

R v Sin Yau-ming**5 Court of Appeal
HcT Case No 289 of 1990**

Silke VP, Kempster and Penlington JJA
 Dates of hearing—10-13, 17 September 1991
 Date of judgment—30 September 1991

Bill of Rights—Interpretation—Proper approach to interpreting human rights legislation—Relevance of international and comparative jurisprudence—Autonomous meaning of terms—“in accordance with law”—Hong Kong Bill of Rights Ordinance, ss 2 (3), 3

Bill of Rights—Presumption of innocence—Validity of reverse onus provisions—Presumption of possession for purpose of trafficking arising from possession of specified quantity of drug—Rationality—Proportionality—Bill of Rights, art 11 (1)—International Covenant on Civil and Political Rights, art 14 (2)—European Convention on Human Rights, art 6 (2)

Constitutional law—Human rights—Bill of Rights—Entrenchment of International Covenant on Civil and Political Rights—Hong Kong Letters Patent, art VII (3)—Hong Kong Bill of Rights Ordinance (Cap 383)

Courts—Jurisdiction—High Court—Court of Appeal—Reservation of questions of law—Whether question reserved may be considered by Court of Appeal before completion of trial—Criminal Procedure Ordinance (Cap 221), s 81

Criminal law—Evidence—Onus of proof—Presumptions—Mandatory presumptions of fact—Reverse onus—Rebuttal of presumption—Presumption of innocence—Rational connection—Proportionality—Drug offences—Possession—Trafficking—Possession for the purpose of trafficking—Dangerous Drugs Ordinance (Cap 134), ss 46 (c), (d), 47 (3)

This case arose out of the trial in the High Court of the defendant on charges of possession of dangerous drugs for the purpose of trafficking. In late August 1991 in the cases of *R v Ng Po-lam* (1991) 1 HKPLR 25 and *R v Leung Ping-lam* (1991) 1 HKPLR 52 Deputy District Judge

Wong had ruled that presumptions contained in ss 46 (c) and (d) and ss 47 (1)(c) and (d) and s 47 (3) of the Dangerous Drugs Ordinance were inconsistent with the guarantee of the presumption of innocence contained in article 11 (1) of the Bill of Rights. After the arraignment of the defendant in the High Court in this case, the Crown applied to the trial judge, Ryan J, to reserve for the consideration of the Court of Appeal questions of law relating to the effect of the Bill of Rights on these provisions. Ryan J reserved the following questions for consideration by the Court of Appeal:

“Do ss 46 (c) and (d) and ss 47 (1)(c) and (d) and s 47 (3) of the Dangerous Drugs Ordinance (Cap 134) admit of a construction which is consistent with s 8, article 11 (1) of the Hong Kong Bill of Rights Ordinance (Cap 383)? If any or all of these provisions do not admit of such a construction and are therefore inconsistent with the said s 8, article 11 (1), to what extent have the said provisions (or any one of them) been repealed by virtue of the provisions of s 3 (2) of the Bill of Rights Ordinance?”

Held:

1. The Court of Appeal had jurisdiction under s 81 of the Criminal Procedure Ordinance to consider a question of law reserved by a trial judge before the completion of the trial. (p 101, line 30 to p 102, line 8; p 120, lines 28-37; p 136, lines 32-37)

Re Tsang Ting-bun [1978] HKLR 141, overruled.

2. The Bill of Rights Ordinance, viewed in the light of the accompanying amendment to the Letters Patent, was a constitutional instrument and its sui generis nature should be recognised by interpreting it in a broad and generous manner. (p 105, line 32 to p 106, line 29)

3. In interpreting the Bill of Rights Ordinance considerable assistance could be gained from the decisions of common law jurisdictions with a constitutionally entrenched Bill of Rights (in particular Canada and the United States), from the general comments and decisions of the Human Rights Committee under the ICCPR and the Optional Protocol to the ICCPR, and from the jurisprudence under the European Convention on Human Rights. While none of these were binding, in so far as they reflect the interpretation of articles in the ICCPR and are directly related to Hong Kong legislation, these sources are of the greatest assistance and should be given considerable weight. (p 107, line 25 to p 108, line 24)

4. In determining whether a mandatory presumption such as those contained in ss 46 and 47 of the Dangerous Drugs Ordinance was consistent with “the right to be presumed innocent until proved guilty according to law”, it was not sufficient to show only that a reverse onus requirement was provided for by domestic legislation. The phrase “according to law” had an autonomous meaning incorporating requirements of reasonableness and proportionality. (p 130, lines 10-14; p 138, lines 4-10)
5. Where an evidentiary presumption left open the possibility that an accused could be convicted despite having raised a reasonable doubt as to the existence of a fact essential to a finding of guilt, there was a prima facie breach of the presumption of innocence. (p 132, line 38 to p 133, line 2)
6. For a mandatory presumption to be consistent with article 11 (1), the Crown would have to show by cogent and persuasive evidence that one could say with substantial assurance that the presumed fact would more likely than not flow from the proved fact. The presumption must be for the purpose of achieving an important social objective and satisfy tests of rationality and proportionality. (p 113, lines 29-36; p 134, lines 24-30)
- (Per Kempster JA, Silke VP, agreeing): A mandatory presumption of fact may be compatible with article 11 (1) of the Bill of Rights if it be shown by the Crown, due regard being paid to the enacted conclusion of the legislature, that the fact to be presumed rationally and realistically follows from that proved and also if the presumption is no more than proportionate to what is warranted by the nature of the evil against which society requires protection. (p 113, lines 21-27; p 134, lines 24-30)
7. While no one doubted that drug trafficking in Hong Kong was a serious social problem in Hong Kong and its eradication an important social objective, the Crown had not demonstrated that the proved fact that a person possessed 0.5 g of heroin meant that it was more likely than not that (s)he had it for the purpose of trafficking. Indeed, the evidence before the court, which showed that the average daily heroin consumption in Hong Kong was somewhere in the range 0.25 to 1 g of heroin, showed that this was not the case and that the presumption might mean that many persons innocent of trafficking might nonetheless be convicted of that offence. Section 46 (d)(v) was therefore inconsistent with article 11 (1) and had been repealed. (p 115, lines 13-19; p 135, lines 30-33; p 139, lines 30-36)

8. The Crown had not produced evidence which showed that the possession of six or more packets containing a dangerous drug more likely than not showed that the person who had those packets had them for the purpose of trafficking. Section 46 (c)(v) was therefore inconsistent with article 11 (1) and had been repealed. (p 116, lines 23-33; p 135, lines 35-39; p 139, line 37 to p 140, line 2)
9. There was no evidence before the court to demonstrate that either of the presumptions in s 47 (1)(c) and (d) satisfied the rational connection test. Common experience did not support that conclusion, but rather the contrary one. (p 116, lines 4-14; p 136, line 4 to p 137, line 3; p 140, lines 9-20)
10. (Per Silke VP and Kempster JA): In so far as s 47 (3) amounted to a presumption upon a presumption, it failed the rational connection test and had been repealed. However, there might be circumstances in which it might be reasonable to presume from the proved fact of possession of a dangerous drug that the possessor had knowledge of the nature of that drug. (p 117, lines 21-25; p 136, lines 3-8)
- Penlington JA (dissenting): s 47 (3) had not been repealed. (p 141, line 36 to p 142, line 7)
11. The rights guaranteed by the Hong Kong Bill of Rights Ordinance are not absolute but are subject to limitations analogous to those contained in s 1 of the Canadian Charter of Rights and Freedoms. Section 1 of the Charter provides that the rights guaranteed in the Charter are subject only to “such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.” (p 109, lines 4-14, p 134, lines 9-30)
12. The questions reserved by Ryan J for the consideration of the Court should be answered as follows:
- The provisions of s 46 (c) and (d)(v) and s 47 (1)(c) and (d) and s 47 (3) are inconsistent with article 11 (1) of the Hong Kong Bill of Rights Ordinance which, in consequence and under the provisions of s 3 (2), has repealed them as from 8 June 1991. (p 142, lines 24-30)
- D Fung QC, J Mullick and J Mok (instructed by the Director of Legal Aid), for the defendant.
I G Cross QC, P Dykes and S R Bailey, for the Crown.

enough. No one who has lost a case will believe he has been fairly treated if the other side has had access to the judge without his knowing.”

There were in my view representations received behind the back of the appellants which might have worked prejudice.

The matter does not rest there. The replies of the appellants to the letter of the Secretary for the Civil Service were passed to the Commissioner of Police who, at least as far as the first four appellants were concerned, made comments thereon. These also were never shown to the appellants but were passed to the Governor for his consideration. In his comment the Commissioner of Police specifically relies, when rebutting the claim of unfurnished reputation, upon “the remarks of the Director of Public Prosecutions (D.P.P.) and the Senior Assistant Crown Prosecutor involved in this case”, of which the appellants were, of course, wholly unaware. The Commissioner goes on to state that “their professional reputation has been left in ruins as they have lost the respect of their brother officers”. This was a telling thrust. It must be taken as a suggestion that they were of little use in the police force as since their return to duty it had become apparent that they had lost the respect of their brother police officers.

That the Commissioner was asking the Governor to rely upon the remarks of the DPP and the Senior Assistant Crown Counsel and the loss of respect of brother officers cannot be doubted as he concludes his observations by saying that these “aspects *form the cornerstone* of the CR59 case”. (emphasis added)

The case for retirement as put to the Governor was that the applicants should in the public interest be retired as their actions prior to and, at the trial had caused the Commissioner of Police, the Director of Public Prosecutions and, as had become apparent since the trial, their brother officers to lose respect for and confidence in them as police officers and that they could, therefore, be of no further use in the police force.

I am satisfied that this was a different and much stronger case than that which was revealed to them.

I am, for the foregoing reasons, satisfied that the appeals should succeed.

Cons VP:

In dismissing these appeals by a majority we make an order nisi that the respondent shall have his costs.

R v So Sai-fong and others

5 High Court Case No 115 of 1991

Deputy Judge Hoo QC

Dates of hearing—17—19 March 1992

10 Dates of ruling—18—19 March 1992

Bill of Rights—Right to be presumed innocent until proved guilty — Validity of reverse onus provision—Presumption of possession of firearm without a licence arising from possession of anything containing firearm—Negative averments—
15 *Whether the Crown must prove lack of a licence—Whether presumption created where it was not necessary for the Crown to prove the lack of a licence — Inconsistency with Hong Kong Bill of Rights — Firearms and Ammunition Ordinance (Cap 238), s 24(1)(b)—Criminal Procedure Ordinance (Cap 221), s 94A —Hong Kong Bill of Rights, art 11(1)*
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Bill of Rights—Right to be presumed innocent until proved guilty — Presumption of innocence—Licences—Requirement that defendant prove possession of a licence
25 *—Whether provision creates a presumption—Whether provision required defendant to disprove an essential element of the offence—Whether prima facie violation of presumption of innocence—Firearms and Ammunition Ordinance (Cap 238), s 13 —Criminal Procedure Ordinance (Cap 221), s 94A—Hong Kong Bill of Rights, art 11(1)*
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Criminal law—Evidence—Exceptions—Licences—Requirement that defendant prove possession of a licence—Whether a violation of the presumption of innocence
35 *—Firearms and Ammunition Ordinance (Cap 238), s 13(1)—Criminal Procedure Ordinance (Cap 221), s 94A*

Criminal law—Offences—Firearms—Possession of a firearm without a licence—
40 *Whether lack of a licence an essential element of the offence—“without a licence” —Defences—Whether consistent with presumption of innocence —Legislative intention —Firearms and Ammunition Ordinance (Cap 239), s 13*

45 The defendants were charged with, inter alia, the offence of possession of firearms without a licence, contrary to s 13 of the Firearms and

Ammunition Ordinance (Cap 239). The defence firstly argued that s 24(a)(b) of the Firearms and Ammunition Ordinance was inconsistent with article 11(1) of the Hong Kong Bill of Rights. After the court had ruled on this submission, the defence argued that there was no case to answer because the prosecution had failed to prove a central element of the offence, namely that the defendants were in possession of arms and ammunition “without a licence”. Furthermore, the defence argued that the Crown could not rely on s 94A of the Criminal Procedure Ordinance (Cap 221) concerning negative averments; to apply s 94A to s 13 would render s 13 inconsistent with article 11(1) of the Hong Kong Bill of Rights.

The Crown argued that the lack of a licence was not an essential ingredient of the offence under s 13. The object of the legislation was to prohibit the possession of firearms or ammunition, and a statutory defence was made available to proper licence holders by way of an exception. It argued that no presumption was created as it was not necessary for the Crown to prove the lack of a licence. The Crown argued alternatively that if unlicensed possession were construed to be a necessary ingredient of the offence, then the reversal of onus was a rational and proportional limitation on the presumption of innocence.

Sections 13 and 24 of the Firearms and Ammunition Ordinance provide:

“13. Possession of arms or ammunition without licence

- (1) No person shall have in his possession any arms or ammunition unless—
- (a) he holds a licence for possession of such arms or ammunition or a dealer’s licence therefor; or
 - (b) he is an agent or a servant of a person referred to in paragraph (a), other than a watchman employed by him, and is carrying out the bona fide and lawful instructions of such person.
- (2) A person who contravenes subsection (1) commits an offence and is liable on conviction upon indictment to a fine of \$100,000 and to imprisonment for 14 years.
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24. (1) Any person who is proved—
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- (b) to have had in his possession or under his charge or control any place, premises, vessel, vehicle or aircraft or a part of any place, premises, vessel, vehicle or aircraft in which any arms or ammunition are found,

shall, until the contrary is proved, be presumed to have had such arms or ammunition in his possession for the purposes of sections 13 and 15.”

Held (rejecting the submission of no case to answer):*

1. Section 24(1)(b) of the Firearms and Ammunition Ordinance, being indistinguishable from a similar provision in the Dangerous Drugs Ordinance (Cap 134) which had been declared repealed by the Bill of Rights Ordinance, does not admit of a construction consistent with article 11(1) of the Bill of Rights and hence stands repealed. (p 699, lines 20-25)
2. It is often necessary for the legislature to enact regulatory legislation that prohibits certain activities or the possession of specific objects which pose a danger to society. Exceptions are sometimes created for a limited class of persons who have express authority to do so. As a result, there is established at common law a departure from the basic principle that the Crown must prove every element that establishes the guilt of the accused in relation to the offence charged. (p 700, lines 23-29)
3. The legislative intent in s 13 of the Firearms and Ammunition Ordinance is to prohibit the possession of firearms or ammunition and to provide that, unless the accused avails himself of statutory defences, a criminal offence has been committed by the mere fact of possession. The absence of a requisite licence is therefore not an ingredient that the Crown has to prove. It is up to the accused to bring himself within one of the exemptions available under the Ordinance. (p 701, lines 34-41)

S Westbrook (on fiat), for the Crown.
M Ko, for the first defendant.
R Murray, for the second defendant.

The following cases and materials are referred to in the ruling:

R v Daniels (1990) 60 CCC (3d) 392
R v Edwards [1975] QB 27
R v Lau Ting-man (1991) 1 HKPLR 249
R v Lee’s Poultry Ltd (1985) 17 CCC (3d) 539

*[Eds] The rulings on s 24(1)(b) (holding 1) and s 13 (holdings 2 and 3) were delivered on 18 and 19 March 1992, respectively.

R v Schwartz [1988] 2 SCR 443, 55 DLR (4th) 1, 45 CCC (3d) 97
R v Sin Yau-ming (1991)1 HKPLR 88, [1992] 1 HKCLR 127

Criminal Procedure Ordinance (Cap 221), s 94A
 Dangerous Drugs Ordinance (Cap 134), s 47(1)(c)
 Firearms and Ammunition Ordinance (Cap 239), ss 11(2), 13, 15, 17, 20,
 24(1)(a), 24(1)(b)
 Hong Kong Bill of Rights Ordinance (Cap 383), ss 3(2), 8
 Hong Kong Bill of Rights, art 11(1)

International Covenant on Civil and Political Rights

Deputy Judge Hoo QC delivered the following ruling:

**RULING ON S 24(1)(B) OF THE FIREARMS AND AMMUNITION ORDINANCE
 (CAP 238)**

Section 24 of the Firearms and Ammunition Ordinance (Cap 238) provides that:

- “(1) Any person who is proved—
 ...
 (b) to have had in his possession or under his charge or control any place, premises,
 vessel, vehicle or aircraft or a part of any place, premises, vessel, vehicle or
 aircraft in which any arms or ammunition are found,
 shall, until the contrary is proved, be presumed to have had such arms or ammunition
 in his possession for the purposes of sections 13 and 15.”

The Court of Appeal in *R v Sin Yau-ming* (1991) 1 HKPLR 88, [1992] 1 HKCLR 127 has established that the principles of rationality and proportionality are to be applied to all mandatory presumptions of fact in determining whether the same is consistent with the International Covenant on Civil and Political Rights as applied to Hong Kong. In *Sin Yau-ming*, Kempster JA stated (HKPLR at 135-136, HKCLR at 164):

“A mandatory presumption of fact may be compatible with s 8 article 11(1) of the Hong Kong Bill of Rights Ordinance if it be shown by the Crown, due regard being paid to the enacted conclusions of the legislature, that the fact to be presumed rationally and realistically follows from that proved and also if the presumption is no more than proportionate to what is warranted by the nature of the evil against which society requires protection.”

In that case, one of the presumptions that fell to be considered was s 47(1)(c) of the Dangerous Drugs Ordinance (Cap 134). It was held that:

“While there is a logical connection between the possession of ‘the part of any place or premises in which a dangerous drug is found or of the keys thereto’ such connection is frail indeed when it comes to ‘any place or premises’ or ‘the keys thereto’. It is only necessary to think of a large house or apartment and an extended family or of numerous key-holders and of apartments embracing separate cubicles having their own locks. When the concept of ‘control’ of any place or premises comes into play I hesitate to find even a logical connection.”

The wording of s 24(1)(b) of the Firearms and Ammunition Ordinance (Cap 239) is nearly identical to s 47(1)(c) of the Dangerous Drugs Ordinance. Furthermore, the Crown does not seek to submit in relation to this presumption that the fact to be presumed follows from or is realistically connected with the fact to be proved or is warranted by and no more than proportionate to the unlawful use of firearms and ammunition.

In the circumstances, I have no hesitation in ruling that s 24(1)(b) of the Firearms and Ammunition Ordinance does not admit of a construction which is consistent with s 8, article 11(1) of the Bill of Rights Ordinance (Cap 383) and has therefore been repealed as from 8 June 1991 pursuant to the provisions of s 3(2) of the Hong Kong Bill of Rights Ordinance.

[The court then invited counsel to make submissions on s 13 of the Firearms and Ammunition Ordinance read in conjunction with s 94A of the Criminal Procedure Ordinance and adjourned the hearing to the following day. After hearing submissions, the court delivered the following ruling:]

RULING ON S 13 OF THE FIREARMS AND AMMUNITION ORDINANCE

Mr Ko on behalf of the first accused submitted that there was no case for his client to answer in relation to count one because the prosecution had failed to prove a central element of the offence, namely, that his client was in possession of arms and ammunition “without a licence”. He argues that the object of s 13 of the Firearms and Ammunition Ordinance (Cap 238) is to prohibit the “unlicensed” possession of arms and ammunition. He also points to the difference in construction of s 13 and the other sections in Part III of that Ordinance such as ss 15, 17 and 20 where he contends that different and express languages were used to create statutory defences. He argues therefore that the burden is on the Crown to prove absence of the requisite licence and submits that the

Crown cannot rely on s 94A of the Criminal Procedure Ordinance (Cap 221) concerning negative averments. To apply s 94A of the Criminal Procedure Ordinance to s 13 of the Firearms and Ammunition Ordinance would render s 13 inconsistent with article 11(1) of the Hong Kong Bill of Rights Ordinance.

In reply, Mr Westbrook for the Crown submits that lack of licence is not an essential ingredient of the offence under s 13. The object of the legislation is to prohibit the possession of firearms or ammunition, and a statutory defence is made available to proper licence holders by way of an exception. He argues that although the construction of the various sections in the Firearms and Ammunition Ordinance referred to by Mr Ko is not uniform, they all create statutory defences in the same way as s 13. As such, no presumption is created as it is not necessary for the Crown to disprove that particular fact. Mr Westbrook further submitted the alternative argument that if unlicensed possession is construed to be a necessary ingredient of the offence, then the reversal of onus under this section satisfies the reasonable limitation and proportionality test.

In the course of counsel's arguments, I have been referred to a decision on the same point in the District Court case of *R v Lau Ting-man* (1991) 1 HKPLR 249, and the Canadian cases of *R v Schwartz* [1988] 2 SCR 443, 55 DLR (4th) 1, 45 CCC (3d) 97, *R v Lee's Poultry Ltd* (1985) 17 CCC (3d) 539 and *R v Daniels* (1990) 60 CCC (3d) 392.

It is often necessary for the legislature to enact regulatory legislation that prohibits certain activities or the possession of specific objects which pose a danger to society. Exceptions are sometimes created for a limited class of persons who has express authority to do so. As a result, there is established at common law a departure from the basic principle that the Crown must prove every element that establishes the guilt of the accused in relation to the offence charged. Lawton LJ in *R v Edwards* [1975] 1 QB 27 at 39-40 stated:

"In our judgment this line of authority establishes that over the centuries the common law, as a result of experience and the need to ensure that justice is done both to the community and to defendants, has evolved an exception to the fundamental rule of our criminal law that the prosecution must prove every element of the offence charged. This exception, like so much else in the common law, was hammered out on the anvil of pleading. It is limited to offences arising under enactments which prohibit the doing of an act save in specified circumstances or by persons of specified classes or with specified qualifications or with the licence or permission of specified authorities. Whenever the prosecution seeks to rely on this exception, the court must construe the enactment under which the charge is laid. If the true construction is that the enactment prohibits the doing of acts, subject to provisoes, exemptions and the like, then the prosecution can rely upon the exception."

Brooke JA, in *R v Lee's Poultry Ltd* (1985) 17 CCC (3d) 539 at 542 stated:

"It is fundamental rule of criminal law that the accused is presumed to be innocent until his or her guilt is proved beyond a reasonable doubt and, as such, the onus is on the Crown to prove each element of the offence to the degree required. At common law an exception developed to this fundamental rule for a class of offences created by regulatory legislation. Often such legislation created offences by banning specified activities but excepted persons who had authority of the regulatory body to do the acts banned."

Lawton LJ in *R v Edwards* [1975] QB 27 at 39 stated, in creating such an exception, regard has been had "to ensure that justice is done both to the community and to defendants".

McIntyre J in *R v Schwartz* ([1988] 2 SCR at 486, 55 DLR (4th) at 34, 45 CCC (3d) at 130) stated:

"The theory behind any licensing system is that when an issue arises as to the possession of the licence, it is the accused who is in the best position to resolve the issue. Otherwise, the issuance of the certificate or licence would serve no useful purpose. Not only is it rationally open to the accused to prove he holds a licence ... it is the expectation inherent in the system."

McIntyre J in *R v Schwartz* stated (SCR at 489, DLR at 36, CCC at 132) stated:

"A condition precedent to the lawful possession of restricted weapon is the obtaining of a valid registration certificate by the possessor. If the certificate is not held, a criminal offence has been committed by the mere fact of possession. Thus, a balance has been struck between the interest of the community in the control of possession and use of firearms and the interest of those who desire to possess and make lawful use of firearms."

It is clear that the legislative intention in s 13 is to prohibit the possession of firearms or ammunition and that unless the accused avails himself of the statutory defences in s 13(1)(a) and (b) or indeed s 11(2), a criminal offence has been committed by the mere fact of possession. The absence of a requisite licence is therefore not an ingredient that the Crown has to prove. For a prosecution under s 13, it is up to the accused to bring himself within any of the exemptions available under the Ordinance if the same is open to him. Although the wording used to create various statutory defences under the Ordinance is not uniform, the intention to create such exceptions are clear and cause no difficulty in the construction of any of the sections referred to.

In the circumstances I find that there is a case for the first accused to

answer on the first count despite the fact that no evidence has been adduced by the Crown that the first accused did not have the requisite licence at the material time. As there are no other submissions, the case against both accused on both counts would now go to the jury.

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**Extramoney Limited and Carrian Holdings
Limited v Chan Lai-pang & Co;
Chan Lai-pang & Co v Commissioner
of Inland Revenue**

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**High Court
Case No A8437 of 1987**

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Deputy Judge D R Fung QC
Date of hearing—18 May 1992
Date of judgment—18 May 1992

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Bill of Rights—Right to freedom of expression—Rights of the press and the public to have access to court proceedings—Hearings in open court—Imposition of reporting restrictions—Bill of Rights, art 16(3)

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Bill of Rights—Right to freedom of expression—Permissible restrictions—Judicial discretion to impose reporting restrictions on hearings in open court—Reconciliation of competing public interests—Balancing “open justice” with the need to avoid prejudicing the accused in pending criminal proceedings—“respect for the rights of others”—Bill of Rights, art 16(3)

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Civil procedure—Restriction on publication of details of proceedings—Postponement of publication—Judicial discretion to impose reporting restrictions on hearings in open court—Reconciliation of competing public interests—Balancing “open justice” with the need to avoid prejudicing the accused in pending criminal proceedings—Bill of Rights, art 16—Rules of the Supreme Court (Cap 4, sub leg), O 32, r 4

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The plaintiffs in this case, Extramoney Limited and Carrian Holdings, sued an accounting firm, as auditors of Extramoney’s annual accounts, for, inter alia, breach of contract and/or negligence and/or breach of statutory duty. The plaintiffs were at all times material to these actions beneficially owned and/or controlled by Mr George Tan. Mr Tan also was a defendant in two criminal trials that were pending at the same time as these civil proceedings. The two criminal trials involved allegations of fraud and dishonesty on the part of Mr Tan in relation to his dealing

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