Public Prosecutor *v* Tan Cheng Yew and another appeal
[2012] SGHC 241

Case Number : Magistrate's Appeals No 97 of 2011/01 and 97 of 2011/02

Decision Date : 30 November 2012

Tribunal/Court : High Court

Coram : Lee Seiu Kin J

Counsel Name(s) : Tan Ken Hwee, Vala Muthupalaniappan and Magdalene Huang (Attorney-General's Chambers) for the appellant in Magistrate's Appeal No 97 of 2011/01 and the respondent in Magistrate's Appeal No 97 of 2011/02; Michael Khoo SC and Josephine Low (Michael Khoo & Partners) for the respondent in Magistrate's Appeal No 97 of 2011/01 and the appellant in Magistrate's Appeal No 97 of 2011/02.

Parties : Public Prosecutor — Tan Cheng Yew

Criminal Law – property – cheating

Criminal Law – property – criminal breach of trust

International Law – extradition – speciality

30 November 2012 Judgment reserved.

Lee Seiu Kin J:

1 Tan Cheng Yew ("TCY") was charged with six charges under the Penal Code (Cap 224, 1985 Rev Ed) (the "Penal Code"). He faced three charges of criminal breach of trust ("CBT") under s 409 of the Penal Code (hereafter denoted as either "s 409" or "our s 409", as may be appropriate to the context) and three charges of cheating under s 420 of the Penal Code ("s 420"). Two of the charges under s 409 and s 420 were stood down. TCY claimed trial to the following charges ("the four charges"):

(a) Between 30 July 2001 and September 2001, in Singapore, TCY did commit CBT in the way of his business as an attorney, in that he, being at the material time a practising advocate and solicitor and in such capacity was entrusted with dominion over property, namely a sum of S$1,500,000 belonging to one Tan Kwee Khoon ("Tommy Tan"), Tan Kwee Boon, Tan Kwee Beng, Tan Kwee Lian and Soh Keng Ngoh (collectively "the Tan Family"), did convert to his own use the said sum of S$1,500,000, by causing it to be pledged as a security for a personal loan facility from DBS Bank to him and TCY had thereby committed an offence punishable under s 409 ("the First Charge").

(b) Between January and February 2002, in Singapore, TCY did cheat one Tommy Tan by deceiving him into believing that it was a legal requirement in loan agreements for the borrowers to repay the lender in the first year of the loan, which representation TCY knew to be false, and he thereby dishonestly induced Tommy Tan into delivering a sum of S$480,000 to him, which act he would not have done if he were not so deceived, and TCY had thereby committed an offence punishable under s 420 ("the Second Charge").

(c) Between March 2001 and June 2001, TCY did commit criminal breach of trust in the way of his business as an attorney, in that he, being at the material time a practising advocate and solicitor and in such capacity was entrusted with dominion over property, namely a sum of S$1,940,724.97 belonging to the Tan Family, did convert to his own use the said sum of S$1,940,724.97, by retaining it in his Standard Chartered Bank (SCB) and Post Office Savings Bank (POSB) accounts and subsequently using them for his own purposes, and TCY had thereby committed an offence punishable under s 409 ("the Third Charge").

(d) Sometime in May 2002, TCY did cheat one Tommy Tan, by deceiving him into believing that he would invest the sum of S$900,000.00 with an Australian bank on behalf of the Tan Family and that he would by reason of the said investment be in a better position to negotiate a better interest rate with the Australian bank, which representations TCY knew to be false, and he thereby dishonestly induced Tommy Tan into delivering a sum of S$900,000.00 to him, which act he would not have done if he were not so deceived, and TCY had thereby committed an offence punishable under s 420 ("the Fourth Charge").

The First Charge and Third Charge will be collectively referred to as the "s 409 charges" or the "amended s 409 charges" as appropriate, and the Second Charge and the Fourth Charge will be collectively referred to as the "s 420 charges".

2 At the end of the trial, the trial judge ("the DJ") convicted TCY on all four charges (see *Public Prosecutor v Tan Cheng Yew* [2011] SGDC 268 ("the Judgment")). She then imposed the following sentences:

Charge	**Sentence**
The First Charge	Five years' imprisonment
The Second Charge	Three years' imprisonment (concurrently with the sentence for the First Charge)
The Third Charge	Five years' imprisonment (concurrently with the sentence for the First Charge)
The Fourth Charge	Four years' imprisonment (consecutively with the sentence for the First Charge)
	Total: Nine years' imprisonment

The sentences were backdated to 22 October 2009, *ie*, the date of TCY's extradition to Singapore (see below at [13]).

3 Magistrate's Appeal No 97 of 2011/02 ("MA 97/2011/02") is TCY's appeal against his conviction on each of the four charges. Magistrate's Appeal No 97 of 2011/01 ("MA 97/2011/01") is the prosecution's appeal against the sentences imposed on each of the four charges.

Facts

4 The following facts are undisputed.

Background to the charges

5 Tommy Tan was the first witness for the prosecution in the trial below. His father, one Tan Siew Seng, passed away in 1999. At the trial below, Tommy Tan was described by witnesses as immature, naive, inexperienced, trusting, and "not a details person" (Judgment at [163]). Tommy Tan was around 29 years of age at the material time.

6 The four charges against TCY arose from two main transactions following the death of Tan Siew Seng:

(a) The loan to the Central Christian Church ("CCC"), of which Tommy Tan and his family ("the Tan Family") were members, so as to enable CCC to buy land to build a church.

(b) The sale of some shares in Poh Lian Holdings Limited ("Poh Lian").

7 Renganathan Shankar ("Shankar"), an advocate and solicitor practising in the firm of Shankar, Nandwani & Partners at the material time, acted for CCC. Shankar also acted for Tommy Tan and his mother in Tan Siew Seng's estate matter. Shankar introduced TCY to Tommy Tan for the purpose of obtaining independent legal advice in the matter of the loan to CCC.

8 TCY was an advocate and solicitor in Singapore, practising in the firm of Tan Cheng Yew & Partners. In 2001, Tan Cheng Yew & Partners merged with Tan JinHwee, Eunice & Lim ChooEng ("Tan & Lim"). Following TCY's introduction to Tommy Tan, TCY became the Tan Family's lawyer and dealt with all their legal matters.

9 At the trial below, the prosecution tendered an agreed statement of facts which provided as follows:

(a) In respect of the First Charge, Shankar, Nandwani & Partners, acting for CCC, had forwarded a cheque for S$1.5m to TCY on 30 July 2001. TCY deposited this cheque into his Development Bank of Singapore ("DBS") fixed deposit account on 7 August 2001.

(b) In respect of the Second Charge, Tommy Tan had issued a DBS cheque dated 5 February 2002 for the sum of S$480,000 to TCY. TCY deposited it into his POSB account.

(c) In respect of the Third Charge, Tommy Tan had, on behalf of the Tan Family, entered into a memorandum dated 24 December 2000 ("Memorandum 1") with Tan Cheng Yew & Partners, appointing TCY to negotiate the sale of 24 million shares in Poh Lian (the "Poh Lian shares"). Pursuant to Memorandum 1, the Poh Lian shares were transferred to TCY. TCY subsequently sold nine million of the Poh Lian shares and received a sum of S$1,940,724.97 from the sale. He deposited S$1,646,663.46 into his SCB account and the balance of S$294,061.51 into his POSB account.

(d) In respect of the Fourth Charge, TCY signed a deed of trust on 25 May 2002 ("the Deed of Trust") [note: 1] wherein he acknowledged that he was holding A$3m (comprising S$1,940,724.97 being the proceeds of the sale of the Poh Lian shares (see above at [9(c)]) and a sum of S$900,000) on behalf of the Tan Family for the purpose of investing the moneys with an Australian bank. Tommy Tan then issued a DBS bank cheque for S$900,000 to TCY who deposited it into his fixed deposit account. This S$900,000 forms the subject-matter of the Fourth Charge.

Background to the extradition

10 TCY left Singapore in 2003 and was untraced for some six years. On 2 June 2009, he was

arrested at Munich Airport in Germany, pursuant to a warrant of arrest (WA-005536-03) issued by a Magistrate in Singapore on 28 November 2006 (the "Arrest Warrant"). The Arrest Warrant provided that TCY faced five charges: one charge under s 409 and four charges under s 420.

11 As TCY resisted extradition, extradition proceedings were commenced against him in Munich pursuant to a request for extradition made by Mr K Shanmugam, the Minister for Law, dated 6 July 2009 (the "Requisition"). Unlike the Arrest Warrant, the Requisition provided that TCY was charged with six charges: four charges under s 409 and two charges under s 420.

12 On 21 August 2009, the Federal Constitutional Court of Germany allowed the extradition of TCY to Singapore (the "Extradition Order"). TCY returned to Singapore on 22 October 2009.

The proceedings below

Preliminary objections based on extradition-related issues

13 Prior to the commencement of the trial, the defence raised a preliminary objection based on extradition-related issues. Counsel for TCY, Mr Michael Khoo ("Mr Khoo") first argued that TCY had been extradited on the basis of the Arrest Warrant and not the Requisition. For the sake of clarity, the differences between the Arrest Warrant and the Requisition are presented in table form below:

	Arrest Warrant	**Requisition**
No of s 409 charges	One	Four
No of s 420 charges	Four	Two
Total no of charges	Five	Six

According to Mr Khoo, the prosecution was not entitled to prosecute TCY on six charges instead of only the five charges listed in the Arrest Warrant.

14 Mr Khoo's second objection was based on the speciality rule under s 17 of the Extradition Act (Cap 103, 2000 Rev Ed) (the "Extradition Act"). He contended that the increase in the number of charges and the amendment of the charges breached the speciality rule.

15 The prosecution's case was that the extradition had taken place pursuant to the Requisition and not the Arrest Warrant. The prosecution then sought further amendments of the four charges that they were proceeding on and contended that these amendments should be allowed as they were in accordance with s 17 of the Extradition Act (hereafter referred to as "s 17" or "our s 17", as appropriate to the context).

16 The DJ found that the preliminary objections were misconceived as the appropriate forum to raise such objections would have been the German Courts. In the light of the provisions for extradition between Singapore and Germany (the "Singapore-Germany Extradition Treaty"), the DJ found that it was not proper for her to go behind the Extradition Order (Judgment at [7]). The DJ then held that the amendments made to the charges arose "broadly out of the same facts" on which the Requisition was made and thus satisfied s 17 (Judgment at [8]–[9]). Further, no prejudice was occasioned to TCY by the amendments to the charges and the speciality rule was not breached (Judgment at [9]).

The submission of "no case to answer"

17 At the close of the case for the prosecution, Mr Khoo made a submission of "no case to answer" on the ground that the prosecution had failed to establish a *prima facie* case against TCY on each of the four charges. Mr Khoo argued that the s 409 charges were fatally flawed as the term "attorney" in s 409 meant a person who was "delegated to do something in the absence of the appointer" and thus did *not* include an advocate and solicitor (see the Judgment at [48]). Even if "attorney" did include an advocate and solicitor, Mr Khoo submitted that the moneys in the s 409 charges were entrusted to TCY in his *personal* capacity and not in his capacity as an advocate and solicitor. In respect of the First Charge, Mr Khoo further submitted that TCY could not be said to have committed CBT *against the Tan Family* as the S$1.5m no longer belonged to the Tan Family at the time it was entrusted to TCY, given that it had been loaned to CCC. Moreover, Mr Khoo stressed that the cheque for the S$1.5m from Shankar, Nandwani & Partners was made out to TCY and not Tan Cheng Yew & Partners, *ie*, the cheque was made to TCY in his personal capacity and not in his capacity as an advocate or solicitor. As regards the Second Charge, Mr Khoo contended that Tommy Tan's evidence was inherently incredible. As regards the Fourth Charge, Mr Khoo submitted that the prosecution had changed the character and nature of the offence committed by TCY by amending it from a charge under s 409 to a charge under s 420.

18 Against this, the prosecution argued that "attorney" in s 409 covered an advocate and solicitor. The prosecution further submitted that, on the evidence, there was entrustment to TCY of the sums referred to in the s 409 charges in the way of his business as an advocate and solicitor. The prosecution also referred to TCY's admission that he had converted the misappropriated sums to his own use by using them to settle his gambling debts. With regard to the s 420 charges, the prosecution submitted that there was evidence that TCY had deceived Tommy Tan to give him the sums of S$480,000 and S$900,000 as indicated in the respective charges. The prosecution thus urged the court to call on TCY to enter his defence to all four charges.

Decision below

19 The DJ agreed with the prosecution that "attorney" in s 409 included an advocate and solicitor (Judgment at [55]). She then noted that while TCY disputed the *circumstances* under which the moneys mentioned in the four charges had been given to him, he had *not* disputed that the moneys were given to him (Judgment at [57]). There was thus nothing inherently incredible about the evidence presented by the prosecution, and under the test in *Haw Tua Tau and others v Public Prosecutor* [1981-1982] SLR(R) 133, the DJ found that there was a case for the defence to answer at the close of the prosecution's case and called on TCY to enter his defence (Judgment at [57] and [60]).

20 After the DJ had heard TCY's defence, she gave her judgment. She noted that TCY had admitted to receiving the respective sums that formed the basis of the four charges, and that he had not made any restitution to Tommy Tan nor any member of the Tan Family (Judgment at [94]).

21 On the First Charge, the DJ noted that the parties had agreed that the Tan Family had decided to give an interest-free loan of S$1.5m to CCC and that this sum would be held by TCY as a trustee. TCY had admitted to using the S$1.5m for his own purposes. The following findings were made in support of the holding that TCY was guilty on the First Charge:

(a) the S$1.5m belonged to the Tan Family and not CCC at the material time (Judgment at [100]);

(b) TCY had held the S$1.5m on trust in his capacity as an advocate and solicitor and not in his personal capacity (Judgment at [112]);

(c) Tommy Tan and Shankar did not consent or acquiesce to TCY pledging the S$1.5m as security for his personal credit facility with DBS (Judgment at [122]);

(d) TCY had converted the S$1.5m to his own use by pledging the money as security for his personal credit facility with DBS (Judgment at [123]); and

(e) the purported document of authorisation on which TCY relied to prove that Tommy Tan had indemnified him and authorised him to pledge the S$1.5m as collateral for a credit facility then to use the moneys in the credit facility to buy equity linked notes with Venture Corporation ("Venture linked notes") was of dubious authenticity and did not advance any defence for TCY (Judgment at [133]).

22 On the Second Charge, the DJ noted that Tommy Tan had, on 5 February 2002, given a DBS cheque in the sum of S$480,000 to TCY. TCY deposited the cheque into his POSB account on 6 February 2002. The DJ made the following findings in support of her holding that TCY was guilty on the Second Charge:

(a) in early 2002, TCY had told Tommy Tan that it was a legal requirement for CCC, as the borrower of the loan, to make repayment within the first two years of the loan period. TCY then told Tommy Tan to give him the sum of S$480,000 to make it appear as if CCC had made the payment. Tommy Tan made the payment of S$480,000 to TCY because he had believed TCY's representations and did not want to burden CCC with repayment for the first two years (Judgment at [134]); and

(b) critically, regardless of TCY's explanations as to why the S$480,000 was paid to him, he had admitted that he did deceive Tommy Tan to get the S$480,000. He had made representations which he knew to be false to dishonestly induce Tommy Tan to give him the S$480,000. What TCY disputed was merely the mode of deception (Judgment at [143]–[144]).

23 On the Third Charge, the DJ noted that the sum of S$1,940,724.97 was the proceeds from the sale of nine million of the Poh Lian shares. TCY had received this sum and deposited it into his SCB and POSB accounts. He then signed the Deed of Trust in which he acknowledged holding A$3m for the purpose of investing the moneys with an Australian bank. This A$3m comprised the S$1,940,724.97 and a sum of S$900,000, the subject matter of the Fourth Charge. The DJ made the following findings in support of her holding that TCY was guilty on the Third Charge:

(a) when Tommy Tan's negotiations with Poh Lian management regarding the sale of the Poh Lian shares failed, TCY told Tommy Tan that he had ready buyers for the same. Tommy Tan believed TCY and transferred the Poh Lian shares to TCY for their sale (Judgment at [146]);

(b) as the transfer of the Poh Lian shares from Tommy Tan to TCY was done pursuant to Memorandum 1 which provided that Tommy Tan "authorize M/s Tan Cheng Yew & Partners to negotiate the sale of all shares in Poh Lian Holdings Limited", [note: 2] TCY was authorised to act in his professional capacity as an advocate and solicitor and not in his personal capacity (Judgment at [148]);

(c) TCY's subsequent course of conduct was conclusive to prove that he had been acting in his professional capacity (Judgment at [149]);

(d) when TCY deposited the S$1,940,724.97 into his SCB and POSB accounts, intending to use it for his own purposes, he was acting dishonestly (Judgment at [154]); and

(e) TCY's claim that he intended to repay the S$1,940,724.97 to the Tan Family was not an acceptable defence (see the Judgment at [154]).

24 On the Fourth Charge, the DJ noted that TCY had admitted to receiving the sum of S$900,000 from Tommy Tan when Tommy Tan gave him a DBS cheque dated 28 May 2002. The DJ made the following findings in support of her holding that TCY was guilty on the Fourth Charge:

(a) TCY had requested the S$900,000 by saying that with this additional sum (to make up A$3m) he would be in a better position to negotiate more favourable interest rates with the Australian bank. Tommy Tan had believed what TCY told him (Judgment at [155]);

(b) TCY's representations to Tommy Tan in the preceding subparagraph had been operative in Tommy Tan's mind instead of the Deed of Trust (Judgment at [160]); and

(c) the Deed of Trust did not exonerate TCY from his deceptive representations regarding the S$900,000 nor his breach of trust regarding the S$1,940,724.97 (Judgment at [162]).

Issues on appeal

25 The issues raised on appeal fall broadly into three categories. Firstly, the extradition-related issues. Secondly, issues relating to the merits of TCY's appeal against conviction. Thirdly, issues relating to the prosecution's appeal against sentence.

26 The extradition-related issues are as follows:

(a) the basis of TCY's extradition from Germany to Singapore ("Issue 1"); and

(b) whether there was a breach of the speciality rule ("Issue 2"):

(i) in particular, the interpretation of s 17(*a*); and

(ii) whether the initial charges and subsequent amendments fell within the scope of s 17(*a*).

27 The issues that go the merits of TCY's appeal against conviction are as follows:

(a) whether the term "attorney" in s 409 encompasses advocates and solicitors ("Issue 3");

(b) if Issue 3 is answered in the positive, whether, on the facts, TCY committed CBT in way of his business as an advocate and solicitor in respect of the s 409 charges ("Issue 4"); and

(c) whether, on the facts, the elements of s 420 were satisfied for the s 420 charges ("Issue 5").

28 The issue that relates to the prosecution's appeal against sentence is whether the sentence imposed on TCY was manifestly inadequate ("Issue 6").

Analysis and decision

Issue 1: the basis of TCY's extradition from Germany to Singapore

29 As noted above (at [100]), the Arrest Warrant was issued on 28 November 2006. The Arrest

Warrant was in the following terms:

> Whereas TAN CHENG YEW NRIC No. [XXX]
>
> ...
>
> stands charged with the offence of:
>
> Section 409 of the Penal Code Chapter 224
>
> Section 420 of the Penal Code Chapter 224(4 counts)

The Arrest Warrant did not provide the particulars of each charge.

30 As noted above (at [11]), the Requisition was subsequently made on 6 July 2009. The Requisition provides as follows:

> I, K SHANMUGAM, Minister for Law for the Republic of Singapore, HEREBY REQUEST that the appropriate steps be taken for the surrender to Singapore of TAN Cheng Yew now under arrest in Germany together with any property or thing seized from or in the possession of the said TAN Cheng Yew in relation to the offences for which he has been accused of.
>
> The said TAN Cheng Yew is accused in Singapore of the following offences:-
>
> i) four charges of Criminal Breach of Trust in his capacity as an attorney or agent punishable under Section 409 of the Penal Code, (Chapter 224), 1985 Revised Edition of the Statutes of the Republic of Singapore ("the Penal Code"); and
>
> ii) two charges of Cheating punishable under Section 420 of the Penal Code.
>
> I am advised that the said offences are extradition crimes for the purposes of the Extradition Treaty of 14th May 1872 between the United Kingdom and Germany for the Mutual Surrender of Fugitive Criminals as extended to Singapore and which was amended by the Agreement of the 23rd of February 1960 between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Federal Republic of Germany for the Extradition of Fugitive Criminals the continuance in force of which was confirmed by the Exchange of Notes of 5th February 1974 and 21st March 1974 ...

The Requisition was accompanied by a copy of the Arrest Warrant, a set of statement of facts ("Statement of Facts") and depositions containing the facts upon which the Requisition was based.

Record of the German extradition proceedings

31 Prior to the commencement of the trial below, the only record of the extradition from Germany was a *Note Verbale* issued by the German Ministry of Foreign Affairs to the Embassy of The Republic of Singapore in Berlin dated 1 October 2009 (the "First *Note Verbale*"). [note: 3] The translated First *Note Verbale* states:

> ... the Government of the Federal Republic of Germany has authorized the extradition of Malaysian citizen Chen Yew Fan [sic], born on 18th March, 1968 in Jaya/Malaysia, *for the purpose of prosecution as per the detention order of the Subordinate court of Singapore issued*

on 28th November, 2006, Gz WA 00536.06, for the listed offences, from Germany to Singapore. [emphasis added]

32 The prosecution subsequently obtained a Resolution of the Higher Regional Court of Munich dated 24 November 2010 ("Third Resolution"). The pertinent portion of the translated Third Resolution is as follows: [note: 4]

> The resolution of the Division of 21 August 2009 concerning the admissibility of the extradition of the persecutee to the Singapore authorities also comprises the "6th charge" depicted in the resolution of the Division of 05 August 2009.

The Higher Regional Court of Munich further observed that: [note: 5]

> The Division points out that the extradition is not declared admissible regarding the penal provision mentioned by the requesting state, but rather regarding the described circumstances to which, by the court of the requesting state, hence also a different penal provision than the originally mentioned one can be applied.

33 The position that TCY could be prosecuted for the sixth charge stated in the Requisition was reiterated by another *Note Verbale* from the German Federal Foreign Office dated 21 December 2010 (the "Second *Note Verbale*"), which states as follows: [note: 6]

> The Federal Ministry of Foreign Affairs has the honour to refer to its *Note Verbale* of 1 October 2009 and would like to add the following clarification: The government of the Federal Republic of Germany approved the extradition of Cheng Yew Tan, Malaysian national, born on 18 March 1968 in Jaya/Malaysia, for the purpose of criminal prosecution, and also due to the criminal offences listed under the sixth count of indictment in the Singapore extradition documents.

34 A letter from Dr Robert Schnabl, the Senior Prosecutor in Munich, dated 8 December 2010 (the "German Prosecutor's Letter") confirmed that the extradition was declared admissible pursuant to the described factual circumstances and not the specific charges. There was therefore no objection to any amendment of the charges provided that they arose out of the same factual circumstances. [note: 7]

35 A resolution of the Federal Constitutional Court of Germany dated 17 September 2009 further dismissed a complaint that the proposed extradition would violate TCY's constitutional rights on the basis of certain elements of the criminal justice system in Singapore.

36 During the course of the hearing of the present appeal, the prosecution obtained copies of two earlier resolutions of the Higher Regional Court of Munich dated 6 August 2009 (the "First Resolution") and 24 August 2009 (the "Second Resolution") respectively.

37 The First Resolution provided that the Arrest Warrant would be taken as the basis for the extradition, but acknowledged receipt of the Requisition and recounted the facts of the four counts of CBT under s 409 and two counts of cheating under s 420 as set out in the Statement of Facts. The Higher Regional Court of Munich then concluded that the extradition was to be put on hold as TCY had yet to be informed of the relevant extradition documents.

38 The Second Resolution stated that TCY had been heard before a judge on 11 August 2009 and had objected to his extradition on grounds of *ordre public* and breach of the principles of fair trial.

These arguments were rejected by the Higher Regional Court of Munich, which resolved that extradition to Singapore was permissible. The Second Resolution, however, made reference to extradition on the basis of the criminal offences mentioned in the Arrest Warrant, instead of those set out in the Requisition.

Scope of the extradition

39 Deputy Public Prosecutor Tan Ken Hwee ("Mr Tan") argued that TCY's extradition was based on the six charges specified in the Requisition, and that this was supported by confirmation from the executive arm of Germany. Mr Khoo submitted that the First *Note Verbale*, which referred only to the five charges in the Arrest Warrant, must be the most accurate record of the extradition proceedings, and that the post trial communication with the Government of Germany or German Prosecutor, was of "dubious value".

40 I accept the prosecution's position and do not see any reason to question the veracity of the contents in the Second *Note Verbale*. Extradition is an act involving the exercise of sovereign power – albeit in compliance with any domestic internal laws governing procedures – and the executive is therefore given the prerogative to determine the scope and conditions of extradition. I do not think that this court is in a position to go behind the discretion exercised by the executive of another country, and without further evidence, I have to take the Second *Note Verbale* on its face value and accept that the *latest* clarification of the position of the Government of Germany is that TCY was in fact extradited on the basis of the six charges listed in the Requisition. Mr Khoo had no grounds for challenging the veracity of the *contents* of the Second *Note Verbale* apart from asserting that the position taken there differed from that in the First *Note Verbale*.

41 I would note, for completeness, that an ancillary issue may possibly arise here, *viz*, whether the executive arm of the requested state may, after the individual has been rendered to the requesting state, give consent for additional offences to be included within the scope of the extradition. In the absence of full argument on this point, and although Mr Khoo expressly stated that he did not concede this point, I do not see any objection in principle or why this would offend against the fundamental concepts of extradition law if extradition is ultimately a sovereign act. For the purposes of the present appeal however, the Second *Note Verbale* only purported to make a *clarification* on the Government of Germany's position based on the original Requisition, not to accede to the addition of an offence that was not originally listed in the Requisition. The only question was whether TCY's extradition was admitted on the basis of the six charges listed in the Requisition or the five charges listed in the Arrest Warrant, and based on the Second *Note Verbale*, I conclude that it is the former.

42 On an assessment of the totality of the documents adduced as evidence before me, I am further satisfied that the extradition was made on the basis of the factual circumstances set out in the Statement of Facts accompanying the Requisition, and not the charges set out in the Arrest Warrant. This was the position taken by the executive and judicial arms of Germany in the German Prosecutor's Letter and the Third Resolution respectively, and Mr Khoo has not disputed this.

Issue 2: whether there was a breach of the speciality rule

43 The speciality rule is expressed succinctly in Alun Jones and Anand Doobay, *Jones & Doobay on Extradition and Mutual Assistance* (Sweet & Maxwell, Third Ed, 2005) at para 2-001:

> ... *speciality*; a person shall be tried or punished, after extradition, only for the criminal conduct for which his surrender has been made, unless the requested state, after surrender, gives consent to further trial or punishment. ...

44 Mr Khoo's first point was that there had been a breach of the speciality rule, and he raised two broad speciality arguments. Firstly, that the extradition was on the basis of the five charges – one charge of CBT under s 409 and four charges of cheating under s 420 – listed in the Arrest Warrant. He thus argued that the prosecution was in breach of the speciality rule by prosecuting TCY on three charges under s 409 and three charges under s 420. Secondly, the prosecution was not entitled, under the speciality principle, to amend the Fourth Charge from an offence under s 409 to an offence under s 420 as the latter was an offence of a completely different genre.

45 In response, Mr Tan submitted that the German executive and judiciary had confirmed that there was no significance in the discrepancy between the five charges listed in the Arrest Warrant and the six charges listed in the Requisition, and there was therefore no breach of the speciality rule. Mr Tan also argued that the amendment of the Fourth Charge was permissible under the speciality rule embodied in s 17, as the amended charge under s 420 was an "offence of which [TCY] could be convicted upon proof of the facts on which that requisition was based". In any event, even if there had been a breach of the Singapore-Germany Extradition Treaty, the obligations were owed only to Germany on the plane of international law, and the appropriate entity to raise the breach would be Germany, not TCY. There had been no such protest by Germany.

Jurisdiction to consider whether the speciality rule had been violated

46 After hearing arguments on Mr Khoo's preliminary objections to prosecution on the basis that the speciality rule had been breached, the DJ arrived at the following conclusion (Judgment at [7]):

> *I was of the view that the preliminary objections of the defence with regard to the extradition proceedings were misconceived as the appropriate forum for them to have been raised would have been in the German courts.* In the light of the Singapore-Germany Extradition treaty, I agreed with the prosecution that the German authorities would not have made the extradition order surrendering the accused unless they were satisfied with the requisition of the Minister for Law of the 6th of July, 2009 and that his undertakings were in accordance with the said treaty. *It was neither incumbent nor proper for me to go behind the extradition order. Matters relating to this were not relevant to the present proceedings.* Suffice to add that the Minister's requisition would have been the determining factor for the German court to rely on in deciding the extradition issue. [emphasis added]

47 To the extent that the DJ was concerned with challenges to the legality of the extradition proceedings in Germany, she was correct to consider that the Singapore courts were not the proper forum for adjudication. However the DJ had jurisdiction to consider Mr Khoo's objections that the subsequent prosecution in Singapore violated the speciality rule.

48 Under s 17 of the Extradition Act, a person who has been extradited from a foreign State "*shall not*, unless he has been returned, or has had an opportunity of returning, to that foreign State" be detained or tried for a particular offence unless certain condition precedents have been met. In other words, s 17 prohibits the trial of any person on a criminal charge that does not comply with the conditions prescribed therein. Therefore if this issue is raised by the defence in any criminal trial, the judge must examine the charge and the circumstances under which it is brought to ensure that the trial is not prohibited by s 17.

49 I now turn to consider the scope of the speciality rule.

The speciality principle under the Extradition Act

50 Section 17 provides as follows:

> **Person surrendered by foreign State in respect of an offence not to be prosecuted or detained for other offences**
>
> **17**. Where a person accused or convicted of an extraditable crime is surrendered by a foreign State, the person shall not, unless he has been returned, or has had an opportunity of returning, to that foreign State —
>
> (*a*) be detained or tried in Singapore for any offence that is alleged to have been committed, or was committed, before his surrender other than the offence to which the requisition for his surrender relates or any other offence of which he could be convicted upon proof of the facts on which that requisition was based; or
>
> (*b*) be detained in Singapore for the purpose of his being surrendered to another country for trial or punishment for any offence that is alleged to have been committed, or was committed, before his surrender to Singapore other than an offence of which he could be convicted upon proof of the facts on which the requisition referred to in paragraph (*a*) was based.

51 Section 17(*a*) sets out two provisos on when an extradited person may be tried for an offence: the first relates to the narrow offence for which the requisition for surrender has been made ("the first proviso of s 17(*a*)"), and the second ostensibly broader limb allows prosecution for an offence for which the extradited person may be convicted of upon proof of the same facts on which the requisition was based ("the second proviso of s 17(*a*)").

The speciality principle under the Singapore-Germany Extradition Treaty

52 Articles I to XIV of the treaty between the United Kingdom and Germany for the Mutual Surrender of Fugitive Criminals 1872 was extended to Singapore (with certain modifications) by Article I of an Agreement entered into between the governments of the United Kingdom and the Federal Republic of Germany on 23 February 1960. The provisions for extradition between Singapore and Germany are set out in the Second Schedule of the Federal Republic of Germany (Extradition) Order 1960, the continuance in force of which was confirmed by an Exchange of Notes dated February 1974 and 21 March 1974 respectively.

53 Article VII of the Singapore-Germany Extradition Treaty ("Art VII") provides as follows:

> A person surrendered can in no case be kept in prison, or be brought to trial in the State to which the surrender has been made, *for any other* crime *or on account of any other matters* than those for which the extradition shall have taken place.
>
> This stipulation does not apply to crimes committed after the extradition.
>
> [emphasis added]

54 Mr Khoo contended that Art VII should be construed *narrowly* and that the scope of s 17 was "obviously wider" than Art VII. He submitted that based on a *prima facie* reading of Art VII, an extradited individual may *only* be prosecuted for the specific crime for which the extradition has taken place; Art VII thus did not appear to cover situations under the second proviso of s 17(*a*) where a person may be prosecuted for offences that arise from similar facts upon which the requisition was

based. Mr Tan disagreed that the scope of Art VII was materially different from s 17(*a*).

55 I note that Mr Khoo and Mr Tan only made assertions on the meaning of the phrase "for any other crime or on account of any other matters" without the citation of authority or a treatment of the historical context of the Singapore-Germany Extradition Treaty. It is not, however, necessary for me to express a definitive view on the construction of this phrase in the light of my conclusion below on the relationship between Art VII and s 17(*a*).

The interpretation of s 17(a) and the relationship between Art VII and s 17(a)

56 It is trite law that Singapore follows a dualist position. In short, Singapore's international law obligations do not give rise to individual rights and obligations in the domestic context unless and until transposed into domestic law by legislation, and there is therefore no question of whether Art VII or s 17(*a*) should "prevail" as they exist on different planes. It was common ground that Art VII cannot apply directly to circumscribe the prosecutor's power to charge an extradited individual; instead, it is the Extradition Act that gives domestic effect to the entirety of Singapore's obligations to other states under the various extradition treaties Singapore has entered into. Mr Khoo's position was vaguely qualified by his submission that the speciality rule in international law operates to protect the rights of the individual, but I will deal with that argument separately. Therefore, the narrow question I am concerned with here is the interpretation of the scope of s 17(*a*) and its relationship with Art VII.

57 Against this, Mr Tan contended that s 17(a) did not admit of any such ambiguity that would permit the court to read out the second proviso, and also took the position that Mr Khoo's argument would result in the wholly untenable proposition that the interpretation of s 17(a) would differ depending on which extradition treaty is in question on the immediate facts before the court.

58 Mr Khoo submitted that s 17(a) had to be read so as to give effect to Singapore's international obligations under Art VII. Alternatively, he argued that s 17(a) should be construed with regard to the need for observance of the comity of nations. In other words, the allegedly wider scope of s 17(a) should be circumscribed by Art VII. Against this, Mr Tan contended that s 17(a) did not admit of any such ambiguity that would permit the court to read out the second provision, and also took the position that Mr Khoo's argument would result in the wholly untenable proposition that the interpretation of s 17(a) would differ depending on which extradition treaty is in question on the immediate facts before the court.

59 I am not persuaded by Mr Khoo's argument that the scope of s 17(*a*) can or should be construed in such a manner that the section is in effect truncated. The words of s 17(*a*) are not abstruse and should be given their plain and natural meaning. Even the most generous reading of that provision would not allow me to strike out the second proviso of s 17(*a*).

60 While I accept Mr Khoo's submission that the courts should endeavour to interpret a domestic statute in accordance with the state's treaty obligations under international law, this canon of interpretation has defined limits. The *locus classicus* is the judgment of Diplock LJ in the English Court of Appeal decision of *Salomon v Commissioners of Customs & Excise* [1967] 2 QB 116 at p 143E:

> *If the terms of the legislation are clear and unambiguous, they must be given effect to, whether or not they carry out Her Majesty's treaty obligations, for the sovereign power of the Queen in Parliament extends to breaking treaties* … and any remedy for such a breach of an international obligation lies in a forum other than Her Majesty's own courts. But if the terms of the legislation are not clear but are reasonably capable of more than one meaning, the treaty itself becomes relevant, for there is a prima facie presumption that Parliament does not intend to act in breach

> of international law, including therein specific treaty obligations; and if one of the meanings which can reasonably be ascribed to the legislation is consonant with the treaty obligations and another or others are not, the meaning which is consonant is to be preferred. [emphasis added]

61 Mr Khoo submitted that there were ambiguities in s 17(*a*), *viz*, the meanings of the words "requisition" and "any other offence of which he could be convicted upon proof of the facts on which that requisition was based". Even if I were to agree with Mr Khoo that s 17(*a*) has such inherent ambiguities, I am unable to see how Art VII assists in resolving such ambiguities. With due respect, Mr Khoo is not inviting this court to *resolve an ambiguity* in the words of the statute by preferring one interpretation over another, but to *ignore* words because they are purportedly ambiguous. That cannot be correct.

62 I have three comments to make *apropos* the decision of *R v Seddon* [2009] 1 WLR 2342 ("*Seddon*"), which Mr Khoo cited in support of his interpretation argument and which Mr Tan sought to distinguish. In *Seddon*, the English Court of Appeal construed s 146(3)(*b*) of the Extradition Act 2003 (c 41) (UK) ("the UK Extradition Act 2003") consistently with the European Council Framework Decision 2002/584/JHA on extradition ("Framework Decision"), and concluded that the court had no jurisdiction to deal with a bail offence when an individual had been extradited for the offence of blackmail. Firstly, the UK Extradition Act 2003 was enacted for the purpose of transposing the multilateral Framework Decision and distinguishes between European and non-European territories. In other words, the interpretation of s 146(3)(*b*) of the UK Extradition Act 2003 – which relates only to European territories – with reference to the Framework Decision would be consistent in relation to all cross-border extraditions within the European Union. This is very different from saying that our Extradition Act should be construed differently depending on which specific bilateral extradition treaty is in question. Secondly, the English Court of Appeal was interpreting a phrase that had potentially more than one meaning, not disregarding the phrase entirely. Thirdly, the duty of harmonious interpretation of European Union law with domestic law is an onerous one that potentially goes beyond the common law canons of interpretation. I therefore do not think that *Seddon* persuasively supports Mr Khoo's case.

63 The older English authorities based on s 19 of the Extradition Act 1870 (c 52) (UK) ("the UK Extradition Act 1870") – which is *in pari materia* with our s 17 – preferred the view that the UK Extradition Act 1870 should be construed *on its own terms without reference to any bilateral treaty*. In *The King v Corrigan* [1931] 1 KB 527, where the defendant's contention effectively paralleled Mr Khoo's argument in the present appeal, the English Court of Appeal made the *obiter* observation that a treaty could not abrogate or dispense with the power to try a person for any extraditable offence that was proved by the facts on which the surrender of the person was grounded. Similarly, in *John Pollitt Davidson* (1977) 64 Cr App R 209, the English Court of Appeal noted that (at p 212):

> So far as extradition into this country is concerned, section 19 [of the UK Extradition Act 1870] contains in our judgment the only restriction on the kind of offences for which the extradited person can be subsequently tried … In our opinion when the question which arises in this case is to be faced by an English Court, in other words when an English Court has to decide whether the accused appearing before it following upon extradition can or cannot be prosecuted in view of the manner in which the extradition was conducted, the Court is not concerned with the treaty between this country and the country from which the fugitive is to come, and is even less concerned with any decision of the exporting Court ordering the return of the fugitive under the extradition law.

I therefore do not think that the interpretation of our s 17(*a*) may be circumscribed in the matter contended for by Mr Khoo.

64 Further, I am of the view that even if I were to construe s 17(*a*) with regard to the principle of comity between nations, this would not support Mr Khoo's restrictive interpretation of the provision.

65 Mr Khoo directed my attention to American jurisprudence on the speciality rule based on comity between nations, discussed in the English High Court decision of *Welsh and another v Secretary of State for the Home Department* and another [2007] 1 WLR 1281 ("*Welsh*"). If comity between nations means something more than the reciprocal obligations assumed by states under extradition treaties, it must refer to the position that the sending state takes on the specific extradition and subsequent prosecution of an individual. As Ouseley J concluded at [37] of *Welsh*:

> The US courts treat the origin and purpose of the specialty rule as *deriving from the state parties' interest in extradition, and regard adherence to it as a matter of international comity and respecting foreign relations embodied in the treaty arrangements.* The purpose is to protect the sending state against abuse of its discretionary act of extradition … *That means that the position of the sending state is regarded as of the highest importance.* [emphasis added]

66 I observe that the United States of America is a monist jurisdiction. In monist jurisdictions, ratified treaties are self-executing and automatically give rise to domestic rights and obligations. The American courts are therefore considering the interpretation and breach of an extradition treaty directly to determine if any individual rights have thereby been infringed. In contrast, the courts of a dualist system are considering the parameters of a statute governing the state's obligations *vis-à-vis* an individual, with the extradition treaty only tangentially in issue. Therefore, while comity is of immediate relevance for the former exercise in determining whether there has been a breach of the international treaty that disables prosecution for an offence, it is much more equivocal how this principle may apply in the latter, which concerns a completely different inquiry of whether the prosecution is in conformity with domestic law.

67 In any event, the application of this principle of interpretation – if it is one – to s 17(*a*) would undermine rather than support Mr Khoo's preferred interpretation of s 17(*a*). On the evidence before me, both the judicial and executive arms of Germany have confirmed that under their internal law or procedure, extradition is not based on the particular charge stated in the requisition but the factual circumstances surrounding the charge. Given the sending state's interpretation of the basis of extradition and how she has no quarrel with the present prosecution, I cannot see how it is necessary for me to construe s 17(*a*) restrictively in order to give effect to the principle of comity between nations.

The speciality rule as a principle protecting individual rights

68 Historially, extradition has its roots in the Grotian tradition of territorial sovereignty. It was – and still is, albeit with the transposition of treaty obligations – principally conceived as an assertion of the dominium of the sending state through the exercise of the sovereign prerogative to surrender fugitives. Before me, Mr Khoo raised a supplementary point that s 17(*a*) should be given a restrictive reading in the light of Art VII as the speciality rule also extends to protect the individual rights of the fugitive. Mr Khoo directed me to the following passage in *Seddon* (at [5]) in support of his argument:

> Historically, extradition was generally achieved through separate bilateral treaties between states. Commonly the power of the requested state to refuse extradition in some circumstances was preserved by the terms of such treaties. To give effect to that practice, the principle evolved that if A requested a prisoner from B, A would identify the offence for which the prisoner was wanted, so that B could decide whether there was a sufficient reason to refuse to surrender him. With that went the practice that if surrendered the prisoner could only be dealt with for the

offence for which he had been sought, otherwise plainly the surrendering state's power to refuse would be circumvented. That principle is called specialty. It has been recognised in this country by successive statutes dealing with our local rules for extradition both inward and outward. *The rationale for it may owe something to the protection of the individual, but it plainly lies principally in the international obligation between states*. [emphasis added]

69 This is a novel point of law that would have benefited from fuller argument, but as Mr Khoo did not make further submissions on how an "individual rights" conception of the speciality rule would affect the interpretation of s 17(*a*) or whether it would confer some additional free-standing ground of challenge, I do not consider it necessary for me to express a concluded opinion. I would nonetheless venture a tentative observation in this regard that much of the theoretical debate and literature has centred on the American jurisprudence on *locus standi*, *ie*, whether an extradited person has an independent or derivative right in domestic courts to raise breaches of speciality provisions in treaties. This debate necessarily arises because of the self-executing nature of treaties in the United States (see above at [66]); but in a dualist system, any individual rights that can be asserted in domestic courts can only derive from implementing legislation. It is therefore, in my view, a purely academic issue in Singapore whether *the speciality rule in an extradition treaty* is additionally premised on the protection of individual rights insofar as *legally enforceable rights* are concerned.

Scope of the speciality rule in Singapore

70 Drawing together the various threads of the analysis above, the only restriction on prosecution after extradition is contained in s 17(*a*), which permits prosecution only for an offence to which the requisition relates or to which the extradited individual could be convicted of upon proof of the facts on which that requisition was based. On a plain and natural reading of the words in s 17(*a*), I am therefore unable to accede to Mr Khoo's submission that s 17(*a*) only permits prosecution for the same offence for which the Requisition was made as the words "or any other offence of which he can be convicted upon proof of the facts on which the requisition was based" clearly permit prosecution of any other offence so long as it is based on the same facts.

Was the prosecution on the Second Charge a breach of the speciality rule?

71 The Second Charge under s 420 was the only charge that was not amended during the proceedings below. In the light of my factual finding above that the extradition was admissible on the basis of the six offences listed in the Requisition, the Second Charge was an "offence to which the requisition for his surrender relates" and the precondition for prosecution under s 17(*a*) has been satisfied.

Were the subsequent amendments of the First Charge, the Third Charge and Fourth Charge in breach of the speciality rule?

72 The DJ made the following finding (at [9] of the Judgment):

> With regard to the proposed amendments to the 1st, 3rd and the 4th charges, I observed that in essence they arose broadly out of the same facts on which the requisition for extradition was made as outlined in the statement of facts (tab 13 of P7). In respect of the 1st and 3rd charges, they remained as charges under section 409 of the Penal Code and for the 4th charge, it has now been reduced to one of cheating under section 420. I regarded it as a reduction as the accused would now be liable to lighter punishment in comparison to the original charge under section 409. As such, there would be no prejudice caused to the accused by the amendment to the 4th charge or for that matter by the amendments to the 1st and 3rd charges.

73 The s 409 charges were amended from the charges listed in the Requisition, *ie*, that TCY committed CBT *in his capacity* as an attorney (the "original s 409 charges") to the present charges that TCY committed CBT *in the way of his business* as an attorney.

74 I am unable to agree with Mr Khoo's submission that the prosecution is precluded from charging TCY under the first proviso of s 17(*a*) because the legal ingredients of the original s 409 charges were stated differently and the two charges were bad in law. Section 17(*a*) only makes reference to "the *offence* to which the requisition for [the individual's] surrender relates" [emphasis added]. As such, I consider that the first proviso of s 17(*a*) is satisfied if the extradited person is charged for the same *offence* under the Penal Code, even if the precise legal ingredients for the offence as stated in the requisition are formulated differently at trial.

75 In the absence of detailed legal argument on this point, I see no basis for reading the word "offence" under s 17(*a*) as requiring a strict correspondence of legal ingredients between the offence that the extradited individual is eventually prosecuted for and the original offence specified in the requisition. The historical rationale behind the speciality rule is essentially one of reciprocity, *viz*, the requesting state should not be allowed to prosecute the extradited individual for an offence that has not been specified in the request so as to override the requested state's right to refuse extradition for particular types of offences. This rationale is not undermined where the extradited individual is prosecuted for the same offence – that may be defined in more than one way – albeit with different legal ingredients. A requisition is often made at a preliminary stage when the investigating authorities may not be apprised of all the relevant facts that may affect how the ingredients of the charge should be phrased, and in my view, s 17(*a*) should not be interpreted in a technical or pedantic manner such that the extradited person can only be prosecuted for a narrowly specific offence with the precise legal ingredients stated in the requisition. I therefore do not consider that the amendment of the original s 409 charges was a breach of the first proviso of s 17(*a*) as the original s 409 charges in the Requisition and the amended s 409 charges at trial all proceeded under s 409.

76 I also observe that the amended s 409 charges would, in any event, fall under the second proviso of s 17(*a*) as an "offence of which [TCY] could be convicted upon proof of the facts on which [the] requisition was based". In relation to the First Charge, the Statement of Facts clearly indicated that TCY was acting as a lawyer for Tommy Tan and the Tan Family, and had converted the moneys entrusted to him in his capacity as a lawyer. In relation to the Third Charge, the facts also indicated a conversion of moneys entrusted to TCY by Tommy Tan and the Tan Family for the purpose of investment. Both sets of facts would equally support a charge under s 409 of CBT in the way of TCY's business as an attorney.

77 I now turn to consider the Fourth Charge. Mr Khoo submitted that the amendment of the original Fourth Charge from a charge under s 409 to a charge under s 420 was a breach of the speciality rule as it did not fall within either proviso of s 17(*a*). It was argued that even if the second proviso of s 17(*a*) was applicable, the s 420 offence was not an "offence of which [TCY] could be convicted upon proof of the facts on which that requisition was based". Alternatively, the DJ had erred as a charge of cheating under s 420 was not a reduced offence from a charge of CBT under s 409 but an offence of a different genre.

78 I deal with the last objection first. I do not think that the DJ was taking the position that it was an additional requirement under the second proviso of s 17(*a*) that the offence based on the same factual circumstances set out in the requisition must also be a "reduced" offence; she was simply making a general observation that TCY would be liable for a less severe punishment should he be convicted on the amended s 420 charge and was accordingly not prejudiced by the amendment. The words of the second proviso of s 17(*a*) do not fetter prosecutorial discretion in such a manner, and I

do not consider that this silence is – as Mr Khoo has contended – an ambiguity. If Parliament had intended to limit the scope of the second proviso of s 17(*a*), it would have said so explicitly, and I cannot add a limiting judicial gloss on the plain words of s 17(*a*). It is therefore irrelevant whether a s 420 offence is a "reduced" or "different" offence from a s 409 offence.

79 The first objection is premised on the question of whether, in the Requisition, the Statement of Facts relating to the original Fourth Charge under s 409 also discloses the amended Fourth Charge under s 420. The relevant portion in the Statement of Facts is reproduced below in full as follows:

> **Facts relating to Fourth Charge**
>
> 21. Sometime in May 2002, Tan Cheng Yew persuaded Tan Kwee Khoon to invest another S$900,000 in the time deposit with the Australian bank referred to in paragraph 18 above, so that he would be in a better position to negotiate with the Australian bank. Tan Kwee Khoon agreed and issued a DBS Bank cheque no.300206 for S$900,000 to Tan Cheng Yew. Tan Cheng Yew deposited this cheque into his DBS Fixed Deposit account no.001-800077-13. Pursuant to the personal loan facility referred to in paragraph 8 above, Tan Cheng Yew pledged all the Singapore Dollar and Foreign Currency Fixed Deposit accounts held by himself as security for this loan from DBS. This included the funds in DBS Fixed Deposit account no.001-800077-13, into which the S$900,000 had been deposited.
>
> 22. Investigations revealed that Tan Cheng Yew did not invest the S$900,000 in a time deposit in an Australian bank on behalf of Tan Kwee Khoon. Instead he converted to his own use the said S$900,000 by pledging it to DBS as security for his personal loan facility.
>
> 23. Tan Cheng Yew was entrusted, in his capacity as an agent acting on behalf of Tan Kwee Khoon and his family for the purpose of investing monies in an Australian bank, with dominance over the said S$900,000. However, Tan Cheng Yew converted to his own use the said S$900,000 by pledging it to DBS as security for his personal loan facility. By doing so, he had committed an offence under section 409 of the Penal Code, Cap. 224.

80 Mr Khoo submitted that the facts in relation to the Fourth Charge did not establish the essential ingredients for a cheating offence under s 420 as paras 21 to 23 in the Statement of Facts alleged entrustment and not deception. During oral argument, Mr Khoo also advanced the tentative legal proposition that where there is an element of entrustment, an offence of cheating cannot be made out.

81 With all due respect, this latter proposition runs completely contrary to my understanding of the offence of cheating under s 420, and I cannot agree with Mr Khoo's submission. It is indeed true that cheating does not necessarily involve entrustment; it does not, however, follow that cheating can never involve entrustment. The definition of the word "cheat" used in s 420 is found in s 415 of the Penal Code which provides:

> **Cheating**
>
> **415.** Whoever, by deceiving any person, whether or not such deception was the sole or main inducement, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit to do if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to any person in body, mind, reputation or property, is said to "cheat".

The necessary elements of cheating are: (a) *deception* and (b) *fraudulently or dishonestly inducing the person deceived to, inter alia, deliver any property*. The offence can be made out so long as these elements are satisfied, even if the circumstances surrounding the offence involve an entrustment of some kind. Indeed in many cases of cheating, there would be entrustment of property by the victim to the offender. The facts disclosed in the Statement of Facts in relation to the Fourth Charge would, if proven, ground a conviction for an offence under s 420. Paragraph 21 states that TCY persuaded Tommy Tan to invest another S$900,000 in an Australian time deposit that was purportedly held on trust for Tommy Tan and the Tan Family in order to obtain a better interest rate, and that Tommy Tan issued a DBS cheque for the amount. This satisfies the element of "inducing the person deceived to deliver property". Paragraph 22 then states that TCY did not invest the S$900,000 on behalf of Tommy Tan but instead converted it to his own use. TCY therefore acted "dishonestly" and "cheated" Tommy Tan as he had no intention of acting on what he had told Tommy Tan. Contrary to Mr Khoo's submission that all three paragraphs had to be read together, I do not think that para 23, which concludes that TCY was entrusted with S$900,000 and converted the S$900,000 to his own use thus committing an offence under s 409, qualifies anything in paras 21 and 22. Paragraph 23 is simply an assertion of the offence disclosed by the facts, and does not mean that the facts cannot support another offence.

82 I am satisfied that the Fourth Charge is an "offence of which [TCY] could be convicted upon proof of the facts on which [the] requisition was based" under s 17(*a*). The prosecution of TCY on the amended Fourth Charge was therefore legal.

Was there a breach of natural justice in the extradition proceedings?

83 I will summarily dismiss this final argument of Mr Khoo's as I do not think that it was made out on the facts and therefore do not have to consider the legal implication of a finding that there had been a breach of natural justice in the extradition proceedings in Germany. Mr Khoo argued that the principles of natural justice had been breached as TCY was not present before the Higher Regional Court of Munich when the Third Resolution was issued.

84 With respect, Mr Khoo has not presented any evidence to support his allegations that there had been a breach of natural justice in the extradition proceedings, apart from assertions that TCY had not been present at the time the Third Resolution was made although the Third Resolution stated that it had been made "after hearing the persecutee". I also note that apart from the disputed Third Resolution, Mr Khoo has not denied that TCY vigorously challenged – and was given the opportunity to be heard – his extradition to Singapore before both the Higher Regional Court of Munich and the Federal Constitutional Court of Germany. In the absence of any affirmative evidence, I am unable to agree with Mr Khoo's submissions on the extradition-related issues.

Conclusion

85 For the foregoing reasons, I therefore conclude that there was no breach of the speciality provision in s 17(*a*) for each of the four charges that TCY stood trial on.

Issue 3

86 TCY has been convicted on the s 409 charges for the commission of CBT "in the way of his business as an attorney". The first question is whether the word "attorney" encompasses an advocate and solicitor. Only if this is answered in the positive will it be necessary to consider Issue 4, *viz*, whether TCY was acting in the way of his business as an advocate and solicitor during the material events that gave rise to the s 409 charges.

TCY's case

87 TCY's case is that "attorney" in s 409 means "a person who has been delegated to do something in the appointer's absence, and does not mean to include an advocate and solicitor". [note: 8] In other words, TCY's case is that the word "attorney" refers only to the donee of a power of attorney. In support of this, Mr Khoo relied on *Butterworths' Annotated Statutes of Singapore* vol 2 (Butterworths Asia, 2001) ("Butterworth's commentary") at p 622. Mr Khoo argued that the cases which the DJ had cited in support of her finding that "attorney" included an advocate and solicitor had been cases where pleas of guilt had been entered and thus the section had not been construed in great detail. In particular, Mr Khoo submitted that *Sarjit Singh s/o Mehar Singh v Public Prosecutor* [2002] 2 SLR(R) 1040 ("*Sarjit Singh (HC)*") is not dispositive of the issue of whether "attorney" includes an advocate and solicitor as that issue was not canvassed before the court in that case.

The prosecution's case

88 The prosecution's case is that "attorney" in s 409 includes an advocate and solicitor. Mr Tan raised four arguments in support of this. Firstly, the holding in *Sarjit Singh (HC)* was that advocates and solicitors, when entrusted with their client's moneys, would fall within the purview of s 409. Secondly, the cases of *Wong Kai Chuen Philip v Public Prosecutor* [1990] 2 SLR(R) 361 ("*Wong Kai Chuen*") and *Public Prosecutor v Leong Wai Nam* [2010] 2 SLR 284 ("*Leong Wai Nam*") were cases where the accused persons had pleaded guilty to charges under s 409 in connection with their work as advocates and solicitors. Thirdly, the "plain and ordinary meaning" of the word "attorney" includes a "professional and properly-qualified legal agent practising in the courts of Common Law (as a *solicitor* practised in the courts of Equity); one who conducted litigation in these courts, preparing the case for the barristers, or counsel whose duty and privilege it is to plead and argue in open court", which is the definition provided in *The Oxford English Dictionary*, Vol I (Clarendon Press, Oxford, 2nd Ed, 1989) at p 772. [note: 9] Fourthly, it would be against public interest for "attorney" to be construed as excluding advocates and solicitors, given that the section targets offenders who are in a position of trust *vis-à-vis* their victims and advocates and solicitors are often in such a position of trust.

Analysis and decision

The definition of "attorney"

89 Section 409 provides as follows:

> **Criminal breach of trust by public servant, or by banker, merchant, or agent**
>
> **409**. Whoever, being in any manner entrusted with property, or with any dominion over property, in his capacity of a public servant, or in the way of his business as a banker, a merchant, a factor, a broker, an attorney or an agent, commits criminal breach of trust in respect of that property, shall be punished with imprisonment for life, or with imprisonment for a term which may extend to 10 years, and shall also be liable to fine.

90 It is clear that s 409 does not make any reference to the term "advocate and solicitor". The Penal Code contains no definition of the term "attorney".

91 While the DJ observed that s 409 does "not specifically mention advocates and solicitors", she found that an advocate and solicitor could nonetheless be charged under s 409 as it has been "widely

accepted that this provision applies equally to lawyers who have been entrusted with their clients' monies" (Judgment at [51]). The DJ drew support for her view from the following cases: *Wong Kai Chuen*, *Leong Wai Nam*, and *Sarjit Singh (HC)* and *Sarjit Singh s/o Mehar Singh v Public Prosecutor* [2002] SGDC 150 ("*Sarjit Singh (DC)*").

92 However, in *Wong Kai Chuen* and *Leong Wai Nam*, the accused persons had pleaded guilty to the charges under s 409, and therefore the issue of the meaning of "attorney" was not raised. This was in fact noted by the DJ at [52] of the Judgment. Further, in *Wong Kai Chuen*, all six charges brought against the accused were for CBT in his capacity as an *agent*, so the issue of the meaning of an "attorney" did not arise.

93 In *Sarjit Singh (DC)*, this point was in issue as one of the accused's arguments in his submission of "no case to answer" was that s 409 did not apply to an advocate and solicitor (see *Sarjit Singh (DC)* at [12]). The trial judge accepted the prosecution's argument that s 409 clearly included "an advocate and solicitor, a person who held himself out as an agent for another", and called on the accused to give his defence (see *Sarjit Singh (DC)* at [13]). *Sarjit Singh (DC)* is slightly ambivalent as to which limb of s 409 the accused was charged under, *ie*, whether he was charged for CBT in the way of his business as an *agent* or as an *attorney*. The judge held, somewhat obliquely, that an advocate and solicitor was "*an attorney or agent* within the meaning of s 409" [emphasis added] (*Sarjit Singh* (*DC)* at [71]). It will be remembered that this finding was also made by the DJ in the instant case. I find such remarks puzzling, as the mere fact that that an advocate and solicitor may be, on the facts of a particular case, an "agent" for his client does not necessarily entail that he is also an "attorney" for the purposes of s 409. The terms "attorney" and "agent" are not co-extensive and the expression "banker, merchant, factor, broker, attorney or agent" manifests an intention to refer to six separate categories of persons.

94 Further, a perusal of the charge sheet in *Sarjit Singh (DC)* reveals that the accused in that case was charged in the way of his business as an *agent*. Therefore, the analysis of the scope of "attorney" in that case is *obiter*. However I note that on appeal to the High Court, Yong Pung How CJ ("Yong CJ") ruled as follows (*Sarjit Singh (HC)* at [21]):

> Thus advocates and solicitors must be taken to have been entrusted with their client's moneys when they are entrusted with the task of collecting the moneys on their client's behalf. Hence they would fall within the purview of s 409 of the Penal Code.

95 Given that the cases do not specifically address the issue whether the word "attorney" includes an advocate and solicitor, I will proceed to analyse the meaning of "attorney" from first principles. In so doing, it is helpful to consider the legislative history and context of s 409.

The legislative history and context of s 409

96 Our s 409 is derived from s 409 of the Indian Penal Code 1860 (Act XLV of 1860) (the "IPC") which provides:

> **Criminal breach of trust by public servant, or by banker, merchant or agent**
>
> Whoever, being in any manner entrusted with property, or with any dominion over property in his capacity of a public servant or in the way of his business as a banker, merchant, factor, broker, attorney or agent, commits criminal breach of trust in respect of that property, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

As can be seen, our s 409 is *in pari materia* with s 409 of the IPC. The meaning of "attorney" under s 409 of the IPC may thus be instructive in examining the meaning of "attorney" in our s 409. While Butterworth's Commentary at p 622 gives a narrow meaning to "attorney", it goes on to refer to two leading commentaries on Indian law:

> An 'attorney' is a person who is appointed by another for a special purpose, to do something in the appointer's absence, and who has authority to act in place of the appointer: Ratanlal & Dhirajlal's *Law of Crimes* (24th Ed) at p 2014; *Gour's Penal Law of India* (11th Ed) at p 4052.

97 The issue is thus what "attorney" meant under s 409 of the IPC when that section was enacted in the IPC in 1860, to see what meaning the framers of the IPC intended. For this, I turned to the leading texts on the interpretation of the IPC. *Ratanlal & Dhirajlal's The Indian Penal Code* (V R Manohar, gen ed) (LexisNexis Butterworths Wadhwa Nagpur, 33rd Ed, 2010) ("*Ratanlal*") defines 'attorney' in the following manner (at p 883):

> **'Attorney'** is one who is appointed by another to do something in his absence, and who has authority to act in the place and turn of him by whom he is delegated. [In *Charman Lal v State of Punjab* AIR 2009 SC 2972, the] High Court, while dismissing the revision petition, observed that it was possible that the appellants were duped by the general power of attorney holder who knew that his powers had been revoked but concealed the fact. If there any *bona fides* in the conduct of the accused person, (by reason of revival of power), such arguments could have made at the trial stage. The court refused to interfere in the judgment.

This definition appears to support the view put forward by Mr Khoo that "attorney" was intended to refer to the holder of a power of attorney.

9 8 *Dr Hari Singh Gour's Penal Law of India v*ol 4 (Law Publishers (India) Pvt Ltd, 11th Ed, 2011) ("Gour") defines "attorney" in the following manner (at p 4052):

> An attorney [from Lat. attornare, to attorn, to commit business to another-lit, a substitute, a proxy is also an agent but appointed for a special purpose. He is a person appointed by another to do something in his absence and, as such, he possesses all the powers which are necessary for transacting that business, and such powers are usually reduced to writing in a document called the "power-of-attorney". An attorney may be public or private. A private attorney is a person appointed by another to transact any business for him out of Court. Pleader's clerks are, for example, called attorneys. Public attorneys, or as they are more popularly called attorneys-at-law, are practitioners in a Court of law, legally qualified to act on the retainer of clients for the purpose of prosecuting and defending suit and cases. As such, they are a class of lawyers, but that is naturally a more general term and includes also counsellors who are a class distinct from attorneys, whose duties are confined to carry on the practical and formal parts of the suit. *In England, since 1873, attorneys are by statute called solicitors.* Such attorneys correspond to the procurators of the civil law, and the proctors of the Ecclesiastical and Admiralty Courts. They are called law agents in Scotland. [emphasis added]

99 Gour's definition of "attorney" is thus twofold:

> (a) A private attorney: one who holds a power of attorney and who is appointed by another to transact any business for him. This is the definition Mr Khoo argued for.
>
> (b) A public attorney, or attorney-at-law: as the name suggests, this connotes one who is a practitioner in a court of law, who is among a class of lawyers. This would include an advocate

and solicitor, and is the definition Mr Tan argued for.

If the term "attorney" is broad enough to encompass *both* the "private" and "public" aspects, then TCY, as an advocate and solicitor, would be caught under the ambit of s 409, provided that he was acting "in the way of his business" as an advocate and solicitor (see below at [127]–[159]).

100 I note, in particular, Gour's statement that "[i]n England, since 1873, attorneys are by statute called solicitors". Section 87 of the Supreme Court of Judicature Act 1873 (c 66) (UK) prescribed that "all persons admitted as ... attorneys ... shall be called Solicitors of the Supreme Court". Therefore, prior to 1873, the understanding of the word "attorney" in England would correspond to what we today call a "solicitor". This provides an insight into the contemporaneous meaning accorded to "attorney" at the time the IPC was enacted. As the IPC was enacted before 1873, the drafters would have relied on the pre-1873 understanding of "attorney" as including a solicitor.

101 I will now consider whether this understanding of "attorney" is consistent with the framework of the Penal Code. The prosecution has submitted that s 409 targets offenders who are in a position of trust *vis-à-vis* their victims. Therefore, it would be anomalous for advocates and solicitors, who are often in a position of trust, to be excluded from the ambit of the word "attorney". It was further urged that for this reason, it would be in the public interest for advocates and solicitors to come under s 409.

102 The statutory framework of the CBT group of offences in the Penal Code supports this contention. Sections 407 to 409 of the Penal Code, which deal with CBT by certain classes of persons, stipulate higher maximum sentences than that for CBT *simpliciter* which is found in s 406 of the Penal Code ("s 406"). The punishments stipulated reveal a sliding scale of severity of offences. At the lowest end of the spectrum is CBT *simpliciter* in s 406, where the maximum sentence provided is three years' imprisonment. Next is s 407 which provides for CBT by a carrier, wharfinger or warehouse-keeper and attracts a maximum sentence of seven years' imprisonment. Section 408 then provides for CBT by a clerk or servant and stipulates a maximum sentence of seven years' imprisonment. At the highest end of the spectrum is s 409 which provides for CBT committed by a person in the capacity of a public servant or in the way of business as a banker, merchant, factor, broker, attorney or agent and stipulates a maximum sentence of ten years' imprisonment or life imprisonment. This shows that as compared to s 406, ss 407 to 409 are treated as aggravated offences by virtue of the offender's position *vis-à-vis* the victim.

103 In my view, the mischief that s 409 targets is the commission of CBT by persons who perform certain trusted trades, when they act in the way of their business. As stated in Gour at p 4037:

> "*Banker, merchant, factor, broker, attorney or agent"*: All these persons are trusted agents employed by the public in their various businesses. ...

Where it is normal for the public to rely on a person's trade as a mark of his trustworthiness and integrity, and where such trust facilitates commercial transactions, it is important that such transactions are above board. A commission of CBT by a person in the performance of his trade would shake the confidence of the public in those trades and impede the ability of persons in such trades to serve the public. A breach of trust in such circumstances "may have severe ... public repercussions" (see Butterworth's commentary at p 621). Therefore, s 409 provides that CBT committed in the capacity of a public servant or in the way of business of a banker, a merchant, a factor, a broker, an attorney or an agent, would be punished more severely than CBT committed by persons who are trusted on an *ad hoc* basis under s 406.

104 The practice of law has long been held to be an honourable profession in which absolute trust in the integrity of its practitioners is essential not only for the administration of justice but also to the smooth operation of the wheels of commerce. It would be a glaring omission were the profession to be excluded from the list of "banker, merchant, factor, broker, attorney and agent" singled out for greater punishment, when much more trust is normally reposed in an advocate and solicitor than the other trades.

105 By reason of the foregoing, I hold that the word "attorney" in s 409 includes an advocate and solicitor. I turn to the next issue, whether the moneys were entrusted to TCY in the way of his business as an advocate and solicitor.

Issue 4

TCY's case

106 The main thrust of TCY's case is that the s 409 charges were not made out as the properties which formed the subject matter of the charges were entrusted to TCY in his personal capacity and not in the way of his business as an attorney. Therefore, even if CBT was made out, this would be CBT *simpliciter* under s 406 and not s 409. TCY's position has been, all along, that he would have pleaded guilty at the first opportunity if the charges against him had been preferred under s 406 (Judgment at [174]). In his long statement, TCY had told the police the following: [note: 10]

> I am not trying to deny my wrong doings [sic] but I am saying that if the charge is appropriately amended to one in which I used the money for my own use, I will admit to it. As the charge now reads it is inconsistent with my recollection of events.

The First Charge

107 Mr Khoo argued that the sum of S$1.5m belonged to CCC at the time it was entrusted to TCY as the Tan Family had loaned the sum to CCC pursuant to a loan agreement dated 30 July 2001 ("the Loan Agreement"). The S$1.5m was thus entrusted to TCY by CCC and not by the Tan Family. While TCY drafted the Loan Agreement in the way of his business as an advocate or solicitor, he held the S$1.5m *as an express trustee*. TCY's case is that it was not in the nature or business of an advocate and solicitor to act as an express trustee. Mr Khoo cited *Dubai Aluminium Co Ltd v Salaam and others* [2003] 2 AC 366 ("*Dubai Aluminium*") and *Lim Kok Koon v Tan Cheng Yew and another* [2004] 3 SLR(R) 111 ("*Lim Kok Koon*") in support of this. Mr Khoo then submitted that TCY's only act in the way of his business as a solicitor for the Tan Family was in the drafting of the Loan Agreement; all his other acts relating to the First Charge were done in his personal capacity:

> (a) Even though the cheque for S$1.5m that TCY received from CCC was stated to be "issued in favour of your solicitor", it was, pursuant to the terms of the Loan Agreement, made out to him *personally* as payee. The cheque was made out to "Tan Cheng Yew", rather than "Tan Cheng Yew & Partners".
>
> (b) The Loan Agreement did not provide that the S$1.5m was to be paid into Tan Cheng Yew & Partners' client's account, but stipulated that the money was to be paid into an account with DBS Bank Shenton Way Branch to be opened in TCY's personal name.

Mr Khoo submitted that while the Loan Agreement referred to TCY as "Tan Cheng Yew of Tan Cheng Yew & Partners", this was only descriptive of where he was from and did not indicate that TCY was entrusted the money as a solicitor.

108 Further, TCY's case is that he had not converted the S$1.5m to his own use by pledging the fixed deposit containing the moneys to secure a short-term loan facility from DBS Bank. According to Mr Khoo, conversion would only occur if there was a drawdown and TCY was unable to repay the overdraft when demanded with the result that the bank exercised its right of set-off against the fixed deposit charged.

109 Mr Khoo also raised the argument that Tommy Tan had acquiesced to TCY pledging the S$1.5m as security for the short-term loan facility in order to buy the Venture linked notes to obtain better returns for the money. [note: 11] Mr Khoo pointed to a document titled "Authority to Pay" which purported to show that Tommy Tan had given express authority to TCY to buy the Venture linked notes.

The Third Charge

110 While TCY admitted that he was authorised under Memorandum 1 to act as the Tan Family's solicitor to negotiate the sale of the Poh Lian shares, his submission is that when the negotiations failed, that authority came to an end. Mr Khoo contended that Tommy Tan's subsequent instructions to TCY to assist in the sale of the Poh Lian shares on the open market could not have originated from Memorandum 1 which merely covered negotiations with the Poh Lian management. Clause 5 of the Deed of Trust provided that the Tan Family "fully discharge Tan Cheng Yew from any further obligation owed to us prior to this date in respect the sale of shares in Poh Lian Holdings Limited and the disposal of the said proceeds and any obligations owed to us will be pursuant to the terms of this Deed of Trust dated 25 May 2011 only and is superseded by the said Deed of Trust". [note: 12]

111 Further or in the alternative, TCY had declared in the Deed of Trust that he would hold A$3m (this sum comprised the S$1,940,724.97 which formed the subject-matter of the Third Charge) and thus held the moneys as an express trustee. Pursuant to *Lim Kok Koon*, as an express trustee, TCY was not acting in the way of his business as an advocate and solicitor. Moreover, it is not in the nature of the business of an advocate and solicitor to engage in commercial transactions such as the sale of shares on behalf of his client. The sale of the Poh Lian shares was thus undertaken in TCY's private, personal, capacity. As *Lim Hsi-Wei Marc v Orix Capital Ltd and another and another appeal* [2010] 3 SLR 1189 ("*Marc Lim*") observed at [41], a law firm's business is to provide legal services, it "does not buy, sell or trade in goods".

112 Mr Khoo also pointed to cl 5 of a memorandum of a meeting held on 26 May 2002 ("Memorandum 2"), which provided that the moneys would not be sent to Australia unless, *inter alia*, it was expressly authorised by the beneficiaries. [note: 13]

The prosecution's case

113 The prosecution's case is that to determine whether "in the way of his business" is met, a subjective test should be applied, *ie*, from the point of view of the person entrusting the money:

(a) was the entrustment done to the accused by the way of his business as an attorney; or

(b) was the entrustment wholly incidental to the accused's business as an attorney or was it unknown to that person that the accused was an attorney?

114 According to the prosecution, if entrustment falls under (a) then "in the way of his business" is satisfied. Conversely, if the entrustment falls under (b) then "in the way of his business" is not

satisfied.

The First Charge

115 The prosecution argued that the S$1.5m belonged to the Tan Family at the time it was entrusted to TCY. The money belonged to the Tan Family until and unless CCC successfully tendered for a plot of land to build their church on. From the perspective of the Tan Family, TCY had been acting as their lawyer throughout the material events. TCY relied on his status and reputation as an advocate and solicitor to exploit the trust of his victims. The Loan Agreement which was drafted by TCY stipulated a condition that the trustee had to be an advocate and solicitor, and went on to describe the trustee as being "Tan Cheng Yew of Tan Cheng Yew & Partners". Further, TCY had been aggressive about the fact that there would only be one trustee, namely himself. [note: 14] Mr Tan argued that TCY had "set out to *make it* his "business" to take on the roles that he did, in respect of the Tan Family, regardless of whether or not, on an normative level, such roles are normally undertaken by lawyers in Singapore" [emphasis in original]. [note: 15] Mr Tan contended that the DJ was right to come to the conclusion that a "more likely position would be that all parties had understood clearly that the trust was in [TCY's] professional capacity" instead of his personal capacity (Judgment at [103]), as this was reached after hearing all the witnesses' testimonies. Further, all the letters touching on the loan to CCC, the things done by TCY and the things needed to be done by the Tan Family were on the letterhead of Tan Cheng Yew & Partners.

116 Even though the S$1.5m was not deposited in Tan Cheng Yew & Partners' client's account, where the moneys were deposited cannot be conclusive as to whether entrustment was in the way of TCY's business as an advocate and solicitor. The moneys were within TCY's sole control, and his law firm partners were without any form of control over the moneys.

117 Mr Tan further argued that Mr Khoo's reliance on *Marc Lim* and *Lim Kok Koon* is misplaced as those cases are civil cases which did not concern the specific definition and scope of s 409. *Lim Kok Koon* concerned the liability of the *other partners* of the law firm involved, and not whether a person had held himself out to be acting in the way of his business as an advocate and solicitor for the purposes of s 409. *Marc Lim* also dealt with the liability of the *other partners* in a civil suit. The issue was what the ordinary course of business carried on *by the firm* was, under s 10 of the Partnership Act (Cap 391, 1994 Rev Ed) ("the Partnership Act").

118 Regarding Mr Khoo's argument that there was no conversion, Mr Tan contended that the pledging of the fixed deposit account sufficed for conversion. Further, the short-term loan facility was in fact drawn upon by September 2001.

119 As for Mr Khoo's argument that Tommy Tan acquiesced in TCY pledging the S$1.5m to secure the short-term loan facility, Mr Tan averred that there was no evidence to support TCY's bare assertion that he was permitted to use the moneys in that manner. The document titled "Authority to Pay" [note: 16] was a photocopied document which was found by the DJ to be an unreliable piece of evidence as she had "great doubts about [its] authenticity" (Judgment at [133]). Even TCY himself admitted that he was "not sure" whether the two pages he produced as the "Authority to Pay" were part of the same document (Judgment at [75]).

The Third Charge

120 Mr Tan highlighted that while Memorandum 1 was for the negotiation of the Poh Lian shares to the Poh Lian management, Tommy Tan did not consider that there was any change in status or

capacity when TCY proceeded to sell the shares on the open market. Further, even as late as 4 June 2002, after TCY had moved to Australia, he had referred to the Tan Family as his "clients" in certain emails relating to investing the proceeds of the sale of the Poh Lian shares. These emails were forwarded to Tommy Tan. The use of the term "clients" reinforces that TCY was acting for the Tan Family in his capacity as their solicitor.

121 The prosecution's case is that the Deed of Trust was an attempt by TCY to negate his own criminality. The Deed of Trust did not negate the fact that inducement given by TCY, *viz*, that he could obtain a higher interest rate for the Tan Family, remained operative on the minds of the members of the Tan Family.

122 As for Memorandum 2, the prosecution pointed out that it was a document drafted by TCY, and was thus drafted to his advantage.

Analysis and decision

123 Gour at p 4037 defines "in the way of his business" as "in the course of his trade in the ordinary course of his duties as such merchant, etc". The concept of liability being imposed only for acts committed in the ordinary course of business also appears in s 5 of the Partnership Act, which provides that the partnership is bound by the acts of every partner who does "any act for carrying on in the usual way business of the kind carried on by the firm" unless the partner so acting has no authority and the person with whom he is dealing either knows that he has no authority or does not believe him to be a partner. It may be useful to refer to the test under s 5 of the Partnership Act for assistance in interpreting the words "in the way of his business" in s 409 of the Penal Code.

124 Under s 5 of the Partnership Act, the test for whether a partner's acts are within the usual nature of the business of the firm has two limbs, *viz*, actual and ostensible authority (see *Marc Lim* at [33]). Pursuant to *Marc Lim* at [44], the test under the limb of ostensible authority is as follows:

> ... even if a partner's actions are *ex facie* within the scope of the usual nature of the business of the firm, the transaction will not bind the partnership unless the *manner* in which it is carried out would also appear to a ***reasonably careful and competent person of the same kind as the third party*** to be in the "usual way" [emphasis in original in italics, emphasis added in bold italics]

125 The cases under s 5 of the Partnership Act concern the civil liability of innocent partners for the wrongdoing of one of the partners. While this may provide a useful comparison, it must be remembered that such cases are *not* directly applicable to the present case, which involves the criminal liability of the advocate and solicitor who has perpetrated the wrongdoing (see the elaboration below at [135]). Nevertheless, I find that such test could be applicable in interpreting the words "in the way of his business" in s 409 of the Penal Code.

126 In the context of s 409 of the Penal Code, the test is whether, to a reasonably careful and competent person of the same kind as the victim, the accused was acting in the way of his business as an advocate and solicitor. There is no statutory definition of what is the ordinary business of an advocate and solicitor. Under the Legal Profession Act (Cap 161, 2009 Rev Ed) (the "LPA"), advocates and solicitors have exclusive right to appear and plead in all courts of Singapore (see s 29 of the LPA). An indirect definition of what amounts to practising as an advocate and solicitor is found in s 33 of the LPA, *viz*, commencing, carrying on, soliciting, or defending any court proceeding, or preparing any document or instrument relating to any court proceeding, including sending notice of claim or threatening legal proceedings or negotiating a settlement of a claim on behalf of another person. However it cannot be doubted that advocates and solicitors carry out work in many other

areas, even if they are not all within their exclusive domains. Hence conveyancing practice forms a significant part of the business of many law firms. Advocates and solicitors draft contracts for their clients and are often involved in the negotiation stage. Some act as trade mark and patent agents. In the course of such work, clients entrust money to the advocate and solicitor partly on a personal basis, but also partly due to the fact that the accreditation process under the LPA has instilled in the public a high level of confidence in the integrity of the advocates and solicitors and the enforcement regime in the same act ensures that the risk of doing so is very much minimised. And as pointed out in [94] above, Yong CJ held in *Sarjit Singh (HC)* that an advocate and solicitor entrusted with collecting money on his client's behalf falls within the purview of s 409 of the Penal Code.

The First Charge

127 For the offence of CBT to be made out, the first element that needs to be shown is entrustment with dominion over the property. The question is thus whether TCY was entrusted with dominion over the S$1.5m. A cheque for S$1.5m was issued in TCY's name by CCC. The cheque was issued by CCC as the Tan Family had earlier transferred S$1.5m to CCC in anticipation that it would be successful in bidding for a piece of land to build a church. I will quickly dispose of the argument that the moneys belonged to CCC and not to the Tan Family at the material time. This argument is not supported by the terms of the Loan Agreement. The preamble of the Loan Agreement provided that the moneys was to be loaned "to finance [CCC's] construction of a church ...". Clause 2.2 of the Loan Agreement provided that if no church was being constructed or if there was no successful tender for land to build the church on, the moneys would have to be returned to the Tan Family. As such, until and unless the church had been constructed, the moneys belonged to the Tan Family and not CCC. At the time the S$1.5m was entrusted to TCY, neither construction nor tender had commenced. The S$1.5m thus belonged to the Tan Family and not to CCC at the material time. The Tan Family had entrusted TCY with dominion over the S$1.5m.

128 Next, it must be shown that the S$1.5m was converted by TCY to his own use. At the hearing before me, Mr Khoo acknowledged that Tommy Tan had *not* given TCY authority to *pledge* the S$1.5m as security for the short-term loan facility. [note: 17] While the Loan Agreement provided for the moneys to be put into a fixed deposit, it did not provide that the fixed deposit could be pledged as security for the short-term loan facility. In fact, the moneys in the fixed deposit were to be released to CCC when it managed to obtain a plot of land to build the church. Thus, the highest that Mr Khoo could pitch his case was that Tommy Tan had given TCY authority to use the S$1.5m to buy the Venture linked notes. In the light of this admission, it is unnecessary for me to examine whether the document entitled "Authority to Pay" did reveal whether Tommy Tan had acquiesced to TCY pledging the S$1.5m to obtain the short-term loan facility. However, notwithstanding this concession, Mr Khoo contended that the mere pledging did not involve conversion and it was only when the bank exercised its right of set-off that there was conversion. With respect, this contention is not tenable. Conversion took place when TCY pledged the money; the bank had become entitled to it. However I need not dwell on this because it does not help TCY, as DBS did subsequently exercise its right to set-off the fixed deposit amount against TCY's overdraft facility. I thus find that TCY converted the S$1.5m to his own use.

129 As for the element of dishonesty, TCY admitted during cross-examination at the trial below that he had never intended to give the S$1.5m to CCC but intended it for personal use: [note: 18]

> I was very very deep in debt because of gambling. Gambling destroyed my life. When I heard that CCC wanted me to hold on to the $1.5 million, I was already planning to use some of it to pay my debts.

In reality, I had no intention to give the $1.5 million to CCC.

But to mask my true intention, I needed to go along with Tommy Tan and his family and CCC by drafting the 1st Loan Agreement and accepting the $1.5 million.

Hence, I lied to Tommy Tan and his family and CCC that I will safekeep the $1.5 million until CCC meets the requirements in the 1st Loan Agreement. But my intentions were to use the money for my use as soon as I have them.

This is clear evidence of dishonesty on TCY's part.

130 I come now to the nub of this issue – whether TCY was entrusted with the S$1.5m in the way of his business as an advocate and solicitor. Clause 2.2.a of the Loan Agreement provided that the S$1.5m was to be kept in a fixed deposit in the name of a trustee, and Annex A provided that the trustee was to be "Tan Cheng Yew of Tan Cheng Yew & Partners". TCY's case is that he held the S$1.5m as an express trustee, and that it was not in the nature or business of an advocate and solicitor to act as an express trustee.

131 Mr Khoo relied on two cases in support of his argument. The first case is that of *Dubai Aluminium*, where Lord Millett, in a concurring judgment, considered at [134] that acting as an express trustee was not within the ordinary business of a solicitor. He arrived at this decision based on a combination of two observations. Firstly, the general understanding in the 19th century was that it was not in the ordinary business of a solicitor to act as an express trustee (see *In re Fryer* (1857) 3 K & J 317). Secondly, given that as compared to the 19th century, private client business now formed a far smaller part of solicitors' work, if it was not part of the ordinary business of a solicitor to act as an express trustee then, *a fortiori*, it was not part of the ordinary business of a solicitor in the present day.

132 The second case is that of *Lim Kok Koon*, which applied the principles elucidated by Lord Millett in *Dubai Aluminium*. *Lim Kok Koon* was a case which also involved TCY. In that case, TCY had, in the course of advising the plaintiff on a reverse takeover, written to the plaintiff on the letterhead of Tan & Lim and conducted meetings at Tan & Lim's office. On TCY's advice, the plaintiff handed TCY three cheques issued in favour of TCY personally. The plaintiff then signed two trust deeds which provided that TCY would hold certain moneys on trust for him. The trust deeds, which were witnessed by a solicitor employed by Tan & Lim, referred only to TCY and contained no reference to Tan & Lim. Subsequently, TCY, and the moneys along with him, went missing and could not be located. In addition to bringing a claim against TCY, the plaintiff also brought a claim against Tan & Lim on the basis that Tan & Lim was vicariously liable for the acts of TCY. After proceedings were commenced, Tan & Lim applied to strike out the claim against it, arguing that TCY had not acted in the ordinary course of business when he received the three cheques from the plaintiff.

133 The crucial fact in *Lim Kok Koon* was that TCY had declared in the trust deeds that he held the moneys personally as trustee for the plaintiff. Pursuant to *Dubai Aluminium*, it was "not part of the ordinary business of a law firm for its lawyers to act as express trustees" as acting as an express trustee was "not legally capable of being performed within the ordinary course of the partnership business" of a law firm (*Lim Kok Koon* at [36] and [38]).

134 Even so, that was not the end of the inquiry in *Lim Kok Koon* and Lai Siu Chiu J ("Lai J") went on to examine whether TCY could have accepted the plaintiff's payment *personally* in the ordinary course of business of a law firm. One of the factors she considered was the closeness of the connection between the duties TCY was authorised to perform and his wrongdoing. The test was a

partly subjective one which took into account the attributes of the plaintiff. Lai J found that the plaintiff, who was the chief executive officer of a public listed company and who had previously consulted lawyers in that capacity, "would or should have realised" that making payments personally to a lawyer was not the norm and not in the ordinary course of the business of a law firm (see *Lim Kok Koon* at [40]). As such, under s 10 of the Partnership Act, Tan & Lim was not vicariously liable for the acts of TCY as the acts were not done in the ordinary course of the firm's business.

135 As noted above at [125], while the cases under the Partnership Act provide a helpful guide, they are *not* directly applicable to the present case. The main focus of both *Dubai Aluminium* and *Lim Kok Koon* was the extent to which innocent members of a partnership could be made liable for the acts of one partner who acted on a frolic of his own. One consideration in such cases is the societal interest in protecting the innocent partners. This consideration is not operative under s 409. As noted earlier at [103], a different societal interest governs s 409, *viz*, upholding the standards of conduct in certain trades by the implementation of more severe punishments in aggravated forms of CBT where purveyors of those trades breach the trust placed in them. Further, the ordinary course of the business of a law firm is not necessarily coextensive with the way of business of an advocate and solicitor. While there are undoubtedly overlaps between the two, they are not identical.

136 Insofar as TCY's case is that it is *never* within ordinary business of an advocate and solicitor to act as an express trustee, I must disagree. It is not the case that the moment a solicitor becomes an express trustee, he cannot be acting in the way of his business as a solicitor. For example, when a solicitor holds money for his client as a stakeholder in a conveyancing transaction, he holds the money as an express trustee *and* does so in the way of his business as an advocate and solicitor. Indeed, solicitors are now required by legislation to hold conveyancing moneys in the firm's conveyancing account as stakeholders (see r 4 of the Conveyancing and Law of Property (Conveyancing) Rules 2011 (Cap 61, S 391/2011); and r 3(1)(A) of the Legal Profession (Solicitors' Accounts) Rules (Cap 161, R 8)). In fact, it was acknowledged in *Lim Kok Koon* at [37] that the furnishing of undertakings by solicitors to third parties is part of the ordinary business of a law firm:

> As a matter of law, the furnishing of undertakings by solicitors to third parties is part of the ordinary business of a law firm. ... Even then, the funds to enable such undertakings to be issued are first paid into the clients' accounts of the law firm concerned. Factually, it is uncommon for moneys to be paid to a solicitor personally, as in this case.

While it may be factually uncommon for solicitors to hold the moneys personally, this does not mean that it cannot be in the way of his business as an advocate and solicitor, if he takes it upon himself to do so.

137 Therefore, I find that the issue is not whether being an express trustee is part of the normal course of business of an advocate and solicitor as a matter of law, but whether *on the facts* of the instant case, TCY held the S$1.5m in the way of his business as an advocate and solicitor. Notably, while Lai J held at [36] in *Lim Kok Koon* that it was not in the ordinary business of a law firm for its lawyers to act as express trustees, she added a caveat:

> ... *It would be a different matter altogether, if the first defendant had been consulted on the construction of trust instruments* which had already been established by the plaintiff, or which the plaintiff intended to set up. [emphasis added]

In the present case, TCY was consulted on the Loan Agreement and had drafted it in the course of a solicitor-client relationship with the Tan Family.

138 One fact that Mr Khoo pointed to in support of TCY's case that he had not acted in the way of his business as an advocate and solicitor is that TCY had not rendered any bills for the work done that led up to the s 409 charges. He pointed to an email from Tommy Tan to TCY dated 29 August 2002 in which Tommy Tan stated that he wanted to pay TCY a fee but TCY had refused. [note: 19] At the trial below, Mr Khoo put it to Tommy Tan that TCY's rejection of a fee for his work showed that TCY was not acting as a lawyer in holding the S$1.5m on trust, but Tommy Tan disagreed: [note: 20]

> Q Now, the reason why [TCY] refused to charge you a fee for handling these five matters of holding the monies in trust to get back from Ong Boon Chuan the 10% to invest in Australia and to hold the 1.5 million is because he was not doing it as a lawyer where he could charge a fee but he was doing it as a favour for you and your family.
>
> A He said that, not me. I'm paying him, he don't want.
>
> ...
>
> Q I put it to you that in respect of all matters in which he acted for you professionally, like drafting the loan agreements for the CCC loan, right, and so on for --- for incorporating your company and related matters, he send you bills.
>
> A Yah, yah.
>
> Q Correct?
>
> A I'm the client.
>
> Q And that he did not want to charge you for these five transactions of holding in trust, selling Poh Lian shares and putting the money in Australia was because he was not acting for you as a lawyer
>
> A Disagree.
>
> Q All right.
>
> A Totally disagree.

139 I find that nothing turns on the fact that the work was done *ex gratia*; it is a factor that can go both ways. That TCY did not charge a fee for the work done which led to the s 409 charges may show that he was not acting in the way of his business as a solicitor, but may just as well show his intention to forgo the lesser amount of billable work in favour of obtaining the greater sums of S$1.5m and S$1,940,724.97.

140 More relevant is the correspondence between the parties which revealed that TCY consistently referred to himself, and was referred to by others, in his capacity as the Tan Family solicitor. A letter from Shankar, Nandwani & Partners to Tan Cheng Yew & Partners dated 30 July 2001 stated that their client, CCC, had enclosed a cheque for the sum of S$1.5m issued in favour of "your solicitor, Mr Tan Cheng Yew". [note: 21] Also on 30 July 2001, TCY wrote a letter on the letterhead of Tan Cheng Yew & Partners to the Commissioner of Stamp Duties for the assessment of the Loan Agreement. This letter provided that "We [*ie*, Tan Cheng Yew & Partners] are the solicitors for [the Tan Family]" and

that the Commissioner of Stamp Duties should not hesitate to contact "our Mr Tan Cheng Yew" for any queries. [note: 22] The references to TCY in his capacity as a solicitor continued after TCY subsequently joined Tan & Lim. On 19 October 2001, TCY wrote a letter to the Tan Family on the letterhead of Tan & Lim, stating the confirmation that Tommy Tan had put "our Mr Tan Cheng Yew" as trustee for the estate in funds of S$1.5m. [note: 23] The term "our Mr Tan Cheng Yew" is common parlance that a law firm uses when referring to an advocate and solicitor practising with that law firm. Attached to the letter dated 19 October 2001 was a copy of the fixed deposit slip for the S$1.5m which bore the firm stamp of Tan Cheng Yew & Partners. [note: 24] All this would contribute to the reasonable impression that TCY was acting in the way of his business as an advocate and solicitor.

141 As noted earlier at [137], the Loan Agreement which gave rise to entrustment of the S$1.5m to TCY on trust was drafted by TCY in the context of his solicitor-client relationship with the Tan Family. The relationship between the Tan Family and TCY was a solicitor-client relationship; not a relationship between friends or relatives, or any other kind of relationship. It must be remembered that while the plaintiff in *Lim Kok Koon* was the CEO of a public listed company and had previously consulted lawyers in his capacity as the top management of the company, Tommy Tan in the present case was said to be immature, naive, inexperienced, trusting, and "not a details person" (see [5] above). To Tommy Tan, the fact that TCY was a lawyer was crucial, and he trusted TCY to act as a trustee "because he was a lawyer". [note: 25] Had TCY not been a lawyer, Tommy Tan would not have entrusted the S$1.5m to him. [note: 26] Tommy Tan disagreed that a person from some other profession such as a doctor would be trusted to act as trustee, [note: 27] and stated as follows: [note: 28]

> Q The reason why you said the trustee shall be an advocate and solicitor in Singapore is because you agreed with me generally people trust lawyers generally.
>
> A Yes.
>
> Q And secondly it's because the lawyer knows the law.
>
> A True.

142 I therefore find that a reasonable person in the position of Tommy Tan and the Tan Family would have understood TCY to be acting in the way of his business as an advocate and solicitor. The facts support the finding that TCY was acting in the way of his business as an advocate and solicitor when the S$1.5m was entrusted to him. It was as the Tan Family solicitor that TCY had drafted the Loan Agreement which provided for the entrustment of the moneys to himself, and he had convinced all parties that it was preferable to only have one trustee, *viz*, himself, rather than two trustees. He has confessed that he intended to use the moneys for his own personal use, and the trustee arrangement furthered this intention. I thus uphold TCY's conviction on the First Charge.

The Third Charge

143 One of TCY's central arguments with regard to the Third Charge is that the operative document at the material time was the Deed of Trust and not Memorandum 1. As will be seen, this has an impact on each of the elements of CBT under s 409.

144 I will first deal with the element of entrustment with dominion over the property. Mr Khoo argued that the property which was entrusted to TCY was the Poh Lian shares and not the proceeds

of sale. This same argument had been advanced at the trial below but was rejected as resting on too fine a distinction (see [150] of the Judgment). Mr Khoo contended that the DJ had erred in law by failing to take into account the decision in *Carl Elias Moses v Public Prosecutor* [1995] 3 SLR(R) 433 ("*Carl Elias Moses*"). [note: 29] The charge sheet in *Carl Elias Moses* provided that the offender had been entrusted with shares and that he had dishonestly misappropriated the sale proceeds of the shares. Yong CJ found at [20] that the charge in that case was defective, as it provided that the offender was "entrusted with one sort of property but that he had dishonestly misappropriated another sort of property". There was also no evidence that the sale proceeds had been entrusted to the offender.

145 In the present case, the charge provides that the sale proceeds amounting to S$1,940,724.97 were entrusted to TCY, and that the sum of S$1,940,724.97 was then converted by TCY (see above at [1(c)]). In other words, the property entrusted is the self-same property which was misappropriated and the charge is not itself defective in the same way as that in *Carl Elias Moses*.

146 Further, in the present case, on a proper construction of Memorandum 1, both the Poh Lian shares *and* the sale proceeds from the sale of the Poh Lian shares, once the sale had taken place, were entrusted to TCY. Memorandum 1 authorises Tan Cheng Yew & Partners to negotiate the sale of the Poh Lian shares. As the DJ observed at [150] of the Judgment, it could not be the case that the Tan Family entrusted the Poh Lian shares to TCY such that the entrustment ended the moment the shares were sold, with the effect that TCY could do whatever he wanted with the sale proceeds. This would be absurd. This interpretation was not supported by TCY's own evidence. While under cross-examination, TCY described the sale proceeds of the Poh Lian shares as a debt that he owed to Tommy Tan: [note: 30]

> Witness: So if he recalls the debt that I owed, then I would have to look for alternatives again.
>
> Q What debts would this be, Mr Tan? He has not loaned you anything.
>
> A Yah, it's in relation to the matters in the 3rd charge.
>
> Q The proceeds from the sale of Poh Lian shares?
>
> A Yes, Sir.

If there had been no obligation on TCY to return the sale proceeds of the Poh Lian shares to Tommy Tan, TCY would not have owed Tommy Tan any debt in relation to the sale proceeds. TCY's obligation is best explained by the entrustment of the sale proceeds of the Poh Lian shares, *ie*, the S$1,940,724.97, to him by the Tan Family.

147 Even if I accept TCY's argument that the Deed of Trust was the operative instrument rather than Memorandum 1, this does not assist TCY. Under the Deed of Trust, TCY declared that he stood possessed of A$3m (comprising S$1,940,724.97 and S$900,000) on trust for the Tan Family as beneficiaries. Therefore, even on TCY's case, there was entrustment.

148 As for the element of dishonesty, this is clearly made out. TCY admitted in his long statement that the purported investment in an Australian bank was simply a device that he used to trick Tommy Tan: [note: 31]

> ... *After I have managed to trick Tommy Tan* into allowing me to hold on to the sales proceeds

> [from the sale of the Poh Lian shares] in my bank accounts, *I needed an excuse* why I could not return him the money. ... [emphasis added]

149 Again, the nub of the matter is whether TCY was acting in the way of his business as an advocate and solicitor when he was entrusted with S$1,940,724.97. As noted above, TCY's case is that when the negotiation of the sale of the Poh Lian shares failed, his authority under Memorandum 1 to act as the Tan Family's lawyer correspondingly ended. Therefore, the operative instrument at the time of the sale of the Poh Lian shares was the Deed of Trust. As TCY's authority to act as the Tan Family's lawyer had ended, the sale of the Poh Lian shares on the open market was done in his personal capacity. Mr Khoo argued that it is not in the nature of the business of an advocate and solicitor to engage in commercial transactions such as the sale of shares on behalf of a client. *Marc Lim* was cited in support of this proposition. At this juncture, I emphasise that the material event for the purposes of the Third Charge is the sale of the Poh Lian shares, and not the subsequent purported investment of the sale proceeds of Poh Lian shares.

150 With respect, I find that *Marc Lim* is not directly applicable to the present case. Like *Lim Kok Koon*, the issue in *Marc Lim* was whether the innocent partners of a law firm should be made liable for the misdeeds of one of the partners. The court was thus called on to determine whether the acts of the partner in question were part of the ordinary business carried out by the firm. It was in the context that the court stated:

> 41 One classic form of a non-trading partnership is the law firm. A law firm's business is to provide legal services. It does not buy, sell or trade in goods; neither does it engage in the business of extending credit. Although like other partnership businesses in general, it is usual for a partner to buy goods reasonably incidental to the law firm's business, *the individual partners of a law firm (or even the managing partner) generally have no ostensible authority to,* inter alia*, borrow money, enter into financial commitments or give guarantees*. Such a power must be expressly conferred by the partnership articles to bind the firm and its partners or impliedly given by clear and incontrovertible conduct. The borrowing of money by a partner in a non-trading firm is not usual conduct unless the firm's business is of such a kind that it cannot be carried on in the usual way without such a power (see [R C I'Anson Banks, *Lindley & Banks on Partnership* (Sweet & Maxwell, 18th Ed, 2002)] at para 12-52). Plainly, a law firm does not satisfy this criterion. [emphasis in original]

151 As stated earlier at [135], the business of a law firm is not necessarily coextensive with the business of an advocate and solicitor. This distinction was alluded to in *Marc Lim* at [42]:

> ... a mere assurance by a solicitor that his undertaking is given in the usual course of business is not sufficient to bind his partners where, on an objective view, the undertaking had not been given in relation to an underlying transaction of a kind which was part of the usual business of a solicitor (see [*Hirst v Etherington [1999] Lloyd's Rep PN 938*] at 945).

While *Marc Lim* held that an assurance from a solicitor that an undertaking was given in the usual course of business would be insufficient *to bind the firm and the partners of the firm*, nothing was said on whether the undertaking would be sufficient to bind the *solicitor himself*. I see absolutely no reason why it should not bind the solicitor himself.

152 Therefore, while it might not be in the way of a firm's business to buy, sell or trade in goods such as shares, it might be in the way of a solicitor's business, if he gives an undertaking to do so, and if a reasonable and competent person of the same kind as the party dealing with the solicitor believes him to be acting in the way of his business.

153 TCY had embarked on the sale of the Poh Lian shares after Memorandum 1 was signed, and *before the Deed of Trust was entered into*. There was no instrument which authorised TCY to sell the Poh Lian shares on the open market in the intervening period. Therefore, although TCY has contended that the operative instrument is the Deed of Trust, I find that at the time of entrustment, the operative instrument was Memorandum 1. As noted above at [23(b)], Memorandum 1 provided that "I, Tan Kwee Khoon Tommy ... authorize M/s Tan Cheng Yew & Partners to negotiate the sale of all shares in Poh Lian Holdings Limited ...". [note: 32] TCY accepted that the authorisation under Memorandum 1 was given to the firm and not to him in his personal capacity. [note: 33] When TCY acted pursuant to Memorandum 1, he was thus acting in the way of his business as an advocate and solicitor.

154 While it is possible for an advocate and solicitor to act in his personal capacity *vis-à-vis* a client, the test is whether a reasonably careful and competent person of the same kind as Tommy Tan and the Tan Family would have understood TCY to be acting in the way of his business. The Tan Family had, through Memorandum 1, authorised Tan Cheng Yew & Partners to negotiate the sale of the Poh Lian shares to Poh Lian management. When the negotiations fell through, TCY then sold the shares on the open market. In so doing, TCY gave no indication he was acting otherwise than as a continuation of his initial undertaking in the way of his business as an advocate and solicitor. Far from that, his actions had the effect of solidifying the impression that he continued to act in the way of his business as an advocate and solicitor:

(a) Notably, in three separate letters, one dated 21 April 2001 and two dated 24 April 2001, TCY made disclosure of the sale of the Poh Lian shares on the letterhead of Tan Cheng Yew & Partners. [note: 34] Tommy Tan was aware of this as the letter dated 24 April 2001 had been copied to him.

(b) TCY's letter to Tommy Tan dated 27 June 2001 had also been written on the letterhead of Tan Cheng Yew & Partners. [note: 35] In that letter, TCY informed Tommy Tan that the Poh Lian shares had been sold on the open market and requested that Tommy Tan should "[p]lease let us know" when he would be free for a meeting. Such language is indicative that TCY was writing on behalf of Tan Cheng Yew & Partners.

(c) Further, even after the Deed of Trust was entered into, in a series of emails dated 4 June 2002, TCY persisted in referring to Tommy Tan and the Tan Family as his "clients". [note: 36]

155 Taken as a whole, I find that a reasonable person in the position of Tommy Tan and the Tan Family would find that TCY had been acting in the way of his business as an advocate and solicitor based on his acts in furtherance of the sale of the Poh Lian shares.

156 I come to Mr Khoo's argument that the Deed of Trust amounts to an *ex post facto* authorisation of TCY's conversion of the S$1,940,724.97. [note: 37] Mr Khoo relied on the following clauses of the Deed of Trust:

3. We hereby rectify [*sic*] all acts done by Tan Cheng Yew on our behalf including all oral instructions given relating to the sale of shares in Poh Lian Holdings Limited and the disposal of the proceeds of sale which were done at our request and on our instructions or the instructions of Tan Kwee Khoon Tommy, on whose instructions Tan Cheng Yew is fully entitled to act upon.

4. …

5. We hereby fully discharge Tan Cheng Yew from any further obligation owed to us prior to this date in respect [of] the sale of shares in Poh Lian Holdings Limited and the disposal of the said sale proceeds and any obligations owed to us will be pursuant to the terms of this Deed of Trust dated 25 May 2001 only and is superceded [sic] by the said Deed of Trust.

6. We acknowledge that we have been advised to and have sought independent legal advice.

If this amounts to an argument that TCY's criminal liability is ameliorated by the Deed of Trust, it is sorely misconceived. TCY has admitted to using the moneys for his own purposes, primarily for the repayment of his gambling debts, and he started doing so as early as 31 March 2001, before the Deed of Trust was even entered into. [note: 38] Therefore, by the time the Deed of Trust was entered into, Tan had already committed CBT under s 409. An agreement to withdraw, discontinue or terminate criminal proceedings would be against public policy.

157 Further, even if I accept that the Deed of Trust authorised TCY to invest, *inter alia*, the sale proceeds of the Poh Lian shares with an Australian bank, this does not assist TCY. By TCY's own admission, the S$1,940,724.97 was never invested in an Australian bank: [note: 39]

> But the truth of the matter is that by then, the original $1.9 million sale proceeds of the Poh Lian shares were already dissipated. Really, there was no time deposit with any Australian bank. ...

158 The fact that there was no investment in an Australian bank suffices to dispose of the argument based on Memorandum 2. While Memorandum 2 provided that the moneys would only be transferred to the Australia bank if the beneficiaries expressly authorised it, this does not assist TCY as there was never an investment.

159 I thus find that as regards the Third Charge, all the elements of CBT under s 409 have been met. TCY's conviction on the Third Charge is upheld.

Issue 5

160 TCY was convicted under the s 420 charges and challenges his conviction under these two charges.

TCY's case

The Second Charge

161 It is hotly disputed between TCY and the prosecution as to whether TCY made a representation to Tommy Tan that it was a legal requirement for CCC, as the borrower of the S$1.5m, to make payment to the Tan Family within the first two years of the loan period. According to the prosecution, Tommy Tan did not wish CCC to have to bear the burden of repayment as yet, [note: 40] TCY then told him to give TCY the S$480,000 to make it appear as if CCC had made the payment. For reasons which I will make clear later at [166], this dispute is a red herring. TCY's case is that Tommy Tan could not have been deceived by the alleged representation. [note: 41] According to TCY, both Tommy Tan and Tan Siew Hwee (a pastor with CCC) knew the terms of the Loan Agreement, and should have known that CCC's repayment obligations would not be triggered at the material time.

162 At the trial below TCY had given a different account of the representation that he made which induced Tommy Tan to part with the S$480,000. He contended that the S$480,000 comprised the following sums: [note: 42]

(a) S$375,000 to be given to Vincent Tan, one of the beneficiaries under Tan Siew Seng's estate. Vincent Tan was allegedly unhappy about the loan to CCC as he was not a Christian and not a member of CCC, and the distribution of S$375,000 to him was to pacify him.

(b) S$5,000 as TCY's legal fees.

(c) S$100,000 to be divided between other beneficiaries.

The Fourth Charge

163 Mr Khoo also raised a further argument that Tommy Tan had not been deceived, as the Tan Family had obtained independent legal advice before signing the Deed of Trust. He pointed out that the Deed of Trust was dated 25 May 2001, and that by May 2001 the Tan Family had consulted two lawyers, *viz*, Shankar and one Peter Gabriel. [note: 43] Paragraph 6 of the Deed of Trust thus provided an acknowledgement that the Tan Family had been advised to and had sought independent legal advice. [note: 44] Mr Khoo argued that this independent legal advice prevented the deception exercised by TCY from having any effect, and thus the offence of cheating is not made out.

The prosecution's case

The Second Charge

164 The prosecution contended that TCY's arguments as regards the Second Charge ignored the fact that there was a large degree of trust reposed by the Tan Family, and especially Tommy Tan, in TCY. When TCY represented that there was a legal requirement for CCC to repay the S$1.5m loan, Tommy Tan did not ask why there was this requirement as he was then immature and young, and relied on TCY's guidance and advice to manage the money he inherited. Given the nature of the relationship between the parties, the prosecution argued that the logical construction of the Loan Agreement regarding the loan repayment obligations was "irrelevant". [note: 45]

Analysis and decision

The Second Charge

165 It is clear that there was delivery of S$480,000 from Tommy Tan to TCY. TCY did not deny having received a cheque for the sum of S$480,000 from Tommy Tan. [note: 46]

166 The next element that needs to be shown for the offence of cheating to be made out is deception, *ie*, the accused must have represented something to the victim which the accused knew was not true. While there was a dispute on what the representation made by TCY to Tommy Tan was, I find that this dispute is a red herring. Whatever the representation was, be it that there was a legal requirement for CCC to repay the loan within the first two years; or that the money was required for distribution to the beneficiaries (see above at [162]), *neither* one was true. Crucially, TCY conceded in his long statement that he had misappropriated the S$480,000 (ROP vol 3 p 2403):

... I am not saying I did not misappropriate the $480,000. I did misappropriate the money for my

own use but it is not the same way in which the 2nd charge described it.

167 He then went on to admit that he had no intention of using the S$480,000 in the manner in which he informed Tommy Tan that the moneys would be used for: [note: 47]

> ... I had not [sic] intention [sic] to distribute the $480,000 in the manner in which I have described earlier.
>
> In fact, between August 2001 and February 2002, I was chasing Tommy Tan for the $480,000 by lying to him that I had intended to comply with his instructions to distribute the $480,000 in the manner in which I have described earlier.
>
> But in reality, I was only lying to Tommy Tan as I was in debt and desperately needed money to clear my debts. When I lied to Tommy Tan in the above, I had no intention to fulfil them.

Therefore, even on the basis of TCY's version, he knew that it was not true, as he had no intention to use the S$480,000 for the represented purpose, but intended to use it to repay his gambling debts.

168 For the sake of completeness I add that I agree with the DJ's finding that the alleged representation was as stated by Tommy Tan. At the trial below, Tommy Tan had stated that TCY informed him of the purported legal requirement on CCC to repay the loan within the first two years. [note: 48] Tommy Tan's testimony was corroborated by Tan Siew Hee who stated that TCY had called him and explained that there was a legal requirement that payments had to be made to the Tan Family during the first two years of the loan period. [note: 49] The existence of the alleged representation is also supported by evidence. In an email from Tommy Tan to TCY dated 29 August 2002, Tommy Tan had described the S$480,000 being for church, *ie*, CCC, building related purposes, and noted that TCY was assisting him to get back the investment. [note: 50] Conversely, TCY's case that the S$480,000 comprised the S$375,000 to be paid to Vincent Tan was not supported by the evidence. There was a separate cheque for the sum of S$375,000 to Vincent Tan which predated the cheque for the S$480,000. [note: 51]

169 The next element that needs to be shown is that of inducement. The deception does not need to have been the sole or main inducement for the victim to have delivered the property to the accused (*Chow Dih v Public Prosecutor* [1990] 2 MLJ 197 ("*Chow Dih*")). This position has now been codified in s 415 of the Penal Code. Tommy Tan stated that he would not have given the S$480,000 to TCY if there had not been any legal requirement to do so. [note: 52] He testified that he trusted TCY that there was in fact such a legal requirement as TCY was his lawyer, whom he trusted, and he himself did not know any better about the law: [note: 53]

> ... At the same time he told me it's legal requirement. ... I mean there is a law somewhere because we really don't know. And he's---I mean it was with him. I mean it was spoken by him. so we thought it's---legal requirement. We don't want to play along with the law. So we don't know. So basically we---we trusted him as a lawyer. So that's what---the four-eighty [*ie*, the S$480,000] was given. ...

170 I thus find that the elements of cheating are made out under s 420 and uphold TCY's conviction on the Second Charge.

The Fourth Charge

The Fourth Charge

171 TCY admitted that he received a cheque for the sum of S$900,000 from Tommy Tan. There was thus delivery of the S$900,000 from Tommy Tan to TCY.

172 Deception is also made out. TCY admitted that he obtained the S$900,000 by lying to Tommy Tan that the S$900,000 was to be invested in an Australian bank together with the sale proceeds of the Poh Lian shares (*viz*, the sum of S$1,940,724.97 which forms the subject-matter of the Third Charge) to make up the sum of A$3m. TCY had represented that he would only be able to negotiate for a higher interest rate with the Australian bank if he had a larger sum of money to invest and he thus required the additional S$900,000. However, TCY's true intention was to use the S$900,000 to settle his gambling debts: [note: 54]

> Question 135 Is it true that sometime in May 2002, you persuaded Tommy Tan to invest another S$900,000 in the time deposit with an Australian bank?
>
> Answer Yes. I needed more money to settle my gambling debts and I lied to Tommy Tan and his family that I would be in a better position to negotiate with an Australian bank if I had more money to deposit.
>
> But the truth of the matter is that by then, the original $1.9 million sales proceeds of the Poh Lian shares were already dissipated. Really, there was no time deposit with any Australian bank. I had no intention to place the $900,000 in any account. I was going to use the money to settle my gambling debts.

173 TCY's case is that the element of inducement was not met, as the Tan Family had obtained independent legal advice before signing the Deed of Trust and his representation of the higher interest rates was no longer operative on Tommy Tan's mind when he delivered the S$900,000 to him. I note that the fact that the S$900,000 was delivered to TCY three days after the Deed of Trust was signed seems to support this. However, in response to questions from the DJ, Tommy Tan was adamant that he would not have given TCY the S$900,000 were it not for the representation of a higher interest rate: [note: 55]

> Q ... Would you have given him this amount of money [*ie*, S$900,000] if you had known that it was not to be used to earn you a better interest rate?
>
> A No, no. No way. No way. No way I will give this money away. [sic]

174 As noted above at [169], pursuant to *Chow Dih*, the deception does not need to have been the sole or main inducement. In other words, it suffices if it was *an* inducement, and it is clear that the representation made by TCY to Tommy Tan regarding the higher interest rate had induced Tommy Tan to deliver the S$900,000 to TCY.

175 Therefore, I agree with the DJ that the Deed of Trust did not exonerate TCY from the act of deception which he had practised on Tommy Tan, with regard to his request for the S$900,000 and the fact that he had committed breach of trust in respect of the S$1,940,724.97 (Judgment at [161]).

Conclusion on MA 97/2011/02

176 In conclusion, I have found TCY's convictions on each of the four charges to be sound in law and to be made out on the facts. TCY's appeal on conviction is thus dismissed. I now turn to the MA

97/2011/01, *viz*, the prosecution's appeal against sentence on the ground that the sentence imposed by the DJ was manifestly inadequate.

Issue 6: Was the sentence manifestly inadequate?

177 The prosecution submitted that the sentence of nine years' imprisonment was manifestly inadequate, and pressed for a deterrent sentence in the region of 13 years. It was argued that the sentences imposed were not consistent with sentencing precedents and that the DJ had failed to attach sufficient weight to the public interest in deterring errant lawyers who abscond after misappropriating funds entrusted to them. The sentence also did not reflect the aggravating factor that the four charges involved large sums of money. While the DJ had correctly held that that there was no doubt that the amounts involved in the four charges involved were "significantly high" and that "[b]y any standard this would be regarded a substantial sum considering that these offences were committed almost 10 years ago" (at [179] of the Judgment), this was not reflected in the sentence meted out.

178 The following sentences were imposed by the DJ for each charge:

(a) five years' imprisonment for the First Charge under s 409 involving S$1,500,000;

(b) three years' imprisonment for the Second Charge under s 420 involving S$480,000;

(c) five years' imprisonment for the Third Charge under s 409 involving S$1,940,724.97; and

(d) four years' imprisonment for the Fourth Charge under s 420 involving S$900,000.

The total sum involved in the four charges was S$4,820,724.97. The DJ ordered the sentences for the First Charge and Fourth Charge to run consecutively with the remaining sentences running concurrently, for a total of nine years' imprisonment.

179 The prosecution did not cite any sentencing precedent for CBT under s 409 committed by members of the legal profession that involved sums of approximately similar magnitude, but submitted that the sentences imposed by the DJ were not in line with the relevant benchmarks. The prosecution pointed to a number of cases (see below at [182]) involving smaller sums where proportionately heavier sentences were imposed under s 409 prior to the Penal Code (Amendment) Act 2007 (No 51 of 2007) ("the 2008 amendments to the Penal Code"). The 2008 amendments to the Penal Code increased the maximum punishment under s 409 from ten years' imprisonment or life imprisonment to twenty years' imprisonment or life imprisonment.

180 In *Wong Kai Chuen Philip v Public Prosecutor* [1990] 2 SLR(R) 361 ("*Philip Wong*"), the offender pleaded guilty to two charges under s 409 with four charges taken into consideration for sentencing. The total sum involved in the six charges was S$1,841,232.36 and the two charges involved S$143,220.15 and S$683,039.40 respectively. No restitution was made. The offender was sentenced to 36 months for each charge, with both charges ordered to run consecutively for a total of 72 months. On appeal, Chan Sek Keong J upheld the sentence. In *Sarjit Singh (HC)*, the offender was convicted of one charge under s 409 for dishonestly misappropriating S$4815.24 from the firm's client account. He was sentenced to seven months' imprisonment. On appeal, Yong CJ enhanced the sentence to 36 months' imprisonment. I was also directed to *Public Prosecutor v Tan Chong Phang Victor* (DAC 47721-80/2008) ("*Victor Tan*"), an unreported decision where the offender, a solicitor, was sentenced to 30 months' imprisonment for an offence involving S$32,484.

181 With respect to the sentences imposed for the s 420 charges, the prosecution relied on the case of *Leong Wai Nam*, where a solicitor was sentenced to two-and-a-half years' of imprisonment for a cheating offence involving S$4,300. The accused in that case was sentenced under the pre-2008 Penal Code regime, where the maximum punishment under s 420 was seven years' imprisonment. The maximum punishment has been increased to ten years' imprisonment pursuant to the 2008 amendments to the Penal Code.

182 The following table shows the sentences imposed by the court against the amounts involved. Unless otherwise stated, the offences committed in these cases pre-date the 2008 amendments to the Penal Code.

	Case	**Offence**	**Amount involved (S$)**	**Sentence (months)**
1	*Leong Wai Nam*	S 409 (as attorney)	48,000	36 (enhanced from 18) (consecutive)
		S 406	1,800	6
		S 409 (as agent)	1,300	10
		S 420 of the Penal Code (Cap 224, 2008 Rev Ed)	4,300	30 (enhanced from 14) (consecutive)
		S 409 (as agent)	1,500	10
		S 409 (as agent)	4,000	12 (consecutive)
		TIC 10 charges (2 under s 406, 7 under s 409, 1 under s 420)	32,470.38 (restitution of 25,000 made)	
		Total (including taking into consideration ("TIC") charges and subtracting restitution)	**68,370.38**	**78**
2	*Sarjit Singh (HC)*	S 409 (as agent)	4,815.24	36 (enhanced from 7)
3	*Victor Tan*	S 409 (as attorney)	32,484	30 (consecutive)
		S 406	73,795.50	24 (consecutive)
		S 465 of the Penal Code ("s 465")	13,555.50	12
		TIC 29 charges under s 465	(restitution of 11,500 made)	
		Total (including TIC charges and subtracting restitution)	**181,575**	**54**
4	*Philip Wong*	S 409 (as agent)	143,220.15	36 (consecutive)

		S 409 (as agent)	683,039.40	36 (consecutive)
		TIC 4 charges under s 409 (as agent)	1,014,972.81 (no restitution)	
		Total (including TIC charges)	**1,841,232.36** [note: 56]	**72**

183 By way of comparison, the following table shows the sums involved and the sentences imposed in the present case by the DJ.

	Offence	**Amount involved**	**Sentence (months)**
1	S 409 (as attorney)	S$1.5m	60
2	S 420	S$480,000	36 (concurrent)
3	S 409 (as attorney)	S$1,940,724.97	60 (concurrent)
4	S 420	S$900,000	48 (consecutive)
Total		**S$4,820,724.97**	**108 months** **(9 years)**

184 The larger the amount misappropriated, the greater the degree of culpability, and the more severe the sentence that may be imposed by the court: see *Philip Wong*, approved in *Public Prosecutor v Lee Meow Sim Jenny* [1993] 3 SLR(R) 369 and *Gopalakrishnan Vanitha v Public Prosecutor* [1999] 3 SLR(R) 310. However, it is commonsense that sentences imposed for CBT or cheating offences do not bear a relationship of linear proportionality with the sums involved. I therefore do not think that the mere fact that proportionately higher sentences were given for smaller sums must inevitably mean that the sentence in the present appeal was manifestly inadequate and out of line with sentencing precedents. I am, however, in agreement with the prosecution that the DJ did not give sufficient weight to the aggravating factors and the need for general deterrence in the public interest; despite the DJ's reference to the "totality" principle, the overall sentence did not reflect the overall gravity of TCY's fraudulent conduct.

185 The DJ rightly did not consider that there was any significant distinction between TCY's conduct and that of a solicitor who embezzles money from client accounts – as was the case in *Leong Wai Nam*, *Sarjit Singh (HC)* and *Philip Wong* – and rejected the defence submission that TCY's conduct should therefore be viewed less severely. However, in my view, TCY's conduct is in fact *more egregious* than the typical breach of trust by a solicitor. This is because much pre-meditation and planning had gone into these offences. It was not merely a situation where he had taken money entrusted to him in his professional capacity, but where he had *actively* abused the unstinting trust reposed in him as both a lawyer and a friend to procure the entrustment of moneys to him that he had no intention of returning from the outset. TCY had taken full advantage of the trust reposed in him by Tommy Tan by taking carefully calculated steps to put himself in a position where he could exploit that trust for his personal benefit.

186 With respect, the DJ also erred in giving substantial mitigatory weight to the fact that TCY was

a "first offender". TCY had repeatedly defrauded Tommy Tan and his family over an extended period, and the leniency that may be extended to an offender who transgresses the law on an isolated occasion does not apply to an offender who was simply fortuitous in avoiding detection on the first occasion: see *Public Prosecutor v Koh Seah Wee and another* [2012] 1 SLR 292 at [56].

187 More importantly, I consider that the DJ failed to give due regard to the public interest in imposing a general deterrence sentence in categories of cases such as the present. The principles relating to general deterrence were explained by V K Rajah J ("Rajah J") in *Public Prosecutor v Law Aik Meng* [2007] 2 SLR(R) 814. Rajah J considered the *type* of offence that would warrant a general deterrence sentence (at [24]):

> 24 General deterrence aims to educate and deter other like-minded members of the general public by making an example of a particular offender: *Meeran bin Mydin v PP* [1998] 1 SLR(R) 522 at [9] ("*Meeran bin Mydin*"). Premeditated offences aside, there are many other situations where general deterrence assumes significance and relevance. These may relate to the type and/or circumstances of a particular offence. Some examples of the types of offences, which warrant general deterrence are:
>
> ...
>
> > (c) *Offences involving professional or corporate integrity or abuse of authority*: In the leading local decision of *Wong Kai Chuen Philip v PP* [1990] 2 SLR(R) 361, Chan Sek Keong J (as he then was) emphatically asserted at [30] that the criminal breach of trust by a lawyer in the discharge of his professional duty must inevitably call for a custodial sentence of a deterrent nature, not so much to deter the offender concerned but rather to deter other members of his profession from committing similar offences. It is axiomatic from this statement that general deterrence is an important consideration in many commercial offences. A similar view was taken by the English Court of Appeal in *R v John Barrick* [1985] 7 Cr App R (S) 142, a guideline judgment declaring that breach of trust by professional workers was a significant aggravating factor that should precipitate more severe penalties: see the observations of Mirko Bagaric in *Punishment & Sentencing: a Rational Approach* (Cavendish Publishing Limited, 2001) at p 139, footnote 49. Offences involving listed companies could similarly come under this category. ...
>
> [emphasis in original]

188 In the oft cited words of Chan Sek Keong J, in *Philip Wong* at [30]:

> Lawyers trade on their honesty. They sell their trustworthiness. Accordingly, one of the gravest offences an advocate and solicitor can commit is to take his clients' money. Criminal breach of trust by a lawyer in the discharge of his professional duty must inevitably call for a custodial sentence of a deterrent nature, not so much as to deter the offender concerned but to deter other members of his profession from committing similar offences.

With respect, I agree fully with these observations. An advocate and solicitor is an officer of the court to which he had pledged his full assistance in upholding justice and the law. He is granted the exclusive privilege to represent a party in courts of law and commands a level of trust unequalled in any profession. Where lawyers commit an offence, it strikes at the very heart of the profession – its honour and integrity. Where lawyers commit an offence against the clients who entrust them with their business and personal affairs as well as their money, the court will not hesitate to impose a strong deterrent sentence.

189 Accordingly, I hold that the overall sentence was manifestly inadequate and order that the sentences for the First Charge and Third Charge be enhanced to imprisonment of six years, with the sentence in the Third Charge to run consecutively with that in the First Charge. I will not interfere with the sentences of imprisonment for the Second Charge and Fourth Charge, which will run concurrently with the sentences in the First Charge and Third Charge. In summary the sentences are as follows:

Charge	**Sentence**
The First Charge	Six years' imprisonment
The Second Charge	Three years' imprisonment (concurrently with the sentence for the First Charge)
The Third Charge	Six years' imprisonment (consecutively with the sentence for the First Charge)
The Fourth Charge	Four years' imprisonment (concurrently with the sentence for the First Charge)
	Total: 12 years' imprisonment

190 The total sentence of imprisonment is therefore 12 years, to be backdated to commence from 22 October 2009, the date of TCY's extradition to Singapore.

[note: 1] Record of Proceedings ("RP") vol 3 at p 2190

[note: 2] RP at p 2190

[note: 3] RP vol 5 at p 3632

[note: 4] RP vol 4 at p 2719

[note: 5] RP vol 4 at p 2720

[note: 6] RP vol 4 at p 2723

[note: 7] RP vol 4 at p 2710

[note: 8] Mr Khoo's skeletal arguments at para 60

[note: 9] Prosecution's skeletal arguments at para 67

[note: 10] RP vol 3 at p 2401

[note: 11] Mr Khoo's submissions at para 75

[note: 12] ROP vol 5 at p 3902

[note: 13] ROP vol 5 at p 3899

[note: 14] ROP vol 1 at p 675

[note: 15] prosecution’s skeletal arguments at para 72

[note: 16] ROP vol 5 at pp 3937 – 3938

[note: 17] NE at pp 227 – 228

[note: 18] ROP vol 3 at p 2406

[note: 19] ROP vol 4 at p 2521

[note: 20] ROP vol 1 at pp 551 – 553

[note: 21] ROP vol 3 at p 2206

[note: 22] ROP vol 4 at p 2724

[note: 23] ROP vol 3 at p 2208

[note: 24] ROP vol 3 at p 2209

[note: 25] ROP vol 1 at p 201

[note: 26] ROP vol 1 at p 493

[note: 27] ROP vol 1 at p 201

[note: 28] ROP vol 1 at p 202

[note: 29] Mr Khoo’s submissions at para 84

[note: 30] ROP vol 2 at p 1399

[note: 31] ROP vol 3 at pp 2409 – 2410

[note: 32] ROP vol 5 at p 3822

[note: 33] ROP vol at p 39 para 39(b)

[note: 34] ROP at pp 3867, 3870, 3873

[note: 35] ROP at p 3862

[note: 36] ROP vol 4 at pp 2746 – 2748

[note: 37] ROP vol 3 at p 2191

[note: 38] ROP vol 3 at pp 2410 – 2412

[note: 39] ROP vol 3 at p 2413

[note: 40] ROP vol 1 at p 128

[note: 41] ROP vol 1 at p 45

[note: 42] ROP vol 3 at p 2404

[note: 43] ROP vol 1 at pp 375 – 376 and 488

[note: 44] ROP vol 3 at p 2191

[note: 45] prosecution's skeletal arguments at para 104

[note: 46] ROP vol 2 at p 1171

[note: 47] ROP vol 3 at pp 2405 – 2406

[note: 48] ROP vol 1 at p 129

[note: 49] ROP vol 1 at p 561

[note: 50] ROP vol 4 at p 2521

[note: 51] ROP vol 2 at pp 1435 – 1436

[note: 52] ROP vol 1 at p 131

[note: 53] ROP vol 1 at p 129

[note: 54] ROP vol 3 at p 2413

[note: 55] ROP vol 1 at p 150

[note: 56] While *Philip Wong* at [4] calculates the total to be S$1,841,232.20, this calculation is incorrect