

O N A P P E A L

FROM THE COURT OF APPEAL OF HONG KONG

B E T W E E N :

LEUNG CHOW PUBLIC CAR COMPANY

(PLAINTIFFS)
APPELLANTS

- AND -

THE ATTORNEY GENERAL

(DEFENDANT)
RESPONDENT

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APPELLANT'S CASE

RECORD

1. This is an appeal from a judgment dated 20th February 1981 of the Court of Appeal of Hong Kong (Sir Alan Huggins, V-P, Leonard and Cons JJ) dismissing an appeal from a judgment dated 8th May 1980 of the Supreme Court of Hong Kong (Liu J.). By the aforesaid judgment the learned judge dismissed the Appellants' claim for damages in respect of the Commissioner of Transport of Hong Kong's ultra vires refusal on July 22nd 1976 to grant the Appellants' application for the registration of 47 vehicles as public cars. The learned Judge furthermore dismissed the Appellants' claims for a series of declarations that, in reducing the limit of the total number of motor cars that might be registered as public cars on July 7th 1977, the Commissioner had acted ultra vires; that he had done so either knowingly or with malice; and that the Appellants were entitled to have applications for the registration of 47 vehicles as public cars entertained on their merits.

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2. The determination of this appeal depends firstly on three issues relating to the legality of the Commissioner of Transport's reduction of the total number of vehicles registrable as public cars on July 7th 1977. The power which the Commissioner purported to exercise in making the said limitation stems from Section 4 1(j) of the Road Traffic Ordinance No.39 of 1957 [CAP. 220] by which the Governor of Council is empowered to make regulations for limiting the number of certain classes of vehicles that may be registered; and from the regulation made thereunder, namely Regulation 18(B)(1) of the Road Traffic (Registration and Licensing of Vehicles) Regulations.

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The statutory provisions and Regulations relevant to this Appeal are set out in full in the Appendix⁷. Regulation 18(B)(1)(d) empowered the Commissioner to limit by "notice in the Gazette" the number of vehicles which may be registered as "public cars". The first issue concerns the purposes for which the Commissioner is empowered to exercise his discretion under Regulation 18(B)(1). The Appellants submit that the said power can only be exercised for one of the two purposes specified in the allied Regulation 17(1)(a), (which governs the Commissioner's discretion to refuse registration of any motor vehicle) namely, "in the interests of "public safety" or the "regulation of vehicular traffic in the colony". The second issue is whether it is consistent with a proper exercise of the discretion conferred by Regulation 18(B)(1) to limit a class of vehicles for the Commissioner of Transport to take a decision by reference to a government policy to abolish that type of vehicles, and to fail to take into account the effect of such a decision on would-be applicants. The third issue is whether, as a matter of fact, the Commissioner of Transport acted maliciously or with knowledge that his act was ultra vires in reducing the limit on public cars.

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3. Secondly, the determination of this appeal depends on the verdict on two further issues. These issues relate, in particular, to the Appellants' entitlement to damages claimed both for the Commissioner's wrongful act in refusing the application for the registration of 47 public cars in 1976, and for the Commissioner's wrongful reduction of the limit for public cars and subsequent refusal of 47 similar applications for the registration of 47 vehicles as public cars both in July 1976 and in July 1977, the Appellants were the owners of the said vehicles within the meaning of the word "owner" in Regulation 4(1) of the aforesaid Road Traffic Regulations. Compliance with the terms of Regulation 4(1) is a precondition for registration and Regulation 4(1) provides as follows:

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"Any person who wishes to have registered a motor vehicle, of which he is the owner, shall deliver to the Commissioner an application for registration in such form as shall be prescribed by the Commissioner, and shall pay to the Commissioner the sum of \$10."

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The point at issue is whether the word "owner" in Regulation 4(1) must be construed as signifying full ownership in the sense required by commercial law or whether, as the Appellants submit, it can be given a more liberal interpretation. The fifth and final issue is whether the case of Attorney General -v- Ng Kee (1978) H.K.L.R. 32 which the Court of Appeal held to be binding on it in considering the Appellants' claim for damages, was rightly decided. In Ng Kee the Hong Kong Court of Appeal decided in the negative the question whether a person had a cause of action where he suffered loss by

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reason of the act of a public officer who has acted ultra vires without malice of knowledge that he was so acting. The Appellants submit that the legal principle enunciated in Ng Kee is wrong and in particular is in conflict with the established principle that a remedy of damages is available for a person suffering loss by reason of a public officer's non-performance of a statutory duty provided that the potential beneficiaries of the performance of that duty constitute an ascertainable class of individuals which includes the person claiming damages, and the statute itself provides no remedy for the non-performance of the duty.

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4. The Appellants carried on business as a partnership operating public cars and public light buses to provide a private hire service in the colony of Hong Kong. On 9th July 1976, the Appellants executed an agreement for the purchase of 47 vehicles with a firm named Honest Motors Limited. On 11th July 1976, the Appellants through their solicitors, submitted formal applications as prescribed by the Minister under the aforesaid Regulation 4(1) for the registration of these 47 vehicles as public cars. By a letter dated 22nd July 1976 from the Commissioner for Transport to the Appellants' solicitors, the Commissioner stated that the said applications were barred from consideration in consequence of the Gazette Notice No.2670 of 1975 dated 5th December 1975 limiting the number of motor vehicles that might be registered and licensed as public cars to 1,388. However, at the time of the said applications, there were in fact only 1,293 vehicles registered and licensed as public cars leaving 95 vacancies before the said limit was reached. The Commissioner subsequently stated that the said vacancies were not available to the Appellants as he was "committed" to grant them to other people. It later transpired that, in respect of the said 95 "committed vacancies" no forms prescribed under the aforesaid Road Traffic Regulations had been submitted at any time.

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p.4 1.11-16

5. As a result of the Commissioner's refusal to register the said vehicles as public cars, the Appellants bought proceedings against the Commissioner by originating summons issued on 17th December 1976 out of the Supreme Court of Hong Kong entitled High Court Miscellaneous Proceedings Action No. 750 of 1976. These proceedings were caused to be instituted against the Commissioner in the name of the Attorney General under the provisions of the Crown Proceedings Ordinance. On 6th July 1977 McMullin J. gave judgment for the Appellants in the said action and made, inter alia, the following declarations and orders; firstly he declared that the Commissioner for Transport was wrong and had no authority when entertaining or considering the Appellants applications for the registration of 47 vehicles as public cars to have taken into account applications for

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p.103 1.17-21

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the registration of motor vehicles as public cars which had not been made in the form prescribed by the Commissioner under Regulation 4 of the aforesaid Road Traffic Regulations. Furthermore he declared that the Appellants were entitled to have applications for the registration of 47 vehicles as public cars entertained under the provisions of Regulation 6 of the Road Traffic Regulations.

- p.106 1.5 6. Prior to the judgment given by McMullin J. on 6th July 1977, the numerical limit for the registration and licensing of public cars had been fixed by the Acting Commissioner of Transport at 1,376 so that there remained 47 outstanding vacancies on 6th July 1977. However, by Gazette Notice (Extraordinary) No.16 of 1977 dated 6th July and published on 7th July, the Acting Commissioner for Transport reduced the limit for the registration and licensing of public cars by 47 to 1,329. On 9th July 1977 the Appellants executed a contract with Honest Motors Limited for the purchase of 47 vehicles. On 11th July 1977, the Appellants caused applications to be made in their name for the registration and licensing of 47 public cars. The said applications were refused in a letter dated 14th July from the Commissioner of Transport to the Appellants wherein the reason given for the refusal was that the total number of vehicles registered as public cars was equal to the total number that the Commissioner of Transport might register as public cars in the terms of the said Gazette Notice Extraordinary of 6th July 1977. 10
- pp.261-5
- pp.221-2
- p.228
- p.212 7. On the 15th June 1977, Road Traffic (Amendment) (No.2) Ordinance 45 of 1977 was passed by the Legislative Council of Hong Kong. The Governor's assent was given on 16th June 1977 and the new Ordinance was published on the 17th June 1977. The operational date was gazetted to fall on 1st November 1977. Section 4A(6) of the principal Ordinance declared that the Commissioner's power to register or licence a public car ceased from the operational date. These amendments in Ordinance 45 were intended and did serve to convert public cars to taxis on payment of a premium of \$75,000. New taxi licenses were otherwise sold at auction. On the 27th July 1977, they were auctioned with the lowest tender accepted at \$181,000 and the highest tender accepted \$196,005. 30
- p.56 1.30-36 8. Subsequent to the Commissioner's refusal of their applications in July 1977, the Appellants commenced the present action by way of a Writ issued on October 12th 1977 and later amended on 17th April 1980. By their amended Writ they claimed firstly an award of damages against the Respondent for the loss consequential on the Commissioner of Transport's ultra vires act in refusing to license 47 public cars on 15th July 1976. Secondly they claimed an award of damages and declaratory relief in relation to the Commissioner of Transport's publication of Gazette Notice 40
- pp.1-9
- pp.5-6
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10 Extraordinary No.16 of 1977. Their statement of claim
alleged that the said act was wrong, unfair and ultra vires
in that it disenabled the Commissioner from complying with
the declaration of Mr. Justice McMullin on 6th July 1977,
that the Appellants were entitled to have applications for
the registration of 47 vehicles as public cars entertained
under the provisions of Regulation 6 of the Road Traffic
Regulations. They therefore sought declarations to the
effect that the Commissioner had acted wrongly and unfairly
in publishing the said Gazette Notice; that he had acted
ultra vires with malice or knowledge that he was so acting;
and that the Appellants were entitled to have 47 vehicles
which complied with the Road Traffic Regulations registered
as taxis on payment of the premium of \$75,000 for each of
the taxis. p.8

20 9. The Respondent, by his defence dated 27th January 1978,
and subsequently amended, denied that the Commissioner was
acting unfairly or ultra vires in publishing the aforesaid
Gazette Notice. The Respondent's denial was based on the
claim that the Commissioner was entitled to reduce the limit
on public cars on 6th July "in furtherance of the Policy
not to issue any new public car licenses" and that he had
"no power to reserve 47 vacancies" in order to comply with
the Court's order. Moreover the Respondent denied that the
Appellants were, at the material time of their applications
for the registration of vehicles as public cars in 1976 and
1977, the owners of the vehicles which were the subject of
the applications. Finally the Respondent denied that the
statement of claim disclosed any cause of action arising
from the publication of Gazette Notice No.16 since he denied
that the Commissioner had, in publishing the said Notice,
acted either maliciously or with any knowledge that he was
acting ultra vires. The Appellants, in their amended reply
to the amended defence dated 16th day of April 1980,
pleaded inter alia, that the Respondent was estopped by his
own conduct from alleging that the Appellants were not
the owners of the vehicles which formed the subject of the
applications made both in 1976 and 1977. The Appellants
relied on the fact that, in correspondence with themselves,
the Respondent had never raised this objection to their
applications on either occasion and had therefore, by an
implicit concession that the Appellants were owners,
caused them not to take delivery of the said vehicles. pp.9-12
p.11 l.10ff
pp.9-10
p.10 l.25ff
pp.12-15
pp.13-14

40 10. The action came on before Liu J. and was heard between
16th and 28th April 1980. The relevant oral evidence given
for the Appellants was that of Mr. Tse Kai Chow, the
Managing partner of the Appellants' firm. His evidence was
to the effect that if the Appellants' applications for the
47 public cars had been granted, the Appellants would
subsequently have taken advantage of the opportunity to
have them re-registered as taxis on payment of the premium
of \$75,000. pp.18-39
p.26

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pp.40-97 11. For the purposes of this Appeal, the relevant evidence put forward on behalf of the Respondents at the trial of the action before Liu J. was that of Mr. Leeds, the Acting Commissioner for Transport between 22nd June 1977 and 8th July 1977. Firstly, Mr. Leeds gave the following evidence as to the administrative and legislative background to the matters in dispute; In 1975, the Transport Advisory Committee had made a recommendation to the Governor in Council for the phasing out of the class of public cars. In anticipation of a decision by the Executive Council, it was decided to fix a limit for the licensing of public cars at the number of 1,388 by the publication on 5th December of Gazette Notice 2670. On 6th April 1976 the Executive Council met and ordered that legislation be prepared to give effect to the recommendation made to the Governor by the Transport Advisory Committee. This legislation was prepared accordingly. [It was common ground that Road Traffic (Amendment) No.2 Ordinance 45 was passed by the Legislative Council on 15th June 1977, that the Governor's assent was given on 16th June 1977, and that the new Ordinance was published on 17th June 1977. The operational date was gazetted to fall on 1st November 1977. By Section 4A(6) of the principal Ordinance it was declared that the Commissioner's power to register or licence a public car ceased from the same operational date.] Secondly, Mr. Leeds gave the following relevant evidence as to the period when he was Acting Commissioner for Transport; He claimed that, prior to the judgment of McMullin J. in the case of HCMP 749 (an identical case brought by the Appellants in respect of applications for the registration of vehicles as public light buses), he was advised that he was entitled to reduce the gazetted limit for public cars by the number of 'committed' vacancies; but that, subsequently he had been advised to preserve 47 vacancies for public cars pending the outcome of the hearing of HCMP 750/76 on 6th July. Accordingly, he had caused to be published Gazette Notice No.15 which reduced the limit for registration of public cars to 1,376, leaving 47 vacancies still available. Subsequent to the judgment of McMullin J. on the public car case (HCMP 750/76) on 6th July he had taken further legal advice. That advice was that the said judgment did not necessarily mean that licenses would have to be granted; and that the Appellants' applications should be entertained, but could be considered in the light of Government policy on public cars at the time. He had not been specifically advised as to whether there was any objection to the reduction of the gazetted limit by a further 47, but did not believe that there was. Accordingly, he had caused to be published on 7th July 1977, Gazette Notice No.16 which reduced the gazetted limit for public cars to 1,329. In cross-examination Mr. Leeds said that the primary object in reducing the limit was "to carry out Government policy at the time" which was not to issue any additional licenses. Furthermore, in cross-

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- 10 examination the Commissioner admitted that, as a consequence of the reduction of the limit, it was the case that, when the Appellants' application for the registration of 47 public cars reached his department, it would be "rejected without more ado" because of the lack of vacancies. He said that the Appellants application "could not be considered because of Government policy at the time" though he subsequently changed his answer to "it could not be approved". p.63 p.64 1.1-10
12. Liu J. gave judgment on 8th May 1980. After summarizing the administrative background to the case, the events leading up to the commencement of the action, and the evidence of Mr. Leeds, the Acting Commissioner, the learned Judge made the following five findings: p.102
- (i) Firstly the learned Judge found that the Commissioner had exercised his powers under Regulation 18B(i) correctly, and had acted intra vires in publishing and acting upon Gazette Notices 15 and 16; and that the Plaintiffs' applications made on 11th July were therefore lawfully precluded by reason of the limit set in Gazette Notice 16 and properly refused. In arriving at this conclusion, the learned Judge found that the case of A.G. -v- Wong Kwong - Shing (Civil Appeal 58 of 1975) could not be relied on as authority for the proposition that the Commissioner's powers under Regulation 18(B) should only be exercised for one of the two reasons specified in Regulation 17(1)(a)(i) or (2) namely "public safety" or the "regulation of road traffic in the colony". p.114 p.110
- (ii) Secondly, the learned Judge found that the Commissioner had not wrongly, unfairly or unjustifiably flouted the declarations made in M.P. 750 by reducing the limit for the licensing of public cars on 6th July. In arriving at this conclusion, he found that the declaration granted by McMullin J. in H.C.M.P. 750 on 6th July that fresh applications for 47 public car licenses should be "entertained" imposed no obligation on the Commissioner to consider the Appellants' applications "on their merits" where the new limits fixed precluded such consideration. p.114-5
- (iii) Thirdly, the learned trial judge found that, in publishing and acting on Gazette Notice No.16, Mr. Leeds was not actuated by malice nor was he knowingly acting ultra vires. p.116-7
- (iv) Fourthly, the learned Judge found that at the time the Appellants made their successive applications for the registration of vehicles as public cars in 1976 and 1977, they were not the "owners" of the vehicles for the purposes of Regulation 4(1); and therefore p.118

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pp.119-120 that they were not entitled to have their applications granted. This finding was based on an interpretation of the word "owner" in Regulation 4(1) as connoting full ownership in the sense required by commercial law. The learned Judge further found that the Commissioner's conduct in no way estopped the Respondent from relying on this "ownership" argument.

p.121 (v) Fifthly, the learned Judge found that the Appellants' claim for damages must fail on account of their failure to establish that the Commissioner had acted either with malice or with knowledge that he was acting ultra vires. 10

p.121 In stating this proposition, the learned Judge held himself bound by the decision of the Court of Appeal in Attorney General -v- Ng Kee (1978) H.K.L.R. 32 that there could be no cause of action against a public officer who had acted ultra vires without malice or knowledge that his actions were ultra vires.

13. That five findings hereinbefore set out were the grounds on which the learned Judge of original jurisdiction dismissed all the Appellants' claims. However it is necessary to distinguish the findings that he relied on in disposing of the claims arising from the 1976 applications and the 1977 applications. In deciding the claim for damages and declaratory relief which arose from the publication of Gazette Notice No.16 and the subsequent refusal of the 1977 applications, the learned Judge can be seen to have based his decision on all five findings hereinbefore set out. When it comes to his rejection of the claim for damages arising from the refusal of the 1976 applications, the learned Judge did not give any detailed separate consideration to this claim. However, the learned Judge can be said to have disposed of this claim on the basis of the fourth finding (the ownership point) and the fifth finding (the Ng Kee principle) alone, since the fact that the refusal of the 1976 applications was occasioned by an ultra vires act was common ground. 30

p.123 14. By a notice of appeal dated 13th June 1980, the Appellants appealed to the Court of Appeal of Hong Kong. The appeal came on before Sir Alan Huggins, V-P and Leonard and Cons J.J.A. on 28th January 1981, and was thereupon dismissed with an order that the Appellants do pay the costs of the Appeal to the Respondent. 40

p.131 15. The judgement of the Court of Appeal was delivered by Cons J.A. on 20th February 1981. After dealing with the background to the proceedings and the sequence of events culminating in the Appeal, the Court defined the appeal as one solely concerned with the rejection of the Appellants' applications on 14th July 1977. Thereafter the Court made 50

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no findings on the rejection of the Appellants' applications in July 1976, and the claim of damages arising therefrom. The Court confined itself solely to the claim arising from the Commissioner's reduction of the limit for public cars on 7th July 1977 and subsequent refusal on 14th July of the Appellants' applications for the registration of 47 vehicles as public cars.

10 16. The Court of Appeal made five findings which form the subject of the present appeal. The first three, which the Court held to be sufficient in themselves to dispose of the Appeal, all concerned the lawfulness of the Commissioner's reduction of the limit for public cars on 7th July 1977;

(i) Firstly the Court upheld the ruling of Liu J. that there was no reason to limit the grounds on which the powers under Regulation 18B of the Road Traffic Regulations could be exercised to the purposes specified in Regulation 17(1)(a)(i) or (ii) namely "in the interests of "either "public safety" or the
20 "regulation of vehicular traffic in the colony". p.135
Furthermore the Court found that, in any event, the "imposition of a limit upon any class of vehicles" is "ipso facto regulation of vehicular traffic in the colony".

(ii) Secondly, the Appeal Court found that, as a matter of fact, the Commissioner had truly exercised his discretion in reducing the limit on 7th July, rather than merely submitting to the dictates of government policy. pp.135-6

30 (iii) Thirdly the Appeal Court found that, as a matter of fact, the Commissioner's decision to reduce the limit of registrations for public cars did not constitute an exercise of his discretionary powers directed solely ad hominem and was not actuated by malice. p.136

The Court of Appeal then went on to uphold the findings of law made by Liu J. at first instance on two further issues, though the Court's findings on these matters did not form part of their rationes decidendi. The fourth and fifth findings were as follows:

40 (iv) Fourthly the Court found that full ownership of the cars in respect of which an application for registration was made under Regulation 4(i) was a necessary precondition for a successful application thereunder, and that the Appellants' contractual entitlement to the vehicles registration they applied for in July 1977 did not satisfy that requirement. pp.137-138

(v) Fifthly the Court held that it was bound by the decision in Attorney-General -v- Ng Kee that no action

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pp.138-142

in damages will lie against a public officer for loss occasioned by his ultra vires acts where those acts are not done either with malice or with knowledge on his part that he is acting ultra vires.

p.144

17. On 27th March 1981, the Appellants were granted leave to appeal to Her Majesty in Council by the Court of Appeal. The issues on which this appeal depends are those set out in paragraphs 2 and 3 of the Case.

18. On the first issue, the Appellants respectfully submit that both the Courts in Hong Kong erred in holding that the Commissioner of Transport was not bound when exercising his powers under Regulation 18(b)(i)(a) to exercise his discretion solely for one of the two purposes specified in Regulation 17(1)(a). It is submitted that the discretionary power under Regulation 18(b)(i) is subject to such a limitation for the reasons stated below: 10

19. Firstly, it is respectfully submitted that the Court of Appeal of Hong Kong, in deciding the case of Attorney-General -v- Wong Kwong Shing Civil Appeal No.58 of 1975 in the Supreme Court of Hong Kong (Appellate Jurisdiction) correctly stated the law as to the relationship between Regulation 18B(i) and Regulation 17(1)(a). In that case, a majority of the Court (Mac Mullin J.A. and Pickering J.A.) determined the cross-appeal by a process of reasoning which included as a necessary step the presumption of law that, when the Commissioner of Transport fixed a limit on the number of a class of vehicles by an exercise of his powers under Regulation 18B(i), he could be presumed to have exercised his powers for the purposes specified in Regulation 17(1)(a). Thus Pickering J.A. held as follows in the relevant passages of his judgment: 20

"It is unfortunate that in giving his reasons for refusing the applications the Commissioner referred to the exercise of his "powers and duties under Regulation 18B ... without making any reference to Regulation 17(1)". 30

"I am confident that had the Commissioner sought to rely upon this sub-regulation [Regulation 17 (1)] there would have been no Respondent's Notice. I have asked myself whether the Commissioner's failure to specify this sub-regulation estops him and this Court from reliance upon it - but I do not think that the failure does so operate". 40

"The power contained in Regulation 18B(1) to limit, by notice in the Gazette, the number of public light buses which may be registered or licensed is not a power to be exercised arbitrarily. It is closely allied to, and indeed may be said to have its roots in the

Commissioner's power, contained in Regulation 17(1) to refuse to register any vehicle in the interests of the regulation of vehicular traffic in the colony. So close is the relationship between the two that in invoking the later, the Commissioner may fairly be said to be also invoking the earlier".

10 Likewise McMullin J.A. held, as a necessary part of his determination of the cross-appeal that an exercise of power under Regulation 18B could be presumed to have been an exercise of power in pursuance of the purposes specified in Regulation 17(1)(a):

20 "In addition to the matters which the Commissioner may justly consider before the inchoate right to be registered becomes a vested right there is also the wide general power given to the Commissioner by Regulation 17(1) to refuse to register in the interests of (a) (i) the safety of the public and (ii) the regulation of vehicular traffic. The Commissioner in refusing these applications did not purport to rely on the limitation which he had introduced under Regulation 18B. A notice under Regulation 18B might be regarded as one practical expression of the exercise of his powers under Regulation 17".

30 Thus the presumption of law as to the relationship between Regulation 17 1 (a) and Regulation 18 B (1) was a necessary part of the decisions of the majority of the Court of Appeal on the cross-appeal in Wong Kwong Shing. It follows that Liu J. was wrong not to hold himself bound by the case of Wong Kwong Shing on this point, and that the court of Appeal erred likewise. The Appellants respectfully submit that the Court of Appeal was wrong to hold that the judges in the case of Wong Kwong Shing "were not called upon to consider the purposes for which Regulation 18B had been invoked", and to dismiss the findings of MacMullin J.A. and Pickering J.A. in Wong Kwong Shing as obiter and as mere comments "upon the close relationships of the two regulations". Moreover the Appellants submit that it follows from the presumption of law asserted in the case of Wong Kwong Shing that no power under Regulation 18B could be reasonably or properly exercised if it was not exercised in accordance with the purposes specified in Regulation 17(1)(a).

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40 20. Furthermore, the Appellants respectfully submit that it is necessary to imply into the terms of Regulation 18B some reasonable limitation on the purposes for which the power conferred by the said Regulation can be exercised in order to give effect to what must be presumed to have been the intention of the Legislative Council. The relevant enabling legislation from which Regulation 18B is derived is
50 Section 4(1)(j) of the Road Traffic Ordinance No.39 of 1957

[CAP. 220] which provided as follows:

"The Governor in Council may make regulations for all or any of the following matters

(j) limiting the number of vehicles which may at any time be

(i) registered; or

(ii) licensed,

Within any of the classes of motor vehicles referred to in subsection 2 of Section 2 or within any division thereof".

The Appellants concede that these statutory provisions do not explicitly require that any regulation made thereunder should impose any conditions on the exercise of the power to limit registrations which it creates. Nonetheless, the Appellants submit that the Legislative Council must be presumed to have intended that conditions should be imposed on this power so as to render any exercise of the power consistent with the general purpose of the Ordinance. And, if it is right to imply into the Regulation some reasonable terms for the exercise of the power it creates, such terms can properly be imported from the allied Regulation 17(1)(a). For Regulation 17(1)(a) could itself be properly construed as a regulation that derives from Section 4(1)(j) of the Road Traffic Ordinance and certainly it provides an alternative means for limiting the number of motor vehicles. The power it creates is a less extensive one, namely to refuse individual applications for registration. In contrast the power created by Regulation 18(b) is one to fix a limit in such a way that all subsequent applications for registration of vehicles in that class will be for the time debarred. If the lesser power under Regulation 17(1)(a) is to be exercisable only for the purposes specified in subsections (i) or (ii), then it is reasonable to presume also that the Legislative Council did not intend the more extensive power under Regulation 18B(i) to be exercised except for these clearly defined objectives of public policy.

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21. It is further submitted that the Court of Appeal were wrong in law to find that reduction of the limit for any class of vehicles "ipso facto" constituted "a regulation of vehicular traffic in the colony", within the terms of Regulation 17(1)(a). The Appellants contend that, in the context of the said regulations, the word "traffic" refers to the volume and movement of vehicles on the roads. The reduction of the limit of any particular class of cars might not have any effect on this total volume and traffic since it might, as was the case here, be compensated for by an increase in the number of vehicles of another class. Furthermore it is submitted that, as a matter of fact, the Commissioner did not address his mind to any considerations relating to traffic as defined hereinbefore when deciding to alter the limit on July 6th.

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22. On the second issue, the question is whether the Commissioner's publication of Gazette Notice (Extraordinary) No.16 was a true exercise of his discretion under Regulation 18B (i) at all. The Appellants submit that firstly by taking his decision in order to further government policy and secondly by failing to consider the effect on the Appellants and other would-be applicants, the Commissioner failed to exercise his discretion independently and/or that, in exercising it, he took into account irrelevant considerations and failed to take into account relevant considerations. Therefore it is respectfully submitted that the Court of Appeal erred in finding that there had been a true exercise of discretion in the three ways set out hereafter:

23. Firstly, the Court of Appeal erred in finding that the Commissioner had exercised his discretion under Regulation 18B(i) independently and had not merely allowed himself to be dictated to by the "government". This finding was inconsistent with the Commissioner's own claim that the primary object of reducing the limit for public cars was to "carry out Government policy at the time". It was clear that what Mr. Leeds meant by "government policy" was the policy adopted by the Executive Council on April 6th 1976 and subsequently given statutory form by the Legislative Council in an ordinance that was not yet law at the time the Commissioner made his decision. This policy was to abolish the class of vehicles known as "public cars". In contrast, the discretion which the Commissioner exercised derived from legislation which clearly envisaged and promoted the continuing registration of "public cars" at the same time as it conferred the power on the Commissioner to "limit" the number of public cars. Thus Section 4(1)(b) of the Road Traffic Ordinance No.39 of 1957 [CAP.220] specifically provided that the Governor in Council "may make regulations for":

"(b) the registration and licensing of motor vehicles within the classes referred to in Section 2 (2)".

And Section 2(2) specifically refers to the category of "public cars". The power to limit the number of any class of vehicles which was conferred by Section 4(1) had to be exercised in a manner consistent with the continuing intention of the Legislative Council, implicit in Section 4(1)(b), that registration of vehicles in each of these classes should not be indefinitely precluded. It was therefore incompatible with a true exercise of the discretion conferred by Regulation 18B(i) - to limit the number of public cars - that the Commissioner should exercise the power with the sole objective of implementing a government policy to abolish public cars altogether. Alternatively the Commissioner's singleminded concentration on the implementation of the aforesaid

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government policy was incompatible with a due consideration of the grounds for not reducing the limit (viz. the interests of would-be applicants), though due consideration of the same as a relevant factor was essential to the proper exercise of the discretion conferred by Regulation 18B (1).

p.135 1.30ff

24. It is further submitted, in support of the arguments advanced in paragraph 23 above, that the Court of Appeal wrongly based their finding that there had been an independent exercise of discretion on the fact that the Commissioner had himself played some part in forming the policy with the Executive Council had adapted as government policy. In this the Court failed to distinguish the function that the Commissioner had, as part of the Transport Advisory Committee, in advising the Executive Council on future legislation from the separate function which the Commissioner had of exercising his discretion under Regulation 18B(1) in accordance with the requirements of existing legislation on July 6th 1977.

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25. Secondly, it is submitted that the Court of Appeal was wrong to hold that the provisions of Section 4A(b) of Ordinance 45 of 1977 were a relevant consideration for the Commissioner to take into account in exercising his powers under Regulation 18(B)(1). The said provisions were unamended principal ordinance and regulations which still governed his power to reduce the limit on public cars on July 7th 1977. The provisions of Ordinance 45 were not yet in force. Thus by taking into account the provisions of Section 4 A (b) of Ordinance 45, the Commissioner based his decision on policy considerations extraneous to and incompatible with those contemplated by the existing legislation under which he purported to act.

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26. Finally, it is submitted that the two Hong Kong Courts were wrong to hold that the Commissioner had exercised his discretion at all or alternatively wrong to hold that he had exercised it reasonably and fairly given that he had failed completely to take into account the effect of his decisions under Regulation 18(B) on the Appellants. It is submitted that no reasonable decision under Regulation 18B (1) could be taken without regard to the effects that an order made thereunder would have on future applicants for registration, since their entitlement to registration could be automatically precluded by a reduction in the limit of registrable vehicles. The underlying criterion to be implied into Regulation 18B (1) must be that the Commissioner should only limit the number of vehicles for registration where the demands of wider public policy considerations outweighed the interest of would-be applicants for registration. And in the present case, it is submitted that, in performing such a balancing act, no reasonable Commissioner could fail to give paramount importance to the Appellants' legal and/or moral entitlement

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10 to have further applications entertained on their merits. The said entitlement arose from the fact that the Commissioner's unlawful act in rejecting the Appellants' earlier applications for registration in 1976 could only be remedied if, as McMullin J. required by his decision in HCMP 76/750, the Appellants' fresh applications for registration were entertained on their merits. It is submitted that the evidence of Mr. Leeds himself as to the effect of the reduction of the limit on the prospects of any later application gives rise to the inescapable conclusion that he knew that such a reduction would effectively preclude consideration of the Appellants' forthcoming applications "on their merits".

20 27. On the third issue, it is submitted firstly that the Court of Appeal were wrong, as a matter of fact and of law, to find that the Commissioner's publication of Gazette Notice No.16 was not an exercise of power designed to thwart the legitimate expectations and aspirations of the Appellants. It is submitted that this ulterior purpose was the dominant intent of the Commissioner. The Appellants will rely, inter alia, on the evidence of the Memorandum from the Commissioner of Transport to the Secretary of State for Environment dated 29th June 1977 and, in particular, on the last sentence of paragraph 2 of the aforesaid Memorandum. The said memorandum, when taken in the overall context of events, gives rise to an inescapable inference that the Commissioner's dominant intent in planning or bringing about any reductions of the limit on public cars between 30th June 1977 and 6th July 1977 was to preclude any further applications by the Appellants for the registration of vehicles as public cars.

p.136

p.250 1.34-8

30 28. It is further submitted that the two Hong Kong Courts erred in fact and in law in finding that the Commissioner did not act with malice towards the Appellants, or with knowledge that he was acting ultra vires, when he reduced the aforesaid limit on 7th July 1977. In particular it is submitted that Liu J. whose overall finding the Appeal Court adopted, erred as a matter of fact in finding that the Commissioner had acted throughout on legal advice which he reasonably believed to be sound. This finding was manifestly inconsistent with the evidence of the Commissioner that he had not been specifically advised as to whether there was any legal objection to the reduction of the gazetted limit on July 7th. Moreover it ignores the fact that his action was inconsistent with the legal advice he had received that the Appellants' fresh application should be "entertained"; and that the effect of his reduction of the limit was, on his own admission, to exclude proper consideration of the said application.

pp.116-7
p.136

p.116

p.46

p.64

50 29. On the fourth issue, it is submitted that both the Courts in Hong Kong erred in holding that the Appellants

RECORD

p.118 and
pp.137-8

were not in any event entitled to the registration of the public cars which were the subject of the applications made in 1976 and 1977 because they were not at the time the legal owners of the said vehicles within the terms of Regulation 4(1) of the Road Traffic (Regulation and Licensing of Vehicles) Regulations. Both Courts erred in holding that the word "owner" in the said Regulation 4(1) should be construed strictly in accordance with commercial law. The Appellants contend that the finding of the majority of the Appeal Court judges (Huggins J.A. and Yang J.) in the case of Hu Choi Yim Fong -v- Attorney General 1978 No.69 (Civil) that the word "owner" in Regulation 4(1) should be so interpreted were obiter and not binding on the Court of Appeal. The minority finding of McMullin J. in the afore-said case to the effect that the word "owner" does not imply the full legal owner embodies the only reasonable interpretation of the said Regulation. Moreover this interpretation is in accordance with the fact that Section 2 of the Road Traffic Ordinance No. 39 of 1957 [CAP. 220] defines the word "owner" in such a way as to include persons who do not have full ownership in a vehicle:

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"Owner" includes the person in whose name a vehicle is registered and the persons by whom the vehicle is kept and used and, in relation to a vehicle which is the subject of a hiring agreement or hire purchase agreement, means the person in possession of the vehicle under that agreement."

Therefore it is submitted that the Appellants did possess sufficient ownership of the said vehicles for the purposes of Regulation 4(1) by virtue of their contractual rights under the agreements with Honest Motors referred to in paragraphs 4 and 6 above.

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30. In the alternative, it is submitted that if the word "owner" in Regulation 4(1) is to be interpreted as requiring ownership in the full legal sense, then the Court of Appeal erred by failing to find that the Respondent was estopped from relying on the ownership point. This point was raised in the Appellants' Notice of Appeal at paragraph 22 but the Court of Appeal failed to make any finding on the matter. The Appellants will rely on the fact that it was not the practice of the Commissioner to require full ownership before granting an application for registration, and on the absence of any mention of the ownership point in the Commissioner's notices of refusal under Regulation 17F dated 22nd July 1976 and 14th July 1977. It is submitted that these facts establish that the Commissioner had impliedly conceded the point of ownership, or implied that he would waive the requirement. The Appellants contend that, when they made their application, they did not take delivery of the vehicles from Honest Motors in reliance on this implicit concession

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p.119

p.228

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and/or waiver by the Commissioner.

31. On the fifth issue, it is respectfully submitted that both the Courts in Hong Kong were wrong to hold that in any event the Appellants were not entitled to damages for whatsoever ultra vires acts or omissions the Commissioner may have committed unless it could be shown that he had acted maliciously or with knowledge that he was acting ultra vires. In so holding, both Courts held themselves bound by the decision of the Court of Appeal in Attorney General -v- Ng Kee (1978) HKLR p.32; wherein the Court held that no action in damages would lie at the suit of a person who had suffered loss by reason of the ultra vires act of a public officer performed in the absence of malice and in the absence of knowledge that it was ultra vires. The Appellants submit that the principle stated by the Court of Appeal in Ng Kee and accepted by the Court of Appeal in disposing of the present Appellants' case was wrong for three reasons: Firstly, the general proposition stated in Ng Kee could not be properly derived from the authorities on which the Court of Appeal relied to establish it. Secondly, the principle enunciated in Ng Kee was inconsistent with a principle that there is a right of action for damages against a public officer whose positive ultra vires act is the cause of loss to the Plaintiff. Thirdly, and more significantly, the principle stated in Ng Kee is inconsistent with a more specific right to claim damages against a public officer when he fails to perform a statutory duty when the statute imposing the duty provides no remedy for such non-performance, and when the statutory duty is designed to benefit an ascertainable class of individual which includes the Plaintiff.

p.121 and
pp.138-42

32. On the question of the authorities relied on in Ng Kee, the Court of Appeal in Ng Kee purported to apply a principle stated by Lord Moulton in Everett -v- Griffiths (1921) 1 A.C. 631. The relevant passage in the judgment of Briggs C.J. in Ng Kee reads as follows:-

*The following passage occurs in the judgment of Lord Moulton in Everett -v- Griffiths:

"If a man is required in the discharge of a public duty to make a decision which affects by its legal consequences, the liberty or property of others, and he performs that duty and makes that decision honestly and in good faith, it is, in my opinion, a fundamental principle of our law that he is protected. It is not consonant with the principles of our law to require a man to make such a decision in the discharge of his duty to the public and then to leave him in peril by reason of the consequences to others of that decision, provided that he has acted honestly in making that decision".

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This passage was quoted by the learned trial judge in his judgment. And it undoubtedly states the true position.

It is respectfully submitted that the decisions of all five Lords in Everett -v- Griffiths were based on the premise that there had been no failure to perform the relevant statutory duty by the public officer whose action was the subject of the case. The case concerned the exercise of a statutory power conferred on a Justice of the Peace or Chairman of the Board of Guardians by Section 25 of the Lunacy Act, 1891, to sign orders for the reception of persons as pauper lunatics in institutions for lunatics where they were "satisfied" that the alleged lunatic was a lunatic and a proper person to be detained. The case was decided by four of their Lordships (Lords Haldare, Finlay, Cave and Moulton) primarily on the basis that the duty imposed on the public officer was solely a duty to act honestly, by reason of the subjective test which they found to be implicit in the word "satisfied". For this reason they found that, provided the decision of the Chairman of the Board of Guardians was honest, his duty had been performed. Hence the decision does not affect the situation where the words of a statute must be interpreted as imposing a more substantive duty to act reasonably or where what is complained of is a total failure to perform a duty. Secondly it is submitted that the decision was based in part at least on the finding that the duty imposed on the relevant public officers by the statute was to perform a judicial act. Similarly the decision of the Court of Appeal in O'Connor -v- Isaacs (1956) 2 Q.B. 288 - on which Briggs C.J. also relied in Ng Kee - concerned the liability of magistrates for a judicial act. The judicial nature of the function imposed by the relevant statutes in Everett -v- Griffiths and O'Connor -v- Isaacs is in itself a sufficient ground for distinguishing any principles enunciated in those cases from those which should be applied to the different circumstances that obtained in Ng Kee and the present case.

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33. Secondly, it is submitted that there is a general right to recover damages where the positive wrongful act of a public officer in excess of his jurisdiction results in loss to a would-be plaintiff. In support of this proposition, the Appellants contend that De Smith correctly states the law at page 321 of Judicial Review of Administrative Action:

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"An action for damages may arise from the negligent, arbitrary or colourable exercise of a power".

The Appellants will rely also on the case of a Brasyer -v- Maclean 1875 Privy Council, Vol. 6, 398, wherein the Court held that misfeasance by a sheriff in making a false return of rescue formed the basis of a claim for damages even in

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the absence of malice. The relevant passage of the judgment of Sir Barnes Peacock reads as follows:

10 "It appears therefore to their Lordships that the sheriff in this case was guilty of a misfeasance in the exercise of the powers which were entrusted him by law and in the discharge of his duty as a public ministerial officer, and that in respect of that misfeasance he is liable to an action for the damage that resulted from that act, notwithstanding it was not proved against him that he was actuated by malice".

20 Furthermore, the Appellants adopt the reasoning of Cons J. in the case of Ng Kee -v- Attorney General at first instance Action No.1372 of 1974. Firstly, there is no logical distinction between the liability of a statutory tribunal for its ultra vires acts, and that of an individual empowered by statute to make decisions affecting an individual's livelihood. Secondly, this liability extends to cases where there has been a wholly unreasonable exercise of discretion, or the total failure to exercise discretion by an individual empowered by statute to exercise a discretion affecting individual's rights.

30 34. Thirdly, on the question of the recovery of damages for loss occasioned by the non-performance of a statutory duty, it is submitted that the judgment of Lord Justice Megaw in Thornton -v- Kirklees Borough Council (1979) 1 Q.B. 626 correctly states the law. In that case, Lord Justice Megaw adopted and applied a proposition put forward by the plaintiff's counsel as summarizing the general principle stated by Lord Simonds in Cutler -v- Wandsworth Stadium Ltd. [1949] A.C. 398, 407 "Where an Act imposes a duty on a public authority or anyone else for the benefit of a specific category of persons but prescribes no special remedy for breach of that duty, it can normally be assumed that "a civil action for damages will lie"

40 The Appellants submit that the aforesaid proposition is correct and is founded on a line of authorities which includes Gatehead Union Guardians -v- Durham County Council [1918] 1 Ch. 146 and Cutler v Wandsworth Stadium Ltd. Furthermore, the reasoning of Lord Justice Megaw in the case of Thornton -v- Kirklees Borough Council was adopted and applied by the Court of Appeal in De Falco -v- Crawley Borough Council (1980) 1 Q.B. 460. The Appellants further submit that, in the light of the aforesaid principle of law, the general proposition stated in Ng Kee is wrong and cannot apply where the ultra vires act of a public officer either causes or is inextricably linked with the non-performance of a statutory duty imposed by a statute that provides no special remedy for an individual who thereby suffers loss.

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p.139, 1.1-6

35. It is submitted that, for the reasons stated above, there are two alternative reasons for finding that the general principle in Ng Kee was wrongly stated and/or that the application of the said principle by the two Courts in the present case was wrong. The Appellants rely principally on the arguments stated in paragraph 33 above. These apply because in both Ng Kee and the present case the substance of the complaint was a failure to perform a public duty by the Commissioner. It was recognised by the Court of Appeal in the present case that in Ng Kee the Commissioner had failed to perform his duty to renew the Appellant's licence unless he had good reason not to do so. The same complaint underlies the present action since what is involved is the failure to perform a statutory duty to grant the licenses applied for in both 1976 and 1977 unless there was good reason not to. Regulation 6(1)(a) (as it then was) provided that "the Commissioner shall register" a vehicle for whose registration an application was made subject to the exceptions provided for in Regulation 17. It is true that in their statement of claim the Appellants rely principally on the ultra vires act of reducing the limit when pleading their claim in respect of the 1977 refusals. But the realities of the situation are that the exercise of the power to reduce the limit led to, and was inextricably bound up with, the non-performance of the duty to register a vehicle. The non-performance of that duty stems from the fact that the reduction of the limit was invalid, so that the reason for not performing the duty - i.e. that the limit was reached and that the exception in Regulation 17(2) therefore applied - was itself invalid. On that basis it is submitted not only that the principles in Ng Kee have to be qualified to take into account the principles in Thornton but also that the principle in Ng Kee was wrongly applied to the facts of the present case since this case involves the non-performance of a statutory duty and the statute in question provides no remedy. The further precondition laid down in Thornton is also met since Regulation 6(1)(a) has been held to confer a qualified right to registration on worthy applicants Attorney General -v- Tsang Kwok Kwon (1971) H.K.L.R. 2667. The Appellants therefore form part of an ascertainable class of individuals for whose benefit the statutory duty was imposed.

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36. Furthermore, the Appellants respectfully submit that, in the alternative, they are entitled to claim damages even in the absence of malice or a deliberate ultra vires act on the basis that they have suffered loss by reason of a wrongful abuse of the Commissioner's discretionary powers under Regulation 18 (B)(1). In support of this alternative reason for not following Ng Kee in the present case, the Appellants rely on the arguments advanced in paragraph 32.

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37. In the light of the foregoing, the Appellants

10 respectfully submit that they are entitled to recover damages for the loss occasioned both by the Commissioner's refusal of their applications on 22nd July 1976 and by his reduction of the limit and subsequent refusal of their later applications in July 1977. With respect the refusal of the 1976 applications, it is common ground that the said refusal was ultra vires as was declared by McMullin J. when giving judgment in M.P. 750 on 6th July 1977. Hence with respect this claim, the only relevant issues raised by the findings of the two Hong Kong Courts are issues four and five, namely the ownership point and the correctness of the principle stated in Ng Kee. It is submitted that these two issues should be resolved in the Appellants' favour and a judgment for the said damages be granted. With respect the 1977 applications, it is submitted that if the Court sees fit to find for the Appellants on any one of the first three issues, then the question of whether there was an ultra vires act will be decided in their favour; all that will remain are issues four and five and, once more, the Appellants respectfully submit that both these issues should be resolved in their favour and damages awarded accordingly.

20 38. The Appellants respectfully submit that the judgment of the Court of Appeal was wrong and ought to be reversed, and this appeal ought to be allowed with costs, for the following (amongst other)

R E A S O N S

30 (1) BECAUSE Regulation 18B (1) of the Road Traffic (Registration and Licensing of Vehicles) Regulations must be interpreted as conferring a power which is subject to the implicit limitation that it should only be exercisable for one of the two reasons specified in Regulation 17(1)(a), namely in the interests of "Public safety" or "the regulation of vehicular traffic in the colony".

40 (2) BECAUSE it is inconsistent with a true and independent exercise of the discretionary power to limit the numbers in any class of vehicles conferred by Regulations 18B(1) for a Commissioner to exercise that power with the sole or predominant objective of applying a government policy to abolish that class of vehicles; and because no fair or reasonable decision to apply the powers conferred by Regulation 18B(1) can be taken without giving due weight to the effect of such a decision on the rights and expectations of would-be applicants for registration.

50 (3) BECAUSE, as a matter of fact and law, the Commissioner of Transport, in reducing the limit on public cars by the publication of Gazette Notice No.16 on July 7th 1977, was exercising his powers ad hominem and was actuated by malice or deliberately acting with knowledge

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that his acts were ultra vires.

(4) BECAUSE the word "owner" in Regulation 4(1) of the aforesaid Road Traffic Regulations does not necessarily mean full ownership in the sense required by commercial law.

(5) BECAUSE the case of Attorney General -v- Ng Kee 1978 H.K.L.R. 52, was wrongly decided in so far as it laid down as a general principle that no action in damages would lie at the suit of a person who had suffered loss by reason of the ultra vires act of a public officer performed in the absence of malice and in the absence of knowledge that it was ultra vires; and was, in any event, wrongly applied to the facts of the present case.

10

EDWARD FITZGERALD

LORD HOOSON Q.C.

O N A P P E A L

FROM THE COURT OF APPEAL OF HONG KONG

B E T W E E N :

LEUNG CHOW PUBLIC CAR COMPANY

(PLAINTIFFS)
(APPELLANTS)

- AND -

THE ATTORNEY GENERAL

(DEFENDANT)
(RESPONDENT)

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A P P E N D I X

Relevant Provisions of Road Traffic Ordinance and Regulations

ROAD TRAFFIC ORDINANCE NO. 39 OF 1957

CHAPTER 220 OF LAWS OF HONG KONG

The following Sections are of particular relevance:-

2. (1) In this Ordinance, unless the context otherwise requires -

"owner" includes the person in whose name a vehicle is registered and the person by whom the vehicle is kept and used and, in relation to a vehicle which is the subject of a hiring agreement or hire purchase agreement, means the person in possession of the vehicle under that agreement.

(2) For the purposes of this Ordinance, motor vehicle shall be divided into the following classes which, in respect of any vehicle which is registered under any such class or any division thereof, indicate the purpose for which the vehicle may be lawfully used -

(Amended, 14 of 1961, S.2)

(c) public cars, that is to say any cars, not being taxis which either -

(i) stand or ply for hire and are used to carry passengers at separate and distinct fares within the colony on a recognized and predetermined route or for a recognized or predetermined purpose, in accordance with a right or licence granted by or under any enactment; or

(ii) are hired or intended to be hired for the carriage of passengers under a contract express or implied, other than a hire agreement, for the use of the vehicles as a whole at or for a fixed rate or sum, whether or not such contract makes provision for the driving of vehicles by the hirers; (Replaced, 23 of 1964, S.2)

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4 (1) The Governor in Council may make regulations for all or any of the following matters -

(a)

(b) the registration and licensing of motor vehicles within the classes referred to in section 2(2) or any division of any such class;

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.....

(j) limiting the number of vehicles which may at any time be

(i) registered; or

(ii) licensed

within any of the classes of motor vehicles referred to in subsection 2 of Section 2 or within any division thereof.

(Deleted, 83 of 1978, S.3)

ROAD TRAFFIC (REGULATION & LICENSING OF VEHICLES) REGULATIONS

CHAPTER 220 OF LAWS OF HONG KONG

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4. (1) Any person who wishes to have registered a motor vehicle, of which he is the owner, shall deliver to the Commissioner an application for registration in such a form as shall be prescribed by the Commissioner, and shall pay to the Commissioner a fee of \$10.

6. (1) Upon receipt of an application for registration of a motor vehicle, the Commissioner, if he is satisfied with the particulars contained in such application, subject to the provisions of regulation 17, shall -

(a) register the motor vehicle

17. (1) The Commissioner may refuse to register any motor vehicle -

(a) if it appears to him to be necessary or expedient so to do in the interests of -

(i) public safety; or

(ii) the regulation of vehicular traffic in the Colony.

10 (2) The Commissioner shall refuse to register a motor vehicle if the total number of motor vehicles registered within the class in respect of which application has been made to register the motor vehicle is equal to or exceeds the total number of vehicles that may be registered within that class having regard to any direction given by the Commissioner under regulation 18B.

18.B (1) Without prejudice to any other enactment the Commissioner by notice in the Gazette may limit the number of vehicles which may be registered or licensed as -

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(d) public cars.

IN THE PRIVY COUNCIL

ON APPEAL
FROM THE COURT OF APPEAL OF HONG KONG

B E T W E E N

LEUNG CHOW PUBLIC CAR COMPANY Appellants

- AND -

THE ATTORNEY GENERAL Respondent

CASE FOR THE APPELLANTS

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