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O N A P P E A L

FROM THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

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IN THE MATTER of THE LEGAL PROFESSION ACT (Cap.217)

- and -

IN THE MATTER of ISAAC PAUL RATNAM AN ADVOCATE AND  
SOLICITOR

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B E T W E E N :

ISAAC PAUL RATNAM

Appellant

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- and -

THE LAW SOCIETY OF SINGAPORE

Respondent

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CASE FOR THE RESPONDENT

RECORD

1. This is an appeal from a judgment dated 2 July 1973 of The High Court Of The Republic of Singapore (Wee Chong Jin C.J. and Chua and Tan Ah Tah JJ.) whereby it was ordered that the Appellant, an Advocate and Solicitor of the Supreme Court, be struck off the Roll of Advocates and Solicitors of the Supreme Court, Singapore.
- 20 2. The questions for decision involve the construction and application of the following statutory provisions of the Law of Singapore :

(1) The Legal Profession Act (Cap.217)

"Section 84(1). All advocates and solicitors shall be subject to the control of the Supreme Court and shall be liable on due cause to be struck off the

p.14, l.16 -  
p.15, l.22  
p.15, l.29-  
p.21, l.43

RECORD

roll or suspended from practice for any period not exceeding two years or censured.

(2) Such due cause may be shown by proof that such person -

(a) has been convicted of a criminal offence, implying a defect of character which makes him unfit for his profession; or

(b) has been guilty of fraudulent or grossly improper conduct in the discharge of his professional duty or guilty of such breach of any usage or rule of conduct made by the Council under the provisions of this Act as in the opinion of the Court amounts to improper conduct or practice as an advocate or solicitor; or ... 10

(h) has done some other act which would render him liable to be disbarred or struck off the roll of the court or suspended from practice or censured if a barrister or solicitor in England due regard being had to the fact that the two professions are fused in Singapore; ... " 20

(2) The Penal Code (Cap.103)

Section 108A. "A person abets an offence within the meaning of this Code who, in Singapore, abets the commission of any act without and beyond Singapore which would constitute an offence if committed in Singapore." 30

Section 116. "Whoever abets an offence punishable with imprisonment shall, if that offence is not committed in consequence of the abetment, and no express provision is made by this Code for the punishment of such abetment, be punished with imprisonment for a term which may extend to one-fourth 40

part of the longest term provided for that offence, or with such fine as is provided for that offence, or with both; ..."

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Section 201. "Whoever, knowing or having reason to believe that an offence has been committed, causes any evidence of the commission of that offence to disappear with the intention of screening the offender from legal punishment, or with that intention gives any information respecting the offence which he knows or believes to be false, shall ... be punished ..."

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Section 406. "Whoever commits criminal breach of trust shall be punished with imprisonment for a term which may extend to three years, or with fine, or with both."

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Section 424. "Whoever dishonestly or fraudulently conceals or removes any property of himself or any other person, or dishonestly or fraudulently assists in the concealment or removal thereof, or dishonestly releases any demand or claim to which he is entitled, shall be punished with imprisonment for a term which may extend to two years, or with fine, or with both."

3. The points raised by this appeal are as follows :

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(1) whether an advocate and solicitor who, acting in accordance with his client's specific instructions, instructs a third party dishonestly to remove property contrary to Section 424 of the Penal Code is guilty of abetting or "instigating" that offence within the provisions of Section 116 of the said Code;

(2) whether, having regard to Section 108A of the Penal Code, an offence of abetting in Singapore the dishonest removal of property

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contrary to Section 424 of the said Code read with Section 116 thereof may be committed when the property in question which is to be removed is situate outside Singapore and is that of a company incorporated and registered in Singapore the winding up of which has commenced;

(3) whether the conviction of a person of an offence under Section 424 of the Penal Code read with Section 116 of the said Code necessarily implies, irrespective of the circumstances of the offence and of the conviction and the previous character of the offender, a defect of character in that person which makes him unfit for his profession as an advocate and solicitor within the provision of Section 84(2)(a) of the Legal Profession Act; 10

(4) whether a person causes evidence of the commission of an offence "to disappear" within the meaning of that expression in Section 201 of the Penal Code when documents or articles constituting such evidence have been withheld from the appropriate prosecuting authorities only temporarily and not for so long as to prevent their use as evidence in Court. 20

p.60,11.16-18  
p.34, 1.29-  
p.35, 1.2

4. The Appellant, who is now aged about 33, was at all material times an Advocate and Solicitor of the Supreme Court, Singapore. From the 1st day of June 1967 to the 29th day of February 1972 he was employed in the legal service of the Government of Singapore as a Deputy Public Prosecutor and a State Counsel in the Attorney-General's Chambers. 30

p.41,11.18-20

From September 1971 to the 29th day of February 1972 he was, in addition, the Deputy Registrar of Companies and Assistant Registrar of Business Names.

p.60,11.18-  
22, p.65  
11.7-11

5. From the 1st day of March 1972 to the 15th day of August 1972 the Appellant was engaged in private practice as a legal assistant in the firm of Francis T. Seow of 6A Raffles Place, Singapore, at a fixed salary or 10% of the firm's profits whichever was the greater. 40

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6. On the 21st day of April 1972 the firm of Francis T. Seow was instructed to act for a company, incorporated and registered in Singapore known as Gemini Chit-Fund Corporation Limited (hereinafter called "Gemini") in connection with a proposed takeover of Gemini. At all material times Gemini had branch offices in Malaysia one of which was in Kuala Lumpur. p.5,11.4-8  
p.60,11.23-25  
p.45,1.38-46, 1.2
- 10 7. On or about the 29th day of April 1972 one V.K.S. Narayanan, the Chairman of Gemini, and one Abdul Gaffar, the Managing Director of Gemini, were arrested in Singapore, and, on the 31st day of April 1972, in the First Magistrates' Court, Singapore, they were charged with an offence of abetting Gemini in the commission of the offence of criminal breach of trust in respect of certain funds entrusted to Gemini, contrary to Section 406 of the Penal Code. p.60,1.33-61, 1.2
- 20 8. On the 31st day of July 1972 the Minister for Finance presented a petition to the High Court of the Republic of Singapore for the winding up of Gemini under the provisions of the Chit Funds Act, 1971 (No. 28 of 1971). The said petition was served on Gemini on the same day. p.60,11.26-32  
p.61,11.3-4
- 30 9. On the 29th day of July 1972 the Appellant learned of the said arrest of V.K.S. Narayanan and Abdul Gaffar; on the 31st day of July 1972 the Appellant learned of the charges preferred against V.K.S. Narayanan and Abdul Gaffar as aforesaid; and on the 1st day of August 1972 the Appellant learned of the presentation of the said petition. p.61,11.8-11  
p.5,11.21-31  
p.6,11.36-41  
p.6,11.43-46
- 40 10. On the 2nd and 3rd days of August 1972 the Appellant caused certain files of Gemini, V.K.S. Narayanan and Abdul Gaffar to be removed from the offices of Gemini in Singapore to the Appellant's office at the offices of the firm of Francis T. Seow in Singapore. The respective secretaries of V.K.S. Narayanan and Abdul Gaffar made lists of all the files so removed, which lists were left with the Appellant and copies of which are set out in the Record of Proceedings. p.61,11.12-21  
p.65,11.12-19  
p.7,11.9-19  
p.7, 1.42-  
p.8, 1.2  
p.66,1.6-71, 1.13  
and p.71, 1.15-  
p.75, 1.12

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p.61,11.22-  
29

p.7, 11.20-  
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p.48,11.1-  
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11. On the 3rd day of August 1972 the Appellant, acting on the instructions of Abdul Gaffar, wrote and despatched on behalf of the firm of Francis T. Seow a letter to one K.K. Kumaran, the General Manager of Gemini's said branch office in Kuala Lumpur, Malaysia, instructing the disposal of five cars and other movable property of Gemini in Malaysia. The Appellant despatched the said letter by handing it to one S. Francis Retnam, then Gemini's Regional Branch Manager in Penang, Malaysia, for personal delivery to the said K.K. Kumaran. The said letter was in the following terms :

p.47,11.1-  
36

"

3rd August 1972

Dear Sir,

We act for Mr. Gaffar who has instructed us to dispose of the five cars owned by the company, as well as other movable properties immediately.

In this connection, we have instructions from our clients to appoint Mr. S. Francis Retnam as the agent to effect the aforesaid transactions. Please take proper inventory and acknowledgment prior to handing over these properties to Mr. Retnam and keep them confidentially in your control. At a later date, when the transactions have been completed, please let me have these documents. You may want to note that Mr. Retnam has [sic] given specific instructions as to the disposal of the funds realised from these properties and as such, he has to be allowed custody thereof.

We have been instructed to inform you that Mr. Retnam has been authorised by Mr. Gaffar to proceed to form a Malaysian based Gemini Chit-Fund Corporation Limited and to discontinue operations as a branch of the Singapore company. These instructions are equally applicable to Gemini Travel Service.

Please co-operate with Mr. Retnam and do the needful to effect Mr. Gaffar's instructions.

RECORD

Yours faithfully,

sd. Francis T. Seow."

- Within a day of the despatch of the said letter a copy thereof was read by Francis T. Seow and initialled by him. p.61,11.38-44  
p.8,11.2-15  
p.64,11.1-40  
p.48,1.14-  
p.49, 1.16
- 10 12. On his receipt from the said S. Francis Retnam of the said letter on the 4th day of August 1972 the said K.K. Kumaran decided to, and did, ignore the instructions that it contained and made a note to that effect on the letter. Therefore, no offence was committed in consequence of the writing and despatch of the said letter. p.48,11.1-10
13. Neither the Appellant nor any member of the firm of Francis T. Seow ever took any steps to withdraw the instructions set out in the said letter. p.62,11.1-6  
p.65, 1.31
- 20 14. On the 4th day of August 1972 two police officers, with the consent of the Appellant, removed from the Appellant's office the majority of the files of Gemini, V.K.S. Narayanan and Abdul Gaffar referred to in paragraph 10 hereof. Each of the said police officers signed by way of acknowledgment of receipt a list of the said files removed by him, copies of which said lists are set out in the Record of Proceedings herein. p.8, 11.16-43  
p.75,1.13-  
p.77, 1.11 &  
p.77,1.12-  
p.78, 1.6
- 30 15. By letter dated 9th August 1972 from a firm of advocates and solicitors in Ipoh, Malaysia, to the firm of Francis T. Seow, a proposal was made, purportedly on the instructions of the said S. Francis Retnam, that a general Power of Attorney should be granted by Abdul Gaffar to the said S. Francis Retnam to enable the latter to dispose of the immovable properties of Abdul Gaffar in West Malaysia providing and in order that the Government of Singapore would not be able to trace the monies or the properties owned by Abdul Gaffar in West Malaysia. On the 11th day of August 1972 the p.8, 1.44-  
p.9, 1.2  
p.51, 1.28-  
p.52, 1.29
- 40 p.8,11.2-4



RECORD

p.3,11.1-25

Appellant despatched on behalf of the firm of Francis T. Seow a letter in reply to the said letter dated 9th August 1972 rejecting the said proposal contained therein and dissociating the firm of Francis T. Seow from that or any similar proposals.

p.62,11.7-45  
p.65, 1.31

16. On the 15th day of August 1972 the Appellant was arrested and charged in the First Magistrates' Court of Singapore with the following two offences :

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p.441,11.  
18-38

(1) That he, on or about the 3rd day of August 1972, did instigate the General Manager, Gemini Chit-Fund Corporation Limited, Malaysia Branch, Kuala Lumpur, to dishonestly remove property, to wit, five cars and other movable properties, belonging to the said company, and that he had by virtue of Section 108A of the Penal Code committed an offence punishable under Section 424 read with Section 116 of the said Code;

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and

p.45,11.1-28 (2)

That he, on or about the 2nd day of August 1972, having reason to believe that a certain offence, to wit, criminal breach of trust by an agent had been committed by the Gemini Chit-Fund Corporation Limited and that such offence had been abetted by its directors, Abdul Gaffar and V.K.S. Narayanan, ... did cause certain evidence of the said offence to disappear, to wit, files containing the Gemini Chit-Fund Corporation Limited's correspondence, vouchers, bank statements, chit fund receipts and Abdul Gaffar's personal correspondence, with the intention of screening the said Gemini Chit-Fund Corporation Limited, Abdul Gaffar and V.K.S. Narayanan from legal punishment, and that he had thereby committed an offence punishable under Section 201 of the Penal Code.

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p.9,11.5-26  
p.51,11.2-14

17. At the time of his arrest the Appellant had in his office two of the said files of Gemini referred to in paragraph 10 hereof which two files he did not disclose to the authorities or to the

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- police officers who arrested him there and who searched the said office in pursuance of a search warrant granted to them for that purpose. On his return to his office after he had been arrested and charged as aforesaid and remanded on bail the Appellant arranged with one M. Rashad, the then accountant of Gemini, to collect the said two files and the company seal of Gemini, which the said Rashad did on the following day, the 16th day of August 1972. It appears (see paragraph 19(10) hereof) from the Notes of T.S. Sinnathuray, the Senior District Judge, of the proceedings in respect of the said charges which are referred to in paragraphs 18 and 19 hereof, and from the Grounds of Decision of the said learned Judge in the said proceedings, (summarized in paragraph 20 hereof) that the said two files were almost immediately handed over to the Police, and that they remained thereafter in the custody of the Police up to and during the said proceedings.
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- 20
18. On the 24th day of October 1972, in the First Magistrates' Court, Singapore, before the said T.S. Sinnathuray, the Senior District Judge, the Appellant who was represented by Counsel, pleaded guilty to the first charge set out in paragraph 16 hereof. The Court, after having received from the Prosecution a written statement of facts (which were admitted by the Appellant) containing a summary of the facts hereinbefore set out of the offence the subject of that charge, convicted the Appellant thereof. The Appellant then admitted having committed the offence the subject of the second charge set out in paragraph 16 hereof and, with the consent of the Prosecution, applied for the said second charge to be taken into consideration by the Court under the provision of Section 171(1) of the Criminal Procedure Code (Cap. 113).
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19. Counsel for the Appellant submitted to the Court a written statement of the Appellant and relied upon the following principal matters of mitigation in his address to the Court :
- (1) The Appellant was previously of good character.
- p.9,11.34-44
- p.43,11.12-15
- p.57,11.31-35
- p.40,11.1-18
- p.40,11.19-20  
p.45, 1.29-  
p.46, 1.45
- p.49,1.20-  
p.51,1.27  
p.41,1.10-  
p.43, 1.32
- p.41,11.10-35  
p.42, 1.3

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- p.42,11.1-2 (2) He had admitted his guilt.
- p.42,11.4-8  
p.51,11.1-2 (3) He had co-operated with the Police since his arrest in order to help them realise the maximum possible assets of Gemini.
- p.42,11.23-27 (4) He had been in private practice as an Advocate and Solicitor for only five months prior to the commission of the offences and was inexperienced in the duties and responsibilities of defence counsel.
- p.42,11.28-29 (5) He had a considerable pressure of work at the time when the offences were committed. In his said written statement the Appellant also stated 10
- p.50,11.5-10
- p.50,11.10-13 (a) that he wrote the said letter dated 3rd August 1973 "without giving it much thought or fully appreciating the consequences thereof";
- and
- p.50,11.14-24 (b) that discussions that he had had with Francis T. Seow about the matter prior to and after writing the said letter had assured him, the Appellant, of the propriety of writing the said letter, and that Francis T. Seow had approved the said letter after it had been despatched on seeing a copy of it. 20
- p.42,1.30 (6) The Appellant's dishonesty was minimal.
- p.42,11.31-34 (7) In the circumstances giving rise to the said offences there was a very thin distinction between protecting the interest of a client and the commission of an unlawful act. In his said written statement the Appellant said : 30
- p.51,11.19-23 "I must make it clear to the Court that whatever I have done, I did in the best interests of my then client without realizing fully the consequences thereof. I have not gained in any way."

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p.43,11.1-2

- (8) The Appellant had behaved properly in relation to the proposal referred to in paragraph 15 hereof for the unlawful disposal of the monies and properties in West Malaysia of Abdul Gaffar. In his said written statement the Appellant said that when he received the said letter dated 9th August 1972 from the law firm in Ipoh, Malaysia, he was shocked that his intentions had been misconstrued and immediately replied dissociating himself from any sinister suggestions.
- (9) No principal offence had been committed in consequence of the Appellant's abetment the subject of the said first charge and no loss had been caused to anyone.
- (10) With regard to the admitted offence the subject of the said second charge to be taken into consideration, all the files referred to in paragraph 10 hereof were at the date of trial in the custody of the Police and available in Court for production if required, and that only two of the said files (see paragraph 17 hereof) had disappeared for as long as two weeks. In this connection, the Appellant in his said written statement said :
- "When the police came to search the office armed with a search warrant ... Francis T. Seow telephoned a few prominent people amongst whom was the Attorney-General and sought to prevent the search. In the course of the conversation with the Attorney-General, Francis T. Seow gave an undertaking that there were no files relating to Gemini...in the office premises. At that moment Francis T. Seow asked me if there were any files. I rose to the occasion and said that there was none when in fact two files were still in the office."
- In his said written statement the Appellant also made the general point that this case was handled

p.50,11.25-29

p.53,11.1-25

p.43,11.6-8

p.43,11.12-16

p.51,11.2-14

p.50,11.30-42

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under the constant supervision, guidance and control of Francis T. Seow.

- p.44,11.1-17  
p.59, 1.36-  
p.60, 1.2
- p.53,1.26-  
p.60, 1.6  
p.53,1.32-  
p.54, 1.9  
p.54,1.10-  
p.57, 1.21  
p.57,11.22-  
24  
p.57,11.24-  
31
- p.57,11.31-35
- p.57,1.36-  
p.59, 1.35
- p.57,11.45-  
46
- p.58,11.7-9
- p.58,11.9-  
13
- p.58,11.  
32-42,p.51,  
1.28- p.52,  
1.29  
p.53,11.1-25
- p.59,11.18-  
35
20. On the 25th day of October 1972 the Senior District Judge sentenced the Appellant to one day's imprisonment and a fine of \$4,000, or in default 15 months' imprisonment, in respect of the said first charge, and, in doing so, took into consideration the admitted offence the subject of the said second charge. The learned Judge, in Grounds of Decision delivered on the 25th day of October 1972, first mentioned the offence to which the Appellant had pleaded guilty and set out the admitted facts giving rise to it. The learned Judge held that the said facts disclosed the offence in the said first charge. Turning to the said second charge, the learned Judge referred to it as relating to an offence "of causing the disappearance of certain evidence, namely, two files containing correspondence etc. of Gemini..." and noted that it was conceded by the Prosecution that those files had disappeared for two weeks only, that they were then available in Court, and that it had not been suggested that anything was missing from the said files. The learned Judge went on to refer to the mitigation tendered on behalf of the Appellant and indicated his acceptance of the following points made in mitigation :
- (1) that the Appellant had an unblemished record;
- (2) that his plea of guilty was a mitigating factor;
- (3) that since his arrest he had co-operated with the Police in order to help the authorities realize to the maximum the assets of Gemini;
- (4) that the Appellant, on receipt of the said letter dated 9th August 1972 from the law firm in Ipoh, Malaysia, had been shocked that his intentions had been misconstrued and had replied thereto dissociating himself from any sinister suggestions contained in it;
- (5) that the said letter dated 3rd August 1972 had been written with the approval of Francis T. Seow and that this case had been handled under

the constant supervision, guidance and control of Francis T. Seow (as the Appellant had maintained in his said written statement - see paragraph 19(5)(b) and the final sentence of paragraph 19 hereof).

10 With regard to the submission made on behalf of the Appellant that, whatever he did, he thought he did in the best interest of his client and without realizing fully the consequences thereof (see paragraph 19(5)(a) and (7) hereof), the learned Judge said :

"When this case was mentioned before me on the 15th of August 1972, the Attorney-General ... said :

p.59,11.1-17

20 "Although an advocate and solicitor must fearlessly and to the best of his ability defend his client's case, he must always bear in mind the greater obligation he owes to this Court of assisting in the administration of justice." What he said succinctly summarizes the role of an advocate and solicitor. On the facts before me, the accused, a practising advocate and solicitor, has pleaded guilty to the committing of a criminal offence and has asked that another offence be taken into account, which offences intrinsically affect the administration of justice in the Courts. The gravity of the matter cannot be denied."

30 21. Pursuant to powers contained in Section 91 of the Legal Profession Act the Chief Justice of Singapore by order dated 7th October 1972, appointed a Disciplinary Committee to investigate complaints arising out of the aforesaid matters made by the Respondent herein.

40 22. On the 10th day of March 1973 the Disciplinary Committee sat to investigate the said complaints. The Respondent, in its written Statement of Case as amended, set out in summary form the facts and circumstances hereinbefore referred to giving rise to the said conviction and sentence of the Appellant, and put in evidence a certified copy of the record of the aforesaid criminal proceedings. The Respondent contended, in its said Statement of Case and by

p.31,1.10-  
p.34, 1.22  
p.60,1.7 -  
p.63, 1.30

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submissions made by Counsel on its behalf, that by reason of the said facts and circumstances :

p.63,11.9-12  
p.32,11.4-7

(1) that the Appellant had been convicted of a criminal offence, implying a defect of character which made him unfit for his profession within the provision of Section 84(2)(a) of the Legal Profession Act;

p.63,11.13-17  
p.31,11.36-  
p.32, 1.3

(2) that the Appellant had been guilty of grossly improper conduct in the discharge of his professional duty within the provision of Section 84(2)(b) of the Legal Profession Act;

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p.63,11.18-23  
p.32,11.7-12

(3) that the Appellant had also been guilty of such conduct as would render him liable to be disbarred or struck off the Roll of the Court or suspended from practice or censured if a barrister or solicitor in England due regard being had to the fact that the two professions are fused in Singapore, within the provisions of Section 84(2)(h) of the Legal Profession Act; and

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p.63,11.24-26

(4) that, accordingly, the Appellant should be dealt with under Section 84(1) of the Legal Profession Act.

p.31,1.36-  
p.32, 1.28,  
and  
p.34,11.3-17

The arguments advanced by Counsel in support of these contentions are set out in the Notes of Argument before the Disciplinary Committee dated 10th March 1973.

p.65,1.1 -  
p.66, 1.5  
p.65,11.31-32

23. The Appellant, in his written Reply to the said Statement of Case of the Respondent, admitted all the material allegations of fact contained in the said Statement of Case and also the Respondent's contention referred to in paragraph 22(1) hereof that he had been convicted of a criminal offence, implying a defect of character which made him unfit for his said profession. However, in his said Reply the Appellant maintained :

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p.65,11.12-25

(1) in relation to the said allegation that he had caused the disappearance of the said files, that he had caused the said files to be removed to his office because he thought that they might be useful in the

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preparation of the defence of Abdul Gaffar and V.K.S. Narayanan to the aforesaid charge preferred against them (see paragraph 7 above) and that he had caused lists of such removed files to be made out by employees of Gemini (copies of which said lists were attached to the said Reply);

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p.66,1.6-  
p.71,1.13  
p.71,1.14-  
p.75,1.12

10 (2) that his action in writing the said letter dated 3rd August 1972 was done in the best interests of his client without any intention to violate the law; and

p.65,11.27-30

(3) that his actions were prompted strictly in the interests of his clients and that his conduct had not caused damage or loss to anyone.

p.65,11.33-38

The said Reply concluded with the Appellant expressing apologies for his conduct, which he maintained was due to his inexperience in the profession, and with a request for leniency.

p.65, 1.39-  
p.66, 1.2

20 24. Counsel for the Appellant, in his submissions to the said Disciplinary Committee on the 10th day of March 1973, said that it was admitted that the Appellant had been convicted and sentenced as alleged, that the facts upon which such conviction and sentence were based had occurred as alleged, and that the Appellant had pleaded guilty to and admitted respectively the said two charges. Notwithstanding the said admissions and the terms of the aforesaid Reply, Counsel for the Appellant  
30 argued, and supported his argument by a written submission which he read and put before the said Disciplinary Committee :

p.32,11.32-42

(1) that the facts the subject of the said first charge did not disclose an offence in law, because the Appellant, in writing the said letter of 3rd August 1972, had acted merely as a "conduit pipe" and in consequence had not "instigated" the commission of an offence in the legal sense of having actively  
40 stimulated the same;

p.34, 1.23-  
p.38, 1.8

p.32,1.42-  
p.33,1.2  
p.33,11.30-33  
p.37,11.6-18



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- p.33,11.33-41  
p.36, 1.29-  
p.37, 1.5
- (2) that the petition in Singapore to wind up Gemini had no effect in Malaysia, that the Appellant had taken the view that the assets of Gemini in Malaysia were not affected by the said winding-up petition, and that, in writing the said letter dated 3rd August 1972, he had desired only to help his clients and not to break the law;
- p.33,11.3-16  
p.37,11.19-42
- (3) that the fact of conviction of an advocate and solicitor of a criminal offence is not in itself sufficient in every case to imply a defect of character in him making him unfit for his profession within the provision of Section 84(2)(a) of the Legal Profession Act, but that consideration ought to be given to :
- (a) the nature of the offence;
- (b) the circumstances of the offence;
- (c) the fact that the convicted person may have admitted guilt wrongly, as the Appellant allegedly did, in order only to avoid the risk of being sentenced to a period of imprisonment;
- p.33,11.19-29  
p.35,1.22-  
p.36, 1.28
- (4) that the Appellant had not committed the offence the subject of the said second charge, since he had not caused the said files "to disappear" in the sense of having caused them to be removed permanently or for so long that they could not be used as evidence in Court for proving an offence.
- p.23,1.11-  
p.28,1.28
25. The written Report of the Disciplinary Committee was delivered on the 23rd day of April 1973. In the said Report the Disciplinary Committee set out the aforesaid complaints against the Appellant and then summarized the submissions made and facts of the case. The Disciplinary Committee took the view that it could not go behind the Appellant's plea of guilty to the said first charge and his admission of the facts the subject of the said second charge. The Disciplinary Committee also observed that the
- p.23,1.17-  
p.25,1.19  
p.25,1. 20-  
p.26, 1.17  
p.26,11.18-25
- p.26,11.25-40

RECORD

Appellant had not maintained in the proceedings before it, as he had in the aforesaid criminal proceedings (see paragraph 19(5)(b) hereof), that Francis T. Seow had assured him of the propriety of writing the said letter of 3rd August 1972 and had approved the same after it had been written. The Disciplinary Committee rejected the submission of Counsel for the Appellant in relation to the said first charge that the Appellant, in writing the said letter dated 3rd August 1972, was acting merely as a "conduit pipe", and, by implication it rejected the submission that the Appellant had not had the requisite criminal intent when writing the said letter. With regard to the third main submission made on behalf of the Appellant (see paragraph 24(3) hereof) on the interpretation and application of Section 84(2)(a) of the Legal Profession Act, the Disciplinary Committee ventured no specific view on the matter of interpretation, but said :

p.27,11.16-19

p.27,11.1-7  
& 11.13-19

"We feel bound to take a serious view of the material before us, which discloses a conviction of a serious criminal offence, and an admission of another and more serious offence, and thus a deplorable absence of appreciation of his professional and moral obligations ..."

p.27,11.1-6

The Disciplinary Committee also rejected the submission of Counsel for the Appellant in relation to the facts the subject of the said second charge that the Appellant had not caused evidence "to disappear" within the provision of Section 201 of the Penal Code. The Disciplinary Committee's view was that, as the Appellant had admitted to removing the said files with the intent set out in the said second charge, the fact that they were missing for at most two weeks was not a relevant factor.

p.27,11.7-13

26. In the result the Disciplinary Committee found in its said Report :

(1) that the Appellant, in writing and issuing the said letter dated 3rd August 1972 and in failing to take any steps to withdraw, countermand or retract or dissociate the firm of Francis T. Seow from the same, was guilty

p.27,11.32-39

RECORD

of grossly improper conduct in the discharge of his professional duty within the provision of Section 84(2)(b) of the Legal Profession Act;

p.27,11.40-46

(2) that the said offence of which the Appellant had been convicted implied a defect of character which made him unfit for his said profession within the provision of Section 84(2)(a) of the Legal Profession Act;

p.28,11.1-5

(3) that the Appellant, "in causing or attempting to cause" the said files to disappear, was guilty of grossly improper conduct in the discharge of his professional duty within the provision of Section 84(2)(b) of the Legal Profession Act;

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p.28,11.6-13

(4) that, in the absence of any evidence as to the attitude which the Bar Council or the Law Society of England would take in relation to the aforesaid matters, no finding could be made on the aforesaid complaint made under Section 84(2)(h) of the Legal Profession Act; and

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p.28,11.14-18

(5) that, in respect of all the matters referred to in sub-paragraphs (1) to (3) of this paragraph, cause of sufficient gravity for disciplinary action existed under Section 84 of the Legal Profession Act.

p.1, 1.1-

p.2, 1.13

p.2,11.14-39

27. On the 25th day of May 1973, upon the application of the Respondent made by way of Originating Summons before The Honourable Mr. Justice D'Cotta in Chambers, it was ordered that the Appellant should show cause why he should not be dealt with under the provisions of Section 84 of the Legal Profession Act.

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p.3, 1.1-

p.11,1.37

28. Pursuant to the said Order, the Appellant, on the 28th day of June 1973, swore an Affidavit to show cause why he should not be dealt with under the provisions of Section 84 of the Legal Profession Act. In it the Appellant recited the aforesaid and certain additional facts and circumstances resulting in his said conviction and sentence and the said proceedings before the

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Disciplinary Committee. In paragraph 2 of his said affidavit the Appellant deposed that, to the best of his knowledge and belief, he had not been "charged with an offence" under Section 84(2)(a) of the Legal Profession Act in the said proceedings before the Disciplinary Committee.

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In fact, as appears from paragraph 15 of the Statement of The Case submitted by the Respondent to the Disciplinary Committee, a complaint was made against the Appellant within the terms of the said provision. The Appellant also deposed wrongly in his said affidavit that the Disciplinary Committee had found him guilty of, inter alia, an offence under Section 84(2)(h) of the Legal Profession Act.

29. With regard to the circumstances leading to his writing of the said letter of 3rd August 1972, the Appellant deposed in his said affidavit:

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(1) that Abdul Gaffar had instructed him to dispose of movable property situate in Malaysia belonging to him, Abdul Gaffar, in order that such property could not be stolen in the confusion following his arrest;

(2) that, due to extreme pressure of work, he mistakenly referred in the said letter to the property in Malaysia to be disposed of as that of Gemini instead of Abdul Gaffar;

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(3) that, before writing the said letter, he referred to the passage in Dicey's Conflict of Laws (7th Edition) regarding the effect of the presentation of a petition for winding-up of a company on the property of such company outside the jurisdiction of the court in which the petition is presented;

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(4) that, on the day after the said letter had been despatched, Francis T. Seow, who had seen a copy of it, indicated to the Appellant his displeasure that the letter had been written, but did not explain the reason for such displeasure and went on nevertheless to initial the said copy;

RECORD

p.11,11.17-19

(5) that the Appellant was unaware when he wrote the said letter and after Francis T. Seow had indicated his displeasure as aforesaid that there was anything unprofessional, let alone criminal about it.

30. With regard to his dealings with the said files, the Appellant deposed in his said Affidavit :

p.7,11.9-19  
p.7,1. 42-  
p.8, 1.2

(1) expressly and by implication, that he had caused the removal on the 2nd and 3rd days of August 1972 of the said files to his office as aforesaid for the purpose of preparing the defence of V.K.S. Narayanan and Abdul Gaffar;

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p.8,11.16-43

(2) that, on the 4th day of August 1972, he had handed over to the Police certain of the said files, some of which had been specifically selected and requested by the Police and some of which were volunteered by him;

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p.9,11.13-24

(3) that, on the 15th day of August 1972, when the Police attended at the office of Francis T. Seow with a warrant for the Appellant's arrest and warrants to search the said office and the Appellant's home, the following incident took place :

"... Francis Seow ... made several telephone calls to the Minister of Law, the Senior District Judge and the Attorney-General. In the course of his telephone conversation with the Attorney-General, he asked me "Isaac, are there any more Gemini files in the office?" I, believing that there were none, replied to him to that effect. He thereupon gave an undertaking to the Attorney-General that there were no other files relating to the Company in our Chambers."

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(4) that, on returning to his office on the 15th day of August 1972 after having been arrested and charged as aforesaid, he discovered two files of Gemini that had previously been left in his custody by the said M. Rashad, the then accountant of Gemini, which said files he immediately arranged to have collected, and which were collected, the following day by the said Mr. Rashad;

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(5) that the said two files were never the subject matter of any charge against him, they having come to light only after the said two charges had been preferred against him on the 15th day of August 1972, and that, despite his own efforts to draw attention to that fact in the aforesaid criminal proceedings against him, the Senior District Judge and prosecuting and defence counsel had mistakenly proceeded on the basis that the said two files were part of the subject matter of the said second charge.

p. 10, 11. 26-40

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31. With regard to his plea of guilty to the said first charge and his admission of the offence the subject of the said second charge, the Appellant deposed in his said affidavit that he entered the said plea and made the said admission as a result of "plea bargaining" and only to avoid the likelihood of being sentenced to a term of imprisonment in the event of his contesting the said two charges and being found guilty thereof.

p. 9, 1. 45-  
p. 10, 1. 25

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32. On the 2nd day of July 1972, in The High Court of the Republic of Singapore, before The Honourable The Chief Justice, The Honourable Mr. Justice Chua and The Honourable Mr. Justice Tan Ah Tah, the Appellant gave evidence in cross-examination by counsel for the Respondent on his said affidavit. In his said evidence the Appellant admitted, inter alia :

p. 12, 1. 1 -  
p. 14, 1. 15

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(1) That his account in the said affidavit of having made a mistake in the said letter of 3rd August 1972 by referring to the disposal of Gemini's properties instead of

p. 13, 11. 10-20

RECORD

the properties of Abdul Gaffar was the first time that he had urged that matter in his favour; and

p.13, ll.21-34

(2) that he had referred to the aforesaid passage in Dicey's Conflict of Laws (7th Edition) before writing the said letter because Abdul Gaffar had indicated that he was uncertain what properties in Malaysia were owned by him, Abdul Gaffar, and what were owned by Gemini;

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p.12, l.23-  
p.13, l.9  
and Supplemental  
Record

(3) that he had previously given evidence, in proceedings before a Disciplinary Committee appointed under Section 91 of the Legal Profession Act to inquire into complaints made by the Respondent against Francis T. Seow, that he had not wanted the said files to be made available to the Police and that he had not wanted the Police to have them.

p.14, l.16-  
p.15, l.22

33. On the 2nd day of July 1973 The High Court of The Republic of Singapore, constituted as aforesaid, made an Order on the said Originating Summons that the Appellant be struck off the Roll of Advocates and Solicitors of the Supreme Court, Singapore and that he pay all the costs incurred by the Respondent in those proceedings and in the proceedings before the Disciplinary Committee.

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p.15, l.29-  
p.21, l.43  
p.19, ll.13-  
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34. The Judgment of the Court was delivered by the Chief Justice who said that the Court disbelieved the assertion made by the Appellant for the first time in his said affidavit that he had erroneously and unintentionally referred in his said letter of 3rd August 1972 to the movable properties as the property of Gemini when the instructions he had received from Abdul Gaffar were to dispose of Abdul Gaffar's movable properties.

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p.19, ll.29-44

35. In delivering the rulings of the Court on the matters of complaint before it (see paragraph 26 hereof) the Chief Justice dealt first with that under Section 84(2)(a) of the Legal Profession Act which was based upon the Appellant's aforesaid conviction. He said that, assuming that the Court was entitled to look behind the said

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conviction in these disciplinary proceedings, the Court was of the opinion that there was no error on the face of the criminal charge and that the admitted facts before the Magistrates' Court justified its acceptance of the Appellant's plea of guilty. He went on to give the following reasons of the Court for such ruling :

RECORD

- 10 (1) that it matters not that the movable properties specified in the said first charge were foreign assets of Gemini since, by virtue of Section 108A of the Penal Code, the Appellant was guilty of the offence if he abetted in Singapore the commission of an act without and beyond Singapore, in this case the dishonest removal of the said movable properties, which act would have constituted an offence punishable under Section 424 of the Penal Code if committed in Singapore; p.19,1.45-  
p.20,1.35
- 20 (2) that the Court was unaware of any principle or of any authority for the proposition that a solicitor who passes on the instructions of his client to another person, which instructions when carried out by that other person amount to the commission of a criminal offence, does not "instigate" that other person to commit that criminal offence; and p.20, 1.36-  
p.21, 1.14
- 30 (3) that the Appellant's conduct in relation to the said letter of 3rd August 1972 and the contents of the same constituted prima facie evidence of "instigation" by the Appellant. p.21,11.4-14
- 40 36. With regard to the contention on behalf of the Appellant that, on the facts and having regard to all the circumstances, the said conviction could not be said to imply a defect of character in him which made him unfit for his profession within the provision of Section 84(2)(a) of the Legal Profession Act, the Chief Justice said that the nature of the offence is the sole criterion in determining whether or not an advocate and solicitor comes within the said provision and that the offence in question was one which clearly implied a defect of character in the Appellant making him unfit for his said profession. p.21,11.15-28



RECORD

37. The Chief Justice did not specifically deal with the aforesaid contention of the Appellant in relation to the offence the subject of the said second charge that he did not in law cause the said files "to disappear" (see paragraphs 24(4) and 30 hereof). However, the Court clearly rejected the said contention since the judgment delivered by the Chief Justice concluded with the following passage :

p.21,11.29-35

"Finally, having considered all the circumstances including his admission of having committed another serious criminal offence we were in no doubt that the extreme penalty ought to be imposed and we accordingly ordered that the Respondent be struck off the roll and that he should bear all the costs of the Law Society."

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p.22, 1.1  
p.23, 1.9

38. On the 1st day of July 1974 The High Court of The Republic of Singapore (Wee Chong Jin C.J. and Winslow and Tan Ah Tah J.J.) made an Order granting leave to appeal to the Judicial Committee of Her Britannic Majesty's Privy Council under Section 3(1)(a)(i), (ii), (iii); (b) and (c) of the Judicial Committee Act (Cap.8) as read with Section 98(6) of the Legal Profession Act against the whole of the aforesaid judgment of The High Court Of The Republic Of Singapore.

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39. The Respondent submits that this appeal should be dismissed with costs for the following amongst other

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R E A S O N S

- (1) BECAUSE, the Appellant in the aforesaid criminal proceedings pleaded guilty to the said first charge and admitted the offence the subject of the second charge.
- (2) BECAUSE the Appellant was properly convicted of the said first charge on his plea of guilty, in that :
  - (a) on the evidence and on his admission, made in the said criminal proceedings and in the proceedings before the Disciplinary Committee, he instructed

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the said K.K. Kumaran, by the writing of the said letter dated 3rd August 1972, dishonestly to dispose of movable properties of Gemini in Malaysia after the winding up of the said company in Singapore had commenced;

- 10 (b) the fact that, in writing the said letter, he may have been acting in accordance with instructions received from his client, Abdul Gaffar, does not deprive his said act of the quality of abetment or "instigation" of a criminal offence within the provision of Section 424 of the Penal Code as read with Section 116 of the said Code;
- 20 (c) by virtue of Section 108A of the Penal Code, an offence of abetting in Singapore the dishonest removal of property contrary to Section 424 of the said Code read with Section 116 thereof may be committed when the property in question is situate outside Singapore and is that of a company incorporated and registered in Singapore the winding up of which has commenced.
- 30 (3) BECAUSE the sole criterion for the purpose of determining whether due cause for disciplinary action has been proved within the provision of Section 84(2)(a) of the Legal Profession Act, is the nature of the offence for which the advocate and solicitor has been convicted.
- (4) BECAUSE an offence committed by an advocate and solicitor under Section 424 of the Penal Code read with Section 116 of the said Code is a serious offence involving dishonesty, it necessarily implies a defect of character which makes him unfit for his profession.
- 40 (5) BECAUSE, on the evidence and on the admission of the Appellant in the said criminal proceedings, he had committed the offence the subject of the said second charge of having caused evidence of an offence to disappear within the provision of Section 201 of the Penal Code.

RECORD

- (6) BECAUSE for the purpose of proving the commission of an offence under Section 201 of the Penal Code it is not necessary to show that the accused has caused evidence to disappear permanently or for so long as to prevent it being used as evidence in any criminal proceedings. It is sufficient for the Prosecution to show that the accused, at the time when he caused the evidence to disappear, did so with the intention of screening an offender from legal punishment. 10
- (7) BECAUSE the conduct of the Appellant the subject of the said two charges or of either of them was grossly improper conduct in the discharge by the Appellant of his professional duty, within the provision of Section 84'2((b) of the Legal Profession Act.
- (8) BECAUSE the judgment of The High Court Of The Republic Of Singapore was right.

ROBIN E. AULD

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No. 10 of 1974  
*JUDICIAL COMMITTEE OF THE*  
IN THE PRIVY COUNCIL

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O N A P P E A L  
FROM THE HIGH COURT OF THE  
REPUBLIC OF SINGAPORE

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IN THE MATTER of THE LEGAL  
PROFESSION ACT (Cap. 217)

- and -

IN THE MATTER of ISAAC PAUL RATNAM  
AN ADVOCATE AND SOLICITOR

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B E T W E E N :

ISAAC PAUL RATNAM Appellant

- and -

THE LAW SOCIETY OF  
SINGAPORE Responder

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CASE FOR THE RESPONDENT

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