suggests that the value of the property would have been in the region of at least HK$4,050,000, calculated as follows:

HK$4,500,000 ÷ 120 x 108 = HK$4,050,000

172 In percentage terms, HK$4,050,000 was only about 1.25% more than the actual sale price of HK$4,000,000. Having regard to all the circumstances, in particular, the estate's potential obligation to its tenant to rectify the defects in the property, I do not think it can be said that the administrators had sold the property at an undervalue. There was no evidence of any deliberate wrongdoing by the administrators in the sale of the property. There was certainly no reason for the First Defendant to defeat the interests of beneficiaries (who comprised herself and her children) in June 1980. I think that the First Defendant had trusted her Hong Kong solicitors to act in good faith in helping her to realise the estate's Hong Kong assets, including No 17 Shouson Hill Road West. I would therefore assess the value of No 17 Shouson Hill Road West at HK$4,000,000.

No 24 Ice House Street

173 No 24 Ice House Street was a six storey commercial property occupying approximately 948 square feet of land. It was a Class B site located at the junction of Ice House Street and Zetland Street. Mr Varty explained in his affidavit of evidence in chief that a "Class B site" was a "corner site, abutting on two streets". This was to be contrasted with a "Class A site" (i.e. a site "having a frontage upon one street only" or "fronting one street and backing upon another") or a "Class C site" (i.e. "an island site, or a site having a frontage to three streets"). The property was purchased by the Deceased on 17 November 1970 for the sum of HK$750,000.

174 Moving along Ice House Street away from Zetland Street, No 24 Ice House Street was followed by No 26 Ice House Street, No 28 Ice House Street and No 30 Ice House Street, in that order. Nos 26, 28 and 30 Ice House Street were all Class A sites. Nos 26 and 28 Ice House Street each occupied approximately 755 square feet of land, while No 30 Ice House Street occupied approximately 743 square feet of land.

175 By an agreement dated 24 March 1981, the First Defendant agreed to sell No 24 Ice House Street to "Mr Cheung Loon Hoi or Nominee" for the sum of HK$13,700,000. The agreement provided for the parties to sign a sale and purchase agreement on or before 28 March 1981, and for completion to take place within two months from the signing of the sale and purchase agreement. The purchaser paid S$10,000 at the time the agreement was signed. The purchaser (or his nominee) was also required to pay the balance of the 10% deposit on the signing of the sale and purchase agreement and the balance of the purchase price on the date of completion. The agreement entitled the purchaser to "compensation" amounting to "10 times of the deposit [of] S$10,000/-" if "the owner rejects to sale [*sic*] the aforesaid property under the terms and conditions stated in [the agreement]".

176 By a sale and purchase agreement dated 9 May 1981, the First and Second Defendants, as administrators of the Deceased's estate, agreed to sell No 24 Ice House Street to Wild Fast Investment Company Limited ("Wild Fast") for the sum of HK$13,700,000. The sale and purchase agreement provided for the purchase to be completed on or before 28 May 1981. It contained an acknowledgement by the administrators that they had received "deposit money" amounting to HK$1,370,000 from Wild Fast.

177 By a sale and purchase agreement dated 16 May 1981, Wild Fast agreed to sell No 24 Ice House Street to Koledo Company Limited ("Koledo") for the sum of HK$28,000,000. This sale and purchase agreement also provided for the purchase to be completed on or before 28 May 1981. It contained an acknowledgement by Wild Fast that Wild Fast had received a deposit of HK$5,000,000 from Koledo. There was no evidence that the administrators knew of this subsale when they entered the agreement dated 9 May 1981.

178 By an assignment dated 28 May 1981 between the administrators of the first part, Wild Fast of the second part and Koledo of the third part, the administrators, "at the request and by the direction" of Wild Fast, assigned the estate's interest in No 24 Ice House Street to Koledo, and Wild Fast confirmed the assignment. The assignment contained an acknowledgement by the administrators that they had received "consideration money" amounting to HK$13,700,000 from Koledo. It also contained an acknowledgement by Wild Fast that Wild Fast had received "consideration money" amounting to HK$14,300,000 from Koledo. In signing the assignment dated 28 May 1981, the administrators were performing the estate's contractual obligations under the sale and purchase agreement dated 9 May 1981. As such, the administrators could not be faulted for proceeding with the assignment on 28 May 1981, even though they had by then come to know of the subsale. The Deceased's estate would have been liable for breach of contract had the administrators acted otherwise.

179 Using the residual valuation method of property valuation, and taking into account the development potential of No 24 Ice House Street if that site was merged with the sites of Nos 26, 28 and 30 Ice House Street, Mr Varty expressed the view that No 24 Ice House Street had a value of approximately HK$24,050,000 to HK$25,900,000. The First Defendant did not adduce any contrary expert evidence on the value of No 24 Ice House Street. When the Plaintiff's counsel suggested that the First Defendant "never obtained a valuation" for No 24 Ice House Street, the First Defendant did not answer his question but instead said something that was not relevant to the question. I therefore found that the property was not valued prior to its sale.

180 The Plaintiff claimed that the First Defendant had sold No 24 Ice House Street at an undervalue. Her counsel submitted that the court should value the property at either HK$24,050,000 to HK$25,900,000 (as assessed by Mr Varty, taking into account the development potential of the property) or HK$28,000,000 (as per the price that Koledo acquired the property from Wild Fast).

181 I did not think that the price of HK$28,000,000 at which Koledo acquired the property from Wild Fast on 16 May 1981 was indicative of the market value of No 24 Ice House Street. There are three reasons for this conclusion.

182 First, the price that Koledo agreed to pay Wild Fast for No 24 Ice House Street was a price that far exceeded the prices paid by Wild Fast and/or Koledo for the adjacent properties at Nos 26, 28 and 30 Ice House Street at about the same period. As the four properties were acquired for the purpose of redevelopment, a useful measure for the comparison of prices would be the cost per square foot of site coverage.

183 According to Mr Varty:

(1) On 5 September 1980, Koledo entered an agreement with the owner of No 26 Ice House Street to acquire the property at the sum of HK$5,600,000.

(2) For each of Nos 28 and 30 Ice House Street:

(a) on 13 July 1981, Wild Fast entered an agreement with the owner of the property to acquire the property at HK$13,500,000, with completion scheduled on 10 September 1981; and

(b) on 10 September 1981, by an assignment between the then owner of the property, Wild Fast and Koledo, Koledo purchased the property from Wild Fast at HK$15,000,000.

184 Based on these figures:

(1) Koledo paid the owner HK$7,417.22 per square foot of site coverage (HK$5,600,000 divided by 755 square feet) for No 26 Ice House Street in September 1980;

(2) Wild Fast paid the owner HK$17,880.79 per square foot of site coverage (HK$13,500,000 divided by 755 square feet) for No 28 Ice House Street in July 1981;

(3) Wild Fast paid the owner HK$18,169.58 per square foot of site coverage (HK$13,500,000 divided by 743 square feet) for No 30 Ice House Street in July 1981;

(4) Koledo paid Wild Fast HK$19,867.55 per square foot of site coverage (HK$15,000,000 divided by 755 square feet) for No 28 Ice House Street in September 1981; and

(5) Koledo paid Wild Fast HK$20,188.43 per square foot of site coverage (HK$15,000,000 divided by 743 square feet) for No 30 Ice House Street in September 1981.

185 In contrast, Koledo agreed to pay Wild Fast HK$29,535.86 per square foot of site coverage (HK$28,000,000 divided by 948 square feet) for No 24 Ice House Street on 16 May 1981. This was almost 1.5 times the price per square foot of site coverage that Koledo was prepared to pay for No 30 Ice House Street in September 1981 and almost 4 times the price per square foot of site coverage that Koledo was prepared to pay for No 26 Ice House Street in September 1980. It was also more than twice the price of HK$14,451.48 per square foot of site coverage (HK$13,700,000 divided by 948 square feet) that Wild Fast had agreed to pay to the administrators for No 24 Ice House Street.

186 Second, when Koledo entered the agreement dated 16 May 1981 with Wild Fast, Koledo must have been aware that Wild Fast had purchased No 24 Ice House Street from the administrators only one week earlier on 9 May 1981 at a price of HK$13,700,000. The agreement dated 16 May 1981 between Koledo and Wild Fast specifically referred to the agreement dated 9 May 1981 between Wild Fast and the administrators. As the transaction between Wild Fast and the administrators had not been completed as at 16 May 1981, Koledo's solicitors would have inspected the agreement dated 9 May 1981 to satisfy themselves of Wild Fast's ability to sell the property. An examination of the agreement dated 9 May 1981 would have revealed that Wild Fast had agreed to pay the administrators only HK$13,700,000 for No 24 Ice House Street. Further, Koledo had paid the owner of No 26 Ice House Street only HK$7,417.22 per square foot of site coverage in September 1980. As at 16 May 1981, neither Koledo nor Wild Fast had entered any agreement with the owners of Nos 28 and 30 Ice House Street to acquire those properties. There was therefore no evidence of Koledo aiming

for a four site redevelopment as at 16 May 1981. According to Mr Varty, using the residual valuation method of property valuation, No 24 Ice House Street would have a value of only approximately HK$20,000,000 to HK$23,300,000 if it was acquired jointly with No 26 Ice House Street as part of a two site redevelopment. Given these facts, it was most unlikely that Koledo would have agreed to pay Wild Fast HK$28,000,000 for No 24 Ice House Street if the transaction between Koledo and Wild Fast was truly carried out at arm's length.

187 Third, Mr Varty himself was unable to justify valuing No 24 Ice House Street at HK$28,000,000. Instead, he surmised, at paragraph 7.2.5.1 of his affidavit of evidence in chief, that there was "an apparent connection between Koledo and Wild Fast". He also observed, at paragraph 7.6.3 of his affidavit of evidence in chief, that when Koledo acquired all four of the properties at Nos 24, 26, 28 and 30 Ice House Street, the "merger value" was not "shared proportionally amongst the four sites".

188 I turn next to Mr Varty's valuation of No 24 Ice House Street. Mr Varty chose not to value No 24 Ice House Street using the comparative sales method of property valuation, even though the above-mentioned transactions involving Nos 26, 28 and 30 Ice House Street were clearly comparable sales, the prices for which needed only minor adjustments to account for differences in lot size and the fact that No 24 Ice House Street was a Class B site while the other properties were Class A sites. Instead, he used the residual valuation method of property valuation.

189 The residual valuation method of property valuation does not actually value a built-up property as it is, but puts a value to the redevelopment potential of the land on which the property stands. Essentially, the residual valuation method of property valuation estimates the maximum amount of money that a developer may be prepared to pay to acquire a piece of property for redevelopment, having regard to estimates of the potential selling price per square foot in the new development, the amount that the developer will have to expend to redevelop the property, the amount of profit that the developer wishes to make from the redevelopment, and the saleable floor area in the new development. It would appear from Mr Varty's evidence when he was examined by the court that the residual valuation method of property valuation involves the following steps:

(1) First, the valuer calculates an accommodation value for the site, having regard to:

(a) the potential selling price per square foot of area in the newly developed property to be built on the site;

(b) the potential development costs that will be incurred by a developer in building the new property; and

(c) the profit that the developer expects to make from the new property.

(2) Drawing on his experience, Mr Varty estimated an accommodation value of approximately HK$1,200 to HK$1,400 per square foot for No 24 Ice House Street. Mr Varty stated at paragraph 7.6.2 of his affidavit of evidence in chief that this "assumes" that a new development on that site would attract a selling price of HK$2,400 to HK$2,600 per square foot, development costs in the order of HK$600 to HK$700 per square foot and a developer's profit of approximately 20%. Applying Mr Varty's formula for calculating accommodation value as discussed in paragraphs 165 to 167 of this judgment, the calculated accommodation values should be in the range of HK$1,300 to HK$1,567 per square foot:

(a) [HK$2,400 – (HK$700 x 1.20)] ÷ 1.20 = HK$1,300

(b) [HK$2,600 – (HK$600 x 1.20)] ÷ 1.20 = HK$1,567

(3) Next, the valuer assesses the potential gross floor area of the new development. This is arrived at by multiplying the area of the site by the plot ratio of the site. The "plot ratio" of a building is the ratio of the total gross floor area of the building to the area of the site. According to Mr Varty, Hong Kong building legislation restricts the plot ratio of a building according to the area of the site on which the building stands.

(4) According to Mr Varty, having regard to the size of the site on which No 24 Ice House Street stood, a potential development on that site alone would have a plot ratio of 5. However, if that site was merged with the land on which No 26 Ice House Street stood, it was possible to build a building with a plot ratio of 15 on the merged site. Similarly, if Nos 24, 26, 28 and 30 Ice House Street were merged, it would be possible to build a building with a plot ratio of 15 on the merged site. Thus, on its own, the potential gross floor area for No 24 Ice House Street would only be 4,740 square feet (948 square feet multiplied by a plot ratio of 5). However, if Nos 24 and 26 Ice House Street were developed jointly, the gross floor area of the two site redevelopment would be 25,545 square feet (combined site area of 1,703 square feet multiplied by a plot ratio of 15). Similarly, if Nos 24, 26, 28 and 30 Ice House Street were developed jointly, the gross floor area of the four site redevelopment would be 48,015 square feet (combined site area of 3,201 square feet multiplied by a plot ratio of 15).

(5) The valuer then multiplies the potential gross floor area of the new development to the accommodation value, and where appropriate, makes an upward adjustment to this figure to arrive at what he considers to be a fair valuation of the site. In Mr Varty's own words, the adjustment was "not a mathematical exercise but a judgment of what allowance to make".

(6) Using an accommodation value of between $1,200 and $1,400 per square foot, and treating No 24 Ice House Street as a single site without the opportunity of merger with adjoining sites, Mr Varty arrived at a figure of HK$5,690,000 to HK$6,640,000 and then added 10 to 20 percent (to account for the "proportionately higher value" of the ground floor in "small developments of this nature") to arrive at his valuation of HK$6,000,000 to HK$8,000,000. Using the same accommodation values and treating No 24 Ice House Street as part of a two site redevelopment with No 26 Ice House Street, Mr Varty arrived at a total value of HK$30,000,000 to HK$35,000,000 for the two sites. Using the same accommodation values and treating No 24 Ice House Street as part of a four site redevelopment with Nos 26, 28 and 30 Ice House Street, Mr Varty arrived at a figure of HK$57,600,000 to HK$67,220,000 and then made an upward adjustment of HK$2,780,000 to HK$7,400,000 (on account of the "scale of that development" and the corresponding "greater efficiency of the saleable area per floor") to arrive at his valuation of HK$65,000,000 to HK$70,000,000 for the four sites.

(7) Finally, if the site being valued was treated as part of a redevelopment with other sites, the valuer has to apportion the total value of the merged site amongst the component sites. In making the apportionment, a Class B site would be accorded a larger portion of the total value of the site than a Class A site. The apportionment would also take into account the relative site areas of the different sites. This apportionment was an exercise of discretion on the part of the valuer. Mr Varty could offer no explanation for why he attributed the percentages that he used to No 24 Ice House Street, beyond saying that they were based on his experience.

(8) Mr Varty decided that if No 24 Ice House Street was part of a two site development with No 26 Ice House Street, 66.6% of the combined value of HK$30,000,000 to HK$35,000,000 should be attributed to No 24 Ice House Street, even though No 24 Ice House Street contributed

only about 55.7% of the combined area of the two sites. Mr Varty also decided that if No 24 Ice House Street was part of a four site development with Nos 26, 28 and 30 Ice House Street, 37% of the combined value of HK$65,000,000 to HK$70,000,000 should be attributed to No 24 Ice House Street, even though No 24 Ice House Street contributed only about 29.6% of the combined area of the four sites.

190 It is therefore apparent that the residual valuation method of property valuation can be a very subjective exercise. There are at least two points in the process where the valuer makes a value judgment based on his experience. First, after calculating the figure arrived at by multiplying the potential gross floor area of the new development to the accommodation value, the valuer may make such upward adjustment as he deems fit. Second, where a Class B site is being valued as part of a multiple site redevelopment involving Class A sites, the valuer may make such apportionment of the value of the combined site as he deems fit. The calculation of the accommodation value also takes into account the valuer's estimates of the potential selling price per square foot in the new development, the amount that a developer will have to expend to redevelop the property and the amount of profit that the developer wishes to make from the redevelopment. Be that as it may, in the absence of contrary evidence, I was prepared to adopt Mr Varty's estimates as these were clearly matters within his field of competence. I was also prepared to defer to Mr Varty's expertise in relation to the two matters referred to in this paragraph that involved value judgment.

191 However, I took issue with Mr Varty's valuation of No 24 Ice House Street as part of a two site or four site redevelopment. A valuation in that manner would have been appropriate only if the administrators were in a position to sell No 24 Ice House Street as part of a collective sale either with No 26 Ice House Street or with Nos 26, 28 and 30 Ice House Street, as the case may be. In a collective sale, a developer is able to immediately unlock the "merger value" of the different sites, and is thus more prepared to offer a higher price to the individual owners of the different sites.

192 Given that No 24 Ice House Street was not sold collectively with Nos 26, 28 and 30 Ice House Street, Mr Varty would have to make the following assumptions in order to maintain that No 24 Ice House Street could have been sold at between HK$20,000,000 and HK$25,900,000 on account of its redevelopment potential as part of a two site or four site development:

(1) A developer would be prepared to pay the administrators the maximum value that No 24 Ice House Street could fetch as part of a development involving multiple sites, whether or not No 24 Ice House Street was sold as part of a collective sale; and

(2) The developer would offer the administrators the maximum amount that the developer would have been prepared to pay to acquire No 24 Ice House Street.

Neither of these assumptions was sound. The fact that Koledo paid the owner of No 26 Ice House Street only HK$5,600,000 (or HK$7,417.22 per square foot of site coverage) to acquire that property, notwithstanding the development potential of that property, was clear evidence to the contrary.

193 Mr Varty expressed the following view at paragraph 7.6.4 of his affidavit of evidence in chief:

The most obvious purchaser for 24 Ice House Street was clearly Koledo. Any competent adviser would have recommended that searches be undertaken on adjoining units, and in particular to ascertain the ownership of 26 Ice House Street, and by undertaking searches at the Land Registry which is a simple procedure open to the public, would have ascertained the name of the owner as "Koledo Company Limited" and would have seen the registered address of the Company. Indeed Koledo did eventually buy the property at HK$28m in mid May 1981. One must

ask therefore why the property was sold in early May 1981 to another party, Wild Fast, apparently without any contact having been made with Koledo.

194 In this passage, Mr Varty appeared to assume that Koledo would have been prepared to deal directly with the administrators. He also appeared to assume that Koledo would have been prepared to pay the administrators HK$28,000,000 for No 24 Ice House Street. However, the facts suggested otherwise. After acquiring No 26 Ice House Street from its owners directly in September 1980, Koledo made no attempt to acquire Nos 24, 28 and 30 Ice House Street directly from their owners. Instead, in each case, Wild Fast would step in to acquire the property from its owner, and then resell the property to Koledo at a higher price. If Koledo had truly intended to acquire the properties for redevelopment, why did it not approach the owners of Nos 24, 28 and 30 Ice House Street directly to acquire the properties from them? The facts suggested that Koledo deliberately chose to deal only through Wild Fast. For the reasons set out at paragraph 186 of this judgment, I did not think that the subsale of No 24 Ice House Street between Wild Fast and Koledo was carried out at arm's length. I doubt Koledo would have agreed to pay the administrators the price of HK$28,000,000 that it paid to Wild Fast. That price exceeded even Mr Varty's valuation of No 24 Ice House Street on the basis that it formed part of a four site development, and was clearly unjustifiable.

195 According to Mr Varty, on 17 July 1981, Nos 24 and 26 Ice House Street were collectively mortgaged by Koledo to the Hongkong and Shanghai Banking Corporation for the sum of HK$32,000,000. By then, No 26 Ice House Street would have appreciated in value to at least HK$13,500,000, that being the price that Wild Fast agreed to pay for No 28 Ice House Street on 13 July 1981. By then, Koledo had also realised the full merger value of Nos 24 and 26 Ice House Street by being the sole owner of both sites. There was no evidence led on whether No 24 Ice House Street had appreciated in value between 9 May 1981 and 13 July 1981. Given these circumstances, it would not be appropriate to assess the value of No 24 Ice House Street in May 1981 on the basis of the sum of HK$32,000,000 at which both Nos 24 and 26 Ice House Street had been mortgaged collectively in July 1981.

196 I think the reasonableness or otherwise of the price at which the administrators sold No 24 Ice House Street to Wild Fast can be tested in another way. According to paragraph 4.2.3 of Mr Varty's affidavit of evidence in chief, the average purchase price for "Grade B" space in 1981 was HK$2,573 per square foot. Mr Varty added that "Grade B accommodation" was "comparable to that which would be constructed at 24 Ice House Street". No 24 Ice House Street was a six storey commercial building comprising shops on the ground floor and five floors of office space that was built on a lot with an area of approximately 948 square feet. Going by Mr Varty's evidence when he was examined by the court, No 24 Ice House Street, as it stood, would have a "non-saleable area" (e.g. for a staircase or a lift). Mr Varty estimated that for a Class B redevelopment with a site area of about 1,703 square feet, about 300 square feet (for two staircases and one lift) would have to be set aside as "non-saleable area". Assuming that each floor of No 24 Ice House Street occupied a total area of about 948 square feet and had a "non-saleable area" of about 70 square feet, the total "saleable" floor area of No 24 Ice House Street would be about 5,268 square feet (calculated from [948 – 70] square feet x 6 floors). Applying the average purchase price for "Grade B" space in 1981 of HK$2,573 to the estimated total "saleable" floor area of about 5,268 square feet, one would arrive at a figure of HK$13,554,564. From this perspective, one can hardly say that the price of HK$13,700,000 at which the administrators sold No 24 Ice House Street to Wild Fast was unreasonably low.

197 I accept that the administrators may have been negligent in failing to obtain a proper valuation of No 24 Ice House Street before it was sold. However, the Plaintiff has not satisfied me that such negligence resulted in any loss to the estate. I did not think that it was appropriate to

adopt Mr Varty's valuation of No 24 Ice House Street in so far as it treated the property as part of a two site or four site redevelopment. A valuation in that manner would have been based on flawed assumptions that were contradicted by the facts. I also did not think that the price of HK$28,000,000 that Koledo ostensibly paid to Wild Fast reflected the market value of No 24 Ice House Street in May 1981. It was clear from the evidence that this transaction was not carried out at arm's length. Given that No 26 Ice House Street was sold to Koledo on 5 September 1980 for the sum of HK$5,600,000 and that Nos 28 and 30 Ice House Street were each sold to Wild Fast for the sum of HK$13,500,000 on 13 July 1981, and having regard to Mr Varty's evidence on the high volatility of the Hong Kong property market at the material time, I could not conclude that the administrators had sold No 24 Ice House Street at an undervalue when they sold it to Wild Fast for HK$13,700,000 on 9 May 1981. The burden was on the Plaintiff to show that the administrators had failed to sell No 24 Ice House Street at its market value as at 9 May 1981. The Plaintiff failed to discharge this burden.

198 There is one aspect of the First Defendant's evidence that troubled me. When the Plaintiff's counsel cross-examined the First Defendant on whether she had obtained a valuation for No 24 Ice House Street, the Malay interpreter translated her answer as: "I did not sell the house to the highest bidder or to the person who offered the most because the house, as I said, was an old house."

199 However, when the Plaintiff's counsel next asked the First Defendant whether she meant that she had received a higher offer but did not want to sell the property at the higher price, she replied as follows:

> I offered HK$15 million. They negotiated to HK$12 million and so on. Several months later, the price remains the same, and since that was the situation, I decided to sell at this price - HK$13.7 million.

The First Defendant's answer that she had attempted to negotiate the price to be paid for No 24 Ice House Street corrected the impression that First Defendant received but rejected a higher offer for No 24 Ice House Street. A few questions later, the First Defendant also said that she would sell the property to "the person who offered the highest price". In the circumstances, I did not think it was the First Defendant's intention to suggest that she had in fact received a higher offer for No 24 Ice House Street. I suspect that what the First Defendant actually meant to say in that curious answer was that she did not sell No 24 Ice House Street by auction (hence the reference to the "highest bidder") or tender (hence the reference to the "person who offered the most") because the property was an old property.

200 There was no evidence of any deliberate wrongdoing by the administrators in the sale of the property. There was no evidence that the First Defendant received any secret commissions from the sale of the property. There was also no reason for the First Defendant to defeat the interests of beneficiaries (who comprised herself and her children) in May 1981. After all, the Second Defendant and the Plaintiff were only married on 1 October 1982, and their marital woes only began much later. In the circumstances, I would assess the value of No 24 Ice House Street at HK$13,700,000.

No 32 Ice House Street

201 Although the Plaintiff never pleaded that No 32 Ice House Street belonged to the estate, the Plaintiff's counsel nevertheless submitted that "it is clear from the documents in the Deacons files ... that the Estate owned other properties which had never been disclosed, in particular 32 Ice House Street". The Plaintiff's counsel relied on a document exhibited at page 7877 of the Plaintiff's Bundle of Documents Volume 29. This was an unsigned copy of a letter dated 27 November 1978 addressed to the Deputy Commissioner of Estate Duty in Hong Kong which contained the following statement:

Please also confirm that we may forward the Deed of Satisfaction in respect of the deceased's property at No. 32 Ice House Street to you for execution. If so, kindly return the title deeds to us so that we can prepare the Deed of Satisfaction.

202 Although Volume 29 of the Plaintiff's Bundle of Documents was labelled "Hong Kong Properties – 32 Ice House Street", the document at page 7877 was in fact the only document which appeared to connect the Deceased with No 32 Ice House Street. Pages 7878 to 7892 and 7901 all referred to "Inland Lot No. 7579", which was clearly a reference to No 24 Ice House Street. Although pages 7893 to 7900 referred to Subsection 1 of Section L of Inland Lot No 617, which would appear to be a reference to No 32 Ice House Street, none of these documents connected the Deceased with No 32 Ice House Street. On the contrary, the extract of the Section Register showing the Record of Owners of No 32 Ice House Street exhibited at page 7896 showed clearly that the Deceased was never an owner of No 32 Ice House Street.

203 The Plaintiff did not call the maker of the document at page 7877 as a witness. The First Defendant was not cross-examined on this document. Nor was the First Defendant cross-examined on whether No 32 Ice House Street belonged to the estate. In the light of the rule in *Browne v Dunn* (1893) 6 R 67, the Plaintiff's counsel was clearly not entitled to make such a submission. Further, if No 32 Ice House Street did in fact belong to the Deceased, and if the Deputy Commissioner of Estate Duties was in fact notified of this, it begged the question why No 32 Ice House Street was not reflected in the estate duty schedule annexed to the Hong Kong grant. In the circumstances, I had no hesitation in finding that No 32 Ice House Street did not belong to the Deceased's estate.

Yuet Wah Mansion, Flat B on 1st Floor, No 53 Yuet Wah Street

204 The First Defendant did not obtain a valuation of Yuet Wah Mansion, Flat B on 1st Floor, No 53 Yuet Wah Street (the "Yuet Wah Mansion flat") before the property was sold to one Choy Kit Yu for HK$125,000 on or about 3 April 1978. Capitalising on this omission, the Plaintiff's counsel submitted that the flat should be valued at HK$205,000. He submitted that Mr Varty had carried out a "valuation" of the Yuet Wah Mansion flat and valued it at around HK$140,000 in 1977 to about HK$205,000 in 1978.

205 However, Mr Varty admitted during cross-examination that he did not carry out a valuation of the Yuet Wah Mansion flat. There was no evidence that Mr Varty inspected the property or assessed its condition. Mr Varty conceded that he did not carry out any research on the prices at which comparable properties within the same development were sold at the material time. All that Mr Varty relied on were official statistics on the average prices at which properties in a different district were sold in 1977 and 1978. Mr Varty admitted that these statistics, by themselves, were not a sufficient basis to arrive at any valuation of property and "should not be relied on alone".

206 It was also not true that Mr Varty valued the Yuet Wah Mansion flat at around HK$140,000 in 1977 to about HK$205,000 in 1978. What Mr Varty actually stated at paragraph 9.8 of his affidavit of evidence in chief was that "[b]ased upon the ... average sale price analysis [for properties in a different district], the average purchase price of a flat of the size of the subject property ... would be in the order of HK$140,000 in 1977 to about HK$205,000 in 1978", which was a different thing altogether.

207 As the Plaintiff did not provide any evidence of the market value of the Yuet Wah Mansion flat at the time that the administrators sold this property, she failed to discharge her burden of proving that the administrators sold this property at an undervalue. Accordingly, I would assess the value of the Yuet Wah Mansion flat at HK$125,000.

Rental Income for No 17 Shouson Hill Road West

208 The administrators sold No 17 Shouson Hill Road West to Wayette pursuant to a sale and purchase agreement dated 26 June 1980. According to this sale and purchase agreement:

(1) the sale was to be completed on or before 31 July 1980;

(2) the sale was subject to a tenancy agreement dated 20 June 1979 with Philip Morris for a term of three years from 1 August 1979 at HK$23,500 per month, exclusive of rates.

209 None of the parties provided a copy of the tenancy agreement dated 20 June 1979. However, it would appear from the sale and purchase agreement dated 26 June 1980 that the administrators collected rental of HK$23,500 per month for the 12 month period from 1 August 1979 to 31 July 1980, amounting to a total of HK$282,000. AA accepted in its report that the estate received rental amounting to a total of HK$282,000 from No 17 Shouson Hill Road West.

210 On the other hand, PWC "assumed that the Estate was earning rental income [in respect of No 17 Shouson Hill Road West] for the period from 22 October 1974 to the date of disposal on 26 June 1980". PWC based its assumption on correspondence between the First Defendant and Deacons dated between 12 October 1977 and 5 August 1978 (found at pages 7910 to 7924 of the Plaintiff's Bundle of Documents Volume 30). The following passages from these letters were pertinent:

(1) Letter dated 12 October 1977 from Deacons to the First Defendant: "As regards ... No. 17 Shouson Hill Road West, kindly let us know whether the present occupier of the property has agreed to quit and deliver up vacant possession of the said property to you."

(2) Letter dated 22 October 1977 from the First Defendant to Deacons: "The occupier of No. 17 Shouson Hill Road, West, has agreed to deliver up vacant possession by this December, 1977."

(3) Letter dated 17 July 1978 from the First Defendant to Deacons: "You will note from the undertaking that the present occupiers of the property must quit and deliver up vacant possession to me not later than 15th September, 1978. As such, kindly write to the occupier, Mrs. Ho, ... and ask her to quit within the specified date accordingly. ... Should Mrs. Ho fail to comply with the above said undertaking, legal action will be commenced against her ..."

(4) Letter dated 5 August 1978 from the First Defendant to Deacons: "As you may be aware this house is letting to Mr. Tong Djoe, who is now staying in Indonesia, for use."

211 These letters suggested that No 17 Shouson Hill Road West had been occupied with the First Defendant's knowledge and consent or acquiescence at the very least from 12 October 1977 to December 1977 and from 17 July 1978 to 15 September 1978. However, there was no evidence that the estate collected any rent from Mr Tong Djoe, Mrs Ho or any other occupier (whether authorised or not) of No 17 Shouson Hill Road West in the period preceding 1 August 1979. Further, as the Singapore grant of letters of administration was resealed in Hong Kong only on 17 August 1977, there was no basis to hold the administrators liable for any failure to impose and collect rent between 22 October 1974 (when the Deceased died) and 16 August 1977. While the beneficiaries of the Deceased's estate may have a cause of action against the First Defendant personally in respect of her failure to collect rent from the occupiers of No 17 Shouson Hill Road West during the periods when that property was occupied with her knowledge and consent or acquiescence, that did not translate the uncollected rent into an "asset" of the Deceased's estate that was available for distribution. In

the circumstances, I would assess the total rental income from No 17 Shouson Hill Road West at HK$282,000.

Rental Income for No 24 Ice House Street

212 The administrators sold No 24 Ice House Street to Wild Fast pursuant to a sale and purchase agreement dated 9 May 1981. According to this sale and purchase agreement:

(1) the sale was to be completed on or before 28 May 1981;

(2) the sale was subject to and with the benefit of:

(a) a tenancy agreement dated 1 September 1979 made between the First Defendant and Charles C H Lam in respect of the ground floor of No 24 Ice House Street;

(b) a tenancy agreement dated 5 August 1980 made between the First Defendant and Shroff & Co in respect of the first floor of No 24 Ice House Street;

(c) a tenancy agreement dated 8 October 1980 made between the First Defendant and Kremar & Company Limited (or "Kremar & Co Ltd") in respect of the second and fifth floors of No 24 Ice House Street;

(d) a tenancy agreement dated 24 April 1980 made between the First Defendant and Paul Tang in respect of the third floor of No 24 Ice House Street; and

(e) lettings and tenancies in respect of the fourth floor of No 24 Ice House Street at a monthly rental of HK$1,021, exclusive of rates.

213 The tenancy agreement dated 1 September 1979 made between the First Defendant and Charles C H Lam in respect of the ground floor of No 24 Ice House Street may be found at pages 8151 to 8152 of the Plaintiff's Bundle of Documents Volume 28A. It showed that this tenancy was for a term of 24 months from 1 September 1979 to 31 August 1981 at a monthly rent of HK$3,000 payable in advance on the first day of each calendar month. Thus, in the period of approximately 21 months from 1 September 1979 to 28 May 1981, the First Defendant would have received, on account of the estate, a total of HK$63,000 in respect of this tenancy. The affidavit of Tay Swee Sze filed on 18 July 1997 on behalf of the First Defendant also stated that the estate received rental income amounting to HK$63,000 in respect of the ground floor of No 24 Ice House Street.

214 None of the parties provided a copy of the tenancy agreement dated 5 August 1980 made between the First Defendant and Shroff & Co in respect of the first floor of No 24 Ice House Street. However, there are exhibited at pages 8032 and 8035 of the Plaintiff's Bundle of Documents Volume 28A pages from what appear to be earlier drafts of the sale and purchase agreement dated 9 May 1981 between the administrators and Wild Fast. These suggest that Shroff & Co paid a monthly rent of HK$3,800 per month. Thus, in the period of approximately 10 months from 5 August 1980 to 28 May 1981, the First Defendant would have received, on account of the estate, a total of about HK$38,000 in respect of this tenancy. The affidavit of Tay Swee Sze filed on 18 July 1997 also stated that the estate received rental income amounting to HK$38,000 in respect of the first floor of No 24 Ice House Street.

215 None of the parties provided a copy of the tenancy agreement dated 8 October 1980 made between the First Defendant and Kremar & Co Ltd in respect of the second and fifth floors of No 24

Ice House Street. However, the First Defendant exhibited at pages 778 to 780 of her affidavit of evidence in chief letters exchanged between Deacons and Kremar & Co Ltd in which the parties appeared to agree that:

(1) the rental for the second floor would be HK$3,000 per month;

(2) the rental for the fifth floor would be HK$1,089 per month; and

(3) the tenancies would commence from 1 October 1980 and expire on 31 August 1981.

These letters also suggested that Kremar & Co Ltd had been a tenant of the fifth floor at least from May 1980 to August 1980, although it was unclear from these letters what the precise rent and period of tenancy were. Thus, in the period of approximately 8 months from 1 October 1980 to 28 May 1981, the First Defendant would have received, on account of the estate, a total of about HK$32,712 in respect of the tenancies of the second and fifth floors. The affidavit of Tay Swee Sze filed on 18 July 1997 also stated that the estate received rental income amounting to HK$32,712 in respect of the second and fifth floors of No 24 Ice House Street. Other sums were also paid in respect of the earlier tenancy of the fifth floor by Kremar & Co Ltd. The calculation of the rental income for the earlier tenancy would be dealt with later in this judgment.

216 The tenancy agreement dated 24 April 1980 made between the First Defendant and Paul Tang in respect of the third floor of No 24 Ice House Street may be found at pages 8157 to 8169 and 8178 to 8179 of the Plaintiff's Bundle of Documents Volume 28A. It showed that this tenancy was for a term of 18 months from 1 March 1980 to 31 August 1981 at a monthly rent of HK$2,500 payable in advance on the first day of each calendar month. Thus, in the period of approximately 15 months from 1 March 1980 to 28 May 1981, the First Defendant would have received, on account of the estate, a total of HK$37,500 in respect of this tenancy.

217 There was no evidence as to when the lettings and tenancies in respect of the fourth floor of No 24 Ice House Street at a monthly rental of HK$1,021 commenced. However, the affidavit of Tay Swee Sze filed on 18 July 1997 stated that the estate received rental income in respect of the fourth floor of No 24 Ice House Street from 24 April 1980 to 28 May 1981. Thus, in the period of approximately 13 months from 24 April 1980 to 28 May 1981, the First Defendant would have received, on account of the estate, a total of about HK$13,273 in respect of this tenancy.

218 At paragraph 105 of her affidavit of evidence in chief, the First Defendant stated as follows:

> From 1974 to 1980, [No 24 Ice House Street] was rented on an ad hoc basis to tenants at the rental of approximately HK$1,000.00 per month. The units in the property were let out on a very informal basis. Tenants would contact us directly and request for the property to be leased for one or two months. The rental were collected by the solicitors. Due to the passage of time, I am unable to recall how much rental was collected from Ice House prior to the tenancy agreement.

219 Implicit in this passage were the following unqualified admissions:

(1) Although the administrators only obtained the Hong Kong grant on 17 August 1977, the estate had in fact collected rental income in respect of No 24 Ice House Street through the estate's solicitors from 1974 to 1980.

(2) The "units" in No 24 Ice House Street were rented on an ad hoc basis at approximately

HK$1,000 per month for one or two months at a time.

220 The Deceased died on 22 October 1974, so the ad hoc tenancies that the First Defendant referred to could only have begun on or after 23 October 1974. These ad hoc tenancies would have ended before the commencement of the tenancies referred to in the sale and purchase agreement dated 9 May 1981. It would appear from the sale and purchase agreement dated 9 May 1981 that the "units" referred to by the First Defendant were in fact entire floors of No 24 Ice House Street. Having regard to these matters, if the First Defendant's admissions were accepted at face value, the amount of rent that the estate's solicitors could have collected on behalf of the estate from the ad hoc tenancies would be HK$399,000, calculated as follows:

(1) HK$58,000 in respect of the ground floor for the period of about 58 months from 23 October 1974 to 31 August 1979;

(2) HK$69,000 in respect of the first floor for the period of about 69 months from 23 October 1974 to 4 August 1980;

(3) HK$71,000 in respect of the second floor for the period of about 71 months from 23 October 1974 to 30 September 1980;

(4) HK$64,000 in respect of the third floor for the period of about 64 months from 23 October 1974 to 29 February 1980;

(5) HK$66,000 in respect of the fourth floor for the period of about 66 months from 23 October 1974 to 23 April 1980; and

(6) HK$71,000 in respect of the fifth floor for the period of about 71 months from 23 October 1974 to 30 September 1980.

221 In *Attorney General v Ching Kwong Yew* [1993] 2 SLR 225, the executors of a deceased person applied for a declaration that the Commissioner of Estate Duties had wrongly included two sums in his assessment of the value of the deceased's estate for estate duty purposes. The sums represented the proceeds of sale of the deceased's shares in two companies. The executors argued that they were not answerable to the Commissioner for any asset that they were unable to trace and which did not come into their possession. The High Court judge granted the declaration sought as he was of the view that the executors had taken all reasonable steps to trace the two sums. The Court of Appeal allowed the Commissioner's appeal and upheld the Commissioner's assessment of the value of the deceased's estate. In so deciding, the Court of Appeal made the following observations on the duties of executors and administrators to account for assets belonging to a deceased person (at page 230):

> It was not disputed that the shares in the two companies had been part of the property of the deceased. Accordingly, if the shares had indeed been sold, the respondents as the accountable persons had the responsibility to account for the sale proceeds. Whether or not they discharged the burden of proof which had shifted to them depended essentially on the evidence of the efforts made by them to trace the whereabouts of the two sums.
>
> ... The respondents repeatedly asserted that a sale of the shares took place with payment being made in cash. However, they did not tender any proper evidence to show that the proceeds of sale ceased to form part of the deceased's property, and the assumption must be that the proceeds of sale remained with the deceased until proven otherwise. Merely insisting that the

sale proceeds are untraceable without more cannot be an example of the exercise of due diligence which would be expected of them.

222 Having regard to the First Defendant's unqualified admissions described in paragraphs 218 and 219 of this judgment, the amount of rent that the estate's solicitors could have collected on behalf of the estate from the ad hoc tenancies would be HK$399,000. The First Defendant could have qualified her admissions by deposing to the occupancy rates of the different floors or "units" at No 24 Ice House Street under the ad hoc tenancies, but she did not do so. Nor did the First Defendant produce, or state what she did to try to locate, records evidencing the amount of rent that was actually collected by the estate's solicitors. Having implicitly admitted that the estate's solicitors could have collected rental income of up to HK$399,000 in respect of the ad hoc tenancies, as the accountable party under the judgment dated 16 July 2003, the First Defendant bore the burden of proving the precise amount of rent collected. The First Defendant could not and did not discharge this burden merely by asserting that she was unable to recall how much rental was collected. Without any proper evidence that the occupancy rates under the ad hoc tenancies were less than 100% or that the rental income collected under the ad hoc tenancies was less than HK$399,000, the assumption must be that HK$399,000 was collected.

223 In the circumstances, I would assess the total rental income from No 24 Ice House Street at HK$583,485, calculated as follows:

	Tenancy	Amount (HK$)
1	Tenancy agreement dated 1 September 1979 with Charles C H Lam in respect of ground floor of No 24 Ice House Street	63,000
2	Tenancy agreement dated 5 August 1980 with Shroff & Co in respect of first floor of No 24 Ice House Street	38,000
3	Tenancy agreement dated 8 October 1980 with Kremar & Co Ltd in respect of second and fifth floors of No 24 Ice House Street	32,712
4	Tenancy agreement dated 24 April 1980 with Paul Tang in respect of third floor of No 24 Ice House Street	37,500
5	Lettings and tenancies from 24 April 1980 to 28 May 1981 in respect of fourth floor of No 24 Ice House Street	13,273
6	Other ad hoc tenancies of "units" or floors in No 24 Ice House Street	399,000

	Tenancy	Amount (HK$)
	Total	583,485

Sin Hua Trust Savings & Commercial Bank Account No 031-349-020456-8

224 The Plaintiff's counsel submitted that the funds in Sin Hua Trust Savings & Commercial Bank Account No 031-349-020456-8 belonged to the estate. He reasoned as follows:

> 436. The 1st Defendant has admitted that the Sin Hua Trust bank accounts contained trust monies mixed with her own monies. The onus of proof is therefore on the 1st Defendant to prove which part of the same is her own, in the absence of which the whole shall be deemed to be trust monies and this is for all accounts with Sin Hua and not just the one mentioned above.
>
> 437. M/s PricewaterhouseCoopers have had sight of various documents in particular receipts from August 1990 to December 1993 in relation to this account which amounted to HK$47,957,940.

225 PWC also expressed the view that the funds in Sin Hua Trust Savings & Commercial Bank Account No 031-349-020456-8 belonged to the estate. Its reasons for reaching this conclusion and for assessing the value of this asset at HK$47,957,940 were set out at paragraphs 4.15 to 4.21 of their report.

226 Several bank accounts with Sin Hua Trust Savings & Commercial Bank and/or Sin Hua Bank were referred to in the course of the inquiry and in the documents exhibited in the Plaintiff's Bundle of Documents Volume 36. While the First Defendant had admitted that funds belonging to the estate had been deposited with Sin Hua Trust Savings & Commercial Bank, it did not necessarily follow that every bank account maintained by the First Defendant with Sin Hua Trust Savings & Commercial Bank and/or Sin Hua Bank was an asset belonging to the estate. Each bank account was a separate and distinct bank account. The Plaintiff bore the burden of showing which of the bank accounts belonged to the estate.

227 In paragraph 102 of the First Defendant's affidavit of evidence in chief, the First Defendant stated that the sale proceeds of No 17 Shouson Hill Road West were "deposited into" a "Sin Hua Trust account" that was "effectively used as an estate account for making distributions to the beneficiaries, in particular, [the Second Defendant]". In paragraphs 111 and 112 of the same affidavit of evidence in chief, the First Defendant stated:

> 111. ... Out of the total sale proceeds, HK$130,000.00 were deposited with Sin Hua Trust Savings & Commercial Current account 14064. ...
>
> 112. I have effectively used my personal Sin Hua Bank account as the Hong Kong Estate account as I had deposited sales proceeds of the Hong Kong assets into this account and on various occasions distributed monies to [the Second Defendant] and the other beneficiaries from this bank account.

228 When these passages are read together, it would appear that the First Defendant was in fact referring to her current account No 14064 with Sin Hua Trust Savings & Commercial Bank when she referred to the Hong Kong "estate account" from which distributions were made to the beneficiaries. At the very least, this account held the proceeds of sale of No 17 Shouson Hill Road West (amounting

to HK$4,000,000) and HK$130,000 from the proceeds of sale of the Pearl Island Villa flats.

229 In contrast, there was no evidence that any of the funds deposited in Sin Hua Trust Savings & Commercial Bank Account No 031-349-0-020456-8 belonged to the estate. A careful review of the bank statements exhibited at pages 8680 to 8751 of the Plaintiff's Bundle of Documents Volume 36 would show that none of the alleged distributions made to the Second Defendant originated from this account. Paragraph 102 of the First Defendant's affidavit of evidence in chief did not lend any support to PWC's assertion that this account was the "estate account" referred to by the First Defendant. There was no basis at all for such an assertion.

230 In the circumstances, I made the following findings:

(1) The funds in Sin Hua Trust Savings & Commercial Bank Account No 031-349-020456-8 did not belong to the estate; and

(2) The First Defendant used her current account No 14604 as the "estate's account".

Sin Hua Trust Savings & Commercial Bank Account No 031-349-5756545

231 Sin Hua Trust Savings & Commercial Bank Account No 031-349-57562545 was a one-month fixed deposit in the name of the First Defendant for the sum of NZ$2,308,869.07 that matured on 29 May 1989. The Plaintiff's counsel submitted that the funds in this account belonged to the estate. He reasoned as follows:

(1) The First Defendant had remitted a sum of NZ$447,000 to the Second Defendant from a Sin Hua Trust Savings & Commercial Bank account on 29 June 1989.

(2) As the First Defendant had claimed that this remittance was a distribution to the Second Defendant, the funds from which this remittance was made belonged to the estate.

(3) It was likely that this remittance originated from Sin Hua Trust Savings & Commercial Bank Account No 031-349-57562545.

232 At paragraph 118 of her affidavit of evidence in chief, the First Defendant explained the origin of the NZ$2,308,869.07 deposit in the following terms:

> On or about 29 May 1989, the HK$ to NZ$ exchange rate was very favourable. As such, I instructed my bankers at Sin Hua Trust to convert some of my money into NZ$ to take advantage of the foreign exchange appreciation.

Thus, it would appear from this passage that the First Defendant claimed ownership of the entire sum of NZ$2,308,869.07.

233 However, at paragraph 5 of the same affidavit, the First Defendant described exhibit "L-16" of her affidavit as "Documents relating to distribution to [the Second Defendant]". Page 879 of exhibit "L-16" displayed the following documents:

(1) the Foreign Currency Fixed Deposit Receipt in respect of the deposit of NZ$2,308,869.07 in Sin Hua Trust Savings & Commercial Bank Account No 031-349-57562545; and

(2) a set of "DEPOSITOR'S INSTRUCTIONS" written in a mix of Chinese and English characters which appeared to be signed by the First Defendant,

while page 880 of exhibit "L-16" displayed an English translation of the "DEPOSITOR'S INSTRUCTIONS", the material portion of which stated: "Please transfer the amount of NZD 447,000 being part of the amount to the account of Ong Siauw Tjoan and extend the balance + 0.1875% for one month."

234 The Foreign Currency Fixed Deposit Receipt and the "DEPOSITOR'S INSTRUCTIONS" were also exhibited at page 13 of the First Defendant's earlier affidavit filed on 12 December 1997, as part of a bundle of documents collectively marked "LLH-6". At paragraph 4 of that affidavit, the First Defendant described "LLH-6" as "copies of the documents supporting the payments already made to the 2nd Defendant".

235 It was therefore clear that the First Defendant had relied on both the Foreign Currency Fixed Deposit Receipt and the "DEPOSITOR'S INSTRUCTIONS" collectively as evidence that the sum of NZ$447,000 had been paid to the Second Defendant. There was no other plausible reason for the inclusion of the Foreign Currency Fixed Deposit Receipt. One could therefore reasonably infer that the sum of NZ$447,000 that was paid to the Second Defendant did in fact originate from Sin Hua Trust Savings & Commercial Bank Account No 031-349-57562545.

236 By asserting that the payment of NZ$447,000 was a distribution to the Second Defendant, the First Defendant implicitly admitted that:

(1) the sum of NZ$447,000 belonged to the estate; and

(2) the bank account from which the payment was made contained funds belonging to the estate.

On the other hand, the First Defendant had unequivocally asserted that she owned all the funds in Sin Hua Trust Savings & Commercial Bank Account No 031-349-57562545, and she was never cross-examined on this allegation. Apart from the First Defendant's implicit admission, there was no evidence that the funds in this account originated from the Deceased or the estate. In the circumstances, I found that of the funds in Sin Hua Trust Savings & Commercial Bank Account No 031-349-57562545:

(1) NZ$447,000 belonged to the estate; and

(2) the remaining NZ$1,861,869.07 belonged to the First Defendant.

237 According to the Foreign Currency Fixed Deposit Receipt, the deposit would have earned interest at 13% per annum upon maturity on 29 June 1989 after being left with the bank for 31 days. It was not disputed that the deposit was in fact held to maturity. As such, the estate's portion of NZ$447,000 would have attracted interest amounting to NZ$4,935.37, calculated as follows:

NZ$447,000 x 13% x 31/365 = NZ$4,935.37

238 In the circumstances, I would value the estate's share of the funds in Sin Hua Trust Savings & Commercial Bank Account No 031-349-57562545 at NZ$451,935.37 upon the maturity of the deposit on 29 June 1989. As there was no evidence that these funds were derived from any other assets belonging to the Deceased, the sum of NZ$451,935.37 would have to be separately accounted for.

Grand Trading Company

239 Grand Trading Company or "Grand Trading Co" was a trading entity in which the Deceased had an interest. In its report, PWC described Grand Trading Co as "a company registered in Hong Kong in which [the Deceased] was the sole proprietor". Grand Trading Co maintained bank accounts with United Commercial Bank and Banque Nationale de Paris plc. It also maintained an account in the name of "Grand Trading Company Ltd" with Bank Mees & Hope NV. An irrevocable letter of credit with a credit balance of £105,061.70 (as at 19 January 1976) had been opened in favour of Grand Trading Co by Marine Midland Bank.

240 In operating Grand Trading Co, the Deceased was assisted by one Mr Batara Pane Alamsjah or "B P Alamsjah". In an undated document displayed at page 179 of the Plaintiff's Bundle of Documents described as "Anton Piller Order Core Bundle No 1", which appeared to be Mr Alamsjah's resume, Mr Alamsjah was described as "the only representative of [the Deceased] in Europe for the last ten years on a 5 % commission basis". Page 187 of the same bundle displayed a document dated 2 February 1973 addressed to Bank Mees & Hope NV in which Grand Trading Co authorised Mr Alamsjah "in general to represent us for all transactions and to bind us by his actions". This document was also described in its body as a "power of attorney" given by Grand Trading Co which "will remain valid until you will have received a registered letter, by which we inform you of the withdrawal thereof".

241 The Plaintiff's counsel submitted that the following were assets belonging to the Deceased:

(1) A sum of DM5,713,772.28 standing in the account of "Grand Trading Company Ltd" with Bank Mees & Hope NV as at 21 November 1974;

(2) Interest on the sum of DM5,713,772.28 up to 29 August 1991 amounting to DM10,472,524;

(3) A sum of £2,933,178 said to have been earned by the Deceased from various sales transactions carried out by Grand Trading Co; and

(4) Interest on the sum of £2,933,178 up to 29 August 1991 amounting to £14,824,905.

In making this submission, the Plaintiff's counsel relied on paragraphs 8.5 to 8.6 of the PWC report.

242 The document relied on by the Plaintiff's counsel as evidence that DM5,713,772.28 was standing in the account of "Grand Trading Company Ltd" with Bank Mees & Hope NV as at 21 November 1974 was not formally tendered in any of the Plaintiff's numerous bundles of documents. Instead, it appeared at Tab 25 of the annexures to an annotated copy of the PWC report. The document appeared to be a bank statement dated 27 November 1974 addressed to Grand Trading Co and Mr Alamsjah. It displayed the following entries:

OMSCHRIJVING – DESCRIPTION – UMSCHREIBUNG	VAL	DT=DEBIT. CR=CREDIT

OLD BALANCE DD 21-11-74		5.713.772,28 CR
SUNDRIES	25-11-74	6.000.000,00 DT
NEW BALANCE DD 27-11-74		286.277,72 DT

243 These entries showed that a sum of DM6,000,000 was withdrawn on 25 November 1974. This amount could not have been withdrawn by any of the administrators as they had not obtained any grants of letters of administration in any jurisdiction as at November 1974. The amount was probably withdrawn by Mr Alamsjah under the "power of attorney" given by Grand Trading Co. There was no evidence on how the amount withdrawn was applied. It would appear from the documents displayed at pages 181 to 193 of the Plaintiff's Anton Piller Order Core Bundle No 1 that Mr Alamsjah continued to trade under the name and style of Grand Trading Co well after the Deceased's death. Although there was some correspondence between the First Defendant and Mr Alamsjah on Grand Trading Co, there was no evidence that Mr Alamsjah had paid over any money to the First Defendant. The First Defendant denied receiving any money from Mr Alamsjah, and there was no evidence to the contrary. In the circumstances, I found that the estate did not realise any of the funds in Grand Trading Co's account with Bank Mees & Hope NV.

244 PWC computed the sum of £2,933,178 said to have been earned by the Deceased from various sales transactions carried out by Grand Trading Co in the following manner:

(1) PWC had "seen documents which show that there were certain sales transactions committed by Grand Trading Co Ltd worth approximately £3,087,555".

(2) After deducting Mr Alamsjah's commission of £154,378, the estate was left with a balance of £2,933,178.

245 The only document tendered by the Plaintiff that made a reference to the sum of £3,087,555 was Mr Alamsjah's resume displayed at page 179 of the Plaintiff's Anton Piller Order Core Bundle No 1. According to the resume, Mr Alamsjah had worked on four transactions valued at a total of £3,087,555.76 that entitled him to commission amounting to £154,377.71. What PWC conveniently ignored was a statement in the resume that the Deceased "made a total profit with those transactions of B.£. 1.333.007.60". The undated resume did not document any sales transaction – it merely recorded what the author of the resume would have the reader believe were Mr Alamsjah's achievements. Mr Alamsjah was not called to attest to the veracity of the resume. There was no evidence as to when the transactions were carried out. Nor was there any evidence as to when, if at all, the Deceased made the alleged profit of £1,333,007.60. In any event, there was no evidence that the administrators received any money from the trading activities carried out by Grand Trading Co and/or Mr Alamsjah. In the circumstances, I found that the estate did not realise any income from the trading activities carried out by Grand Trading Co.

246 Grand Trading Co had bank accounts with United Commercial Bank and Banque Nationale de Paris plc. The credit balance of HK$703.89 with United Commercial Bank was accounted for as an undisputed asset in paragraph 158(5) of this judgment. The bank account with Banque Nationale de Paris plc had a credit balance of £1,470.34 as at 31 December 1975 (see page 8580 of the Plaintiff's Bundle of Documents Volume 35). Of this, a sum of £1,430.34 was paid to Robert Gore & Company (the English solicitors for the administrators) on 30 October 1986, the bank having deducted £40 on account of premium paid to its insurers for an "Absence of Grant on Representation Indemnity" (see page 8615 of the Plaintiff's Bundle of Documents Volume 35). In the circumstances, I would increase the value of Grand Trading Co by £1,430.34 on account of the credit balance in its Banque Nationale de Paris plc account.

247 Although an irrevocable letter of credit with a credit balance of £105,061.70 (as at 19 January 1976) had been opened in favour of Grand Trading Co by Marine Midland Bank (see page 8619 of the Plaintiff's Bundle of Documents Volume 35), there was no evidence that this sum was realised. As such, it would not be appropriate to treat this as an asset.

Hong Kong Estate Expenses

248 According to the AA report, the estate paid the following expenses:

(1) Legal fees HK$41,735

(2) Ice House Street/Shouson Hill expenses HK$257,450

(3) Pearl Island Villa renovation expenses HK$2,778

(4) Estate duty HK$677,947

(5) Profit tax HK$87,750

(6) Payment for overdraft HK$5,245,804

(7) Miscellaneous expenses HK$80

(8) Payments made by First Defendant HK$405,555

249 At paragraph 4.1 of the PWC report, PWC agreed with AA's computation of the expenses except in relation to two items, namely:

(1) Estate duty, which PWC contended should be reduced to HK$673,417; and

(2) Payments made by the First Defendant on behalf of the estate, which PWC contended should be disregarded as there was a double-counting of the estate's expenses.

Estate Duty

250 AA's computation of the estate duty payable was set out at note 4.15 at page 12 of Tay Swee Sze's affidavit filed on 16 June 1999. It included a sum of HK$4,530 alleged to have been paid on 23 August 1978 pursuant to a letter dated 23 August 1978 from Deacons to the Estate Duty Office. I was unable to locate the letter dated 23 August 1978. What was more significant was the fact that this alleged payment of HK$4,530 was not reflected in the Estate Duty Office's statements

of payment of estate duty found at pages 6918, 6924 and 6925 of the Plaintiff's Bundle of Documents Volume 25. A careful tabulation of the payments received by the Estate Duty Office clearly showed that the estate only incurred a total of HK$673,417.12 as estate duty. I therefore assessed this item of expense at HK$673,417.12.

Payments made by the First Defendant

251 AA's computation of the payments made by the First Defendant on behalf of the estate was set out at note 4.21 at page 14 of Tay Swee Sze's affidavit filed on 16 June 1999. The sum of HK$405,555 claimed by the First Defendant as reimbursement for expenses paid on behalf of the estate comprised the following items:

(1) HK$130,370.55 in respect of payment of estate duty (including interest);

(2) HK$77,750 in respect of payment of profit tax; and

(3) HK$197,434.30 in respect of other expenses.

252 I accept that the First Defendant paid HK$130,375.55 of the estate duty and HK$77,750 of the profit tax on behalf of the estate. I also accept that the First Defendant was entitled to, and did obtain, reimbursement of those payments from the estate. However, it was clearly mathematically wrong for AA to charge the First Defendant's claims for reimbursement of those expenses after AA had already separately accounted for the same expenses under the headings of "estate duty" and "profit tax". When the First Defendant paid those expenses on behalf of the estate, the estate was not put out of pocket. When the estate later reimbursed the First Defendant for those payments, the estate was paying for those expenses for the first time. In the circumstances, there was no justification for charging the sums of HK$130,370.55 and HK$77,750 to the estate a second time on account of the reimbursement of expenses paid by the First Defendant on behalf of the estate.

253 AA explained how it derived the figure of HK$197,434.30 in respect of other expenses allegedly paid by the First Defendant on behalf of the estate in the following terms:

> Based on the Estate's account maintained with Deacons, a total of HK$372,715.38 was received by Deacons on behalf of the Estate and total expenses of HK$570,149.68 was paid on behalf of the Estate, leaving a deficit of HK$197,434.30. [The First Defendant] had paid a total sum of HK$216,984.36 into the Estate's account with Deacons. We have taken the deficit of HK$197,434.30 to be the Estate's expenses which were paid by [the First Defendant] on its behalf.

254 The estate accounts maintained by Deacons can be found in a truncated form at pages 7030 to 7033 of the Plaintiff's Bundle of Documents Volume 25. They were also exhibited in full spreadsheet format at pages 762 and 763 of the First Defendant's affidavit of evidence in chief. A careful examination of the estate accounts will show that the sum of HK$570,149.68, which AA wrongly referred to as "expenses", comprised the following payments made by Deacons:

(1) Legal costs and disbursements paid to Deacons and PC Woo & Co (the estate's previous solicitors) amounting to HK$257,322.26;

(2) Estate duty amounting to HK$170,899.55;

(3) Profits tax amounting to HK$10,000;

(4) Water charges in respect of No 17 Shouson Hill Road West amounting to HK$128.10;

(5) Sundry expenses relating to the Pearl Island Villa flats amounting to HK$1,678.50;

(6) Government rates amounting to HK$121.27; and

(7) HK$130,000 of the proceeds of sale of the Pearl Island Villa flats, which were transferred to the First Defendant's current account No 14064 with Sin Hua Trust Savings & Commercial Bank.

255 The same estate accounts recorded that:

(1) Deacons received a total of HK$372,715.38 and US$300 from the realisation of various estate assets; and

(2) the First Defendant paid Deacons a total of HK$216,984.36 on account of Deacons' costs and disbursements.

256 Therefore, the difference of HK$197,434.30 between estate funds received by Deacons and estate funds paid out by Deacons related solely to legal costs and disbursements incurred by the estate. According to the estate accounts, those legal costs and disbursements amounted to a total of HK$257,322.26 and were evidenced by:

(1) PC Woo & Co's debit note dated 7 July 1977 for the sum of HK$63,942.10;

(2) Deacons' debit note No 2737/76 for the sum of HK$89,286.58;

(3) Deacons' debit note No 561/78 for the sum of HK$65,032.33; and

(4) Deacons' debit note No 8615480 for the sum of HK$39,061.25.

HK$59,887.96 of those legal costs and disbursements had been paid from the proceeds of realisation of estate assets, and those legal costs and disbursements would include the sum of HK$41,735 that had been separately reflected as "legal fees". The remaining legal costs and disbursements amounting to HK$197,434.30 were not separately accounted for in AA's list of Hong Kong estate expenses. In the circumstances, the sum of HK$197,434.30 that had been paid by the First Defendant in respect of legal costs and disbursements and for which the First Defendant was entitled to be reimbursed by the estate should be reflected as a separate estate expense item.

Value of Deceased's Estate in Hong Kong

257 Having regard to the matters set out at paragraphs 158 to 247 of this judgment, the value of the notional pool of Hong Kong assets available for distribution is assessed at HK$25,192,547.17, NZ$451,935.37 and £1,430.34, calculated as follows:

	Asset	Value of Asset (HK$ unless otherwise indicated)
1	American Express traveller's cheques (US$300) and other traveller's cheques (US$1,000)	6,039.00
2	Balance on current account with Algemene Bank Nederland NV	1,490.00
3	Balances on fixed deposit accounts with United Commercial Bank (with accrued interest)	5,370,645.17
4	1,900 shares in Ramayama Financial Ltd at HK$100 each	190,000.00
5	Deceased's interest in the firm Grand Trading Co (United Commercial Bank account)	704.00
6	Deceased's interest in the firm Orliandokco	673,020.00
7	Mercedes Benz car under registration number AS8069	15,000.00
8	Proceeds of sale of No 17 Shouson Hill Road West	4,000,000.00
9	Proceeds of sale of No 24 Ice House Street	13,700,000.00
10	Proceeds of sale of Yuet Wah Mansion, Flat B on 1st Floor	125,000.00
11	Proceeds of sale of Pearl Island Villa Flats 5 and 7 on 1st Floor of Block F4	205,000.00
12	Bulldozer	17,491.00
13	Avoonsco – account with Deutsche Bank (DM579.16)	1,246.00

	Asset	Value of Asset (HK$ unless otherwise indicated)
13	Deceased's household goods and personal effects at No 17 Shouson Hill Road West	1,000.00
14	Deceased's balance with Wells Fargo Bank	20,427.00
15	Rental income for No 17 Shouson Hill Road West	282,000.00
16	Rental income for No 24 Ice House Street	583,485.00
	Sub-Total for assets in HK$	25,192,547.17
17	Sin Hua Trust Savings & Commercial Bank Account No 031-349-5756545	NZ$451,935.37
18	Deceased's interest in the firm Grand Trading Co (Banque Nationale de Paris plc)	£1,430.34

258 Having regard to the matters set out at paragraphs 248 to 256 of this judgment, the legitimate expenses of the Deceased's estate in Hong Kong are assessed at HK$6,506,448.42, calculated as follows:

	Expense	Amount of Expense (HK$)
1	Legal fees	41,735.00
2	Ice House Street/Shouson Hill expenses	257,450.00
3	Pearl Island Villa renovation expenses	2,778.00

	Expense	Amount of Expense (HK$)
4	Estate duty	673,417.12
5	Profit tax	87,750.00
6	Payment for overdraft (with United Commercial Bank)	5,245,804.00
7	Miscellaneous expenses	80.00
8	Payments made by First Defendant on behalf of the estate	197,434.30
	Total	6,506,448.42

259 The difference in value between HK$ assets and the HK$ expenses was HK$18,686,098.75, calculated as follows:

HK$25,192,547.17 - HK$6,506,448.42 = HK$18,686,098.75

In the circumstances, the value of the Deceased's estate in Hong Kong is assessed at HK$18,686,098.75, NZ$451,935.37 and £1,430.34.

The Malaysian Assets

260 The First Defendant's duly authorised attorneys were granted letters of administration in respect of the Deceased's estate by the High Court of Malaya at Kuala Lumpur on 13 April 1978. The Malaysian grant was issued on 13 March 1979. According to the estate duty schedule annexed to the grant, the Deceased owned the following assets, valued at a total of RM487,733.93 at the time of his death:

(1) Cash at Oversea-Chinese Banking Corporation Ltd Johore Bahru – C/A No 1958 valued at RM233.93; and

(2) 325,000 shares in United Plywood & Sawmills Sdn Bhd valued at RM487,500.

261 PWC and AA agreed on the following computation of the value of the Malaysian assets that were available for distribution:

	Asset	Value of Asset (RM)

	Asset	Value of Asset (RM)
1	Cash at Oversea-Chinese Banking Corporation Ltd Johore Bahru – C/A No 1958	234
2	Net sale proceeds of 325,000 shares in United Plywood & Sawmills Sdn Bhd	448,223
3	Dividend income from United Plywood & Sawmills Sdn Bhd	43,875
	Total	492,332

262 According to the AA report, after a total of RM113,750 had been distributed to the Third and Fourth Defendants, the balance of the sales proceeds of the shares and the dividend income were remitted to the estate's Singapore solicitors (Lee & Lee) and subsequently paid into the estate's bank account in Singapore. The sales proceeds and dividend income were presumably converted to Singapore currency in 1979, when the Malaysian grant was issued. As the bulk of the Malaysian assets were converted to Singapore currency in 1979, and as the beneficiaries were primarily resident in Singapore at the material time, I was of the view that the proper S$/RM exchange rate for calculating the value of the Malaysian assets would be that applicable in 1979.

263 AA used an exchange rate of RM1 = S$0.9937 (which it stated was the prevailing S$/RM exchange rate in 1979) in calculating the balance due to or from each beneficiary. However, AA did not state the S$ value of the Deceased's estate in Malaysia. PWC did not state what exchange rate it used in its report. However, PWC's conversion of the value of RM492,332 to S$485,528 would give a slightly less favourable exchange rate of RM1 = S$0.98618. In the circumstances, I would adopt S$485,528 as the value of the Deceased's estate in Malaysia.

The Indonesian Assets

264 The administrators did not commence any probate proceedings in Indonesia. The First Defendant's reasons for this were set out at paragraph 87 of her affidavit of evidence in chief. The general tenor of her evidence was that she had encountered considerable difficulty trying to locate the Deceased's assets and that she had reservations about the legal process in Indonesia. However, with the assistance of an Indonesian lawyer named Dr Adnan Buyung Nasution ("Dr Buyung"), she was able to recover the following assets:

(1) Proceeds of sale of the Deceased's shares in PT Bank Rama amounting to Rp100,000,000; and

(2) 4,000 shares in PT Gunadjaja Indah with a net value of Rp3,466,666,667.

The Admitted Assets

265 According to paragraph 89 of the First Defendant's affidavit of evidence in chief, the shares in PT Bank Rama were sold in 1977, the sale proceeds amounting to Rp100,000,000 were paid

over two to three months, and the amount was utilised within three years to pay for the education of the Second and Third Defendants. It would also appear from the First Defendant's evidence that the sum of Rp100,000,000 had been converted to Singapore dollars in 1977 at an exchange rate of S$1 = Rp1,000.

266 The First Defendant's explanation for how she acquired the shares in PT Gunadjaja Indah and how their value was computed is set out at paragraphs 91 to 95 of the First Defendant's affidavit of evidence in chief. As at 28 December 1974, PT Gunadjaja Indah had issued 5,790 registered shares and 210 bearer shares, each share having a par value of Rp 100,000. However, only 36⅔% of the issued shares, with a total value of Rp 220,000,000, were fully paid-up. The Deceased had been issued 4,860 of the 5,790 registered shares in PT Gunadjaja Indah. However, after the Deceased's death, one of the company's shareholders "unilaterally changed the composition of the shares of the company". As at 31 July 1989, the value of the Deceased's shareholding in PT Gunadjaja Indah had fallen to Rp 180,000,000. Notwithstanding this, the First Defendant had been informed by Dr Buyung that "there [was] evidence that [she] still owned 4,000 shares". In a letter dated 15 July 1998 under the letterhead of the Indonesian law firm called Nasution, Soedibjo, Maqdir & Partners, Dr Buyung estimated the value of each share at Rp1,300,000, giving a total value of Rp5,200,000,000. However, legal costs amounting to one-third the value of the shares (or Rp1,733,333,333.33) would be charged, leaving a balance of Rp3,466,666,666.67 available for distribution. These shares had not been realised as at the time the First Defendant made her affidavit of evidence in chief on 6 March 1999.

267 Both PWC and AA agreed on the following computation of the values of these Indonesian assets:

	Asset	Value of Asset (Rp)
1	Proceeds of sale of shares in PT Bank Rama	100,000,000
2	4,000 shares in PT Gunadjaja Indah	3,466,666,667
	Total	3,566,666,667

268 The Plaintiff's counsel nevertheless contended that these assets were worth more than what the First Defendant had declared and what both PWC and AA had accepted to be their value. He relied primarily on the evidence of Mr Christopher Jerome Walton ("Mr Walton"), an English Chartered Accountant. Mr Walton's evidence on the Deceased's Indonesian assets was summarised at pages 17 to 19 of his affidavit of evidence in chief filed on 14 February 1994.

Shares in PT Bank Rama

269 Mr Walton purported to value the Deceased's interest in PT Bank Rama at a minimum of Rp9,793,000,000 or US$4,920,000 as at December 1991. This valuation, which Mr Walton continued to maintain during cross-examination at the inquiry, conveniently ignored the First Defendant's unchallenged evidence that the Deceased's shares in PT Bank Rama had been sold in 1977. Mr Walton also claimed to have based his valuation on "extracts from [PT Bank Rama's] accounts filed in the period 1986-1991" which, he alleged, showed the value of the bank's shareholders' funds as at 31

December 1991 to be Rp18,123,000,000. However, the document that Mr Walton exhibited in support of this allegation was in fact a summary prepared by an entity known as "Indonesian Business Data Centre" or "Pusat Data Bisnis Indonesia". There was no evidence led on what this entity was, but my own searches on the Internet suggest that this entity was not an Indonesian government agency entrusted with a public duty to maintain records of companies and businesses but a publisher of economic and business information on Indonesia. In so far as Mr Walton sought to rely on the information contained in the summary, he was relying on inadmissible hearsay, since the maker of the statements contained in the summary was not called to give evidence at the inquiry. There was also no assurance that the information contained in the summary were reliable. In any event, as the summary relied on by Mr Walton showed that the value of "Stockholders' Equity" fluctuated dramatically from year to year in the six-year period from 1986 to 1991, with a trough of Rp6,149,000,000 in 1988 and a peak of Rp18,123,000,000 in 1991, I could not possibly rely on the summary to assist in the valuation of the shares in PT Bank Rama when they were sold in 1977. In the circumstances, no weight could be given to Mr Walton's valuation of the Deceased's shares in PT Bank Rama.

270 The First Defendant had also exhibited, at pages 704 to 707 of her affidavit of evidence in chief, a translation of a document dated 23 January 1976 under the letterhead of "Bank Indonesia" which suggested that as at January 1976, the Deceased had held 6,593 of 12,200 common shares and 54 of 200 preference shares in PT Bank Rama. The same document stated that the nominal value of each share was Rp25,000, and that the total value of the Deceased's shares was Rp166,175,000. While this document suggested that the Deceased's shares in PT Bank Rama were worth about Rp166,175,000 in January 1976, it provided no evidence of the value of the shares when they were sold in 1977. Given that the summary relied on by Mr Walton showed that the value of "Stockholders' Equity" in PT Bank Rama fluctuated dramatically from year to year in the six-year period from 1986 to 1991, I could not positively say that the sum of Rp100,000,000 received by the First Defendant in 1977 did not represent a fair value of the Deceased's shares in PT Bank Rama in 1977.

271 The First Defendant attributed the full value of the sales proceeds of the shares in PT Bank Rama, which amounted to Rp100,000,000, to the Deceased's estate. As the First Defendant did not treat the fee paid to Dr Buyung as an estate expense, the Plaintiff's counsel had no reason to complain that the First Defendant may have overpaid Dr Buyung for his services.

272 The Plaintiff bore the burden of proving that the Deceased's shares in PT Bank Rama were not sold at a fair value. The Plaintiff provided no evidence whatsoever as to the value of the shares in 1977, when the shares were sold. As there was no evidence to suggest that the price of Rp100,000,000 received by the First Defendant was not a fair value of the shares when they were sold in 1977, I assessed the value of the Deceased's 6,593 common shares and 54 preference shares in PT Bank Rama at the value that the First Defendant sold the shares, namely Rp100,000,000. As the proceeds of sale were converted to Singapore currency shortly after the sale, the relevant exchange rate should be that prevailing in 1977. According to the First Defendant, the exchange rate that was actually applied was S$1 = Rp1,000. As there was no evidence to the contrary, I assessed the value of the Deceased's shares in PT Bank Rama at S$100,000.

4,000 Shares in PT Gunadjaja Indah

273 Mr Walton purported to assess the value of the shares in PT Gunadjaja Indah on the basis of various documents in the Bahasa Indonesia language for which no English translations were provided. He made a speculative, incoherent and unsubstantiated allegation that PT Gunadjaja Indah must have had an underlying value of at least US$3,000,000 in 1972 because it had received a loan or investment of US$6,000,000 from a government bank. Mr Walton also claimed that the Deceased had

owned 81% of PT Gunadjaja Indah and alleged that 3,060 of the Deceased's shares had been disposed of between 29 and 31 December 1974.

274 It was not disputed that as at 28 December 1974, PT Gunadjaja Indah had issued 5,790 registered shares and 210 bearer shares, each with a par value of Rp100,000. It was also not disputed that at that time, although shares with a total value of Rp600,000,000 had been issued, only 36⅔% of the issued shares, with a total value of Rp220,000,000, were fully paid-up. These facts suggested that only 2,200 shares out of the 5,790 registered shares and 210 bearer shares were fully paid-up. There was no evidence led as to which shareholders had paid for their shares and which had not. Assuming that each shareholder had paid for only 36⅔% of the shares that were issued to him, the Deceased would have paid in full for only 1,782 of the 4,860 registered shares that were issued to him. Given that the administrators did not pay for any of the shares that were issued to the Deceased, and as there was no credible evidence that the administrators had disposed of any of the Deceased's shares, the fact that the Deceased was listed in the Annual Report of PT Gunadjaja Indah dated 31 July 1989 as having a "shareholding" of Rp180,000,000 suggested that the Deceased had paid for 1,800 of the 4,860 shares in his name at the time of his death. By then, the "shareholding" of PT Gunadjaja Indah had grown to Rp1,100,000,000 through the contribution of funds by other shareholders. Seen in this light, there was nothing sinister about the dilution of the Deceased's interest in PT Gunadjaja Indah. If neither the Deceased nor his administrators paid for the remaining 3,060 shares that were registered in the Deceased's name as at 28 December 1974 or any other shares in the company that were offered to them, the estate cannot reasonably expect to maintain a majority stake in the company.

275 There was no clear evidence as to precisely when the number of shares held by the estate in PT Gunadjaja Indah was increased from 1,800 to 4,000. As the First Defendant had included all 4,000 shares in the basket of Indonesian assets that were available for distribution, I treated this as a concession by the First Defendant that all 4,000 shares belonged to the estate as at 29 August 1991. I preferred Dr Buyung's valuation of the 4,000 shares, which had been adopted by both PWC and AA, to Mr Walton's valuation of the shares, as I found Mr Walton's reasons for his valuation to be speculative, incoherent and unsubstantiated. I therefore assessed the net value of the 4,000 shares in PT Gunadjaja Indah at Rp3,466,666,667. As the shares had not been sold as at 29 August 1991, the relevant S$/Rp exchange rate should be the exchange rate applicable as at 29 August 1991. PWC converted the sum of Rp3,466,666,667 to S$3,027,545 using an exchange rate of S$1 = Rp1,145.04 as at August 1991. Both AA and D&T converted the sum of Rp3,466,666,667 to S$3,466,667 using an exchange rate of S$1 = Rp1,000.00 as at August 1991. As the First Defendant's accountants had used an exchange rate that was more favourable to the Plaintiff than that used by the Plaintiff's accountants, I treated this as a concession by the First Defendant. I therefore assessed the value of the estate's 4,000 shares in PT Gunadjaja Indah as at 29 August 1991 at S$3,466,667.

The Alleged Assets

276 The Plaintiff alleged, in her counsel's closing submissions, that the following should also be treated as assets belonging to the Deceased's estate:

(1) House at Jalan Batu Tulis 2, Jakarta;

(2) House at Jalan Pakubuwono VI/3 Kebayoran Baru, Jakarta;

(3) Factory in Cibenong, Indonesia;

(4) PT Gunadjaja Indah Plantation;

(5) Plantation in Lampung; and

(6) House in Puncak.

House at Jalan Batu Tulis 2, Jakarta

277 The house at Jalan Batu Tulis 2, Jakarta was registered in the First Defendant's name at all material times. It was never registered in the name of the Deceased. The First Defendant conceded during cross-examination that the Deceased had provided the funds for the purchase of the house. The First Defendant sold the house for about Rp50,000,000 on 27 July 1983.

278 When the First Defendant was questioned on the ownership of the house, her evidence appeared to waver between the house belonging to her personally and the house belonging to the Deceased. For completeness, the seven relevant passages from the First Defendant's evidence are quoted verbatim:

(1) Notes of evidence for the inquiry page 4 lines 21 to 25:

Q: #17-02 Beverly Hills to Plantation at PT Gunadjaja Indah - confirm that they do not form part of the estate?

A: Plantation at PT Gunadjaja Indah is part of the estate. Property at Kebayoran belongs to deceased's nephew. 2 Jl Batu Tulis Jakarta belongs to me.

(2) Notes of evidence for the inquiry page 23 lines 33 to 43:

Q: What were her assets at the time of marriage?

A: A house at Batu Tulis, Jakarta.

Q: In whose name was the house registered?

A: My name.

Q: Only, without anyone else?

A: Yes, only my name.

Q: Were you holding this house on trust for another party?

A: I bought the house myself and registered it under my name.

(3) Notes of evidence for the inquiry page 24 lines 2 to 12:

Q: What was the understanding between you and him when the money was handed to you and used to pay for the house?

A: The money was used for the purchase of the house for us to reside in that house.

Q: Is it correct that his intention was that although the house was in your name, he retains

ownership in the house because he provided the monies for the house?

A: Yes, even though it was he who provided the money, the house was registered under my name and the lease for the house was only for 30 years.

(4) Notes of evidence for the inquiry page 24 lines 24 to 31:

Q: Was the 50 million rupiah or the house ever declared as an estate asset?

A: That kind of matter shouldn't arise because the house was under my name and I had a right to sell it.

Q: But your son, Ong Siauw-Tjoan said at the trial that the Batu Tulis house belonged to your husband. See Volume XXXII at page 8374 (or page 481 of the notes of evidence).

A: You have to look at the title deed itself.

(5) Notes of evidence for the inquiry page 34 lines 33 to 36:

Q: Why was your position and Lee & Lee's position prior to the trial of OS 939/91 that the estate had no assets in Indonesia?

A: No, I didn't say that. What I know is that there were 3 assets in Indonesia - one at Batu Tulis, the Bank Ramayana and Gunadjaja.

(6) Notes of evidence for the inquiry page 79 lines 14 to 17:

Q: Put: At date of your husband's death, you had few assets of your own and that any substantial assets including the Batu Tulis house in Jakarta were held by you on trust for him.

A: I disagree.

(7) Notes of evidence for the inquiry page 95 lines 26 to 29:

Q: Refer to house at Batu Tulis, Jakarta. You mentioned in your evidence that this house was registered under your name. Did your husband before his death tell you that he considered this house to be his or yours?

A: He told me that the house at Batu Tulis should be mine.

279 In the first, second, fourth, sixth and seventh passages, the First Defendant unequivocally asserted that the house belonged to her. In the third passage, the First Defendant appeared to agree with the suggestion that "[the Deceased's] intention was that although the house was in [the First Defendant's] name, he retains ownership in the house because he provided the monies for the house". However, what was most telling was the fifth passage, where the First Defendant voluntarily stated that the estate had "3 assets in Indonesia – one at Batu Tulis, the Bank Ramayana and Gunadjaja", even though she was not being questioned on the house at Jalan Batu Tulis at all. The only reasonable inference that can be drawn from the fifth passage was that the First Defendant regarded the house at Jalan Batu Tulis as an asset belonging to the estate. As the house was registered in the First Defendant's name at all material times, the house could only belong to the estate if the First Defendant regarded herself as holding the house on trust for the estate. I think the fifth passage gave away the First Defendant's lie.

280 The Second Defendant also testified, both at the trial and during the inquiry, that the house at Jalan Batu Tulis belonged to the Deceased. These were bald assertions, but they corroborated the First Defendant's admissions.

281 There was no evidence adduced by any party on whether Indonesian law recognised the concept of beneficial ownership. The First Defendant's counsel submitted that as the Plaintiff had not shown that the concept of a "beneficial owner" existed in Indonesia or that such a concept was recognised under Indonesian law, the house must be treated as belonging to the First Defendant. This argument was clearly misconceived. The passages from *Dicey and Morris* set out at paragraphs 32 and 46 of this judgment show that:

(1) the burden of proving that Indonesian law does not recognise the concept of beneficial ownership lay squarely on the First Defendant; and

(2) in the absence of evidence of Indonesian law on this issue, the court would apply Singapore law, which recognises the concept of beneficial ownership.

282 The First Defendant's counsel raised the alternative argument that the evidence adduced did not displace the presumption of advancement in the First Defendant's favour. In *Teo Siew Har v Lee Kuan Yew* [1999] 4 SLR 560, the Court of Appeal observed that the current judicial approach towards the presumption of advancement was to treat it as an evidential instrument of last resort where there was no direct evidence as to the intention of the parties, rather than as a rule of thumb. If the First Defendant's own admissions that the house belonged to the estate did not displace the presumption of advancement, I do not know what will.

283 Having regard to the First Defendant's admissions as set out in paragraphs 278(3) and 278(5) of this judgment, I found that the house at Jalan Batu Tulis 2, Jakarta belonged to the estate, even though the First Defendant was the registered owner. In the circumstances, the proceeds of sale of the house, amounting to Rp50,000,000 (or S$50,000, using the exchange rate of S$1 = Rp1,000 as at August 1991) should be treated as an asset belonging to the estate.

284 In so deciding, I did not place any weight on the assertion that the Deceased had used Jalan Batu Tulis 2, Jakarta as his address. Proof of residence at a particular address does not amount to proof of ownership of the property at that address.

House at Jalan Pakubuwono VI/3 Kebayoran Baru, Jakarta

285 The house at Jalan Pakubuwono VI/3, Kebayoran Baru, Jakarta was registered in the name of Mr Aria Tohdjaya, a nephew of the Deceased, and was used as collateral for a loan from a bank. The house was subsequently auctioned off by the bank. The only document linking this property to the Deceased was a one page document dated 13 December 1972 entitled "BRIEF REPORT ON THE MEANS OF MR. ONG KING SENG ALIAS ARIEF HUSNI, PROPRIETOR OF GRAND TRADING COMPANY 24 ICE HOUSE STREET 5TH FLOOR, HONGKONG", which contained the statement "Owns a bungalow in Kebojaran Baru worth around S$200,000". No evidence was led on the origin of this document or who its maker was. The First Defendant was not cross-examined on this document. The Second Defendant's claim that this property belonged to the Deceased was a self-serving, bare allegation. The Second Defendant admitted that whatever he knew about the Deceased's Indonesian properties was based on what the Deceased had told him (see the notes of evidence for the inquiry page 203 at lines 15 to 19). As such, the Second Defendant's claim was based on inadmissible hearsay. All things considered, there was no credible evidence that this property ever belonged to the Deceased.

Factory in Cibenong

286 During cross-examination, the First Defendant admitted that the Deceased had once owned a "factory" at Cibenong. She explained that although the term "factory" was used, the property was actually "just a land without any activities". However, she clarified that she had no personal knowledge of this property and had relied on what she heard from others. The First Defendant had not realised this property as at the date of the inquiry. She said that her Indonesian lawyers were still negotiating the "compensation" to be paid for the land. The Second Defendant also claimed that the Deceased had owned "a piece of land in Cibenong".

287 In the circumstances, I found that as between the parties to this action, the Deceased had an interest in this as yet unidentified piece of land in Cibenong. As this piece of land has not been realised, and as no value has been attributed to the Deceased's interest in this piece of land, I can do no more than declare that the Plaintiff would be entitled to a one-twelfth share of the Deceased's interest in this piece of land in Cibenong. Until such time as this asset is realised, the Plaintiff is not entitled to any monetary payment in respect of her one-twelfth share of the Deceased's interest in this asset.

PT Gunadjaja Indah Plantation

288 According to the First Defendant, the property described as "PT Gunadjaja Indah Plantation" was leased from the Government of the Republic of Indonesia or the Regional Government of Lampung for a period of 20 years. The lease expired in 1976 and the plantation was taken over by the Government. The First Defendant stated that this information was furnished by Dr Buyung. She exhibited Dr Buyung's letter dated 15 July 1998 at pages 719 to 721 of her affidavit of evidence in chief. To buttress his allegation that this property belonged to the Deceased, the Plaintiff's counsel relied on certain newspaper obituaries in the Bahasa Indonesia language that had been dug up by Mr Walton. Those obituaries were not translated. The Plaintiff's counsel also referred to Mr Walton's various unsubstantiated allegations and pages 5102 to 5172 of Volume XIX of the Plaintiff's Bundle of Affidavits and Documents filed in the Originating Summons Proceedings. Having studied the materials referred to by the Plaintiff's counsel, I was satisfied that there was no credible evidence that the property described as "PT Gunadjaja Indah Plantation" belonged to the Deceased.

Plantation in Lampung

289 The First Defendant stated during cross-examination that she had "heard from people" that the Deceased had an asset at Lampung, namely, a jute plantation on a lease. The Deceased had never told her about this property, and she came to know about it only after the Deceased's death. The First Defendant had not realised this property as at the date of the inquiry. She said that her lawyers were still negotiating the "compensation" to be paid for this asset. She added that when the term of the lease expired, the Indonesian government would take back the property. The Second Defendant also claimed that the Deceased owned "a plantation for jute in Lampung".

290 In the circumstances, I found that as between the parties to this action, the Deceased had an interest in this as yet unidentified jute plantation in Lampung. As this asset has not been realised, and as no value has been attributed to the Deceased's interest in this asset, I can do no more than declare that the Plaintiff would be entitled to a one-twelfth share of the Deceased's interest in this asset in Lampung. Until such time as this asset is realised, the Plaintiff is not entitled to any monetary payment in respect of her one-twelfth share of the Deceased's interest in this asset.

House in Puncak

291 The Second Defendant made a self-serving, bare allegation that the Deceased had owned "a villa in Puncak". However, he admitted that whatever he knew about the Deceased's Indonesian properties was based on what the Deceased had told him (see the notes of evidence for the inquiry page 203 at lines 15 to 19). As such, his allegation was based on inadmissible hearsay. No particulars were provided of this alleged asset. There was also no evidence that this asset continued to belong to the Deceased at the time of his death. Contrary to the rule in *Browne v Dunn* (1893) 6 R 67, the Plaintiff's counsel did not cross-examine the First Defendant on this alleged asset. In the circumstances, it was not open to the Plaintiff's counsel and/or the Second Defendant's counsel to submit that this alleged asset belonged to the estate. Nor was there any credible evidence to support such a submission.

Value of the Deceased's Estate in Indonesia

292 Having regard to the matters set out at paragraphs 264 to 291 of this judgment, I found that the following assets belonged to the Deceased's estate:

(1) Proceeds of sale of shares in PT Bank Rama amounting to Rp100,000,000 or S$100,000 (based on the S$/Rp exchange rate in 1977);

(2) 4,000 shares in PT Gunadjaja Indah with a net value of Rp3,466,666,667 or S$3,466,667 (based on the S$/Rp exchange rate in August 1991), after deducting legal expenses;

(3) Proceeds of sale of the house at Jalan Batu Tulis 2, Jakarta amounting to Rp50,000,000 or S$50,000 (based on the S$/Rp exchange rate in August 1991);

(4) an interest in a piece of land in Cibenong; and

(5) an interest in a jute plantation in Lampung.

293 In the circumstances, excluding the unrealised assets in Cibenong and Lampung, the value of the Deceased's estate in Indonesia was S$3,616,667. The Plaintiff would also be entitled to a one-twelfth share of the estate assets in Cibenong and Lampung or the proceeds of sale of these assets, if and when these assets are realised.

The Taiwanese Assets

294 The Plaintiff's counsel alleged that the Deceased had owned a bungalow and an apartment in Taiwan. He relied on two documents to support this allegation.

295 The first document was a one page document dated 13 December 1972 entitled "BRIEF REPORT ON THE MEANS OF MR. ONG KING SENG ALIAS ARIEF HUSNI, PROPRIETOR OF GRAND TRADING COMPANY 24 ICE HOUSE STREET 5TH FLOOR, HONGKONG", which contained the statement "Owns a bungalow in TAIWAN worth around S$250,000". No evidence was led on the origin of this document or who its maker was. Nor was the First Defendant cross-examined on this document. This document clearly did not qualify as evidence that the Deceased had owned a bungalow in Taiwan.

296 The second document was an unsigned letter dated 4 November 1974 bearing a reference "DL/San". No evidence was led on the origin or maker of this document. However, the contents of this document suggested that it was a carbon copy of a letter sent by the estate's Singapore solicitors, Messrs Lee & Lee, to the estate's Taiwanese solicitors, Messrs Lee & Li. The letter stated its author's belief that:

(1) the Deceased had some property in Taiwan; and

(2) the Deceased could have left a will in Taiwan.

297 The First Defendant gave the following evidence on the alleged assets in Taiwan (see notes of evidence for the inquiry page 5 lines 25 to 35):

Q: Did deceased have any assets in Taiwan?

A: He had a small condo in Taiwan.

Q: What became of it?

A: My former lawyer, Mr Tan Kok Quan, through his associate firm in Taiwan also known as Lee & Li, tried to trace the property. But he told me that even if that property had been sold, it would not be sufficient to pay that lawyer.

Q: Can 1st Defendant provide the address of the property?

A: I don't know the address.

298 Her evidence was amplified by that of Mr Tan Kok Quan ("Mr Tan"), formerly of Messrs Lee & Lee, who was one of the estate's solicitors at the material time. Mr Tan gave the following evidence (see notes of evidence for the inquiry page 269 lines 7 to 11 and page 270 lines 33 to 42):

Q: What about Taiwan?

A: I think in respect of Taiwan, she had solicitors there – the Taiwan Li & Lee. That was in respect of some property there, I think. I think Lee & Lee was instructed to instruct solicitors there about property there. I am here talking entirely from memory of many years ago.

...

Q: Do you know what happened to the property of the deceased in Taipei, Taiwan?

A: Purely from memory, I think the end result of that was that this is a very small piece of property. The title was not registered in the deceased's name. Action had to be taken to recover the property, if at all. And I think the legal cost did not justify proceeding further.

Q: And that was the opinion given by the Taiwanese firm of Li & Lee?

A: I don't know if that was the opinion given, but that was the result of the whole Taiwanese property issue.

299 The Second Defendant could only identify one asset in Taiwan, namely, an apartment in Taipei (see notes of evidence for the inquiry page 191 line 39 to page 192 line 6). The Second Defendant claimed that the Deceased had told him that this apartment belonged to the Deceased. He also confirmed that he had no other basis for believing that the apartment belonged to the Deceased. (See notes of evidence for the inquiry page 220 lines 17 to 24.)

300 On the totality of the evidence, I think it is possible that the Deceased had some form of interest in an apartment in Taipei. This was the only asset of the Deceased in Taiwan. However, the

title to the property was not registered in the Deceased's name, and the legal costs that would have to be expended to recover the property would have exceeded the then gross value of the property. As such, the First Defendant, on the advice of Messrs Lee & Lee and/or Messrs Lee & Li, made a conscious decision not to commence legal proceedings to recover the property.

301 None of the parties identified the apartment in Taipei. Nor was any valuation carried out on that property. No weight could be given to any of the valuation reports on Taiwanese properties that were tendered by the Plaintiff, as those reports clearly did not refer to the property concerned. As the Plaintiff failed to call the Taiwanese property valuers as witnesses at the inquiry, everything contained in the valuation reports was hearsay.

302 In the circumstances, I find, on a balance of probabilities, that although the Deceased had an interest in an apartment in Taipei:

(1) the title to the property was not registered in the Deceased's name;

(2) the legal costs that would have to be incurred to recover the property would have exceeded the value of the property in or about 1974;

(3) there was no certainty that the estate would have been successful in recovering the property; and

(3) consequently, the property did not have a positive net value (after deducting legal expenses) when the First Defendant was deciding whether to attempt to realise the Deceased's interest in the property in 1974.

The European Assets

303 The Plaintiff claimed that the following European bank accounts and the corresponding sums of money belonged to the Deceased's estate:

(1) Bank Mees & Hope NV:

(a) Deposit of US$1,500,000;

(b) Current account with a credit balance of US$76,772.40;

(c) Current account with a debit balance of £7,970.17;

(d) Interest on these sums amounting to US$152,504; and

(e) Deposit of US$3,000,000.

(2) Midland Bank Trust Corporation (Jersey) Limited:

(a) DM4,247,284 as at 27 February 1980 in an unknown account;

(b) DM1,153,880 as at 26 August 1980 in account number 04.000099 Ref 003;

(c) US$2,386,132 as at 10 March 1983 in account number 00.078034 Ref 0001;

(d) £274,100 as at 26 September 1980 in account number 00.78034 Ref 0002;

(e) £1,443,584 as at 30 April 1981 in account number 00.078034 Ref 0003; and

(f) £1,726,959 as at 9 September 1982 in account number 00.078034 Ref 4000.

(3) Standard Chartered Bank (C.I.) Limited – Channel Islands:

(a) £728,658 as at 19 August 1985 in account number 02 8819033.11;

(b) US$1,000,000 as at 28 June 1985 in account number 02 8819033 21;

(c) £151,918 as at 3 July 1985 in an unknown account; and

(d) £1,173,635 as at 3 October 1985 in account number 03 8819033 11.

(4) Midland Bank Limited (London):

(a) £251,046 as at 4 July 1979 in an unknown account; and

(b) US$2,840,432 as at 6 December 1985 in account number 51069756.

(5) Barclays Bank Finance Company (Jersey) Limited:

(a) £1,546,189.90 as at 4 October 1985 in account number 01 220780017; and

(b) US$3,093,915.36 as at 21 September 1987 in account number 45 220780051.

(6) Banque Nationale de Paris (UK):

(a) £1,470.34 as at 11 September 1985 in account number 2564171.

304 Account number 2564171 with Banque Nationale de Paris plc was in fact an account in the name of Grand Trading Co and was dealt with under paragraph 246 of this judgment. For the reasons stated in paragraph 246, this asset was valued at £1,430.34. As it had already been credited to the Hong Kong estate of the Deceased, it should not be treated as an European asset.

Bank Mees & Hope NV

305 The First Defendant admitted that the estate had the following bank accounts and funds with Bank Mees & Hope NV:

(1) Deposit of US$1,500,000;

(2) Current account with a credit balance of US$76,772.40; and

(3) Current account with a debit balance of £7,970.17.

These particulars were set out in a letter dated 2 May 1975 from Mr M J Meijer (the lawyer for Bank Mees & Hope NV) to Mr A Kadharusman SH (the administrators' Indonesian lawyer at that time). Using the May 1975 exchange rate of £1 = US$2.32047 provided by the US Federal Reserve Board at its Internet website (formerly http://www.stls.frb.org/fred/data/exchange/exusuk and now http://research.stlouisfed.org/fred/data/exchange/exusuk), AA had calculated the amount credited to

the estate (after setting off the debit balance against the credit balance) to be US$1,558,277.86.

306 According to the First Defendant, the monies in these accounts were subsequently withdrawn and placed with Midland Bank Trust Corporation (Jersey) Limited ("Midland Bank"). While she did not have any documents evidencing the closure of the Bank Mees & Hope NV account or the transfer of the funds to Midland Bank, she said that she remembered that this was what was done at the material time. (See paragraph 120 of the First Defendant's affidavit of evidence in chief.)

307 The Plaintiff's counsel claimed that in addition to the sums admitted by the First Defendant, the following were also assets belonging to the estate:

(1) Interest on these sums amounting to US$152,504; and

(2) Deposit of US$3,000,000.

308 The interest claimed was a sum calculated by PWC as "interest accrued to May 1975". PWC did not explain how it calculated the sum of US$152,504, but stated that it relied on the following documents to support this claim for interest:

(1) a bank statement dated 22 May 1974 from Bank Mees & Hope NV addressed to the Deceased (found both at page 3641 of Volume XIV of the Plaintiff's Bundle of Affidavits and Documents filed in the Originating Summons Proceedings and at page 835 of the First Defendant's affidavit of evidence in chief);

(2) a letter dated 1 April 1975 from Mr A Kadharusman SH to Bank Mees & Hope NV (found both at page 8569 of the Plaintiff's Bundle of Documents Volume 35 and page 838 of the First Defendant's affidavit of evidence in chief); and

(3) the letter dated 2 May 1975 from Mr M J Meijer to Mr A Kadharusman SH referred to at paragraph 305 of this judgment (found both at page 8570 of the Plaintiff's Bundle of Documents Volume 35 and page 839 of the First Defendant's affidavit of evidence in chief).

309 The bank statement dated 22 May 1974 confirmed that the Deceased had renewed a deposit of US$1,500,000 for the period from 24 May 1974 to 25 November 1974 at an interest rate of 10% per annum. It also confirmed that the Deceased would earn interest for the period from 16 November 1973 to 24 May 1974 (a period of 190 days of which the bank treated only 188 days as interest bearing days) at 8.625% per annum amounting to US$67,562.50. (This sum can be calculated from US$1,500,000 x 188/360 x 8.625%.) The statement also informed the Deceased that the bank would debit the sum of US$67,652.50 with a value date of 24 May 1974 from this account for credit to account number 213 838117 (presumably an account in the name of the Deceased).

310 The Deceased died on 22 October 1974. There was no evidence as to what the Deceased did with the interest amounting to US$67,652.50 between 24 May 1974 and 22 October 1974. There was no evidence that the Deceased left it in his account with Bank Mees & Hope NV or that this sum remained unspent as at 22 October 1974. There was no evidence that the Deceased gave Bank Mees & Hope NV instructions to renew the deposit of US$1,500,000 for a further period beyond 25 November 1974. There was also no evidence to suggest that Bank Mees & Hope NV would automatically renew the deposit of US$1,500,000 at the prevailing interest rate on 25 November 1974.

311 Although the deposit of US$1,500,000 was left with the bank from 24 May 1974 to 25

November 1974, going by the practice adopted for the period from 16 November 1973 to 24 May 1974, it may be presumed that the bank would pay interest only for the 184 day period between 24 May 1974 and 25 November 1974 (both dates excluded). The interest earned in the period from 24 May 1984 to 25 November 1974 would be approximately US$76,666.67 (calculated from US$1,500,000 x 184/360 x 10%).

312 The letter dated 2 May 1975 from Mr M J Meijer to Mr A Kadharusman SH suggested that Bank Mees & Hope NV only recognised the administrators' authority to receive information on the Deceased's bank accounts with Bank Mees & Hope NV on 2 May 1975. The second paragraph of the letter stated:

> After considering the documents, previously sent by you, it is our opinion that you are indeed the lawful representative of one of the heirs of the deceased and therefore entitled to receive at least part of the information you asked for.

The letter went on to provide information relating to the Deceased's personal bank accounts with Bank Mees & Hope NV. The only bank accounts and funds in the name of the Deceased that Mr M J Meijer referred to were the deposit of US$1,500,000, a current account with a credit balance of US$76,772.40 and a current account with a debit balance of £7,970.17. The interest earned on the US$1,500,000 deposit in the period from 24 May 1984 to 25 November 1974 would have been subsumed under the current account credit balance of US$76,772.40. In the circumstances, the evidence did not support PWC's assertion that the estate had received additional "interest accrued to May 1975" amounting to US$152,504.

313 The Plaintiff's claim as regards the alleged deposit of US$3,000,000 was based on:

> (1) the letter dated 1 April 1975 from Mr A Kadharusman SH to Bank Mees & Hope NV; and
>
> (2) a cable message dated 22 October 1974 that was ostensibly sent by the Deceased to Bank Mees & Hope NV (found at page 8567 of the Plaintiff's Bundle of Documents Volume 35).

314 The material portion of the cable message dated 22 October 1974 states as follows:

> MEESBANK
>
> AMSTERDAM
>
> ATTENTION MRJWCOPPOOLSE
>
> RYL 12/9 ACCORDING OUR CALCULATION WE HAVE SURPLUS ABOUT THREEMILLIONDOLLARS FROM VARIOUS CREDITS KINDLY CABLE SPECIFY REGARDS
>
> ARIEFHUSNI

315 The material portion of Mr Kadharusman's letter dated 1 April 1975 states as follows:

> In your letter of the 17th March 1975, you mention a total credit balance of approximately a value of Nfl. 3.500.000,-.
>
> In this respect, we request you to send me or my client (Singapore-address) copies of all current account notes, deposit-accounts and other papers, forming together the complete documents which could enable us to control the financial relation between the deceased and your Bank until

the present moment.

More specifically, I am asking your attention for the enclosed photocopies of :

a) confirmation of renewal of deposit amounting US$1.500.000,- dated 22-5-1974;

b) your letter to Grand Trading Coy (Attention : Mr. A Husni) dated Sept. 12th, 1974;

c) cable sent by Mr. A Husni to you dated 21 Oct. 1974, [*sic*] concluding that according to his calculation he had a surplus of about US$ 3 million from various credits; with request to cable your specification.

Especially this cable was – to the best of the knowledge of the persons concerned – not replied to; in other cases also we have failed to find replies from you to questions asked to you.

316 Bank Mees & Hope NV replied to Mr Kadharusman's letter dated 1 April 1975 through its lawyer Mr M J Meijer. The material portion of Mr Meijer's letter dated 2 May 1975 addressed to Mr Kadharusman states as follows:

We can answer the questions, framed under point a) and c) as follows:

The guarantees, mentioned in the letter of the Bank to you dated March 17th, 1975 have expired by now, thus ending the blocking of Mr. Husni's accounts.

There are in the books of Bank Mees & Hope several accounts on the name of the deceased:

1. A deposit of US $ 1,500,000.00, terminating ult. May,19;

2. A current account, showing US $ 76,772.40 credit;

3. A current account, showing £7.970.17 debet.

With regard to your point b) we have to inform you that Mr. Husni acted as a representative of Grand Trading Ltd. towards the Bank; also we would like to receive more information about the relationship between your client and Grand Trading Ltd.

You will appreciate, that the Bank is not in a position to give any information about the accounts of a firm in her books, unless she is authorized to do that by said firm.

317 It would appear from the correspondence that whatever view the Deceased, Mr Kadharusman and/or the administrators may have had about Bank Mees & Hope NV owing the Deceased "THREE MILLION DOLLARS" (as stated in the cable) or US$3,000,000 (as stated in Mr Kadharusman's letter dated 1 April 1975, Bank Mees & Hope NV were firmly of the view that the only accounts and funds in the books of Bank Mees & Hope NV that were in the name of the Deceased were the deposit of US$1,500,000, a current account with a credit balance of US$76,772.40 and a current account with a debit balance of £7,970.17. There was no evidence that Bank Mees & Hope NV had agreed to pay the administrators anything more than the balance after setting off the sum of £7,970.17 from the sum of US$1,576,772.40. The Deceased's belief, as set out in the cable dated 22 October 1974, did not, in itself, translate into a liability on the part of Bank Mees & Hope NV to pay the administrators the sum that the Deceased believed was owed to him.

318 There was no evidence to contradict the First Defendant's assertion that she withdrew all the

funds in the Deceased's personal accounts with Bank Mees & Hope NV and placed them the Midland Bank. There was also no evidence that the balance of US$1,558,277.86 (after setting off the sum of £7,970.17 from the sum of US$1,576,772.40) earned any additional interest before it was withdrawn from Bank Mees & Hope NV. In the circumstances, I valued the funds in the Deceased's personal bank accounts with Bank Mees & Hope NV at US$1,558,277.86. I have dealt with Grand Trading Co's accounts with Bank Mees & Hope NV at paragraphs 239 to 243 of this judgment.

Midland Bank Trust Corporation (Jersey) Limited

319 According to the First Defendant, the entire sum of US$1,558,277.86 was transferred from the Deceased's accounts with Bank Mees & Hope NV to the First Defendant's account with Midland Bank Trust Corporation (Jersey) Limited ("Midland Bank"). The First Defendant did not say when the money was withdrawn from Bank Mees & Hope NV and deposited with Midland Bank. However, the funds must have been transferred by 1976, for the First Defendant claimed that a property at 6 Audley Court, 32/34 Hill Street, London ("6 Audley Court") was purchased "[a]round 1976 or 1977" with "funds transferred from the bank account in Midland Bank" (see paragraph 121 of the First Defendant's affidavit of evidence in chief).

320 The First Defendant claimed that from 1976 to 4 November 1985, she had placed her personal funds in the Midland Bank account (see paragraph 121 of the First Defendant's affidavit of evidence in chief). However, although there were numerous documents relating to the Midland Bank account that were available, the First Defendant chose not to provide any information as to:

(1) how much of her personal funds were deposited with the Midland Bank;

(2) when those funds were deposited; or

(3) the account numbers of the accounts into which the estate's funds and her personal funds were deposited.

321 According to the First Defendant, when the Midland Bank account was closed on 4 November 1985, the sum of US$1,299,691.04 standing in the credit of the Midland Bank account was transferred to her bank account with Standard Chartered Bank (C.I.) Limited ("Standard Chartered Bank"). The First Defendant claimed that she did not have any documents in relation to the closure of the Midland Bank account. (See paragraphs 121 and 123 of the First Defendant's affidavit of evidence in chief.)

322 In *Caltong (Australia) Pty Ltd v Tong Tien See Construction Pte Ltd* [2002] 3 SLR 241, the Court of Appeal made the following observation (at paragraph 44):

> 44 Ordinarily, when a trustee mixes trust funds with his own funds, the law assumes that the whole is subject to the trust. In *Frith v Cartland* (1865) 71 ER 525 at 526, Page Wood VC observed: '… if a man mixes trust funds with his own, the whole will be treated as the trust property, except so far as he may be able to distinguish what is his own'. See also *Re Tilley's Will Trusts* [1967] CH 1179 at 1182.

The Court of Appeal went on to hold (at paragraph 45) that as a particular defendant in that case had knowingly mixed trust money with her own when purchasing a property, she bore the burden of showing which portion of the purchase price came from her own sources and was not tainted by the breach of trust committed by the trustees.

323 *Lewin on Trusts* (17th Ed, 2000) elaborates on this principle in the following terms (at page 1272, paragraph 41-18):

> Wherever the trust property is placed, if a trustee amalgamates it with his own, the beneficiary will be entitled to every portion of the blended property which the trustee cannot prove to be his own. ... But the principle normally applies only where the amalgam of assets cannot be sufficiently distinguished and treated separately: it is based on the fact that the lack of evidence to do so is attributable to the trustee's fault.

324 In the present case, there was clear evidence that the Midland Bank account was an interest bearing account. As such, any interest earned from the estate's funds that were deposited into the account would belong to the estate. The interest earned could be reinvested as part of the principal of a subsequent deposit. Any interest earned from the reinvested interest would similarly belong to the estate. The First Defendant failed to account for any of the interest earned from the estate's funds between 1976 and 4 November 1985. She also did not provide any particulars of the origins of the principal sums for her deposits with the Midland Bank. The First Defendant had admitted that she had knowingly mixed the estate's funds with her personal funds in the Midland Bank account. As such, she bore the burden of showing what portion, if any, of the funds in and interest earned from the account was attributable to her personal funds. In the absence of such evidence, the court would presume that all the funds in and interest earned from the account belonged to the estate.

325 However, in order for the estate to claim ownership of the principal sum in each deposit in the Midland Bank account, that sum would have to be traced to and accounted for:

(1) as part of the sum of US$1,558,277.86 transferred from the Deceased's Bank Mees & Hope NV accounts;

(2) as part of the estate's funds from the realisation of other assets that the court had found to belong to the estate; or

(3) as interest earned on either of these sums.

As such, even if all the funds in the account did in fact belong to the estate, the only amounts from the Midland Bank account that could be added to the pool of estate assets for the purposes of determining the size of the Deceased's estate would be the interest earned from the deposits in the account. The principal sums for each deposit would already have been accounted for, so any addition of the principal sums would result in a double-counting of the estate's assets.

326 It is perhaps more accurate to say that the estate's funds deposited with the Midland Bank were placed in "accounts" rather than "an account". The First Defendant in fact held several Midland Bank accounts. By deliberately declining to identify which account or accounts the estate's funds were paid into or render a proper account of the transactions in the Midland Bank accounts, even though there was ample documentation of the transactions involving the Midland Bank accounts, the First Defendant ran the risk that the court might find that all the funds in all of the Midland Bank accounts belonged to the estate. As the Plaintiff had specifically prayed for an inquiry as regards the funds in the Midland Bank accounts (see prayers 51 and 52 of the Plaintiff's Statement of Claim filed on 13 April 1994), the First Defendant had no excuse for failing to render a proper account that distinguished between the sums in the accounts that were attributable to the estate's funds and the sums (if any) in the accounts that were attributable to her personal funds.

327 There is another reason for my belief that the funds in the Midland Bank accounts belonged to

the estate. From 4 August 1978 to 14 August 1980, Deacons sent several letters to the First Defendant entitled "Estate of Arief Husni, deceased" or "Arief Husni – deceased" which either enclosed letters or bank statements sent by the Midland Bank to the First Defendant or were responses to the First Defendant's instructions on dealings with the Midland Bank accounts. Examples of these letters may be found at pages 10760 and 10895 of the Plaintiff's Bundle of Documents Volume 51 and pages 11016, 11019, 11034, 11037, 11041, 11044, 11053, 11061 and 11064 of the Plaintiff's Bundle of Documents Volume 52. In addition, from 12 July 1979 to 26 March 1987, Deacons sent numerous letters to the First Defendant entitled "Estate of Arief Husni, deceased", "Arief Husni – deceased" or "Your late husband's estate" which enclosed letters addressed to the First Defendant from Jersey, Channel Islands. Examples of these letters may be found at pages 11031, 11060, 11065, 11074, 11075, 11077, 11078, 11085, 11086, 11092, 11094, 11105, 11111, 11112, 11116, 11157, 11159, 11160, 11162 to 11183, 11283 to 11297, 11300, 11301, 11318, 11324, 11325, 11327, 11328, 11332 to 11335, 11338 to 11341, 11343, 11344, 11347 and 11348 of the Plaintiff's Bundle of Documents Volume 52, and pages 11358, 11380, 11448, 11454, 11457, 11485, 11488, 11493, 11498 to 11503, 11511 to 11514, 11516 to 11524, 11526, 11527, 11533 to 11546 of the Plaintiff's Bundle of Documents Volume 53. It was improbable that Deacons would have captioned the letters in this manner unless the letters pertained to assets belonging to the Deceased's estate. There was no evidence that the First Defendant objected to the manner in which the letters were captioned.

328 In deciding on the quantum of funds in the Midland Bank accounts that were to be added to the pool of estate assets, I considered the analyses provided by PWC and D&T in their respective reports. However, I did not adopt either analysis because, in my opinion, neither analysis gave proper regard to the law and the evidence. In particular, the PWC computation involved considerable double-counting and made various unfounded assumptions in computing claims for interest.

329 Whether any interest was earned on a particular deposit is a finding of fact that can only be made if there is evidence that a deposit of a specific amount was in fact placed in an interest bearing account for a specific term at a specific interest rate. While the First Defendant may have deposited funds in a particular bank account at a particular point in time, that did not constitute evidence that the First Defendant continued to maintain the same amount of funds in that bank account right up to 29 August 1991. The First Defendant was a shrewd businesswoman who constantly moved funds from one account to another, and from one currency to another, in order to maximise returns from fixed deposits. In the absence of evidence that the estate's funds were placed in a specific interest bearing account for a specific term, no interest could be imputed to the estate.

330 A careful study of the Midland Bank accounts would show that while multiple account numbers were disclosed, the principal sums that passed through the different accounts from 1977 to 1979 could all be traced to a single deposit of DM5,604,270.83 that matured on or about 25 February 1977 (see page 10645 of the Plaintiff's Bundle of Documents Volume 51). If the funds for the purchase of 6 Audley Court in 1976 or 1977 came from the Midland Bank accounts, those funds would have to originate from either this sum of DM5,604,270.83 or the interest earned on it. As the First Defendant claimed that the funds from the purchase of 6 Audley Court originated from the Deceased's accounts with Bank Mees & Hope NV, it followed that the deposit of DM5,604,270.83 (or at least a significant part of it) also originated from the sum of US$1,558,277.86 that was transferred from the Deceased's accounts with Bank Mees & Hope NV. As the First Defendant did not provide any evidence that the deposit of DM5,604,270.83 also contained her personal funds, the law required the court to hold that the entire deposit of DM5,604,270.83 originated from the sum of US$1,558,277.86 that was transferred from the Deceased's accounts with Bank Mees & Hope NV and belonged to the estate. The US Federal Reserve Board Internet website at http://research.stlouisfed.org/fred/data/exchange/exgeus states that the DM/US$ exchange rate in February 1977 was US$1 = DM2.4050. Thus, as at February 1977, the sum of US$1,558,277.86 would

have amounted to approximately DM3,747,658.25. The difference of DM1,856,612.58 between the principal sum of DM5,604,270.83 in the Midland Bank account as at February 1977 and the sum of DM3,747,658.25 (converted from US$1,558,277.86) would represent the interest earned on the sum of US$1,558,277.86 from May 1974 to January 1977. This sum of DM1,856,612.58 constituted a separate and distinct estate asset.

331 On the available records, the interest earned by the estate from the Midland Bank accounts from February 1977 to November 1985 amounted to a total of DM851,859.82, £331,043.46 and US$8,752.90. The calculations relating to these sums of interest, and the particulars of the corresponding deposits and supporting documents, are set out in the following table:

Supporting Document(s)	**Principal**	**Value Date**	**Maturity Date / Term**	**Interest Rate**	**Interest**
1. Transactions in DM	**DM**				**DM**
(1) First Defendant's letter dated 6 February 1977 and Midland Bank statement dated 1 March 1977 (pages 10638, 10639 and 10645 of Plaintiff's Bundle of Documents Volume 51)	5,604,270.83	Not stated	25 February 1977	Not stated	136,059.24
(2) Midland Bank statement dated 1 March 1977 and Midland Bank letter dated 23 January 1978 (pages 10637, 10639 and 10645 of Plaintiff's Bundle of Documents Volume 51)	4,740,330.07	25 February 1977	27 February 1978	4.6875%	226,523.58

Supporting Document(s)	Principal	Value Date	Maturity Date / Term	Interest Rate	Interest
(3) Midland Bank statement dated 1 March 1977 and Midland Bank letters dated 9 August 1977 and 26 July 1978 (pages 10639, 10640, 10645 and 10758 of Plaintiff's Bundle of Documents Volume 51)	1,000,000.00	25 February 1977	25 August 1977	4.5%	22,625.00
(4) Account No 04.000099 Deposit No 0001 Midland Bank letters dated 9 August 1977 and 26 July 1978 and First Defendant's letter dated 11 August 1977 (pages 10640, 10641 and 10758 of Plaintiff's Bundle of Documents Volume 51) Midland Bank statement of DM transactions from 25 August 1977 to 25 August 1978 (page 11198 of Plaintiff's Bundle of Documents Volume 52)	1,022,625.00	25 August 1977	25 August 1978	3.625%	37,585.02

Supporting Document(s)	Principal	Value Date	Maturity Date / Term	Interest Rate	Interest
(5) Midland Bank letters dated 23 January 1978 and 23 January 1979, First Defendant's letter dated 14 February 1978, Deacons' telex dated 21 February 1978, Midland Bank's telex dated 23 February 1978 and Midland Bank statement dated 23 February 1978 (pages 10637, 10644, 10648, 10653, 10654, 10894 and 10940 of Plaintiff's Bundle of Documents Volume 51)	4,966,853.65	27 February 1978	27 February 1979	3.0625%	154,222.53
(6) Account No 04.000099 Reference 0003 Midland Bank letter dated 26 July 1978, Deacons' letters dated 4 August 1978 and 9 August 1978 and First Defendant's letter dated 10 August 1978 (pages 10758, 10760, 10769 and 10771 of Plaintiff's Bundle of Documents	1,060,210.02	25 August 1978	26 August 1980	Not stated	47,028.42 (paid out on 28 August 1979) and 93,670.31 (paid out on 26 August 1980)

	Principal	Value Date	Maturity Date / Term	Interest Rate	Interest
Volume 51) **Supporting Document(s)** Midland Bank statement for DM transactions from 25 August 1978 to 26 August 1980, First Defendant's letters dated 10 October 1979 and 15 September 1980, Deacons' two letters dated 20 October 1979, Deacons' letter dated 18 September 1980 and Deacons' telex dated 22 August 1978 (pages 11040, 11041, 11042 11067, 11069, 11070, 11073, 11191 and 11199 of Plaintiff's Bundle of Documents Volume 52)					

Supporting Document(s)	Principal	Value Date	Maturity Date / Term	Interest Rate	Interest
(7) Midland Bank letters dated 23 January 1979 and 27 February 1979, Deacons' letters dated 23 January 1979 and 19 February 1979 and First Defendant's letter dated 7 February 1979 (pages 10894, 10895, 10937, 10939 and 10941 of Plaintiff's Bundle of Documents Volume 51)	1,000,000.00	27 February 1979	3 months	Not stated	7,656.25 (estimated on the assumption that the deposit was renewed at the last interest rate of 3.0625%)
(8) Midland Bank letters dated 23 January 1979 and 27 February 1979, Deacons' letters dated 23 January 1979 and 19 February 1979 and First Defendant's letter dated 7 February 1979 (pages 10894, 10895, 10937, 10939 and 10941 of Plaintiff's Bundle of Documents Volume 51)	4,121,076.18	27 February 1979	1 year	Not stated	126,207.96 (estimated on the assumption that the deposit was renewed at the last interest rate of 3.0625%)

Supporting Document(s)	Principal	Value Date	Maturity Date / Term	Interest Rate	Interest
(9) Account No 04.000099 Reference 0005 Midland Bank letter dated 5 July 1979, Midland Bank statement for DM transactions from 28 May 1979 to 4 July 1979, Deacons' letter dated 18 July 1979 (pages 11032, 11033 and 11034 of Plaintiff's Bundle of Documents Volume 52) (Note: According to the Midland Bank letter dated 5 July 1979, the principal and accrued interest totalling DM1,013,725 was converted to £251,046.31 and forwarded by telegraphic transfer to Midland Bank Limited, London for credit to First Defendant's GBP account with Midland Bank Limited, London.)	1,008,750.00 and 4,693.49	28 May 1979 and 2 July 1979	2 days' notice	4.75% (28 May 1979 to 21 June 1979); 4.875% (22 June 1979 to 2 July 1979); 5.125% (from 3 July 1979)	281.51
Sub-Total					**851,859.82**

Supporting Document(s)	Principal	Value Date	Maturity Date / Term	Interest Rate	Interest
2. Transactions in GBP	**GBP(£)**				**GBP(£)**
(10) Account No 00.078034 Reference 0001 Midland Bank statement for GBP transactions from 27 February 1980 to 27 May 1980 (page 11066 of Plaintiff's Bundle of Documents Volume 52)	1,040,280.84	27 February 1980	27 May 1980	17.5%	44,888.83
(11) Ditto (Note: On 1 March 1983, the First Defendant instructed Midland Bank to convert the entire balance to US$.)	1,010,169.67	27 May 1980	27 August 1980	16.5%	42,011.99 (calculated from 1,010,169.67 x 16.5% x 92/365)

Supporting Document(s)	Principal	Value Date	Maturity Date / Term	Interest Rate	Interest
(12) Account No 00.784034 Reference 0002 Midland Bank statement for GBP transactions on 26 August 1980 (page 11071 of Plaintiff's Bundle of Documents Volume 52) Midland Bank statement for GBP transactions from 22 September 1980 to 29 January 1981 (pages 841 to 842 of First Defendant's affidavit of evidence in chief)	270,409.58	26 August 1980	26 September 1980	16.375%	3,760.73
(13) Ditto	1,340,405.07	26 September 1980	27 October 1980	15.875%	18,072.52
(14) Ditto	1,358,477.59	27 October 1980	27 November 1980	16.25%	18,748.85
(15) Ditto	1,377,226.44	27 November 1980	29 December 1980	14%	16,904.04
(16) Ditto	1,394,130.48	29 December 1980	29 January 1981	14.25%	16,872.80

Supporting Document(s)	Principal	Value Date	Maturity Date / Term	Interest Rate	Interest
(17) Account No 00.078034 Reference 4000 Midland Bank statement for GBP transaction on 29 January 1981 (page 843 of First Defendant's affidavit of evidence in chief)	1,411,003.28	29 January 1981	27 February 1981	14%	15,695.00 (calculated from 1,411,003.28 x 14% x 29/365)
(18) Account No 00.784034 Reference 0003 Midland Bank statements for GBP transaction in February 1981 and March/April 1981 (pages 844 and 845 of First Defendant's affidavit of evidence in chief)	1,426,698.27	Unclear	1 month ending 31 March 1981	13.5%	16,885.85

Supporting Document(s)	Principal	Value Date	Maturity Date / Term	Interest Rate	Interest
(19) Account No 00.784034 Reference 0003 Midland Bank statement for GBP transaction in March and April 1981 (page 845 of First Defendant's affidavit of evidence in chief)	1,443,584.12	31 March 1981	30 April 1981	12.25%	14,534.72 (calculated from 1,443,584.12 x 12.25% x 30/365)
(20) Account No 00.078034 Reference 4000 Deacons' letter dated 2 September 1982 and Midland Bank statement for GBP transactions from 8 March 1982 to 9 July 1982 (pages 11184, 11186 and 11187 of Plaintiff's Bundle of Documents Volume 52)	1,637,633.53	8 March 1982	8 April 1982	13.375%	18,602.84
(21) Ditto	1,656,236.37	8 April 1982	10 May 1982	12.875%	18,695.05
(22) Ditto	1,674,931.42	10 May 1982	10 June 1982	12.625%	17,959.62
(23) Ditto	1,692,891.04	10 June 1982	9 July 1982	12.375%	16,644.83

Supporting Document(s)	Principal	Value Date	Maturity Date / Term	Interest Rate	Interest
(24) Account No 00.078034 Reference 4000 Deacons' letter dated 2 September 1982 and Midland Bank statement for GBP transactions from 8 March 1982 to 9 July 1982 (pages 11184, 11186 and 11187 of Plaintiff's Bundle of Documents Volume 52) Midland Bank statement for GBP transactions in August 1982 (page 11244 found at Tab 28 of the annotated version of the PWC report)	1,709535.87	9 July 1982	9 August 1982	12%	17,423.22

Supporting Document(s)	Principal	Value Date	Maturity Date / Term	Interest Rate	Interest
(25) Account No 00.078034 Reference 4000 Midland Bank statement for GBP transactions in August 1982 (page 11244 found at Tab 28 of the annotated version of the PWC report)	1,726,959.09	9 August 1982	9 September 1982	10.75%	15,767.37 (calculated from 1,726,959.09 x 10.75% x 31/365)
(26) Account No 91.036720 Deal No 4000 Midland Bank statement for GBP transactions from 2 August 1985 to 2 September 1985 (page 11366 of Plaintiff's Bundle of Documents Volume 53) (Note: The First Defendant gave Midland Bank instructions to convert this deposit to a US$ call deposit upon maturity – see pages 11372 and 11392 of Plaintiff's Bundle of Documents Volume 53.)	910,089.54	2 August 1985	2 September 1985	11.5%	8,888.96

Supporting Document(s)	Principal	Value Date	Maturity Date / Term	Interest Rate	Interest
(27) Ditto	918,978.50	2 September 1985	2 October 1985	11.5%	8,686.24 (calculated from 918,978.50 x 11.5% x 30/365)
Sub-Total					**331,043.46**
3. Transactions in US$	**US$**				**US$**

Supporting Document(s)	Principal	Value Date	Maturity Date / Term	Interest Rate	Interest
(28) Account No 01.055763 Deal No 4000 Midland Bank statement for US$ transactions on 2 October 1985 (Note: The First Defendant gave Midland Bank instructions to close this account on maturity on 4 November 1985 and to transfer the entire balance to her US$ Call Deposit Account No 02881903322 with Standard Chartered Bank. Channel Islands – see pages 11465 and 11466 of Plaintiff's Bundle of Documents Volume 53.)	1,290,831.57	2 October 1985	4 November 1985	7.5%	8,752.90 (calculated from 1,290,831.57 x 7.5% x 33/365)

332 In the circumstances, I would assess the value of the estate's interest in the funds in the Midland Bank accounts, exclusive of funds that had already been separately accounted for under other headings, at a total of DM2,708,472.40, £331,043.46 and US$8,752.90.

Standard Chartered Bank (C.I.) Limited – Channel Islands

333 As at 23 October 1985, the First Defendant's Standard Chartered Bank (C.I.) Limited ("Standard Chartered Bank") account number 028819033/22 had an opening balance of US$2,705,634.42. The First Defendant claimed that this sum of money "represented [her] share and [the Third Defendant's] share under the Estate". On 4 November 1985, a sum of US$1,299,691.04 was transferred to this account from the First Defendant's Midland Bank account number 01.055763

Deal No 4000. The First Defendant conceded that "this could amount to inter-mingling of funds" between her personal funds and the estate's funds. On 2 December 1985, interest with a value date of 29 November 1985 amounting to US$38,250.32 was paid on the total credit balance of US$4,005,325.46 in Standard Chartered Bank account number 028819033/22. (See paragraph 123 and page 847 of the First Defendant's affidavit of evidence in chief.)

334 As neither the Plaintiff's nor the Second Defendant's counsel cross-examined the First Defendant on her evidence that the opening balance of US$2,705,634.42 in Standard Chartered Bank account number 028819033/22 "represented [her] share and [the Third Defendant's] share under the Estate", and as there was no evidence to the contrary, I accepted that the entire sum of US$2,705,634.42 belonged to the First and Third Defendants beneficially. This sum was intermingled with a sum of US$1,299,691.04 from the Midland Bank accounts. As there was clear evidence that the Midland Bank accounts contained funds transferred from the Deceased's bank accounts with Bank Mees & Hope NV, and as the First Defendant provided no evidence as to what sums, if any, she had contributed to the Midland Bank accounts, the court would presume that the entire sum of US$1,299,691.04 belonged to the estate for the reasons stated at paragraphs 322 and 323 of this judgment.

335 According to the Standard Chartered Bank statement dated 6 December 1985 exhibited at page 847 of the First Defendant's affidavit of evidence in chief, account number 028819033/22 was a US$ call deposit account that paid interest at 7.3750% per annum. As interest amounting to US$38,250.32 was credited to the account on 2 December 1985 with a value date of 29 November 1985, the interest that would have been earned on the sum of US$1,299,691.04 deposited on 4 November 1985 would have amounted to US$6,565.22, calculated as follows:

US$1,299,691.04 x 7.3750% x 25/365 = US$6,565.22

This sum of US$6,565.22 would be a separate and distinct asset belonging to the estate.

336 According to a letter dated 23 December 1985 from Standard Chartered Bank to the First Defendant (see page 849 of the First Defendant's affidavit of evidence in chief):

(1) a total of US$1,203,143.75 was debited from account number 028819033/22 on 20 December 1985, of which US$1,203,068.75 was converted to £837,500 and the remaining US$75 was utilised for payment of Standard Chartered Bank's commission and telex charges; and

(2) of the £837,500:

(a) £100,000 was transferred to Barclays Bank plc to the account of Robert Gore and Company;

(b) the remaining £737,500 was placed on a fixed deposit account at 11.375% per annum to mature on 6 January 1986, when the principal balance of £737,500 would be transferred to Barclays Bank plc to the account of Robert Gore and Company; and

(c) the interest on the £737,500 deposit would be remitted to the First Defendant's account number 51069756 at Midland Bank plc, London after Standard Chartered Bank had first deducted its charges for the transfer of £737,500 to Barclays Bank plc.

337 At paragraphs 124 and 125 of the First Defendant's affidavit of evidence in chief, the First Defendant stated that the first sum of £100,000 remitted to Robert Gore and Company was used for

the deposit for the purchase of 39 Sheldon Avenue, while the second sum of £737,500 remitted to Robert Gore and Company was used to pay for 39 Sheldon Avenue and the associated legal fees. 39 Sheldon Avenue was meant to be the residence of the Second Defendant and his family. The First Defendant submitted that of the US$1,203,143.75 that was debited from account number 028819033/22 on 20 December 1985, the court should treat US$862,066.00 as belonging to the estate and the balance of US$341,077.75 as coming from the First Defendant's personal funds. She further submitted that the sum of US$862,066.00 should be treated as a distribution to the Second Defendant, as 39 Sheldon Avenue had been "beneficially used by [the Second Defendant] and/or the Plaintiff" and "the Plaintiff had already been living there for quite some time".

338 However, the First Defendant changed her story during the inquiry. She now claimed that she had transferred S$5 million from Singapore to Jersey and used those funds to acquire 39 Sheldon Avenue. Her explanation for the contents of paragraphs 124 and 125 was that she had spoken to the person who recorded the affidavit in Mandarin, and "maybe" what she had said had been "wrongly put in writing". (See notes of evidence for the inquiry at page 77 line 22 to page 78 line 9.)

339 I did not think that the First Defendant was telling the truth at the inquiry when she claimed that she had transferred S$5 million from Singapore to Jersey and used those funds to acquire 39 Sheldon Avenue. This bare allegation was not supported by any documentary evidence. It was also contradicted by the available documentary evidence and the First Defendant's own statements at paragraphs 120 to 125 of her affidavit of evidence in chief. I did not find the First Defendant's explanation for the discrepancies between her oral evidence at the inquiry and her evidence as set out at paragraphs 124 and 125 of her affidavit of evidence in chief to be credible. On the evidence, the funds for the acquisition of 39 Sheldon Avenue came from a mixed fund amounting to US$4,043,585.78 of which US$1,306,256.26 (comprising the sum of US$1,299,691.04 transferred from the Midland Bank account and interest amounting to US$6,565.22) belonged to the estate and the remainder (comprising the opening balance of US$2,705,634.42 and interest amounting to US$31,685.10) belonged to the First and Third Defendants beneficially.

340 I did not think that there was sufficient evidence before me to come to a firm conclusion as to whether the First Defendant had consciously used the estate's funds or the funds belonging to the First and Third Defendants to acquire 39 Sheldon Avenue. The purchase price could have been paid for in whole or in part from the estate's funds or from the funds belonging to the First and Third Defendants. If the rule in *Re Hallett's Estate* (1880) 13 Ch D 696 was applied, the First Defendant would be presumed to have drawn on her own funds first, and would be deemed not to have drawn on the estate's funds until her own funds had been exhausted. 39 Sheldon Avenue was registered in the name of the First Defendant. While the First Defendant might have intended, at some point in time, to acquire 39 Sheldon Avenue for the benefit of the Second Defendant and his family, there was certainly no evidence that the First Defendant intended to maintain 39 Sheldon Avenue as an estate asset. It would appear from paragraph 125 of the First Defendant's affidavit of evidence in chief that she had intended unilaterally to treat at least part of the purchase price of 39 Sheldon Avenue as a distribution to the Second Defendant. However, there was insufficient evidence to conclude that the administrators and the Second Defendant had in fact agreed to treat the purchase price of 39 Sheldon Avenue, or any part of it, as a distribution to the Second Defendant. If such an arrangement had been reached, it would have been unnecessary for the parties to consider the creation of the trust in respect of 39 Sheldon Avenue that both the Plaintiff and the Second Defendant had referred to. It would also have rendered the property susceptible to execution by the Second Defendant's creditors, which was a prospect that the Second Defendant had sought to avoid. For these reasons, I thought it was more probable than not that the acquisition of 39 Sheldon Avenue did not constitute a distribution to the Second Defendant. Instead, the property was to be treated as having been

acquired by the First Defendant using her personal funds. In this regard, I find the following passage from *Hanbury and Martin – Modern Equit*y (16th Ed, 2001) at pages 694 to 695 instructive:

> There is little English authority on the question whether the beneficiaries may claim property purchased out of a mixed account when a sufficient balance remains to satisfy their claim. The point will be significant where the property purchased has increased in value, or it may be that the balance has been spent on a property which has made a smaller profit. Under *Re Hallett* the first expenditure is presumed to have been the trustee's money. *Re Oatway* is distinguishable because the balance has not been dissipated. *Re Tilley's Will Trusts* suggests that the beneficiaries must be content with a claim to the balance (or the second property, as the case may be). ...

341 In the circumstances, I found that the entire sum of US$1,306,256.26 belonging to the estate (comprising the sum of US$1,299,691.04 transferred from the Midland Bank account and interest amounting to US$6,565.22) remained in account number 028819033/22 after 20 December 1985. As this was an interest bearing call deposit account, and as there was no evidence led to show that the sum of US$1,306,256.26 was subsequently expended, the court would presume that this sum continued to earn interest in the account at the prescribed rate of 7.3750% per annum from 30 November 1985 to 29 August 1991. Simple interest at 7.3750% per annum on a sum of US$1,306,256.26 during the 5.75 year period from 30 November 1985 to 29 August 1991 would amount to approximately US$553,934.30. In the circumstances, I would assess the total interest earned from this account during the period from 30 November 1985 to 29 August 1991 at US$553,934.30.

342 Both the Plaintiff's counsel and PWC alleged that the following credit balances belonged to the estate:

(1) £720,974.75 standing in Standard Chartered Bank account number 028819033/11 as at 17 July 1985; and

(2) US$2,698,393.60 standing in Standard Chartered Bank account number 028819033/21 as at 28 June 1985.

However, there as no evidence whatsoever that these funds belonged to the estate or were traceable to funds belonging to the estate. On the contrary, there was clear evidence that by 1985, the First Defendant was a fairly wealthy businesswoman in her own right.

343 In the circumstances, I would assess the value of the estate's interest in the funds in the Standard Chartered Bank accounts, exclusive of funds that had already been separately accounted for under other headings, at a total of US$560,499.52. This sum comprised interest earned from the deposit of US$1,299,691.04 from 4 November 1985 to 29 August 1991.

Midland Bank Limited (London)

344 At paragraph 8.27 of its report, PWC claimed that the balance in Standard Chartered Bank account number 028819033/22, after deducting US$1,203,143.75, was transferred to the First Defendant's bank account number 51069756 at Midland Bank, London. This allegation was apparently based on a misreading of the letter dated 23 December 1985 from Standard Chartered Bank to the First Defendant found at page 849 of the First Defendant's affidavit of evidence in chief. A plain reading of the letter would show that this allegation was totally misconceived. There was no evidence whatsoever that the estate's funds had been transferred to the First Defendant's account

number 51069756 at Midland Bank, London.

345 While it was true that a sum of DM1,013,725 was withdrawn from Midland Bank account number 04.000099 reference 0005, converted to £251,046.31 and transferred to the First Defendant's account with Midland Bank Limited (London), as this sum originated from other funds belonging to the estate, it would already have been separately accounted for under another heading.

Barclays Bank Finance Company (Jersey) Limited

346 Both the Plaintiff's counsel and PWC alleged that the following credit balances with Barclays Bank Finance Company (Jersey) Limited belonged to the estate:

(1) £1,546,189.90 standing in account number 01 220780017 as at 4 October 1985; and

(2) US$3,093,915.36 standing in account number 01 220780016 as at 17 August 1987.

However, there as no evidence whatsoever that these funds belonged to the estate or were traceable to funds belonging to the estate.

Value of Deceased's Estate in Europe

347 Having regard to the matters set out at 303 to 346 of this judgment, the value of the notional pool of European assets available for distribution is assessed at US$2,127,530.28, DM2,708,472.40 and £331,043.46. These comprised the following:

(1) Funds in the Deceased's accounts with Bank Mees & Hope NV amounting to US$1,558,277.86;

(2) Interest on funds in Midland Bank Trust Corporation (Jersey) Limited amounting to of DM2,708,472.40, £331,043.46 and US$8,752.90, which the First Defendant held as a trustee for the estate; and

(3) Interest on funds in Standard Chartered Bank (C.I.) Limited amounting to US$560,499.52, which the First Defendant held as a trustee for the estate.

Miscellaneous Alleged Assets

348 The Plaintiff's counsel also alleged the following assets belonged to the Deceased's estate:

(1) Two Piaget watches and Patek Philippe watch;

(2) Bank accounts in Switzerland and/or Liechtenstein;

(3) Rama Shipping Co Pte Ltd;

(4) S K Ong Rubber Estate;

(5) Bank account in United States of America; and

(6) Properties in Batam, Indonesia that were registered in the names of the First, Third and Fourth Defendants.

Two Piaget Watches and Patek Philippe Watch

349 Both the Plaintiff and the Second Defendant claimed that the Deceased had owned two Piaget watches and one Patek Philippe watch when they gave oral evidence during the inquiry. However, none of these alleged assets were specifically referred to in the Plaintiff's Statement of Claim. Further, in breach of the rule in *Browne v Dunn* (1893) 6 R 67, the First Defendant was never cross-examined on these alleged assets. There was also no evidence led as to the value of these alleged assets. In the circumstances, I was not in a position to find that these watches belonged to the estate, Nor was I in a position to make a determination as to their value.

Bank Accounts in Switzerland and/or Liechtenstein

350 The Plaintiff claimed that Deceased had bank accounts in Switzerland and/or Liechtenstein, and that she believed that the account numbers of these bank accounts were engraved on the three watches allegedly owned by the Deceased. The First Defendant denied any knowledge of these alleged bank accounts. It was also not disputed that both the Plaintiff and the Second Defendant had tried unsuccessfully to trace these alleged bank accounts. In the circumstances, the Plaintiff has failed to prove the existence of the alleged bank accounts in Switzerland and/or Liechtenstein.

Rama Shipping Co Pte Ltd

351 The Second Defendant claimed that the Deceased had owned Rama Shipping Co Pte Ltd when he gave oral evidence during the inquiry. This alleged asset was not specifically referred to in the Plaintiff's Statement of Claim. The Plaintiff's counsel claimed that there was a letter dated 13 January 1978 from the estate's Singapore solicitors, Messrs Lee & Lee, to the Commissioner of Estate Duties, Singapore "showing that Rama Shipping was an Estate asset". However, this document was never formally tendered in court or admitted in evidence. It was also significant that this alleged asset was not referred to in the estate duty schedule annexed to the Singapore grant of letters of administration. Further, in breach of the rule in *Browne v Dunn* (1893) 6 R 67, the First Defendant was not cross-examined on this alleged asset. There was also no evidence led as to the value of this alleged asset. In the circumstances, I was not in a position to find that this alleged asset belonged to the estate. Nor was I in a position to make a determination as to its value.

S K Ong Rubber Estate

352 The Second Defendant claimed that the Deceased had owned a rubber estate in Gelang Patah called S K Ong Rubber Estate when he gave oral evidence during the inquiry. This alleged asset was not specifically referred to in the Plaintiff's Statement of Claim. In breach of the rule in *Browne v Dunn* (1893) 6 R 67, the First Defendant was not cross-examined on this alleged asset. There was also no evidence led as to the value of this alleged asset. In the circumstances, I was not in a position to find that this alleged asset belonged to the estate. Nor was I in a position to make a determination as to its value.

Bank Account in United States of America

353 During the inquiry, the Plaintiff's counsel tendered a document (marked as exhibit "P1" by the court) which was apparently seized from the First Defendant pursuant to an Anton Piller Order. The document appeared to be a letter dated 29 January 1976 from the United States Inland Revenue Service to Deacons (the estate's Hong Kong solicitors). The letter required Deacons to file an inventory of the Deceased's assets, wherever situated, after which the Inland Revenue Service would "issue the transfer certificate on the United States bank account". When the First Defendant was

cross-examined on this document, she gave the following evidence:

> Q: Refer to this document seized under the Anton Piller Order. Have you seen this document before or are you aware of it?
>
> A: From my knowledge, there was asset in Holland, but as far as I know, there was none in the United States. Maybe it was Deacon who wrote to them and this is reply from them to Deacon.
>
> Q: Do you know what happened to the monies in the United States bank account?
>
> A: I do not know of any money in United States.

354 This alleged asset was not specifically referred to in the Plaintiff's Statement of Claim, so the First Defendant's inability to provide information on this alleged asset was understandable. The Plaintiff herself did not provide any particulars of this alleged asset. There was no evidence as to the sums, if any, were contained in the alleged bank account. There was no evidence that this alleged asset was ultimately realised by the estate. In the circumstances, while I thought that it was more probable than not that the Deceased had a bank account in the United States of America, I was not in a position to make a determination as to its value. As such, I can do no more than declare that the Plaintiff would be entitled to a one-twelfth share of the Deceased's interest in this asset. Until such time as this asset is realised, the Plaintiff is not entitled to any monetary payment in respect of her one-twelfth share of the Deceased's interest in this asset.

Properties in Batam, Indonesia registered in the Names of the First, Third and Fourth Defendants

355 The Plaintiff's counsel claimed that various properties in Batam, Indonesia that were registered in the names of the First, Third and Fourth Defendants belonged to the estate. He claimed that these assets had been acquired with funds belonging to the estate. However, there was no evidence whatsoever that the funds used to acquire these assets belonged to the estate or were traceable to the estate. Accordingly, I found that these alleged assets did not belong to the estate.

Summary of the Deceased's Estate

356 The full extent of the Deceased's estate may be summarised as follows:

(1) Estate in Singapore – net value of S$11,872,574.21 (see paragraphs 153 to 155 of this judgment);

(2) Estate in Hong Kong (including assets belonging to Grand Trading Company) – net value of HK$18,686,098.75, NZ$451,935.37 and £1,430.34 (see paragraphs 257 to 259 of this judgment);

(3) Estate in Malaysia – value of S$485,528 (based on the S$/RM exchange rate in 1979, when the assets were realised and converted to Singapore currency) (see paragraphs 260 to 263 of this judgment);

(4) Estate in Indonesia – value of S$3,616,667 (based on the S$/Rp exchange rate in 1977 or August 1991, depending on the asset concerned) plus an interest in a piece of land in Cibenong and an interest in a jute plantation in Lampung (see paragraphs 292 and 293 of this judgment);

(5) Estate in Europe – total value of US$2,127,530.28, DM2,708,472.40 and £331,043.46

(see paragraph 347 of this judgment); and

(6) Estate in United States of America – an interest in a bank account (see paragraphs 353 and 354 of this judgment).

The Second Defendant's Share in the Estate

357 For the reasons set out in paragraphs 14 to 48 and 53 to 61 of this judgment, the Second Defendant was entitled to a one-sixth share of the Deceased's estate, as summarised at paragraph 356 of this judgment. This amounted to:

(1) S$1,978,762.37 from the Deceased's estate in Singapore;

(2) HK$3,114,349.79, NZ$75,322.56 and £238.39 from the Deceased's estate in Hong Kong (including assets belonging to Grand Trading Company);

(3) S$80,921.33 from the Deceased's estate in Malaysia;

(4) S$602,777.83 plus a one-sixth share of the Deceased's interest in the piece of land in Cibenong and a one-sixth share of the Deceased's interest in the jute plantation in Lampung, from the Deceased's estate in Indonesia;

(5) US$354,588.38, DM451,412.07 and £55,173.91 from the Deceased's estate in Europe; and

(6) a one-sixth share of the Deceased's interest in a bank account from the Deceased's estate in the United States of America.

The Amounts Received by the Second Defendant from the Estate

358 On the evidence before me, I was satisfied that the following material facts had been established:

(1) Although the First Defendant transmitted various sums of money to the Second Defendant from time to time, except in relation to the sale proceeds of No 4 Chatsworth Park, the First Defendant never contemporaneously informed the Second Defendant when the money was disbursed that the money was to be treated as a distribution of the Second Defendant's share of the Deceased's estate. The only time that the Second Defendant was made aware that the money to be disbursed to him constituted a distribution of his share of the Deceased's estate was when he received a share of the sale proceeds of No 4 Chatsworth Park. That was also the only occasion when the Second Defendant contemporaneously acknowledged receiving a distribution of his share of the estate.

(2) Apart from one receipt in relation to a part-payment of S$242,255 in respect of the sale proceeds of No 4 Chatsworth Park, the Second Defendant did not contemporaneously sign any other receipts for the money disbursed to him. It was only much later, probably in or after October 1987, that the Second Defendant signed an undated document confirming that he had received from the First Defendant a total of £1,018,000 and US$150,000 as a distribution of the Deceased's estate (see page 120 of the Second Defendant's affidavit filed on 10 September 2002). As this document referred to the Second Defendant receiving £200,000 from the sale of 6 Audley Court, and as 6 Audley Court was sold in October 1987, it followed that this document

was signed in or after October 1987. After the Plaintiff had commenced divorce proceedings against the Second Defendant in 1988, the First Defendant required the Second Defendant to further sign a Deed of Release dated 29 June 1989, under which the Second Defendant purported to acknowledge receiving from the administrators of the estate the sums of £1,018,000 and US$150,000 in full and final settlement of his interest in the estate. However, the Second Defendant had no knowledge as to the precise extent of the Deceased's estate when he signed these documents.

(3) After the death of the Deceased, the First Defendant held the purse strings of the family. The First Defendant sometimes opened bank accounts or made investments in the names of the Second Defendant and/or the Third Defendant. From time to time, the First Defendant would disburse various amounts of money to the Second Defendant for his maintenance, for the maintenance of the Third Defendant and for the various projects and businesses embarked on by the Second Defendant and/or the Plaintiff. The First Defendant never made it clear whether these funds came from the estate or from her own considerable financial resources. In practice, the First Defendant made no distinction between the estate's funds and her own personal funds when she disbursed funds to the Second Defendant. Although the First Defendant did not manage the day to day operations of the various projects and businesses, she controlled the access to funds and had a significant say on how the projects and businesses were to be managed and operated.

359 Under the judgment dated 16 July 1996, for the purposes of the inquiry, the only payments to the Second Defendant that were relevant were those that were made on or before 29 August 1991. This was because the judgment specifically directed the court to ascertain the amount still due to the Second Defendant from the estate as on 29 August 1991.

360 The Second Defendant received numerous payments of money from the First Defendant between the death of the Deceased and 29 August 1991. The Second Defendant received a total of at least £1,018,000 and US$150,000, for when he was cross-examined on the undated written confirmation found at page 120 of his affidavit filed on 10 September 2002 (the "undated confirmation"), he confirmed that he had received payments from his mother as set out in this document (see notes of evidence for the inquiry at lines 14 to 31). However, that did not address the question as to how these payments were to be characterised, in particular, whether these payments were distributions of the Second Defendant's share of the estate. In this regard, the trial judge, Chao Hick Tin J, made a very pertinent observation on the state of the Second Defendant's knowledge. His Honour said (at pages 26 to 27 of the judgment dated 16 July 1996):

> From 1979 to 1988, the second defendant had been receiving various sums from his mother. How much each time the first defendant would send, or at what intervals, or for what purposes, were entirely matters within the control of the first defendant. I doubt he really knew then whether each sum received was from his share in the inheritance or was it a gift from his mother or was it his mother's investment.

Having studied the evidence before me, I was of the same view as the trial judge. The Second Defendant had included in the list of alleged distributions set out in the undated confirmation a payment of £85,000 in 1983 and a payment of £30,000 in 1985 which he also described as loans. This clearly demonstrated that he did not appreciate the nature of a distribution when he signed the document. It also created a doubt as to whether any of the other payments set out in the undated confirmation were in fact distributions.

361 Although the First Defendant maintained that as at 29 June 1989, the Second Defendant

had received a total of £1,018,000 and US$150,000 as distributions of his share of the Deceased's estate, there were conflicting versions as to how these sums were arrived at in the undated confirmation and in the table at page 860 of the First Defendant's affidavit of evidence in chief (which the First Defendant had used to justify the amounts set out in the Deed of Release dated 29 June 1989). These discrepancies reinforced the conclusion that when the sums referred to were paid, the parties never applied their minds as to which payments should be treated as distributions to the Second Defendant. They also created a doubt as to the veracity of the items listed in the undated confirmation. I noted that unlike the table found at page 860 of the First Defendant's affidavit of evidence in chief, many of the items listed in the undated confirmation were not corroborated by documentary evidence of payments made to the Second Defendant. The discrepancies between the undated confirmation and the table at page 860 of the First Defendant's affidavit of evidence in chief were as follows:

Year of payment	Amount paid according to table at page 860 of First Defendant's affidavit of evidence in chief	Amount paid according to the undated confirmation	Reason for payment according to the undated confirmation
1979		£125,000	"Purchase Aeroplane"
1980	£11,152 (converted from S$56,875)		
1981	£385,161	£248,000	"Set-up Construction Firm"
1982	£85,000		
1983	£51,056 (£31,056 of this sum was converted from S$100,000)	£85,000	"Loan – signed by Jane Rebecca & Mr Ong Siauw Tjoan"
1984	US$150,000	US$150,000	"GOLD TRADING"
1984	£82,477 (converted from S$45,000 and S$173,080)		

Year of payment	Amount paid according to table at page 860 of First Defendant's affidavit of evidence in chief	Amount paid according to the undated confirmation	Reason for payment according to the undated confirmation
1985	£18,760 (converted from S$45,400)	£30,000	"Repair Flat 6 Audley Court, Mayfair"
1985		£30,000	"Loan"
1986		£300,000	"Final Distribution"
1987		£200,000	"Sale of Flat 6 Audley Court, Mayfair"
1989	£385,032 (converted from S$475,000, S$242,255, NZ$350,000 and NZ$97,000)		
Total	£1,018,638 and US$150,000	£1,018,000 and US$150,000	

362 No evidence was presented at the inquiry on the origin of the undated confirmation. However, the trial judge observed (at pages 53 to 54 of the judgment dated 16 July 1996) that from 1981, the Second Defendant "has wholly depended financially on his mother, who exercises considerable dominance over him and his life". The trial judge also observed (at page 10 of the judgment dated 16 July 1996) that by the autumn of 1987, the Plaintiff had spoken to the First Defendant about her then desperate financial position and the fact that the Plaintiff and the Second Defendant had separated. As explained at paragraph 338(2) of this judgment, the undated confirmation must have been signed in or after October 1987. It would not be unreasonable to infer that the undated confirmation was prepared at the instigation of the First Defendant to thwart any claims that the Plaintiff might subsequently make that would threaten the Second Defendant's inheritance. During the inquiry, the Second Defendant confirmed that the First Defendant had asked him to sign the document (see notes of evidence for the inquiry at page 175 lines 23 to 34). He also said that he had understood what this document said, but the extent of his understanding was clearly debatable, given his inability to distinguish a distribution from a loan.

363 In my opinion, before a particular payment to the Second Defendant can be treated as a

distribution of the Second Defendant's share in the Deceased's estate, the Second Defendant would first have to be made aware that the payment was to be treated as such. At the time when the payments were made, the Second Defendant relied exclusively on the First Defendant for all his expenses. He was accustomed to being maintained by the First Defendant in the type of lifestyle that he had led. At paragraph 128 of her affidavit of evidence in chief, the First Defendant admitted that she had advanced other sums of money to the Second Defendant that she did not regard as distributions of the Second Defendant's share in the Deceased's estate. Given this factual matrix, it would not be unreasonable for the Second Defendant to assume that the payments that he received from the First Defendant were gifts from her for his maintenance and personal expenses, unless she specifically informed him of the purposes for which the funds were remitted. Therefore, if the First Defendant wished to treat a particular sum remitted to the Second Defendant as a distribution of his share in the Deceased's estate, it was incumbent on her to notify him of her intention. Without such knowledge, the Second Defendant could not reasonably be expected to give the administrators a valid discharge for the payment received.

364 I did not think that the issue as to whether a particular payment was to be characterised as a distribution turned on how the funds were ultimately used. If a payment was in fact a distribution, it was quite irrelevant how the Second Defendant chose to use it. If a payment was not intended by the parties to be a distribution at the time that it was made, the fact that it was used to maintain the Second Defendant and/or the Plaintiff or to support their lifestyle did not retrospectively change the nature of the payment.

365 In the circumstances, the only payments received by the Second Defendant that might legitimately be treated as distributions from the Second Defendant's share of the estate were the payments of $475,000 and $242,255 that the Second Defendant had admitted receiving from the sale proceeds of No 4 Chatsworth Park. The Second Defendant had been informed that those payments would be made from his share of the estate. He even signed a receipt dated 11 May 1989 for the part-payment of $242,255 which bore the description "Being part-payment on Sale of 4, Chatsworth Park". Although the Second Defendant suggested, at paragraph 67 of his affidavit filed on 10 September 2002, that he did not recall receiving the full sum of $717,255 from the sale proceeds of No 4 Chatsworth Park, he confirmed during the inquiry that he did in fact receive the full sum of $717,255 (see notes of evidence for the inquiry at page 237 lines 38 to 40 and page 243 lines 19 to 21).

366 How then were the other payments received by the Second Defendant to be characterised? The First Defendant's counsel submitted that the payments were not loans. He pointed out that if the Second Defendant and the Plaintiff were unaware whether a particular payment was a loan or advance, then that particular payment could not have been a loan or advance, because it was not possible for a person to "unknowingly" borrow money from another. He also pointed out that there were no terms of repayment agreed between the First and Second Defendants. I fully agreed with his submission that the payments could not have been loans.

367 By characterising the other payments as distributions, the First Defendant in effect conceded that she did not expect the Second Defendant to repay any of those sums. The First Defendant was the Second Defendant's mother and had been maintaining and supporting the Second Defendant from his childhood. In my opinion, a significant portion of the funds that were remitted were allowances given by the First Defendant as a parent to the Second Defendant as her child for his maintenance and expenses. A portion of the funds remitted was probably for the reimbursement of expenses incurred by the Second Defendant on behalf of the estate or the other Defendants. The First Defendant might also have remitted some money as advances for expenses to be incurred by the Second Defendant on behalf of the estate or the other Defendants. I did not think it was necessary

to reach a firm conclusion on the apportionment between gifts, reimbursements and advances for expenses to be incurred on behalf of the estate or the other Defendants. For the purposes of determining the amount still due to the Second Defendant as at 29 August 1991, it would sufficient to say that the other payments were not distributions of the Second Defendant's share of the estate.

368 In this regard, it was significant that on 7 September 1989, the First Defendant paid a sum of HK$79,800 to American Express International Inc to settle the Second Defendant's credit card debts. This payment was made after the Second Defendant had signed the Deed of Release dated 29 June 1989. As at 7 September 1989, the court had not made any pronouncement on the validity or otherwise of the Deed of Release. As the Second Defendant had then purported to discharge and release the administrators from making any further payments to him, it followed that the payment of HK$79,800 could not possibly be a distribution to the Second Defendant. If the Deed of Release was valid, the First Defendant would be committing a breach of trust if she made any further payments to or on behalf of the Second Defendant. By subsequently treating this sum as a distribution to the Second Defendant, the First Defendant conceded that the Second Defendant was not expected to repay the sum. Given the circumstances prevailing as at 7 September 1989, the sum of HK$79,800 that was paid on behalf of the Second Defendant had to be a gift from the First Defendant.

369 In the circumstances, I found that as at 29 August 1991, the Second Defendant had received only a total of S$717,255 as a distribution of his share of the Deceased's estate. This sum of S$717,255 came from the Deceased's estate in Singapore. Accordingly, the amount still due to the Second Defendant from the estate as at 29 August 1991 would be:

(1) S$1,261,507.37 from the Deceased's estate in Singapore;

(2) HK$3,114,349.79, NZ$75,322.56 and £238.39 from the Deceased's estate in Hong Kong (including assets belonging to Grand Trading Company);

(3) S$80,921.33 from the Deceased's estate in Malaysia;

(4) S$602,777.83 plus a one-sixth share of the Deceased's interest in the piece of land in Cibenong and a one-sixth share of the Deceased's interest in the jute plantation in Lampung, from the Deceased's estate in Indonesia;

(5) US$354,588.38, DM451,412.07 and £55,173.91 from the Deceased's estate in Europe; and

(6) a one-sixth share of the Deceased's interest in a bank account from the Deceased's estate in the United States of America.

370 In so deciding, I was mindful of the fact that many of the payments made to the Second Defendant were in fact traceable to funds belonging to the estate. In my opinion, the origin of the funds was not conclusive of the nature of the payment. The First Defendant was also a beneficiary of the estate. She was therefore entitled to make gifts to the Second Defendant from her own share of the estate's funds.

The Quantum of the Plaintiff's Share in the Estate

371 As at 29 August 1991, the Second Defendant had received less than half of his share of the estate in all the jurisdictions in which the estate assets were located. For the reasons set out in paragraph 64 of this judgment, the Plaintiff was entitled to half of the Second Defendant's share of

the Deceased's estate as set out at paragraph 357 of this judgment. Thus, the Plaintiff's share in the estate amounted to:

(1) S$989,381.19 from the Deceased's estate in Singapore;

(2) HK$1,557,174.90, NZ$37,661.28 and £119.20 from the Deceased's estate in Hong Kong (including assets belonging to Grand Trading Company);

(3) S$40,460.67 from the Deceased's estate in Malaysia;

(4) S$301,388.91 plus a one-twelfth share of the Deceased's interest in the piece of land in Cibenong and a one-twelfth share of the Deceased's interest in the jute plantation in Lampung, from the Deceased's estate in Indonesia;

(5) US$177,294.19, DM225,706.04 and £27,586.96 from the Deceased's estate in Europe; and

(6) a one-twelfth share of the Deceased's interest in a bank account from the Deceased's estate in the United States of America.

372 The parties did not object to the court should give judgment in Singapore currency. The practical reason for this was that the Plaintiff had previously received a number of interim payments in Singapore currency. The Plaintiff's interest in the Deceased's estate crystallised on 29 August 1991. As such, unless a sum in a foreign currency was converted to Singapore currency prior to 29 August 1991, or the parties had agreed to use an exchange rate prevailing at another date, the relevant exchange rates at which the foreign currencies should be converted to the Singapore currency would be the exchange rates prevailing as at 29 August 1991.

373 According to the Monthly Statistical Bulletin issued by the Monetary Authority of Singapore, in the week ending 30 August 1991, the average Singapore dollar exchange rates for the US dollar, the British pound sterling, the Deutsche mark and the Hong Kong dollar were as follows:

(1) US$1 = S$1.7218;

(2) £1 = S$2.8939;

(3) DM100 = S$98.58; and

(4) HK$100 = S$22.18.

374 According to paragraph 4.31 of the PWC report, the average New Zealand dollar/Singapore dollar exchange rate in 1991 was NZ$1 = S$0.9881, based on financial information provided by Dow Jones & Company, Inc.

375 In the circumstances, as at 29 August 1991, the Plaintiff's share in the estate would have amounted to a total of S$2,321,770.27 plus a one-twelfth share of the Deceased's interest in the piece of land in Cibenong, a one-twelfth share of the Deceased's interest in the jute plantation in Lampung and a one-twelfth share of the Deceased's interest in a bank account in the United States of America. The Plaintiff would be entitled to judgment for the sum of S$2,321,770.27 and declarations as to her share in the Deceased's interests in the named assets. The breakdown according to the different jurisdictions is as follows:

(1) S$989,381.19 from the Deceased's estate in Singapore;

(2) S$345,381.39 (converted from HK$1,557,174.90), S$37,213.11 (converted from NZ$37,661.28) and S$344.95 (converted from £119.20) from the Deceased's estate in Hong Kong (including assets belonging to Grand Trading Company);

(3) S$40,460.67 from the Deceased's estate in Malaysia;

(4) S$301,388.91 plus a one-twelfth share of the Deceased's interest in the piece of land in Cibenong and a one-twelfth share of the Deceased's interest in the jute plantation in Lampung, from the Deceased's estate in Indonesia;

(5) S$305,265.14 (converted from US$177,294.19), S$222,501.01 (converted from DM225,706.04) and S$79,833.90 (converted from £27,586.96) from the Deceased's estate in Europe; and

(6) a one-twelfth share of the Deceased's interest in a bank account from the Deceased's estate in the United States of America.

Interest

376 As at 29 August 1991, the Plaintiff was entitled to payment of a sum of S$2,321,770.27 from the First Defendant. Section 12 of the Civil Law Act (Cap 43, 1999 Ed) gives the court a discretion to award interest on this sum "at such rate as it thinks fit on the whole or any part of the debt ... for the whole or any part of the period between the date when the cause of action arose and the date of the judgment".

377 In an action for a debt, the norm is to award interest at 6% per annum from the date the action is commenced to the date of judgment (see, for instance, paragraph 16(2) of The Supreme Court Practice Directions (1997 Ed)). This action was commenced on 21 September 1991, shortly after the Plaintiff's cause of action under the Deed of Assignment arose on 29 August 1991. Although it has taken a fairly long time to bring this action to its conclusion, this was not through any fault on the part of the Plaintiff. Much of the interval between the commencement of the action and the hearing of the inquiry was taken up by various interlocutory matters, the trial itself, the appeal therefrom and the difficulties encountered by all parties in piecing together events that stretched back to 1974. Interest under section 12 of the Civil Law Act is awarded to compensate a plaintiff for having been kept out of his money. Unless there are special circumstances, for example, unreasonable and unjustified delay on the part of the plaintiff in prosecuting the action, such interest will be awarded almost as a matter of course. (See *Yip Kok Meng Calvin v Lek Yong Han* [1993] 2 SLR 134 at page 142 and *Nirumalan V Kanapathi Pillay v Teo Eng Chuan* [2003] SGHC 96 at paragraphs 46 to 49.)

378 However, in this case, the Plaintiff had received a number of payments from the First Defendant prior to the date of this judgment pursuant to five Orders of Court. The parties agreed that the payments under the first four Orders of Court were interim payments under Order 29 rule 9 of the Rules of Court (Cap 322, R 5, 1997 Ed). There was a dispute between the parties as to whether the payment under the fifth Order of Court was an interim payment. I therefore consulted the judge who made the Order of Court on the nature of the payment. On 28 May 2003, the judge clarified that he had intended it as an interim payment to the Plaintiff. The particulars of the payments received by the Plaintiff were as follows:

(1) Payments under the Order of Court dated 1 April 1998 ordering the payment of a principal sum of S$460,821.37:

(a) S$50,000 paid on 16 May 1998;

(b) S$50,000 paid on 19 June 1998;

(c) S$50,000 paid on 20 July 1998;

(d) S$310,821.37 paid on 17 August 1998; and

(e) interest amounting to S$40,987.51 paid on 17 August 1998.

(2) Payments under Order of Court dated 7 January 1999 ordering the payment of a principal sum of S$750,000:

(a) S$375,000 paid on 11 February 1999;

(b) S$40,000 paid on 9 April 1999;

(c) S$25,000 paid on 11 May 1999;

(d) S$100,000 paid on 14 July 1999;

(e) S$60,000 paid on 4 August 1999;

(f) S$60,000 paid on 3 September 1999;

(g) S$60,000 paid on 5 October 1999;

(h) S$30,000 paid on 4 November 1999; and

(i) interest amounting to S$18,554.79 paid on 11 February 2000.

(3) Payment under Order of Court dated 31 March 2000 ordering the payment of a principal sum of S$350,000: S$350,000 paid on 3 April 2000.

(4) Payment under Order of Court dated 24 April 2000 ordering the payment of a principal sum of $600,000: S$600,000 paid on 28 April 2000.

(5) Payment under Order of Court dated 6 April 2001 ordering the payment of a principal sum of £423,000 or S$1,170,297.75: S$1,170,297.75 paid on 12 April 2001.

379 In the circumstances, the Plaintiff would be entitled to interest as follows:

(1) Interest on the sum of S$2,321,770.27 at 6% per annum from the date of commencement of the action (21 September 1991) to 16 May 1998;

(2) Interest on the sum of S$2,271,770.27 at 6% per annum from 17 May 1998 to 19 June 1998;

(3) Interest on the sum of S$2,221,770.27 at 6% per annum from 20 June 1998 to 20 July

1998;

(4) Interest on the sum of S$2,171,770.27 at 6% per annum from 21 July 1998 to 17 August 1998;

(5) Interest on the sum of S$1,819,961.39 at 6% per annum from 18 August 1998 to 11 February 1999;

(6) Interest on the sum of S$1,444,961.39 at 6% per annum from 12 February 1999 to 9 April 1999;

(7) Interest on the sum of S$1,404,961.39 at 6% per annum from 10 April 1999 to 11 May 1999;

(8) Interest on the sum of S$1,379,961.39 at 6% per annum from 12 May 1999 to 14 July 1999;

(9) Interest on the sum of S$1,279,961.39 at 6% per annum from 15 July 1999 to 4 August 1999;

(10) Interest on the sum of S$1,219,961.39 at 6% per annum from 5 August 1999 to 3 September 1999;

(11) Interest on the sum of S$1,159,961.39 at 6% per annum from 4 September 1999 to 5 October 1999;

(12) Interest on the sum of S$1,099,961.39 at 6% per annum from 6 October 1999 to 4 November 1999;

(13) Interest on the sum of S$1,069,961.39 at 6% per annum from 5 November 1999 to 11 February 2000;

(14) Interest on the sum of S$1,051,406.60 at 6% per annum from 12 February 2000 to 3 April 2000;

(15) Interest on the sum of S$701,406.60 at 6% per annum from 4 April 2000 to 28 April 2000; and

(16) Interest on the sum of S$101,406.60 at 6% per annum from 29 April 2000 to 12 April 2001.

The Orders

380 In the circumstances, I make the following orders:

(1) The Plaintiff shall have final judgment against the First Defendant for the sum of S$2,321,770.27 with interest as follows:

(a) Interest on the sum of S$2,321,770.27 at 6% per annum from the date of commencement of the action (21 September 1991) to 16 May 1998;

(b) Interest on the sum of S$2,271,770.27 at 6% per annum from 17 May 1998 to 19 June

1998;

(c) Interest on the sum of S$2,221,770.27 at 6% per annum from 20 June 1998 to 20 July 1998;

(d) Interest on the sum of S$2,171,770.27 at 6% per annum from 21 July 1998 to 17 August 1998;

(e) Interest on the sum of S$1,819,961.39 at 6% per annum from 18 August 1998 to 11 February 1999;

(f) Interest on the sum of S$1,444,961.39 at 6% per annum from 12 February 1999 to 9 April 1999;

(g) Interest on the sum of S$1,404,961.39 at 6% per annum from 10 April 1999 to 11 May 1999;

(h) Interest on the sum of S$1,379,961.39 at 6% per annum from 12 May 1999 to 14 July 1999;

(i) Interest on the sum of S$1,279,961.39 at 6% per annum from 15 July 1999 to 4 August 1999;

(j) Interest on the sum of S$1,219,961.39 at 6% per annum from 5 August 1999 to 3 September 1999;

(k) Interest on the sum of S$1,159,961.39 at 6% per annum from 4 September 1999 to 5 October 1999;

(l) Interest on the sum of S$1,099,961.39 at 6% per annum from 6 October 1999 to 4 November 1999;

(m) Interest on the sum of S$1,069,961.39 at 6% per annum from 5 November 1999 to 11 February 2000;

(n) Interest on the sum of S$1,051,406.60 at 6% per annum from 12 February 2000 to 3 April 2000;

(o) Interest on the sum of S$701,406.60 at 6% per annum from 4 April 2000 to 28 April 2000; and

(p) Interest on the sum of S$101,406.60 at 6% per annum from 29 April 2000 to 12 April 2001.

(2) It is declared that the Plaintiff shall be entitled to a one-twelfth share of the Deceased's interest in the piece of land in Cibenong, a one-twelfth share of the Deceased's interest in the jute plantation in Lampung and a one-twelfth share of the Deceased's interest in a bank account in the United States of America.

381 I reserve judgment on the issue of costs until after I have heard the parties' submissions on the appropriate orders for costs.