

32/83

ON APPEAL
FROM THE COURT OF APPEAL OF HONG KONG

BETWEEN:

EDWARD WONG FINANCE COMPANY LIMITED Appellants
(Plaintiffs)

- and -

JOHNSON STOKES & MASTER (a firm) Respondents
(5th Defendants)

10

CASE FOR THE APPELLANTS

20

1. This is an Appeal, by leave of the Court of Appeal of Hong Kong, from a judgment of that Court (Roberts C.J. and Silke J., Li J.A. dissenting) dated the 4th June 1981 allowing an Appeal by the Respondents from and setting aside a judgment of Penlington J. dated the 14th August 1980, which had awarded a sum of HK \$1,295,000 with interest to be paid to the Appellants by the Respondents.

Record

p. 584

p. 567

p. 45

30

2. The sole question in this Appeal is concerned with the standard of care owed by a solicitor to his client in a conveyancing transaction. The facts are set out in the judgment of Penlington J. and more summarily in the judgment of Roberts C.J., and are not in dispute.

p. 45

p. 567

3. The Appellants are licensed money-lenders. In January 1976 they agreed to advance the necessary funds to enable Po Fung Finishing Works Limited ("Po Fung") or an associated company to purchase the ground floor of a

Record

- pp. 589, 595. factory building at 76 Hung To Road, Kowloon ("the Property") which Po Fung already occupied as tenant. The Second, Third, and Fourth Defendants were Directors of Po Fung; the Second Defendant was its principal shareholder. The ground floor of the property was to be acquired by a new company to be formed for the purpose (and which in the event was the First Defendant), of which the Second, Third and Fourth Defendants were to be Directors. The advance by the Appellants was to be secured by a mortgage of the ground floor of the property and by the personal guarantees of the Second, Third and Fourth Defendants. 10
- p. 51 4. It is not in dispute that throughout the transaction the Respondents acted as the Appellants' solicitors; (although it was in dispute whether and to what extent the Respondents were also acting as solicitors for the other Defendants). The Assistant Solicitor in the Respondents' firm who handled the matter was a Miss Leung. 20
- p. 815 5. In January 1976 the property was owed by one Ho Sau-ki and was mortgaged to the Hang Seng Bank to secure a sum of H.K. \$4,400,000. By three Agreements all dated the 17th December 1975 :-
- p. 654 (i) Ho Sau-ki had agreed to sell the property to Lucky Time Finance Co. Limited ("Lucky Time") for \$3,800,000 (which was less than the sum secured thereon); 30
- p. 657 (ii) Lucky Time in turn had agreed to sell the property to Chan Sun-Ming and Kai Ming Investment Co. Limited ("Kai Ming") for \$5,250,000; and
- p. 660 (iii) Chan Sun-Ming and Kai Ming recorded that Kai Ming was purchasing the upper floors of the property for \$3,510,000 and Chan Sun-Ming the ground floor for \$1,740,000.
- p. 659 6. On the 30th December 1975 Po Fung agreed to purchase the ground floor of the property from Chan Sun-Ming for \$1,850,000, and paid \$100,000 as a deposit. A further deposit of \$85,000 was paid on the 15th January 1976. In each case, a receipt for the deposit, signed by Chan Sun-Ming, was obtained. 40

7. The Appellants were approached to finance the balance of the purchase price (\$1,665,000) or the greater part thereof, and the Appellants agreed to advance a sum of \$1,355,000 on the terms previously mentioned. On the 21st January 1976 Mr. Edward Wong, the Appellants' Managing Director, accompanied by the Second Defendant, saw Miss Leung and instructed her to act. Miss Leung was informed that the solicitor acting for the vendors was Danny Yiu & Co., a one-man firm. Miss Leung ascertained that the property was in mortgage to the hang Seng Bank, but she did not (then or subsequently) ask or know how much was secured by the mortgage. Nor did she consider making enquiries of the solicitor acting for the hang Seng Bank.

p. 359

8. The completion date for the purchase was to be the 26th January, and both Mr. Wong and the Second Defendant wished to complete the transaction before the Chinese New year, which was on the 30th. Miss Leung told them that she could not do it by the 26th, but could manage the 27th. The Trial Judge found that neither Mr. Wong nor the Second Defendant was putting strong pressure on Miss Leung to complete as a matter of urgency. Neither of them had any reason to demand speed. The Appellants' only interest was a prospective lenders and mortgagees; while the Second Defendant's Company Po Fung was already in occupation as tenant. (In any case, in defending her subsequent conduct Miss Leung claimed to be following normal practice, not that she departed from it by reason of the urgency of the matter).

p. 47

9. Following the meeting on the 21st January, Miss Leung wrote to the Appellants confirming receipt of their instructions, and obtained copies of the documents of title from Danny Yiu & Co. On the 27th January, she wrote to Danny Yiu & Co., stating that she would ask her clients to put her in funds to the extent of \$1,355,000 towards the purchase price and would forward to Danny Yiu & Co. a cheque for that sum on his undertaking to forward to her, within 10 days, all the relevant documents of title duly executed, and to arrange for the reassignment of the ground floor of the property from the Hang Seng Bank to Ho Sau-Ki. If Danny Yiu was not in a position to comply within the time stated, he was to hold the sum of \$1,355,000 to the order of the Respondents, and was not to release the money to his clients. Danny Yiu

p. 606

p. 607

p. 610

Record

was to sign a copy of the letter to indicate that he gave the requisite undertakings, and he did so.

p. 612

10. Also on the 27th January, Miss Leung drafted a letter of authority, for signature by the Second Defendant on behalf of the First Defendant, directing the Appellants, on the execution of the debenture, to forward the sum of \$1,355,000 to Danny Yiu & Co. She also wrote to the Appellants, reporting (as was the case) that the mortgage had been duly executed, and asking the Appellants to let her have a cheque for \$1,355,000 made out in favour of Danny Yiu & Co.

p. 616

10

p. 614

11. On the same day Miss Leung, after telephoning Danny Yiu to confirm the amount due, sent a further letter to him enclosing \$1,665,000 in the form of three cheques drawn by the Appellants in favour of Danny Yiu & Co. (The larger sum was sent because at the last minute the Appellants agreed to advance a further \$310,000 on the security of some post-dated cheques).

p. 617

pp. 618 - 20

20

12. A few days later, Danny Yiu absconded from Hong Kong, without honouring his undertaking, and taking with him a large amount of money, among which was the sum which he had received from the Appellants. The Hang Seng Bank had not received payment of the money secured by its mortgage on the property, and had not executed a reassignment of the property or any part thereof. Danny Yiu was not the Bank's solicitor, and the Respondents had obtained no undertaking from the Bank, or from any solicitor acting for the Bank, to vacate the security. In these circumstances, the Bank naturally declined to release its security until it was paid; the First Defendant failed to obtain title to the property it had agreed to purchase; and the Appellants, who had (inter alia) advanced \$1,355,000 towards the purchase price on the intended security of the property to be acquired, failed to obtain the security for which they had stipulated.

p. 632

30

40

13. At the Trial, the Appellants claimed that the first four Defendants were liable to pay the outstanding balance of the advance, and that to the extent that they failed to do so the Respondents were liable in damages for negligence as solicitors for the Appellants.

p. 45

The Trial Judge found in favour of the Appellants on both counts, and ordered the Respondents to pay to the Appellants a sum of \$1,295,000 with interest as damages for negligence. The Court of Appeal by a majority ruled that the Respondents had not been guilty of negligence, and allowed their Appeal. Other issues were raised below between the Respondents and other Defendants which are not material to the present Appeal.

p.567

10

14. In forwarding the purchase money by cheque made payable to the Vendor's solicitor, in exchange, not (as in England) for the executed documents of title, but for a mere undertaking by the Vendor's Solicitor to forward within a specified period the necessary documents of title, Miss Leung was allegedly following a practice common in Hong Kong and known as "completion Hong Kong style". The existence of a Hong Kong style of completion was not challenged by the Appellants- its substance, the incidence of liability in case of loss and the degree of risk involved, were.

20

15. It is important to observe that the loss to the Appellants was due, not so much to the fact that Miss Leung parted with the purchase money in exchange for an undertaking to forward the executed documents of title instead of the documents themselves, but rather to the fact that she parted with the purchase money in a case where she knew that the property was in mortgage, without obtaining any undertaking from the mortgagee or the mortgagee's solicitor. As the Trial Judge pointed out, payment to a vendor's solicitor duly authorised to receive it is equivalent to payment to the vendor. If the property had not been in mortgage to the Bank, then (assuming that Danny Yiu & Co. were acting as the vendors' solicitors) the vendors would have been obliged to assign the ground floor to the First Defendant as they had been paid.

30

40

p. 51

16. At the Trial, expert evidence was given on behalf of the Appellants by Mr. Edmund Cheung, then President of the Hong Kong Law Society. Evidence on behalf of the Respondents was given by Mr. McElney, the Senior Partner of the Respondents. The Trial Judge found that :-

pp. 112 - 171

pp. 498 - 554

- (1) conveyancing transactions in Hong Kong were almost invariably completed,

50

p.52

Record

not (as in England) by exchanging money for executed documents, but by one solicitor paying cash to the other against the other's undertaking to forward, within a reasonable time, registrable documents of title.

- p. 52 (2) transactions in which an "English style completion" was required formed a tiny proportion of the total;
- p. 53 (3) the general approved practice of completion in Hong Kong involved the Solicitor in each case considering whether or not he could safely pay cash to the other on the other's undertaking to forward within a reasonable time, registrable documents of title and if he decided that he could not safely so pay insisting on an "English style completion". 10
- (4) while dishonest solicitors who defrauded their own clients and made off with their money were not unknown, this was (so far as was known) the first occasion on which the adoption of the Hong Kong style of completion had resulted in loss to a purchaser or his mortgagee arising from the dishonesty of the vendor's solicitor; 20
- p. 53 (5) Miss Leung should have been, but was not, given instructions or guidance by the Respondents about vetting other solicitors before accepting an undertaking to complete. She simply accepted an undertaking from Danny Yiu & Co., without considering whether, in the particular circumstances of the case, it was appropriate or safe to do so; 30
- p. 50 (6) Mr. Wong was aware of the procedure which was being followed but, if he had been properly advised of the risk involved and of the alternatives available, he would not have agreed to it. No such advice was given. 40
- p. 53

17. In his evidence, Mr. McElney was constrained to admit that the risk inherent in completion Hong Kong style was "self-evident". Mr. Cheung told the Court that, while he normally

p. 525

adopted that style of completion, he would consider in each case whether to do so or not, and would not have done so in the present case, where certain features were present which would have "rung a warning bell". He instanced the amount involved, the fact that the vendors' solicitor was a one-man firm, and the fact that there was a mortgage on the property exceeding the purchase money. He said that he would have made enquiries of the morgagee's solicitors and, if necessary, sent the purchase money direct to the morgagee on his undertaking to reassign the land, or portion of the land being purchased.

10

18. The Hong Kong Law Society was also aware of the dangers involved in a Hong Kong style completion. On the 12th October 1959, a Sub-Committee was appointed (inter alia) "to consider and make recommendations whether and what changes should be made in the conveyancing practice prevailing in the Colony and particularly to consider and make recommendations for the prevention of frauds and for safeguarding the interests of members of the public and of the Society in conveyancing matters. The Sub-Committee's Report was submitted to the Committee of the Law Society on the 8th March 1965 which on the 30th March 1966, issued to Members Circular No. 12 of 1966, which contained a Memorandum on the Report of the Sub-Committee.

20

19. In that Circular, the Committee of the Law Society reported (inter alia) under the heading "Completion of Conveyancing Transactions" as follows:-

30

"The Committee accept the recommendations of the Sub-Committee and all members of the Society are directed to observe that:-

40

- (i) If, instead of forwarding a cheque or an executed deed to a brother solicitor against the latter's undertaking to do certain things, any solicitor concerned in a completion wished for reasons of greater security to have a completion as is commonly practised in England, then it is unethical for the other solicitor to object or refuse to comply with such request;

.....

(iii) Any solicitor is completely justified in refusing to part with title deeds against an undertaking, but in that case, where he has the title deeds, he must of course arrange to make them available at his office on payment of a production fee;

(iv) The Committee consider that the present practice of sending the consideration money or executed document against the undertaking of the solicitor on the other side to send the executed document or the consideration money, as the case may be, is one of courtesy and convenience only, and that, therefore, any solicitor in any transaction may properly require in any particular case that the completion of the transaction be effected by delivery of title deeds and the executed documents only against cash, a banker's draft or certified cheque made payable to the solicitor concerned or client as the case may be. 10 20

The Committee also observe that in recent months a number of local firms have adopted among themselves the practice of completion on the basis of delivery of executed deeds against payment in cash or by banker's draft or certified cheque. The Committee watch with interest the progress of such a "pilot scheme"..... 30

p. 53

20. The Trial Judge found that all the relevant considerations pointed towards possible danger. Danny Yiu was a one-man firm, recently established. The amount was substantial, even by Hong Kong's land values. The mortgage to the Hang Seng Bank was apparently very great in relation to the purchase price. The Respondents were acting for prospective lenders and mortgagees, and their borrowers were small businessmen of no great wealth whose personal guarantees were of doubtful value. He held that the style of completion which was generally followed in 1976 was that, while in the great majority of cases a solicitor's undertaking could be accepted, a solicitor must be aware of the risk and must give thought to the factors involved. Miss Leung gave the matter no such 40 50

consideration. He accordingly held that Miss Leung had not in fact followed the generally approved practice, and the Respondents were liable in negligence.

10 21. In the Court of Appeal, Roberts C.J. (with whose judgment Silke J. agreed) recognised that a general practice may be imprudent, or make inadequate provision for a known risk, and that it may be negligent for a solicitor to follow it, even if all solicitors have done so for a long time. He added, however, that it is strong evidence that a solicitor has acted with prudence if he is able to show that he has followed a general practice; all the more so if this practice has received the seal of approval of the governing body of his profession. He held:-

p. 567
p. 582
p. 570
p. 571

- 20 (1) that the true Hong Kong style of completion did not require the solicitor to consider whether it was safe or prudent to accept the proffered undertaking, unless there were "warning bells";
- (2) that there were no "warning bells" in the present case; and
- (3) that accordingly the Respondents were not guilty of negligence.
- p. 571
p. 574
pp. 571 - 574
pp. 572 - 574

30 Roberts C.J. added that, while he considered that the Respondents were not negligent in following the generally accepted practice in 1976, he might not reach the same conclusion today, (that is to say, after the risks involved had been demonstrated by the present case). Both Roberts C.J. and Silke J. thought that the time had come for the Law Society to reassess the practice.

p. 572
p. 582

- 40 22. Li J.A. who dissented, held that:
- (i) the fact that Miss Leung complied with the general practice which had been followed for years without mishap went a long way to show that she was not negligent, but was not conclusive; but
- (ii) parting with money before obtaining what one pays for carries an obvious and inherent risk, which ought to have been foreseen by any reasonable person of ordinary prudence;
- p. 575
p. 577
p. 578
p. 578

Record

p. 578

(iii) it was not Miss Leung's professional skill or judgment which were called in question, but her ordinary prudence; and

pp. 578 - 9

(iv) in acting in accordance with the general practice she took a foreseeable risk with her client's money for which there was no necessity and no counter-vailing advantage to the client, and this was negligent.

10

23. It is submitted that the Trial Judge and Li J.A. were right for the reasons given by them, and that the judgment of the Trial Judge should be restored.

24. The relevant law is not in doubt. It may be summarised in three propositions :-

(1) The standard of care and skill required of a professional man is that of a reasonably competent and diligent practitioner carrying on that profession :-

20

"Where you get a situation which involves the use of some special skill or competence, then the test as to whether there has been negligence or not is not the test of the man on top of a Clapham omnibus, because he has not got this special skill. The test is the standard of the ordinary skilled man exercising and professing to have that special skill..... A man need not possess the highest expert skill; it is well established law that it is sufficient if he exercises the ordinary skill of an ordinary competent man exercising that particular art";

30

Bolam v. Friern Hospital Management Committee,
(1957) 1 W.L.R. 582, 568 per McNair J.

This standard of care, however, is (it is submitted) higher, not lower, than that required of the man on the top of the Clapham omnibus. Where professional skill and judgment are not involved, the professional man is not justified in taking risks on his client's behalf which the ordinary prudent and reasonable layman would not take. In this respect the approach

40

of Li J.A. is (it is submitted) to be preferred to that of the majority of the Court of Appeal.

- (2) Compliance with common practice is strong evidence that reasonable care has been used, but it is not conclusive:

10

"No one can claim to be excused for want of care because others are as careless as himself" : Blenkiron v. Great Central Gas Consumer Co. (1860), 2 F. & F. 437 per Cockburn C.J."

"A common practice may be shown by evidence to be negligent" : Mercer v. The Commissioner for Road Transport and Tramways (N.S.W.), (1936) 56 C.L.R. 580 at p. 589 per Latham C.J.

20

"The practice itself may not conform to the standard of care required ... in such a case it is not a good defence that the Defendant acted in accordance with the general practice" ibid at p. 593.

"It is open to the Court to hold that common practice does not make proper provision for a known risk:"
Charlesworth on Negligence (6th Ed.)
p. 137.

30

- (3) A defendant who relies upon a common practice must at least prove that it has been followed without mishaps sufficiently widely in circumstances similar to those in his own case in all material respects: Morris v. West Hartlepool Steam Navigation Co. Ltd. (1956) A.C. 552 at p. 574 per Lord Reid.

25. On the evidence, the Respondents failed to establish:-

40

- (i) that the Hong Kong style of completion involved the payment of the purchase money to the Vendor's Solicitor in exchange for undertakings by him, even in the case where the property concerned was in mortgage, without obtaining any undertaking at all from the mortgagee or his solicitor; or

- (ii) that the Hong Kong style of completion involved the payment of the purchase money to the Vendor's solicitor in exchange for undertakings by him to obtain the vacation of a subsisting mortgage on the property, even where the property being acquired was part only of a larger property on which the mortgage subsisted, without first being satisfied that the purchase money was sufficient to redeem the mortgage, or that the mortgagee was willing to release the property being acquired from the mortgage on receipt of the purchase money 10

26. It is accordingly submitted :-

- (i) that if the common practice involved the foregoing, it failed to provide for an obvious and known risk and was a negligent practice; whereas if it did not involve the foregoing, Miss Leung did not follow it; and in any event 20
- (ii) the respondents failed to prove that the practice of completing Hong Kong style had been followed without mishap in the circumstances of the present case.

27. Further or in the alternative, the Appellants contend :-

- (i) that completion Hong Kong style involves unnecessary and avoidable risk to the purchaser and his mortgagee, and is a negligence practice; and 30
- (ii) that it is negligent for a solicitor acting for a proposed mortgagee blindly to adopt completion Hong Kong style without first weighing the risks to his client against the disadvantages (if any) of taking the obvious precautions: see Morris v. West Hartlepool Steam Navigation Co. Ltd. (supra) at p. 555; and in any event 40
- (iii) that a solicitor who adopts completion Hong Kong style without advising his client of the risk and obtaining his informed consent assumes the liability in case of loss

28. In support of their contention that the Hong Kong style of completion is a negligent practice, the Appellants respectfully observe as follows :-

- 10 (1) In England, payment of cash except against executed documents is improper. It is not merely negligent, but so extravagantly so as to be outside the ambit of the solicitor's authority: see Pape v. Westacott, (1894) 1 Q.B. 272 at p. 278 per Lindley L.J., Blumberg v. Life Interests and Reversionary Securities Corporation (1897) 1 Ch. 171.
- 20 (2) The Hong Kong style of completion appears to have originated when Hong Kong was a small place; when there were few solicitors in practice, all of whom knew and trusted each other; when the transactions with which they had to deal were of relatively small value; and (for all that is known) when they were able and willing to take personal financial responsibility if anything went wrong. pp. 125 - 6; 536; 784
- 30 (3) The practice could no longer be justified in the very different circumstances prevailing in 1976, when Hong Kong was a major financial centre, with some 500 solicitors in practice, many of them strangers to one another, and with transactions involving very large sums of money indeed. The fact that the practice has continued to be followed in circumstances in which it is no longer safe or appropriate is almost certainly attributable to inertia and force of habit in a conservative profession. p. 125
- 40 (4) The practice was not (pace Roberts C.J.) "implicitly approved" by the Hong Kong Law Society, nor did it "receive the seal of approval" of the Law Society. The Law Society acknowledged the existence of the practice; they did not approve it. On the contrary, they drew attention to the risks inherent in it, and to the existence of a safer alternative; and they made it unethical for a solicitor to refuse a request for an English style of completion. Its Sub-Committee reported that the practice was merely one of convenience, and that its adoption might leave the practitioner vulnerable to claims if it p. 571
- 50 p. 812

miscarried.

- (5) On 25th November 1981 the Law Society of Hong Kong issued a circular No. 84/81 to its Members which provided inter alia :-

"1.....

2.....

3. The Council is of the view that Sale and Purchase Agreements should contain a clause stating clearly that payment by the purchaser of the balance of the purchase price to the Vendor's solicitor constitutes a full discharge of the purchaser's obligations. A vendor should have drawn to his attention that, by the Sale and Purchase Agreement, he has appointed his solicitor as his agent for the purposes of collecting the instalments, (if any), and balance of the purchase price due to him. If the vendor and purchaser are separately represented and the vendor objects to this clause being included, then it may, of course, be omitted but the solicitor acting for the purchaser will then be upon notice that he should insist upon a formal completion or otherwise satisfy himself that the cheque will be received by the vendor 10 20

4. The Council is further of the view that a solicitor acting for a purchaser should split the completion cheque between the vendor's solicitor and the vendor's mortgagee. In a typical instance, where the property is subject to a registered Mortgage, the vendor's solicitor should give to the purchasers' solicitor a written memorandum showing the principal and interest required to discharge the Mortgage. The purchaser's solicitor should, on completion, send to the vendor's solicitor his cheque for this amount payable to the mortgagee direct. The balance of the sum payable upon completion should be paid to the Vendor's solicitor. It is important that where the Mortgagee's cheque is drawn in favour of a bank the cheque should state the name of the party to whose credit the cheque is to be, i.e. 30 40

"Pay ABC Bank Ltd. Account John James Smith".

The Council is of the view that this should become routine practice. Solicitors acting for vendors must be in a position to answer the enquiry and expect the completion cheque to be split accordingly.

10 5. If no sum is due on the Mortgage but the Mortgage is still outstanding, the vendor's solicitor should either supply the purchaser's solicitor with a written statement from the mortgagee to this effect or produce the mortgage endorsed with a reassignment before completion.

20 (6) Roberts C.J. considered that to follow the Hong Kong style of completion today, after the Danny Yiu affair had revealed its dangers, might well be negligent. Yet it is fallacious to think that a mishap or series of mishaps must occur before a general practice can be condemned as unsafe: Atkinson v. Tyne Steam Shipping Co. Ltd., (1956) 1 Lloyds Rep. 244. Here, the risk was "self-evident", as Mr. McElney admitted; it was obvious even to a layman, and must have been obvious even before the disappearance of Danny Yiu.

p.525

30 (7) There was evidence (tendered on behalf of the Respondents,) that in Hong Kong no bank will release its security against a solicitor's undertaking to pay the redemption money; it will insist upon actual payment. The two situations are strictly comparable. It cannot be an exercise of reasonable care for a solicitor for a prospective mortgagee to dispense with a precaution which, in the converse but comparable situation, his client would insist upon.

p. 539

40 29. In support of their contention that Miss Leung was negligent in blindly following her normal practice without considering whether it was appropriate, the Appellants respectfully observe as follows :-

(1) Miss Leung qualified and practised as a solicitor in England, where she had obtained a distinction in conveyancing, before moving to Hong Kong. She was conversant with the English procedure on completion, and in

p. 305

Record

- p. 306 adopting the Hong Kong style of completion
 was consciously departing from English
 practice.
- (2) Miss Leung was acting for a mortgagee. There
was no advantage to her client in completion
Hong Kong style, and no reason to run the
slightest risk on his behalf.
- (3) There was no conceivable advantage to her
client in (i) parting with the mortgage
money in exchange for undertakings instead 10
of executed documents; (ii) making the
payment to the Vendor's Solicitors instead
of to the Hang Seng Bank or the Bank's
solicitors; or (iii) accepting the
undertakings of the Vendor's solicitor
without requiring appropriate undertakings
from the Bank or the Bank's solicitors
- p. 52 (4) The Trial Judge found that there were
 "warning bells" which should have led
 Miss Leung to consider the propriety in 20
 following completion Hong Kong style
pp. 115 and there was evidence on which he could
116 so find. It is submitted that the majority
 of the Court of Appeal were wrong in
 reversing this finding of fact.
30. In support of their contention that
a Solicitor who adopts completion Hong Kong
style without advising his client of the risk
and obtaining his informed consent assumes
the liability in case of loss, the Appellants 30
rely upon the report of the Sub-Committee of the
Hong Kong Law Society and in particular upon
its conclusion that the practice is merely
one of convenience and that its adoption may
leave the practitioner vulnerable to claims if
it miscarries.
- p. 784
31. The Appellants therefore submit that
this appeal ought to be allowed and the judgment
of the Trial Judge restored for the following 40
(among other)

R E A S O N S

- (1) BECAUSE if the Hong Kong style of
completion involves payment to the
vendor's solicitor against undertakings
by him in the circumstances of the present
case, it is a negligent practice, while
if it does not, Miss Leung did not follow it;

- (2) Because the Respondents failed to prove that the practice of completing Hong Kong style has been followed without mishap in circumstances comparable to those in the present case;
- (3) Because the Hong Kong style of completion involves unnecessary and avoidable risk to the client and is a negligent practice;
- 10 (4) Because it is negligent for a solicitor blindly to adopt completion Hong Kong style without a full consideration of the risks to his client and of any countervailing advantages;
- (5) Because there were "warning bells" in the present case which should have led Miss Leung to reconsider her normal practice, and she did not;
- 20 (6) Because a solicitor who adopts completion Hong Kong Style without advising his client of the risk and obtaining his informed consent assumes the liability in case of loss;
- (7) Because the Trial Judge and Li J.A. were right for the reasons they gave, and the majority of the Court of Appeal were wrong.

P.J. MILLET Q.C.

P. FUNG

M. SIMMONS

No. 15 of 1982

IN THE PRIVY COUNCIL

O N A P P E A L
FROM THE COURT OF APPEAL OF HONG KONG

B E T W E E N:

EDWARD WONG FINANCE COMPANY LIMITED

Appellants
(Plaintiffs)

- and -

JOHNSON STOKES & MASTER (a firm)

Respondents
(5th Defendants)

CASE FOR THE APPELLANTS

LINKLATERS & PAINES,
Barrington House,
59-67 Gresham Street,
London, EC2V 7JA

Solicitors for the Appellants