

36/82

IN THE PRIVY COUNCIL

No. 30 of 1981

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

B E T W E E N :

LEUNG CHOW PUBLIC CAR COMPANY (a firm) Appellants

- and -

THE ATTORNEY GENERAL Respondent

RECORD OF PROCEEDINGS

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

B E T W E E N :

LEUNG CHOW PUBLIC CAR COMPANY (a firm)

Appellants

- and -

THE ATTORNEY GENERAL

Respondent

RECORD OF PROCEEDINGS

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

B E T W E E N :

LEUNG CHOW PUBLIC CAR COMPANY (a firm) Appellants

- and -

THE ATTORNEY GENERAL Respondent

R E C O R D O F P R O C E E D I N G S

10	No. 1 Amended Writ of Summons and Amended Statement of Claim <hr style="width: 10%; margin: 0 auto;"/> 1977, No. 2882	In the Supreme Court of Hong Kong <hr style="width: 10%; margin: 0 auto;"/> No. 1
	IN THE SUPREME COURT OF HONG KONG HIGH COURT <hr style="width: 10%; margin: 0 auto;"/>	Amended Writ of Summons and Amended State- ment of Claim 12th October 1977
	BETWEEN : LEUNG CHOW PUBLIC CAR COMPANY (a firm) <u>Plaintiffs</u> and THE ATTORNEY GENERAL <u>Defendant</u>	
20	<p style="color: red; margin: 0;">Amended as in red this 17th day of April 1980, pursuant to the Order of Hon. Mr. Justice Liu Q. C., dated the 16th day of April 1980.</p> <p style="color: red; margin: 0;">Sd. S.H. Mayo Registrar.</p>	

ELIZABETH THE SECOND, BY THE GRACE OF GOD, OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND OF OUR OTHER REALMS AND TERRITORIES QUEEN, HEAD OF THE COMMONWEALTH, DEFENDER OF THE FAITH.

To the abovenamed Defendant, The Attorney General, of
Legal Department, Central Government Offices,
Main Wing, Victoria in the Colony of Hong Kong.

In the Supreme
Court of Hong
Kong

—————
No. 1

Amended Writ of
Summons and
Amended State-
ment of Claim

12th October
1977

(continued)

WE Command you that within eight days after the service of this writ on you, inclusive of the day of service you do cause an appearance to be entered for you in an action at the suit of Leung Chow Public Car Company (a firm) of Flat B-3, 12th floor, Mirador Mansion, No. 60 Nathan Road, Kowloon in the said Colony of Hong Kong, and take notice that in default of your so doing the plaintiff may proceed therein, and judgment may be given in your absence.

WITNESS the Honourable Sir Geoffrey Briggs,
Chief Justice of Our said Court, the 12th day
of October, 1977.

10

S.H. MAYO

Registrar.

Note:- This writ may not be served more than 12 calendar months after the above date unless renewed by order of the Court.

Directions for Entering Appearance

The defendant may enter an appearance in person or by a solicitor either (1) by handing in the appropriate forms, duly completed, at the Registry of the Supreme Court in Victoria, Hong Kong, or (2) by sending them to the Registry by post.

20

Note:- If the defendant enters an appearance, then, unless a summons for judgment is served on him in the meantime, he must also serve a defence on the solicitor for the Plaintiff within 14 days after the last day of the time limited for entering an appearance, otherwise judgment may be entered against him without notice.

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(Sd.) K. Y. WOO & CO.

AMENDED STATEMENT OF CLAIM

1. The plaintiffs were at all material times and are a partnership trading as operators of public cars and public light buses.
2. The defendant is sued under the provisions of the Crown Proceedings Ordinance, Chapter 300 in the circumstances hereinafter appearing.
3. On 15th July 1976 the plaintiffs delivered to the

Commissioner for Transport applications for the registration of 47 public cars. The said applications were made in each case in the form prescribed by the Commissioner duly completed and signed and were accompanied in each case by the tender of \$10.00 (being the fee specified in Regulation 4(1) of the Road Traffic (Registration and Licensing) Regulations, Chapter 220.

In the Supreme
Court of Hong
Kong

No. 1

Amended Writ
of Summons and
Amended State-
ment of Claim

12th October
1977

(continued)

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4. With the 47 application forms mentioned in paragraph 3 hereof the plaintiffs also delivered to the Commissioner for Transport an insurance cover note, an agreement relating to the maintenance of the vehicle concerned, copy of the bank statement of one of the partners of the plaintiffs, a parking space certificate and a copy of the Business Registration Certificate of the plaintiffs. Further, the vehicles concerned complied with the Road Traffic (Construction and Use) Regulations.

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5. By a letter dated 22nd July 1976 from the Commissioner for Transport (hereinafter called "the Commissioner") to the plaintiffs' solicitors, the Commissioner stated that the said applications were not approved under Regulation 17(1) of the Road Traffic (Registration and Licensing of Vehicles) Regulations and 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. The said Gazette Notice limited the number of motor vehicles that might be registered as public cars to 1,388.

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6. At the time of the said applications, there were only 1,293 vehicles registered and licensed as public cars, leaving 95 "vacancies" before the said limit was reached.

7. The Commissioner state that the said "vacancies" were not available to the plaintiffs as he was "committed" to grant them to other people.

40

8. In consequence of the said refusal by the Commissioner to register the said vehicles as public cars, the plaintiffs brought 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.

9. The said action was first heard before the Honourable Mr. Justice McMullin in Chambers on 24th May 1977

In the Supreme
Court of Hong
Kong

No. 1

Amended Writ
of Summons and
Amended State-
ment of Claim

12th October
1977

(continued)

together with High Court Miscellaneous Proceedings
Action No. 749 of 1976.

10. At the hearing of the said action, it was admitted by
the defendant

(a) by virtue of the affidavit of Cheung Yuk-yin,
Senior Executive Officer, Public Vehicles,
Transport Department, sworn and filed on
25th May 1977, that on 15th July 1976 there
were 1,293 vehicles registered as public cars
leaving 95 "committed vacancies";

10

(b) by virtue of a statement of agreed facts, that
in respect of the said 95 "committed vacan-
cies", no forms prescribed under Regulation
4(1) of the Road Traffic (Registration &
Licensing of Vehicles) Regulations had been
submitted at any time; and

(c) by virtue also of the said statement of agreed
facts, that the forms delivered by the plain-
tiffs' solicitors to the Commissioner for the
registration of 47 motor vehicles as public
cars on 15th July 1976 were forms prescribed
by the Commissioner under the said Regulation
4(1).

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11. On 6th July 1977, without any objection from the
defendant, the Honourable Mr. Justice McMullin made,
inter alia, the following Declarations and Orders in the
said action :

(a) that the Commissioner for Transport was
wrong and had no authority when entertaining
of considering the plaintiffs' applications all
of 15th July 1976 for registration of 47
vehicles as public cars to have taken into
account applications for the registration of
motor vehicles as public cars unless such
latter mentioned applications had been made
in the form prescribed by the Commissioner
under the provisions of Regulation 4 of the
Road Traffic (Registration and Licensing of
Vehicles) Regulations, Cap. 220 of the Laws
of Hong Kong; and

30

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(b) that the plaintiffs are entitled to have applica-
tion for registration of 47 vehicles as public

cars entertained under the provisions of Regulation 6 of the Road Traffic (Registration and Licensing of Vehicles) Regulations.

In the Supreme Court of Hong Kong

12. By Ordinance No. 45 of 1977, an Ordinance to amend the Road Traffic Ordinance, enacted on 16th July ~~July~~ June 1977, it was provided, inter alia, that

No. 1

Amended Writ of Summons and Amended Statement of Claim

12th October 1977

(continued)

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(a) The Governor might by notice published in the Gazette appoint the day on which the Ordinance or any part or provision of the Ordinance should come into operation and might at different times appoint different days for different parts or provisions;

(b) The Commissioner should on application by the registered owner, register as a taxi a motor vehicle which immediately prior thereto had been registered as a public car on the payment by the said registered owner of a premium of \$75,000.00; and

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(c) With effect from the expiry of the vehicle licence in force at the commencement of the Ordinance in respect of a motor vehicle registered as a public car, the registration of that vehicle as a public car should cease to have effect.

13. The Governor has appointed the 1st day of November 1977 as the day when the said Ordinance referred to in sub-paragraph (a) of the preceding paragraph will come into operation.

30

14. By Gazette Notice 1741 of 1977 dated and published on 22nd July 1977, the Transport Department disclosed that tenders mentioned therein for the right to register Hong Kong and Kowloon taxis, then recently invited, had been accepted. The lowest tender therein mentioned was \$181,000.00 for the right to register a Hong Kong and Kowloon taxi.

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15. By virtue of the declaration referred to hereinbefore in sub-paragraph (a) of paragraph 11 hereof, the Commissioner was wrong and had no authority to refuse the plaintiffs' said applications of 15th July 1976. By reason of the said wrongful refusal or refusal without authority, the plaintiffs have suffered loss and damage.

In the Supreme
Court of Hong
Kong

No. 1

Amended Writ
of Summons and
Amended State-
ment of Claim

12th October
1977

(continued)

PARTICULARS

(a)	47 vehicles to be registered and licensed as public cars @ \$106,000.00 (\$181,000.00, the said lowest tender price for a taxi less \$75,000.00 the premium for converting a public car to a taxi under the said Ordinance No. 45 of 1977)	\$4,982,000.00 \$4,928,000.00	
(b)	Loss of profit for operating or loss of use of 47 public cars from 15th July 1976 till 31st October 1977 @ \$1,500.00 (\$1,276.00 agreed) per public car per month for 15½ months	\$ 929,566.00 \$1,092,750.00	10
(c)	Loss of profit for operating or loss of use of 47 taxis after 1st November 1977 @ \$2,500.00 (\$1,200.00 agreed) per taxi per month to 15/4/80 and continuing	\$1,663,800.00 \$7,575,366.00	20
	(a) and (b) Total	\$6,020,750.00	

16. (a) By Gazette Notice (Extraordinary) 15 of 1977 dated 30th June 1977 and published on 2nd July 1977, the Commissioner limited the number of motor vehicles which might be registered and licensed as public cars to a maximum number of 1,376.

(b) By Gazette Notice (Extraordinary) 16 of 1977 dated 6th July 1977 and published on 7th July 1977, in purported exercise of the powers conferred upon him by regulation 18B(1) of the Road Traffic (Registration and Licensing of Vehicles) Regulations, he limited the number of motor vehicles which might be registered and licensed as public cars to a maximum number of 1,329. 30

17. By a letter dated 11th July 1977, on behalf of the plaintiffs, the plaintiffs' solicitors wrote to the Commissioner submitting 47 applications for the registration and licensing of 47 public cars in the prescribed forms duly completed and signed enclosing therewith \$470.00 as registration fee in pursuance of the said judgment of the Honourable Mr. Justice McMullin referred to in paragraph 11 hereof. 40

18. By a letter dated 14th July 1977 from the Commissioner to the plaintiffs' solicitors, the Commissioner informed the plaintiffs' solicitors that the said applications for registration of 47 motor vehicles as public cars had been entertained by the Transport Department under the provisions of Regulation 6 of the Road Traffic (Registration and Licensing of Vehicles) Regulations, Cap. 220 and that he refused to register the plaintiffs' applications as the number of motor vehicles actually registered as public cars was equal to the total number of motor vehicles that might be registered as public cars in the terms of the said Gazette Notice (Extraordinary) of 6th July 1977.

In the Supreme Court of Hong Kong

No. 1

Amended Writ of Summons and Amended Statement of Claim

12th October 1977

(continued)

19. By reducing the limit of the total number of motor vehicles that might be registered as public cars in the terms of the said Gazette Notice (Extraordinary) of 6th July 1977,

- (a) the Commissioner has wrongfully deprived the plaintiffs of their right to have the said 47 applications dated 11th July 1977 properly and duly entertained;
- (b) the Commissioner has wrongfully and unjustifiably and unfairly put himself out of his power to duly and properly entertain the said 47 applications dated 11th July 1977; and
- (c) the Commissioner has wrongfully and unfairly defeated, evaded, and nullified the terms and intent of the said Declarations of the Honourable Mr. Justice McMullin.

~~20. -- By reason of the matters aforesaid, the plaintiffs have suffered loss and damage.~~

20. The reduction of the limit of the total number of motor vehicles that might be registered as public cars in the terms of the said Gazette Notice (Extraordinary) of 6th July 1977 by the Commissioner was malicious and/or ultra vires with the knowledge that he was so acting.

PARTICULARS

The Plaintiffs rely on the matters pleaded herein and in the Reply as evidence of such knowledge and/or malice.

In the Supreme Court of Hong Kong

No. 1

Amended Writ of Summons and Amended Statement of Claim

12th October 1977

(continued)

~~20.~~21. By reason of the matters aforesaid, the Plaintiffs have suffered loss and damage.

PARTICULARS

The particulars under paragraph 15 hereof are repeated.

THEREFORE THE PLAINTIFFS CLAIM :-

- (1) A declaration that the Plaintiffs are entitled to have 47 vehicles which comply with the Road Traffic (Construction and Use) Regulations to be registered as taxis by the Commissioner on payment of \$75,000.00 premium for each of the 47 vehicles. 10
- (2) A declaration that the Commissioner was acting ultra vires knowing that he was so acting or maliciously in reducing the limit of the total number of the motor vehicles that might be registered as public cars in the terms of the Gazette Notice (Extraordinary) of 6th July 1977.
- (3) A declaration that the Commissioner was acting wrongfully and unfairly in reducing the limit of the total number of motor vehicles that might be registered as public cars in the terms of the Gazette Notice (Extraordinary) of 6th July 1977. 20
- (4) (1) Under paragraph 15 hereof, ~~\$6,020,750.00~~ (a) & (b) \$6,074,750.00;
- (5) (2) Alternatively, such damages as the Court may deem reasonable and just;
- (6) (3) Damages; 30
- (7) (4) Interest; and
- (8) (5) Costs.

WOO KWOK HING
Counsel for the Plaintiffs.

WOO KWOK HING
Counsel for the Plaintiffs.

And the sum of \$626.00 (or such sum as may be allowed on taxation) for costs, and also, if the Plaintiff obtain an order for substituted service, the further sum of \$500.00 (or such sum as may be allowed on taxation). If the amount claimed and costs be paid to the Plaintiff or their Solicitors within 8 days after service hereof (inclusive of the day of service), further proceedings will be stayed.

In the Supreme Court of Hong Kong

No. 1

Amended Writ of Summons and Amended Statement of Claim

12th October 1977

(continued)

10 This who writ issued by Messrs. K. Y. WOO & CO., of Lansing House, 2/F, 41-47 Queen's Road Central Hong Kong, Victoria in the Colony of Hong Kong, Solicitors for the Plaintiffs, whose address is Flat B-3, 12th floor, Mirador Mansion, No. 60 Nathan Road, Kowloon in the said Colony of Hong Kong.

(Sd.) K. Y. WOO & CO.

No. 2

Amended Defence

1977 No. 2882

IN THE SUPREME COURT OF HONG KONG

HIGH COURT

20 BETWEEN LEUNG CHOW PUBLIC CAR COMPANY (a firm) Plaintiffs
and
THE ATTORNEY GENERAL Defendant

No. 2

Amended Defence

27th January 1978

AMENDED STATEMENT OF DEFENCE

30 The Defendant admits paragraphs 1 to 3 inclusive of the Statement of Claim save that ~~as regards paragraph 3 the said applications were in respect of the registration and licensing of 47 public cars for which no licensing fees were tendered.~~ **it is denied that the Plaintiffs were at any material times the owners of the vehicles referred to in paragraph 3 of the Statement of Claim.**

2. The Defendant admits paragraphs 4 to 10 of the Statement of Claim save that as regards paragraphs 9 and 10 the said action was not heard on the 24th May 1977 but was adjourned to the 30th June 1977 and further adjourned to and heard on the 6th July 1977.

In the Supreme
Court of Hong
Kong

—
No. 2

Amended
Defence

27th January
1978

(continued)

3. The Defendant admits paragraph 11 of the Statement of Claim save that the declaration and orders referred to in paragraph 11 of the Statement of Claim were the only declarations and orders made. The Defendant says that as at the date of the hearing of the said action on the 6th of July 1977 the vehicles in respect of which registration and licensing as public cars had been sought were ~~no longer~~ **not** in the possession of the Plaintiffs as a consequence of which the Plaintiffs abandoned the original declaration sought namely that the Plaintiffs were entitled to have 47 vehicles registered as public cars and sought a declaration that the Plaintiffs were entitled to have application for registration of 47 vehicles as public cars entertained a declaration in these terms being granted.

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4. The Defendant admits paragraph 12 of the Statement of Claim save that the duty imposed on the Commissioner referred to in paragraph 12(b) was to re-register as a taxi a motor vehicle which immediately prior thereto had been registered as a public car.

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5. The Defendant admits paragraphs 13 and 14 of the Statement of Claim.

6. The Defendant denies that the Plaintiffs have suffered a loss as calculated in paragraph 15 of the Statement of Claim. The Defendant denies that the Defendant is liable for the loss so calculated or at all.

7. The Defendant admits paragraphs 16 to 18 of the Statement of Claim, **but it is denied that the Plaintiffs were at any material times the owners of the vehicles referred to in paragraph 17 of the Statement of Claim.**

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8. Paragraph 19 of the Statement of Claim is denied. The Defendant says that in accordance with the policy underlying the enactment of Ordinance No. 45 of 1977 on the 16th June 1977 referred to in paragraph 12 of the Statement of Claim, the Commissioner for Transport decided that no new public car licences would be issued. He therefore determined on the 28th June 1977 to limit the number of vehicles registered as public cars to the existing number registered. However in order not to prejudice the pending hearing and decision in action No. 750 of 1976 the Commissioner made provision for a further 47 reserved vacancies. That decision was implemented in Gazette Notice (Extraordinary) 15 of 1977 dated 30th June 1977 and published on the 2nd July 1977.

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9. The decision in the said action No. 750 of 1976 was given on the 6th July 1977. The Plaintiffs were declared to have the right to have application for registration of 47 vehicles as public cars entertained. The Plaintiffs did not obtain the original order sought namely that they were entitled to have 47 vehicles in respect of which applications were made to the Commissioner for Transport on 15th July 1976 duly registered as public cars. The Defendant will say that the Commissioner for Transport formed the opinion that he was no longer bound to consider the applications for 47 vehicles to be registered as public cars submitted on the 15th July 1976 and had no power to reserve 47 vacancies and was in a position to reduce the number of vehicles registered as public cars to those existing on the 6th of July 1977 in furtherance of the Policy not to issue any new public car licences. That decision was implemented in Gazette Notice (Extraordinary) 16 of 1977 dated the 6th of July 1977 and published on the 7th July 1977. Applications by the Plaintiffs for 47 vehicles to be registered as public cars were duly entertained by the Commissioner for Transport together with other applications for the registration of vehicles as public cars and were ultimately refused as were such other applications.

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~~10. Paragraph 20 of the Statement of Claim is denied.~~

10. The Defendant states that paragraph 20 of the Statement of Claim does not disclose a cause of action in that the matters pleaded therein do not show that the Commissioner for Transport was malicious and/or ultra vires with the knowledge of so acting. If, which is denied, paragraph 20 does disclose a cause of action it is ~~not admitted~~ denied that the Commissioner for Transport acted with malice and/or was ultra vires with the knowledge of so acting. The Defendant states that at all material times, the Commissioner for Transport reasonably believed (as was the case) that he was acting lawfully properly and within his powers.

11. The Defendant denies paragraph 21 of the Statement of Claim. Without prejudice to the generality of the denial of the Plaintiffs claim for relief the Defendant states that even if the matters pleaded in the Statement of Claim were proved the Plaintiff would not be entitled to the relief sought in paragraph 1 of the prayer of the Statement of Claim.

As for paragraphs 2 and 3 the Defendant denies that the Plaintiff is entitled to such relief.

In the Supreme
Court of Hong
Kong

No. 2

Amended
Defence

27th January
1978

(continued)

the Plaintiffs join issue with the Defendant upon his Defence.

In the Supreme
Court of Hong
Kong

No. 3

Amended Reply

31st October
1978

(continued)

2. In further answer to paragraph 1 of the Amended Defence, the Plaintiffs say that the Defendant is estopped from alleging that the Plaintiffs were not the owners of the said vehicles (which is denied) by reason of the following matters :-

- 10
- (a) By a letter dated 22nd July 1976 sent to the Plaintiffs' solicitors, the Commissioner in pursuance of Regulation 17F of the Road Traffic (Registration and Licensing of Vehicles) Regulations specified the grounds for the refusal of the Plaintiffs' applications referred to in paragraph 3 of the Amended Statement of Claim.
- (b) The Commissioner by the said letter treated and/or expressly or impliedly admitted that the Plaintiffs were the owners of the said vehicles.
- 20
- (c) The Commissioner never raised the question of the Plaintiffs' ownership in the said vehicles by the said letter or at all prior to the proceedings in H.C.M.P. 750 of 1976.
- (d) As a result of the matters aforesaid, the Plaintiffs did not take delivery of the said vehicles and allowed Honest Motors Ltd. the vendors thereof to sell or dispose of the same.

30

3. In further answer to paragraph 7 of the Amended Defence, the Plaintiffs say that the Defendant is estopped from alleging that the Plaintiffs were not the owners of the said vehicles (which is denied) by reason of the following matters :-

- 40
- (a) By a letter dated 14th July 1977 sent to the Plaintiffs' solicitors, the Commissioner in pursuance of Regulation 17F of the Road Traffic (Registration and Licensing of Vehicles) Regulations specified the grounds for the refusal of the Plaintiffs' application referred to in paragraph 17 of the Amended Statement of Claim.
- (b) The Commissioner by the said letter treated

In the Supreme
Court of Hong
Kong

No. 3

Amended Reply

31st October
1978

(continued)

and/or expressly or impliedly admitted that the Plaintiffs were the owners of the said vehicles.

(c) The Commissioner never raised the question of the Plaintiffs' ownership in the said vehicles by the said letter or at all prior to the amendment of paragraph 7 of the Defence herein.

(d) As a result of the matters aforesaid, the Plaintiffs did not take delivery of the said vehicles and allowed Honest Motors Ltd. the vendors thereof to sell or dispose of the same.

10

4. In further answer to paragraphs 8 and 9 of the Defence, the decision of the Commissioner to reserve 47 vacancies that was implemented in Gazette Notice (Extraordinary) 15 of 1977 dated 30th June 1977 and published on 2nd July 1977 and the failure or omission of the Commissioner to inform the Plaintiffs or the Court of his alleged determination referred to in paragraph 8 of the Defence (which is denied) lulled the Plaintiffs and/or their legal advisers into a false sense of security in thinking that the Commissioner had made specific provision for the 47 applications that they would be making after they obtained a declaration from the Court that they were entitled to have application for registration of 47 vehicles as public cars entertained. As a result thereof, the Plaintiffs were prejudiced and acted to their detriment in that

20

(a) they did not make any application for registration of 47 vehicles as public cars before they obtained the said Declarations of Honourable Mr. Justice McMullin on 6th July 1977;

30

(b) they did not at the trial of the said action make any application to the Court for damages to be assessed for the Commissioner's wrongful acts as declared by the Court as set out in paragraph 11(a) of the Statement of Claim herein.

40

5. If, which is not admitted, there was in existence at any relevant time the policy as pleaded in paragraph 8 of the Defence, the Plaintiffs say that by reason of the

matters aforesaid, the Defendant is estopped from applying the said policy with regard to the Plaintiffs and ought not in law to have disqualified himself from properly entertaining the Plaintiffs' applications for registration and licensing of 47 vehicles as public cars.

In the Supreme
Court of Hong
Kong

No. 3

Amended Reply

31st October
1978

(continued)

10

4. 6. In further answer to paragraphs 9 and 11 of the Defence. If the Commissioner had received two separate applications for registration each of 50 vehicles as public cars on 6th July 1977, which is denied, the Plaintiffs' right and position would only be subject to the Commissioner's exercising his duty, power or discretion under Regulation 18B(3) of the Road Traffic (Registration and Licensing of Vehicles) Regulations, Cap. 220 whereby the Plaintiffs' applications and the said alleged applications received by the Commissioner would be determined by lot.

WOO KWOK HING

Counsel for the Plaintiffs,

Dated the 31st day of October 1978,

20

WOO KWOK HING

Counsel for the Plaintiffs.

Dated the 18th day of April 1980.

No. 4

Request for Further and Better Particulars of
the Statement of Claim

H.C. Action No. 2882/1977
Leung Chow Public Car Co. v. A.G.

Request for Further and Better Particulars of
the Statement of Claim

No. 4

Request for
Further and
Better Parti-
culars of the
Statement of
Claim

25th February
1980

30

1. Under Paragraph 15(B)

Of "Loss of profit for operating or loss of use of 47 public cars from 15th July 1976 till 31st October 1977 at 1,500 Hong Kong Dollars per public car per month for 15 and a half months", please state how the figure of 1,500 Hong Kong Dollars per public car per month is arrived at

In the Supreme Court of Hong Kong

No. 4

Request for Further and Better Particulars of the Statement of Claim

25th February 1980

(continued)

giving full particulars of the calculation including details of the income and expenditure relevant to the said calculation.

2. Under paragraph 15(C)

Of "Loss of profit for operating or loss of use of 47 taxis after 1st November 1977 at 2,500.00 Hong Kong Dollars per taxi per month and continuing", please state how the figure of 2,500.00 Hong Kong Dollars is arrived at giving full particulars of the calculation including details of the income and expenditure relevant to the said calculation.

10

3. Under paragraph 19

Of "(A) The Commissioner has wrongfully deprived the Plaintiffs of their right to have the said 47 applications dated 11th July 1977 properly and duly entertained,

(B) The Commissioner has wrongfully and unjustifiably and unfairly put himself out of his power to duly and properly entertain the said 47 applications dated 11th July 1977, and

(C) The Commissioner has wrongfully and unfairly defeated, evaded and nullified the terms and intent of the said declarations of the Honourable Mr. Justice McMullin",

20

please state whether there are any facts or matters relied upon other than those in the statement of claim or the reply. If so, please specify with sufficient particularity.

No. 5

Reply to Further and Better Particulars of
Statement of Claim

In the Supreme
Court of Hong
Kong

No. 5

1977, No. 2882

IN THE SUPREME COURT OF HONG KONG
HIGH COURT

Reply to Further
and Better
Particulars of
Statement of
Claim

BETWEEN LEUNG CHOW PUBLIC CAR
COMPANY (a firm)

Plaintiff

14th March 1980

and

10

THE ATTORNEY GENERAL

Defendant

FURTHER AND BETTER PARTICULARS OF
THE STATEMENT OF CLAIM PURSUANT TO
A REQUEST OF 25TH FEBRUARY 1980

Under paragraph 15(b) thereof

Gross profits from hiring out a public car
@ \$50 for 5 a. m. to 5 p. m. and @ \$50
for 5 p. m. to 5 a. m. each day for 30 days
per month \$3,000.00

LESS:-

20	depreciation \$32,000 divided by 60 months for 5 years x 12 months, about	\$6,400.00 p. a.
	licence fee, about	1,000.00 p. a.
	insurance premium, about	1,500.00 p. a.
	maintenance repairs and tyres, about	6,000.00 p. a.
	inspection of car, about	<u>2,000.00 p. a.</u>
	About	\$ 16,900.00 p. a.

The monthly expenditure would be about \$1,408.00 per
month. The monthly net earnings would therefore be
\$3,000 less about \$1,500 = \$1,500 per month.

30 Under paragraph 15(c) thereof

Gross profits from hiring out a taxi

In the Supreme Court of Hong Kong @ \$65 for 5 a.m. to 5 p.m. and @ \$70 for 5 p.m. to 5 a.m. each day for 30 days per month \$4,050.00

No. 5 LESS:-

Reply to Further and Better Particulars of Statement of Claim 14th March 1980 (continued)	depreciation \$30,000.00 divided by 60 months for 5 years x 12 months, about licence fee, about insurance premium, about maintenance repairs and tyres, about inspection of car, about	\$6,000.00 p.a. 500.00 p.a. 1,500.00 p.a. 7,200.00 p.a. <u>2,000.00</u> p.a.	10
	About	\$17,200.00 p.a.	

The monthly expenditure would be about \$1,433.00 per month. The monthly net earnings would therefore be \$4,050 less about \$1,500 = \$2,550 per month.

Under paragraph 19 thereof

You are not entitled to such particulars.

Dated the 14th day of March 1980.

(Sd.) WOO KWOK HING

Counsel for the Plaintiffs.

Appellants' Evidence

Appellants' Evidence

20

No. 6

No. 6

Tse Kai Chow

Tse Kai Chow
Examination
in Chief

PW1 Tse Kai Chow sworn in punti :

I live at Flat B3, 12/F., Mirandor Mansion, 60 Nathan Road, Kowloon.

I am managing partner of Leung Chow Public Car Co.

In November 1975, I instructed K. Y. Woo & Co. to apply to Transport Department for registration of 200 p.c. and 100 PLB.

In December 1976, I instructed my solicitors to take proceedings against A.G. in respect of registration of 25 PLB in HCMP 749/76 and in respect of 74 p.c. in HCMP 750/76.

On 30/6/77, judgment was given in Plaintiffs' favour by McMullin J. in HCMP 749/76. Then I instructed my solicitors to register 4 PLB with Transport Department.

10 Q. Have a look at P. 81 in Bundle B. This is covering letter of your solicitors including 4 applications for registration of 4 PLB.

A. Yes.

PW1: P. 82, P. 83, P. 84 and P. 85 were forms signed by me. (Bundle B referred to).

PW1: P. 86 was Insurance Note for the 4 cars. P. 87 and P. 877 were invoices for 4 cars for registration.

20 I was authorised by Co. to be owner of 4 PLB. The letter so authorizing me was sent to Commissioner of Transport as in P. 89.

P. 90 is the letter approving my 4 applications. The 4 cars were registered as PLB.

The Commissioner did not take any objection that I was not owner of these 4 PLB. The Commissioner did not take any objection to me registering these 4 PLB.

I signed P. 79, a contract dated 2/7/76.

30 When I applied for registration of PLB in 1977, I did not sign any contract with Honest Motors Ltd. P. 79 is the contract.

Q. Why do you say that?

A. At the time when I ordered 100 vehicles from Honest Motors, I signed this document.

Q. What was the basis of purchase of 4 vehicles registered in 1977?

A. It came from here (PW1 pointing at P. 79). I went to Honest Motors Ltd. and told them that judgment was delivered in my favour, and I asked for delivery of the vehicles.

In the Supreme Court of Hong Kong

Appellants' Evidence

No. 6

Tse Kai Chow

Examination in Chief

(continued)

In the Supreme
Court of Hong
Kong

Appellants'
Evidence

No. 6

Tse Kai Chow
Examination
in Chief
(continued)

Q. How many vehicles did you ask to be delivered?

A. 4.

PW1: The price was the same as in P. 79, but I'm not quite sure. All the vehicles for business purpose have fixed price.

Q. Have a look at P. 23. This is the same contract. The unit price is \$45,600.

A. Yes.

Q. In P. 79, the unit price is deleted.

A. Yes.

10

Q. And the figure is \$45,900.

A. Yes.

Q. Two signatures, there are two signatures next is it.

A. Yes.

PW1: One is my signature. The deletion of \$45,600 was possibly due to, in that period of time, evaluation of Japanese Years. I'm not quite sure. I say possibly.

In P. 79 Bundle B, List Price is \$45,900 which is not contract price but the changed price.

20

Still on PLB, please refer to P. 9 up to P. 12. That is your affidavit filed in proceedings 749. (Bundle B referred to).

A. Yes.

PW1: I confirm the truth of this affidavit. There are a number of exhibits from pp. 15 - 32. Apart from P.17 & P.32, I confirm the contents of the various exhibits there.

P.54 to P.56 is another affidavit of mine used in 749. I confirm the truth of the contents in that affidavit.

30

Bundle A from P. 1 to P. 10, they are correspondence between your solicitors and Transport Department.

A. Yes.

PW1: I confirm truth of contents of letters written by my solicitors. P. 15 and P. 16 is a copy of contract I entered into with Honest Motors Ltd. on 30/6/76. I confirm my signature on it as buyer.

In the Supreme Court of Hong Kong

Appellants' Evidence

No. 6

Tse Kai Chow

Examination in Chief

(continued)

Q. In P.P.19 and 20 is Supplement to that contract you referred to.

A. Yes.

Q. Did you sign that supplement?

A. I couldn't find any.

10 Q. Did you in fact sign this document?

A. There is no my signature here.

Q. PP.34-38 is one of your affidavits in 750/76.

A. Yes.

Q. Actually that is the only one in 750.

A. Yes.

Q. Do you now confirm the truthfulness of contents of that affidavit?

A. Yes.

Q. From PP. 41-67 are exhibits to your affidavit.

20 A. Yes.

Q. As far as these documents came out from you and your solicitors. Do you confirm the truth of the contents?

A. Yes.

Q. Look at PP. 111-121. These are letters written by your solicitors and one of the application forms filled by you together with accompanying documents for 47 p.c.

A. Yes.

30 Q. Do you confirm truth of contents of these documents?

A. Yes.

In the Supreme
Court of Hong
Kong

Appellants'
Evidence

No. 6

Tse Kai Chow
Examination
in Chief
(continued)

Q. Eventually your applications for 47 p.c. were refused by Commissioner?

A. Refused.

Q. Did that come as a surprise to you or was it expected?

A. I thought my applications would be accepted because of the judgment of the Commissioner.

Q. Judgment of the Court is at pp. 104-105 of the bundle.

A. Yes.

10

Court: I take it that all documents referred to you for your confirmation have been interpreted and explained to you in Cantonese.

A. Yes.

Q. At P. 105 the declaration given by the Court in your favour is to the effect your company was entitled to have applications for registration 47 vehicles as p.c. entertained under the provisions of Reg. 6.

A. Yes.

Q. Your application was refused on 14/7/77 as in P.123.

20

A. Yes.

Q. Have a look at Bundle C P.P. 19 & 20. This is contract between plaintiff company and Honest Motors Ltd. dated 9/7/77 for the purchase of 47 Datsun 220C Diesel Sedan for p.c.

A. Yes.

Q. On L.H. bottom is your signature there?

A. Yes.

Q. At PP.21-22, there is Supplement to the contract.

A. Yes.

30

Q. At P.22 you can find your signature in very middle of the page.

A. Yes.

Q. Do you confirm this contract and the Supplement was agreed to by you for your company?

A. Yes.

Q. At the time of entering the contract were your company able to pay the contract price for 47 cars?

A. Yes.

Q. Were your company ready and willing to pay the same if you were registered with the department?

10 A. Yes.

Q. In fact Commissioner refused your applications on 14/7/77.

A. Yes.

PW1: My original application in July 76 was for registration of 47 p.c. If my application had been granted in July 76, the income for each vehicle would have been as follows: \$50 hire rate for day time and \$50 for night time.

20

Day time means day shift from 5 a.m. to 5 p.m. Night time would be from 5 p.m. to 5 a.m. For one day, it would be \$100. That was income for hiring out each as a p.c. Expenses were licence, insurance and maintenance and depreciation. Licence was about \$1,000 per year. Insurance was around \$1,500 per year. Maintenance/repairs would be around \$6,000 per year. A p.c. could be used for a period of approx. 5 years. Depreciation is arrived at by dividing the vehicle price into 5 years. At that time the car price was around or a bit more than \$30,000.

30

Around \$32,000 to \$23,000. Each car from P.15 in bundle A was \$34,900 and there was a discount \$2,617.50. The net price was \$32,282.50 to be divided into 5 years.

Q. Have a look at C19. There is a contract in July 77.

A. Yes.

Q. The net price is slightly over \$30,000. It is \$30,005.

In the Supreme Court of Hong Kong

Appellants' Evidence

No. 6

Tse Kai Chow

Examination in Chief

(continued)

In the Supreme
Court of Hong
Kong

Appellants'
Evidence

No. 6

Tse Kai Chow
Examination
in Chief

(continued)

A. Yes.

Q. The price of car was coming down.

A. Yes. This was for use as taxi which was cheaper. At that time, this vehicle was purchased for p.c., yes.

Q. Is there any difference in cars purchased for p.c. and taxis?

A. If vehicles were purchased for use as p.c. we had to pay tax but not for taxis.

Q. For same car, is there any difference in price?
Can you use same car for taxi or p.c.?

10

A. Yes, except the price varies.

Q. It would be cheaper for a car to be used as a taxi.

A. Yes, because of tax to be paid to government.

Q. Every year is it necessary for a p.c. to be inspected by government?

A. Yes, once a year.

PW1: Formerly we had to pay no fee, now yes. It appears to be \$75. I'm not quite sure. We have to pay expenses for painting of body and overhaul of engine. It is around \$2,000 a year.

20

Q. How much would an operator of a p.c. make a month taking into consideration income and expenses?

A. Around \$1,500 per month.

Q. At end of 1977, how much would a taxi operator make per day?

A. \$65 for day shift and \$70 for night shift.

Q. What are expenses for operational expenses for taxi at end of 77?

A. Also the same : licence, insurance and maintenance.

30

PW1: At that time, it appeared taxi licence was \$500 odd

per annum, but it is now more than that. It is double now. Insurance was the same then, about \$1,500 per annum. Maintenance was around \$6,400 per year. There was to be an inspection of a taxi yearly and inspection of the meter was to be half-yearly. Expenses for inspection of a taxi was \$2,000 a year. A taxi could be used for 5 years. The price for a taxi at end of 1977 was around \$30,000. It was cheaper than p.c. because we need not pay tax which amounted to \$2,000 - \$3,000.

The income of \$65 for day shift and \$70 for night shift was from hiring it out.

End 77, 78 & 79, our net income was \$2,500 per month per unit as owner for hiring a car to a driver.

I have been in transportation business for 23 years since 1957.

I have operated p.c.

I have operated taxis.

We have an organization for p.c. owners. It is called H.K. & Kowloon Public Cars Licence Holders Association. This association is still in existence. I'm the Chairman.

Public cars have been phased out in H.K. That Association is an association for public vehicles which include PLB.

Q. There was an ordinance which came into existence in June 77 which provided owners of p.c. could registered them as taxis on payment of \$75,000.

A. Yes. The first payment would be \$50,000 and the balance of \$25,000 to be paid in following year.

Q. This Ordinance came into force on 1/11/77.

A. Yes.

Q. On 22/7/77, there was a G.N. setting out price tender for taxis.

A. Yes.

Q. Look at P.125 in Bundle A. We can see penultimate figure is \$181,000 for one taxi.

A. Yes.

In the Supreme Court of Hong Kong

Appellants' Evidence

No. 6

Tse Kai Chow Examination in Chief

(continued)

In the Supreme
Court of Hong
Kong

Appellants'
Evidence

No. 6

Tse Kai Chow

Examination
in Chief

(continued)

Q. Had you been granted 47 applications, would you have changed them into taxis?

A. Yes.

Q. You would have paid \$75,000 to change each into a taxi.

A. Yes.

PW1: The auction tender price was higher later.

Q. At P.138 Bundle A tender price for one car was \$242,828.

A. Yes.

10

Q. That was in September.

A. Yes.

Q. It had gone up \$60,000.

A. Yes.

Q. You said if you had been granted application for 47 p. c., you would have changed them into taxis by payment \$75,000 premium.

A. Yes.

Q. Were your company able to pay that?

A. Yes.

20

Q. Were your company willing and ready to pay that?

A. Yes.

Q. If H. C. granted your applications now, would your company able to pay \$74,000 premium each?

A. Yes.

Q. Would your company willing and ready to pay that?

A. Yes.

Cross-examination of PW1 :

In the Supreme
Court of Hong
Kong

Q. Would you please look at Bundle B? Turn to P. 23.

A. Yes.

Appellants'
Evidence

Q. You told the Court that you were subsequently registered 4 LB and you purchased these 4 LB pursuant to this contract.

No. 6

Tse Kai Chow

A. Yes.

Cross-
examination

Q. The contract provided a price per unit at \$45,600.

A. Yes.

10 Q. But it also provided that price was subject to change or be revised at the time of delivery.

A. Yes.

Q. If you turn to P. 25, you'll find engine and chassis numbers of 25 cars.

A. Yes.

Q. It was out of those 25, I take it, you obtained the 4 you subsequently registered.

A. I don't know.

Q. Was there any contract for the other 75 LB?

20 A. These numbers were available after shipment of these vehicles arrived in H.K.

Q. In other words, when you signed contract on 2/7, the cars had not arrived in H.K.

A. The vehicles listed down here were already in H.K. As to the others, I don't know.

Q. Was a list even given to you of 75 vehicles you had agreed to buy?

A. I can't recollect.

30 Q. You have been asked by your solicitors to produce all documents relating to this action.

A. Yes.

In the Supreme
Court of Hong
Kong

Appellants'
Evidence

No. 6

Tse Kai Chow

Cross-
examination

(continued)

Q. And you have done so.

A. Yes.

Q. Please turn to P. 79. P. 79 is another copy of this contract. Is it not?

A. Yes.

Q. But with a difference that an alteration was made by hand in the price.

A. Yes.

Q. When was that alteration made?

A. I can't remember. 10

Q. Can you say approx. when? e.g. 76 or 77?

A. I can't remember.

Q. Was the alteration made because Honest Motors insisted upon it?

A. I can't recollect. I was handed this document for signature, and I signed accordingly.

Q. Because you knew Honest Motors was entitled to increase the price if they wished to do so.

A. Yes, because it was stipulated here.

Q. Would you turn to P. 91? This is one of the invoices for one of 4 PLB you purchased. 20

A. Yes.

Q. But engine number and chassis number are different from those in contract in 1976.

A. Yes.

Q. So the 4 vehicles you purchased were obviously not the ones you had originally agreed to buy.

A. Any way as long as they provided me with the vehicles that would do.

- In the Supreme
Court of Hong
Kong
——
Appellants'
Evidence
No. 6
Tse Kai Chow
Cross-
examination
(continued)
- Q. But they were not the ones you had originally agreed to buy?
- A. I did not check the numbers. As long as the Government approved these vehicles, that would do.
- Q. I understand that, but you have not answered my question.
- A. I submitted the vehicles for inspection of government department, and as long as government department said "yes", I was alright.
- 10 Q. Would you please turn to Bundle A and look at P.15? This is contract in 1976 in which you agreed to buy 100 cars for p.c. use.
- A. Yes.
- Q. Was this agreement made on 30/6/76?
- A. I don't remember. It is written down here. Yes. Here it is stated 30/6/76.
- Q. And that was the date when the agreement was signed. Was it?
- A. I do not remember.
- 20 Q. If there had been, you would have produced it to your solicitors, I expect?
- A. If my solicitors asked me to hand over it, I would have certainly handed it over. If not, I do not know if I should.
- Q. Do you know if on 30/6 the cars in contract had been in H.K.?
- A. I don't know.
- Q. Even if they been in H.K. They would not have been ready for delivery, would they, because they would have to be treated before they could be delivered?
- 30 A. The vehicles had been ready before they arrived in H.K. even the painting of the body.
- Q. But after the journey from Japan they had to be

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Court of Hong
Kong

Appellants'
Evidence

No. 6

Tse Kai Chow

Cross-
examination

(continued)

dewaxed and given a going-over.

A. No. Once they arrived in H.K., delivery could be made immediately.

Q. Would you please turn to P. 17? Did you obtain that Insurance Certificate with a list of vehicles attached to it?

A. Yes. That is cover-note.

Q. It is dated 15/7 more than 2 weeks after the contract.

A. Yes.

Q. Why is that?

A. This cover-note was to be given to Transport Department at the time of tendering applications in order to obtain licence book.

Q. Why did you wait until 15/7 to insure the vehicles?

A. Because at the time when we went to Transport Department to issue the licence book the licence fee and documents as well as this note were handed over to Transport Department.

Interpreter: (Witness wants question to be repeated)

Q. Please.

A. We have to wait for all the formalities to be completed before going to T.D. for the insurance of the licence book. It is no use going to T.D. with the cover note only before the other formalities are ready.

(T.D. = "Transport Department")

Court: Adjourned to 9.30 a.m. tomorrow.

Sd
(B. Liu)
Judge of the High Court
16/4/80

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30

17th April 1980 (9.30 - 1.08 & 2.30 - 4.38)

Coram: Hon. Liu, J. in Court

Appearance as before

9.30 a.m.

PW1 reminded of his former oath

Cross-examination of PW1 continued

In the Supreme
Court of Hong
Kong

Appellants'
Evidence

No. 6

Tse Kai Chow

Cross-
examination

10 Q. Your firm began proceedings in 750/6 on 17/12/76,
by that time Honest Motors had already sold the 47
vehicles for the registration of which you had
applied to Commissioner on 15/7.

A. I do not know.

Q. Your firm never acquired any of those 47 vehicles.

A. But I had already signed the contract in order to
buy the vehicles.

Q. Yes. We know that, but you never took possession
of those vehicles. Did you?

A. I was not issued with any licence. So how could I
obtain possession of my vehicles?

20 Q. You began present proceedings on 12/10/77, by
that time Honest Motors had sold 47 vehicles for
the registration of which you had applied earlier.
Is that not right?

A. I do not know whether they were sold or not.

Q. Did you ever pay for any of the vehicles. You
agreed to buy from Honest Motors?

A. I paid a deposit of \$20,000. This is the receipt.
(2 blue documents handed over to counsel).

30 Q. You handed me 2 receipts for \$10,000 each one
dated 30/6/76 and the other dated 2/7/76. I think
one of them, the one for 30/6/76, referred to your
contract of purchase for use as p.c. Is that not
right?

A. Yes.

In the Supreme
Court of Hong
Kong

Appellants'
Evidence

No. 6

Tse Kai Chow

Cross-
examination

(continued)

Q. Was that deposit for \$10,000 made on 30/6/76
refunded to you by Honest Motors?

A. No.

Q. Why not?

A. Because it was a deposit for the purchase of p.c.

Q. Would you look at Bundle A P.15? This is the
contract for the purchase of 100 vehicles for p.c.
use and also provided the deposit would be
refunded if applications were to be rejected by
H.K. Government in due course.

10

A. If we refused to purchase the vehicles after placing
this order, a charge would be made by H.M. ("H.M."
= "Honest Motors").

Q. Why was your deposit not refunded in accordance
with the contract?

A. It was not refunded, and it was also not refunded for
the other receipt for \$10,000 for purchase of 100
LB.

Q. Why not?

A. I was told since I had signed the contract with him,
I must buy those vehicles. Anyway I was going to
ask for the return of the deposit.

20

Court: Do you want the documents in?

Scott: I am not concerned with the one dated 2/7/76.

Woo: Perhaps only the one for p.c. should be exhibited.

Court: Mark the one dated 30/6/76 "P1".

Q. The sum of \$10,000 represented by that receipt is
the only sum you paid H.M. for purchase of
vehicles for p.c. use. Is that right?

A. Yes.

30

Q. Would you please look at Bundle C P.19? This is
contract dated 9/7/77 between your firm and H.M.
for purchase of 47 cars for p.c. use.

- A. Yes.
- Q. That does not provide for any deposit. Does it?
- A. The payment in this receipt ("P1") is included in this contract.

Court: "Refers to this contract"?

Interpreter: Yes. "also refers to this contract".

- A. It is not referred in the contract at all.

Court: He says the receipt also refers to the contract and not the other way round.

- 10 Q. Did you see any of vehicles, subject of this contract?
- A. I had bought a total of about 100 odd to 200 from H.M. Ltd, and I had never seen any one of it because all these were brand new vehicles. So it was not necessary for me to examine them closely.

Q. Did you intend to operate any of these 47 vehicles as p.c.?

- A. Yes, all of them.

20 Q. What was total capital investment required to operate 47 p.c. at this time?

- A. You have to pay $\frac{1}{4}$ of the price of the vehicles in order to obtain delivery of vehicles.

Q. Is that the only capital investment that would be required - $\frac{1}{4}$ of purchase price?

- A. And there must be a reserve fund in order to operate this business.

Q. How much?

- A. At that time, I had \$1 million odd in Bank of America and facilities of \$4 million with same bank.

30 Q. Do I understand you would have to pay $\frac{1}{4}$ of purchase price and borrow rest on hire-purchase terms?

- A. No.

In the Supreme
Court of Hong
Kong

Appellants'
Evidence

No. 6

Tse Kai Chow

Cross-
examination

(continued)

In the Supreme
Court of Hong
Kong

Appellants'
Evidence

No. 6

Tse Kai Chow

Cross-
examination

(continued)

Q. How would you acquire 75%?

A. I possibly would have paid $\frac{1}{2}$ or over $\frac{1}{2}$ of purchase price.

Q. But what about balance of purchase price?

A. That would be mortgaged with either my banker or any other bank or even with H. M. Ltd.

Q. And you would have had to pay interest on that. Wouldn't you?

A. Yes.

Q. But you have not allowed for interest in your calculation for profit? Have you? 10

A. Right.

Q. In order to operate a business of 47 vehicles you would have had to acquire an office. Would you not?

A. Yes.

Q. With staff to run it.

A. Yes.

Q. But you have not allowed cost of that in your calculation of profit. Have you? 20

A. I had been operating the p.c. business. I have a radio. So I had already had a team of staff there including radio station operator. So even if I had some more p.c. the expenditure for the staff would have been included.

Q. How many p.c. did you operate in 77?

A. There were 175 p.c. under the management of our company in 1971 to 1974.

Q. I asked you how many p.c. you operated in 77.

A. Around 70 - 80. 30

Q. Were they all operated from Flat B3, 60 Nathan Road, 12/F?

- A. Yes. There was a radio station there.
- Q. And how many people were in this team of staff?
- A. Around 7.
- Q. Were they all working in your flat?
- A. Yes.
- Q. When the Commissioner refused to register your vehicles in 77, did you make any application for taxis by tender - when the next opportunity arose?
- A. I had on many occasions but with no success.
- 10 Q. How many did you apply for in October or November 77?
- A. 3 to 4 per one tender 6 to 7 in another & 7 to 8 per another - I can't remember how many.
- Q. But on figure you have provided, less than 20.
- A. Yes.
- Q. There was no reason why you should not apply for 47 taxis.
- A. We had to pay a tender amounting to \$200,000 for taxes, but we did not have to pay that for p. c. Moreover the profit for operating the taxis is \$2,000 odd while that for p. c. was \$1,500, so p. c. were more attractive to me.
- 20 Q. You said you put in 3 tenders. Were they accumulative tenders or alternative tenders?
- A. What do you mean?
- Q. Did you ask for all your tenders to be granted or one or two to be granted?
- A. I tendered on separate occasions, and I asked for the lowest tender be accepted.
- 30 Q. So you only in fact applied for a maximum of 5 taxis.
- A. Yes.

In the Supreme
Court of Hong
Kong

Appellants'
Evidence

No. 6

Tse Kai Chow

Cross-
examination

(continued)

In the Supreme
Court of Hong
Kong

Appellants'
Evidence

No. 6

Tse Kai Chow

Cross-
examination

(continued)

Q. And the reason your tenders were rejected was because your tenders were too low.

A. Yes.

Q. Going back to your claim for loss of profit, you have calculated it on basis of income of \$100 for a day and a night for one p.c.

A. Yes.

Q. Would you receive that sum if the vehicle were off the road because of accident or due to mechanical failure?

10

A. Yes. And if the car was damaged due to traffic accident, I would be compensated.

Q. Who would compensate you?

A. The driver.

Q. Do you have some form of written agreement under which you let out p.c. on these terms?

A. No.

Q. But how do you know the driver would compensate you in terms you suggest?

A. At the time of interview it was clearly told to driver. In addition a sum of \$500 - \$1,000 was collected as deposit.

20

Q. Do you mean to say you let out dozens of p.c. without written agreements?

A. Right. Simply a deposit was collected. No receipt was issued.

Q. Has your partnership submitted any return showing hiring rate of p.c. and other particulars in relation to the hire to Commissioner of Transport?

A. Before 1970 when the licence was suspended for 2 years, yes.

30

Q. Are you aware before a p.c. is hired, the registered owner and hirer must complete 2 documents in form approved by Commissioner of Transport?

- A. They were not signed after 1971, i.e. after suspension of the licence.
- Q. It is a perfectly simple question. Are you aware of that requirement?
- A. Formerly yes I mean before 1971 when Transport Department asked us to sign these forms every month, but later there was no such necessity. But we had our business register i.e. records of messages received from radio station.
- 10 Q. You presumably have available documents showing what profits you made on operation of p.c.?
- A. Yes.
- Q. Why have these documents not been produced in this action?
- A. It is a fact that everybody knows about the profit of operating this kind of business even the Transport Department know it.
- Q. Presumably you have also accounts of partnership showing capital available.
- 20 A. Which company?
- Q. The plaintiff firm.
- A. Do you mean the former one?
- Q. The plaintiff firm.
- A. This is a partnership business of 2 persons.
- Q. Would you kindly answer my question?
- A. I have, but my other partner told me that we have equal share in partnership business i.e. \$1.5 million each.
- Q. Have you operated taxis since 1977?
- 30 A. Yes. In 1960, I had to N.T. taxis.
- Q. And you presumably have documents showing how profitable operating taxis has been since 77?

In the Supreme
Court of Hong
Kong

Appellants'
Evidence

No. 6

Tse Kai Chow
Cross-
examination

(continued)

In the Supreme
Court of Hong
Kong

Appellants'
Evidence

No. 6

Tse Kai Chow

Cross-
examination

(continued)

A. Yes. As to hire rate etc., there is a record of this.

Scott: It is quite clear discovery has been totally inadequate if not in existence in the light of this witness' evidence. In my submission I should not have to cross-examine his witness on profit in the absence of production of documents which on his own admission are in his custody, possession or power. I would invite Y.L. to give me leave to defer remainder of my cross-examination on this subject and to order him to make discovery of 3 classes of documents to which he had just referred in answer to me. I would ask discovery be by supplemental list verified by affidavit.

10

Woo: I'm not opposing.

Scott: I'm concerned only with documents showing profitability: the first is documents showing profitability of p.c., second the documents showing profitability of taxis and thirdly accounts of partnership which of course would increase income and capital accounts.

20

Court: Adjourned 15 minutes.

10.55 a.m.

Scott: My learned friend and I have agreed two figures subject to liability. The two figures are: \$1,276 net profit before tax for operation of a p.c. at the material time per month. The corresponding figure for the operation of a taxi is agreed at \$1,200 per month. The particulars given by plaintiffs in P.P. 21 & 22 in Bundle B are therefore to be ignored. In those circumstances, I have no further question of the witness.

30

Lee: I agree.

PW1 reminded of his former oath

Re-examination Re-examination of PW1 :

Q. In regard to your application in July 76, they were refused by the Commissioner.

A. Right.

- In the Supreme
Court of Hong
Kong

Appellants'
Evidence
No. 6
Tse Kai Chow
Re-examination
(continued)
- Q. At that time you had already made a contract with H. M. to buy 100 vehicles for p. c.
- A. Right.
- Q. Had Commissioner approved your application for registration of 47 public cars in July 76, would you have taken delivery of the 47 cars under the contract you had made with H. M. ?
- A. Yes.
- 10 Q. Similarly in relation to your applications for registration of 47 p. c. in July 77, had Commissioner approved your applications, would you have taken delivery of 47 cars from H. M. under the contract?
- A. Yes.
- Q. You produced 2 receipts and actually we were talking about one of them - the receipt dated 30/6 for \$10,000 concerning purchase of p. c.
- A. Yes.
- Q. That was in relation to a contract in June 76 and that was paid under that contract in June 76.
- 20 A. Yes.
- Q. You said you never got the refund of that sum.
- A. Right.
- Q. And you said that payment continued in the receipt for \$10,000 was included in contract and also referred to contract in 1977 at P.19 of Bundle C. What do you mean?
- A. That is the deposit referred to in receipt dated 30/6/76 is transferred to this contract.
- Q. The contract at C19?
- 30 A. Yes.
- Lee: That is our case, my lord.
- Scott: If I may, I will call my evidence and address Y. L. later.

In the Supreme
Court of Hong
Kong.

Respondent's Evidence

No. 7

Respondent's
Evidence

Peter Frederick Leeds

No. 7

DW1 Peter Frederick Leeds sworn in English :

Peter Frederick
Leeds
Examination in
Chief

My business address is Transport Department,
Guardian House, 32 Oi Kwan Road, H.K.

I am presently Deputy Commissioner for Transport.

I am 49.

I arrived in H.K. in 1951 having done my national
service and worked in U.K.

10

I served in H.K. Police Department for about 5
years. Since then I have been various government
departments.

I joined the T.D. in 1972. ("T.D." = "Transport
Department").

I became Deputy Commissioner in 1979.

During my service in T.D., I have been conversant
with government policy and practice in relation to p.c.

I have also been conversant with legislation relating
to p.c.

20

The question of phasing out of p.c. was first con-
sidered by Transport Advisory Committee in 1975.

The main reason for phasing out p.c. were p.c.
were not performing functions originally prescribed for
them and many had been illegally operated as what we
call "pirate taxis".

Following discussions in Transport Advisory Com-
mittee, there was a recommendation to Governor-in-
Council that p.c. should be phased out.

Q. Did Department consider phasing out of p.c. as
desirable for reasons you have given?

30

A. Yes.

	Q.	What stand did department take pending decision of Ex. C?	In the Supreme Court of Hong Kong
	A.	The Commissioner for Transport instructed that the issue of p. c. licences should be suspended pending a policy decision by the Governor-in-Council.	Respondent's Evidence
	Q.	Why was that done, do you know?	No. 7
	A.	The reason for doing this was: it appeared undesirable to continue issuing licence for a class of vehicles which might be phased out.	Peter Frederick Leeds
10	Q.	On 20/11/75, following the decision in case of Wong Kwong Shing v. A.G., did T.D. receive certain advice from c. c. ?	Examination in Chief
	A.	Yes.	(continued)
	Q.	What was the effect of that advice?	
	A.	The advice was a limit should be set for those classes of vehicles for which licences were not being granted.	
20	Q.	In other words: a policy instead of not issuing any further licences, there should be a limit.	
	A.	The intention was, to implement that policy, a limit be set at the number of licences already issued.	
	Q.	In fact, was G.N.2670 published on 5/12/75 limiting p. c. to a maximum 1,388.	
	A.	Yes.	
	Q.	Did that figure represent number of vehicles actually registered at end of November 75 plus what was known as committed vacancies?	
	A.	Yes.	
30	Q.	On 6/4/76, did the Ex. C. meet and make an order relating to government's intention?	
	A.	Yes.	
	Q.	What did Ex. C. order?	

In the Supreme
Court of Hong
Kong

Respondent's
Evidence

No. 7

Peter Frederick
Leeds

Examination in
Chief

(continued)

A. The Ex. C ordered that legislation should be prepared to implement the new policy on p. c. and a public announcement should be made on this policy.

Q. And was that done?

A. Yes.

Q. Would you look please look Bundle C? Turn to P. 5. Is this an example of publicity which appeared in English as we can at P. 7 Chinese press following policy of phasing out?

10

A. Yes.

Q. Between 22/6/77 & 8/7/77, did you act as Commissioner for Transport?

A. Yes.

Q. While Mr. Mcpherson the Commissioner was on leave.

A. Yes.

Q. Had you previously acted as Commissioner of Transport on a number of occasions?

A. Yes.

20

Q. We know judgment in 749/76 was given on 30/6/77. Prior to that time, did you take advice from c. c. on limit of p. c. ?

A. Not directly but advice was given to officer in charge of p. vehicle section of Licensing Office. He informed me of this advice.

Q. What, you were given to understand, is the advice?

A. That the Committed vacancies need not be included in the gazetted limit.

Q. So that if that advice is right you were entitled to reduce the number in the gazetted limit by the number of committed vacancies.

30

A. That is correct.

	Q. Did you in fact wish to do so if it was lawfully possible?	In the Supreme Court of Hong Kong
	A. Yes.	_____
	Q. Why did you wish to do so?	Respondent's Evidence
	A. In order to effect the policy of not issuing additional licences.	No. 7
	Q. That is not issuing further licences of the type, you said, that were being abused?	Peter Frederick Leeds
	A. Yes.	Examination in Chief
		(continued)
10	Q. If you had reduced the gazetted limit by the full number of committed vacancies, what number would you have reduced it? Turn to P.10 Bundle C. This is, in fact, a memo on your behalf from Mr. Cheung Yuk Yin to Secretary of Environment dated 29/6/77. Perhaps, we will look at this for the moment: "G.N. 2290	
	Lee: I understand from my learned friend he is not calling Mr. Cheung, and I object to it on the ground of hearsay.	
20	Court: Are we not concerned with "malice"?	
	Lee: If Y.L. overrules my objection, I must be bound by that.	
	Scott: The question is: this document is in evidence by the plaintiffs as an agreed document. At the moment, I'm only asking him to refresh his memory by the figure.	
	Lee: This document is agreed as to authenticity only. It is not permissible for witness to look at somebody else's document to refresh his memory.	
30	Court: I would allow the proposed course to be taken, after all it was a memo written on behalf of Mr. Leeds by Mr. Cheung. I take it that it was so written was it?	
	DW1: Yes. It was on my instructions.	
	Court: Did you have a look at it before it was sent out?	

In the Supreme
Court of Hong
Kong

A. I cannot recall seeing it before it was sent.

Q. Did you see it after it was sent?

Respondent's
Evidence

A. Yes.

No. 7

Q. If the number were reduced to 1,388, by eliminating committed vacancies what would be the new number?

Peter Frederick
Leeds

A. For p.c. 1,829.

Examination in
Chief

Q. And you have said this document was written on your instructions. (Para 3) I'm simply reminded witness of what it is said. Is draft notice referred to on P.11 in Bundle?

(continued)

A. Yes.

Q. Which as we can see reduces number of p.c. to 1,329.

A. Yes.

Q. Following that notice, was there further advice received from c.c.?

A. Yes.

Q. And what was the effect of that advice?

Lee: I think for the purpose of the record, Y.L. would be good enough to record my objection : it is hearsay.

Court: But this is not sought to be introduced as proof of the truth or falsity of that advice.

Lee: Subject to that qualification, I would concede it is alright.

Q. (Question repeated)

A. The advice was to increase the limit for p.c. by 47.

Q. From what?

A. 47, additional to 1,329.

Q. In another words, the reduction was smaller than the one you wished to make.

10

20

30

A. Yes.

Q. What did you understand the reason for those 47 vacancies to be preserved within the limit?

Lee: If witness would have to guess I would object but in fact he was told of the reasons then subject to my earlier objection i.e. he is not here to give evidence as to correctness or otherwise of that advice but as to fact that that advice had been given, then I would not object.

10 Scott: In asking the witness his understanding I am asking his state of mind which is one of the issues in this action. I shall in due course ask leave to put to him the question: "What was basis of that understanding?" Both questions are relevant and permissible.

Lee: If there is no question of guess work, I would not object.

Court: But there may be.

Lee:

20 Scott: I was not asking witness to guess. I was just asking him to tell Y.L. his understanding.

Court: I would allow that.

Q. What was your understanding as to why c.c. considered you should reserve 47 vacancies in gazetted limit?

A. There was an action related to 47 p.c. then being heard, and it might be improper to reduce the number before the result of that action is known.

Q. Did you accept that advice?

30 A. Yes.

Q. And accordingly, as published, did GN 15, my lord, the reference is A109, merely reduce the limit to 1,376?

A. Yes.

In the Supreme Court of Hong Kong

Respondent's Evidence

No. 7

Peter Frederick Leeds

Examination in Chief

(continued)

In the Supreme
Court of Hong
Kong

Respondent's
Evidence

No. 7

Peter Frederick
Leeds

Examination in
Chief

(continued)

Q. It is dated 30/6/77, signed by you and published in government Gazette (Ex.) on 2/7/77.

A. There is correct.

Q. Was judgment given in 750 on 6/7/77?

A. I believe so.

Q. Did you consider what action to take before that judgment was given if the judgment did not require the Commissioner to register any of the vehicles referred to in the action?

A. Yes. I considered it necessary to comply with the policy by reducing the number to the number of vehicles actually licensed. 10

Q. And following the judgment, was further legal advice taken by your department?

A. Yes.

Q. And what was the legal advice you received at that stage?

A. The advice was that the application should be entertained and could be considered in the context of Government policy on p.c. at that time. 20

Q. Can you be a little bit more specific? First of all, did you receive any advice whether or not you were entitled in the light of the Court's judgment to reduce number of vacancies?

Lee: I rather my learned friend would not lead on it.

A. The advice was that after considering the application, it would be in order to adjust the limit.

Q. What applications do you mean?

A. I referred to applications for registration of 47 p.c.

Q. I'm sorry, we are at cross purposes. Following the judgment, did you receive any advice on the effect of the judgment? 30

A. I was advised the judgment did not necessarily mean that licences would have to be granted.

- | | | | |
|----|----|--|--|
| | Q. | Yes. | In the Supreme
Court of Hong
Kong |
| | A. | And if licences were not granted, it would be possible to revert back to the original limit imposed of 1,329. | Respondent's
Evidence |
| | Q. | Were you advised if there was an objection to the reduction of gazetted limit to that number i. e. 1,329? | No. 7 |
| | A. | No. | Peter Frederick
Leeds |
| 10 | Q. | Did you have any reason to believe there was any legal reason why you should not reduce the limit to 1,329 following the judgment in Action 750? | Examination in
Chief

(continued) |
| | A. | I knew of no reason. | |
| | Q. | And was that in fact done by GN 16 which we can find in P. 110 of Bundle A? | |
| | A. | Yes. | |
| | Q. | That is, as we can see, signed by you, dated 6/7 and published in Government Gazette (Ex.) on 7/7/77. | |
| | A. | Yes. | |
| 20 | Q. | We know that subsequently the plaintiffs applied on 11/7 for 47 vehicles to be registered as p. c. Was that application considered by you personally or not? | |
| | A. | No. By that time the Commissioner Mr. Macpherson had returned to duty. | |
| | Q. | It was, however, refused on the ground that there was no vacancy for such registration. Was that inconsistent with any legal advice you had received? | |
| | A. | No. | |
| | Q. | Or with any such advice that you were aware of? | |
| 30 | A. | No. | |
| | Q. | Prior to the refusal of plaintiffs' application of 11/7, did you receive other applications for p. c. registration in July 1977? | |

In the Supreme Court of Hong Kong

Respondent's Evidence

No. 7

Peter Frederick Leeds

Examination in Chief

(continued)

A. I was aware that other applications had been received, but I did not see them personally.

Q. Would you turn to P.12 Bundle C? It would appear it is an application by V.E.E. Ltd. for 50 p.c. I just draw your attention to that. Would you please turn to P.14? It appears to be an application from Sammel Fermand Ip for registration of 50 p.c. dated 6/7/77. Mr. Leeds, if in that that had been vacancies for p.c. when the plaintiffs applied on 11/7, how would the department have resolved the question who should have the vacancies as between Mr. Ip, V.E.E. Ltd. and the plaintiffs?

10

A. This would have been an unusual situation, and it is likely the advice of Transport Advisory Committee would have to be sought, but the most likely possibility would have been allocation by ballot.

Q. Would that be pursuant to Reg. 18B(3)? (Copy handed to DW1).

A. Yes.

20

Q. In carrying out your duties as acting Commissioner for Transport, were you actuated by any malice towards the plaintiffs?

A. No.

Q. In carrying out those duties, did you at any time think you were acting outside your powers?

A. No. Because at each stage legal advice was sought.

Q. Was such legal advice invariably acted on?

A. Yes, in every case.

Cross-examination

Cross-examination of DW1 :

30

Q. Apart from documents disclosed in this Court, are there other written advices pertaining to this matter from the Legal Dept?

A. I cannot recall any document directly from the Legal Dept., but there are records of conversations between c.c. and staff of T.D.

- | | | |
|----|--|--|
| Q. | I don't want to trap you in any way and i. e. why I ask you to look at Bundle C. What I would like you to do is to go through the index and check the documents. The question I want you to answer is: "whether apart from those documents contained in Bundle C whether there are written advices or written records of oral advice from the Legal Dept?" | In the Supreme Court of Hong Kong
————
Respondent's Evidence
No. 7
Peter Frederick Leeds |
| 10 | A. I can recall there are written records of discussions between c. c. and T. D. staff on T. D. files. | Cross-examination
(continued) |
| Q. | Do you know plaintiffs' history of applications for PLB and p. c. in 76 and 77? | |
| A. | I'm aware of it, but I don't have details of it. | |
| Q. | Please look at Bundle A in that case. P.1. Do you accept from me on 17/11/75, the plaintiffs through their solicitors, asked to be supplied with application forms for registration of 200 vehicles as p. c. ? | |
| A. | Yes. | |
| 20 | Q. Your memory might have faded in these years, but were you aware of it at the time? | |
| A. | I recall the number of 200, but I did not necessarily relate it to the plaintiffs. | |
| Q. | Fair enough. Look at P.3 Bundle A. The number was reduced from 200 to 105? | |
| A. | Yes. | |
| Q. | Were there at the time in fact 105 vacancies for p. c. ? | |
| A. | There were at the time what we call committed vacancies i. e. | |
| 30 | Q. We all know what it is. Were there 105, both committed and uncommitted, vacancies? | |
| A. | There were vacancies, but I can't be sure now of their status. | |
| Q. | P.5 please. This was a reply by your Dept to the last letter at P.3. | |

In the Supreme
Court of Hong
Kong

Respondent's
Evidence

No. 7

Peter Frederick
Leeds

Cross-
examination

(continued)

A. Yes.

Q. It does not deny it had 105 vacancies.

A. Yes.

Q. Were you then acting Commissioner in January 76?

A. I can't recall.

Q. You were very high up in the Department if not No. 1,
then No. 2 or No. 3?

A. At that time I was Assistant Commissioner, No. 2.

Q. So when No. 1 was away, you were acting as No. 1
if in H.K.

10

A. Yes.

Q. Were you aware of this reply or a reply of this
nature?

A. I was aware of replies of this nature, but I can't
recall this specific reply.

Q. You would not disagree with what this letter said.
Would you? The whole letter. Have you read it?

A. Yes. At the time I could see nothing wrong.

Q. Do you mean to say now you can?

A. Yes. The advice given following the action was
that it was not necessary to reserve the committed
vacancies.

20

Q. Apart from that, is there anything wrong with it as
you now look at it?

A. I can't see anything wrong with it.

Q. The writer of this letter seems to be saying this.
I would paraphrase it and see if you agree. Right?
"Yes, there were vacancies but they were all com-
mitted to various people." "And when I look at the
limit set for p.c., there is no more vacancy left
for you." Is that right?

30

A. There is correct.

- | | | | |
|----|----|--|-----------------------------------|
| | Q. | "Because of that, your application cannot be entertained." Is that right? | In the Supreme Court of Hong Kong |
| | A. | That is correct. | ----- |
| | Q. | "So that I did not even have to consider your application on merit." Is that correct? | Respondent's Evidence |
| | A. | It didn't say that. | No. 7 |
| | Q. | Fair enough. Do you agree with me in the light of that matter, it appears the plaintiffs' application was not considered on its merits? | Peter Frederick Leeds |
| | A. | I cannot say that because I don't know the manner in which this application was dealt with. | Cross-examination |
| 10 | Q. | It would appear Mr. Cheung Yuk Yin is the person to ask. Is that right? | (continued) |
| | A. | He draft with that application. | |
| | Q. | Assume yourself to be on the applicant side, is it reasonable of him to think that this application had not been entertained on its merits because there were no more vacancies? | |
| 20 | A. | I would have read it that the application might have been considered but licences could not be issued at that time because there were no vacancies. | |
| | Q. | May I draw your attention to last line in that letter: "It cannot be entertained". Does it not mean the application was a non-starter because of the limitation? | |
| | A. | It was certainly stopped at that time. | |
| | Q. | You know very well the procedure in your department in processing application of this sort. | |
| | A. | Yes. | |
| 30 | Q. | Mr. Cheung Yuk Yin was a very experienced man in your department in handling applications of this kind. Is that right? | |
| | A. | That's correct. | |

In the Supreme
Court of Hong
Kong

Respondent's
Evidence

No. 7

Peter Frederick
Leeds

Cross-
examination
(continued)

Q. What was his official title then?

A. I think he was then Senior Executive Officer
(Public Vehicles).

Q. He was pretty high up in hierarchy of your depart-
ment. Is that right?

A. He was not particularly high in the department, but
he was second most senior officer in the Licensing
Division.

Q. A person in that position would know, on any given
day, whether there were uncommitted vacancies.

10

A. Correct.

Q. At that point of time, it was correct to say that for
your department committed vacancies were not
vacancies available to other people. Is that right?

A. That is how we regarded it as, yes.

Q. At that time, it is common ground the plaintiffs
were not what I would call committed applicants.
Do you agree?

A. Yes.

Q. So that at that time your department's attitude was
that the committed vacancies could not be of use to
the plaintiffs. Is that correct?

20

A. That is correct.

Q. Therefore when they lodged their applications for
the registration of 106 p. c., I must be precise my
lord, when they asked for application forms for
105 p. c., your department would know that if the
application were submitted it must fail.

A. That is correct.

Q. You see, I might have misled you, but look at
documents 3 & 5 again. By document 3, the
plaintiffs' solicitors were asking 105 application
forms. Is that right?

30

A. That is correct.

- Q. They have not actually submitted any application for registration of any of those 105 vehicles as p.c. Is that right?
- A. Correct.
- Q. So in that context, would you now look at P.5 "Your client's application cannot be entertained" must mean "your client's application for the supply of 105 application forms for registration cannot be entertained"? Is that right?
- 10 A. That is not correct because application forms are readily available at licensing office.
- Q. Then are you suggesting the word "application" in document 5 refers to actual application for registration of p.c. ?
- A. I think those words refer to words in document 3 : "We are instructed to apply to Y.M. for 105 p.c. licences."
- 20 Q. That is perfectly alright, but by document 5 therefore the Commissioner of Transport was saying through Mr. Cheung Yuk Yin that your application for registration and licensing of 105 vehicles as p.c. cannot be entertained even before you lodge a formal application for such registration and licensing. Is that correct?
- A. I'm not sure because the practice at that time was to consider applications well in advance of the submission of the prescribed form.
- 30 Q. Now so perhaps you can agree with me now that the plaintiffs' application for registration and licensing of these vehicles had simply not been entertained on its merits. Do you agree?
- A. It certainly had not been fully processed.
- Q. But you cannot even begin to process it because the application had not yet been submitted in the prescribed form. Is that right?
- A. As I said the practice at that time was to process application even before receipt of the prescribed form.

In the Supreme Court of Hong Kong

Respondent's Evidence

No. 7

Peter Frederick Leeds

Cross-examination

(continued)

In the Supreme
Court of Hong
Kong

Respondent's
Evidence

No. 7

Peter Frederick
Leeds

Cross-
examination

(continued)

Q. But there was nothing for your department to process apart from the number. Do you agree? Look at document 3.

A. That is correct.

Q. Finally on this matter, going back to document 5, last line, "your client's application cannot be entertained" means the application had been rejected without any processing because the limit had been reached.

A. Substantially right.

10

Court: 2.30 p.m.

Sd
(B. Liu)
Judge of the High Court
17/4/80

Appearances as before.

Court resumes 2.30 p.m.

DW1 reminded of his former oath

Cross-examination of DW1 continued :

Q. This morning, you told my Lord the reason for Government decision in phasing out p.c. as a class.

20

A. Yes.

Q. Let me put to you various reasons or various matters to see if you would agree with it. Many of the p.c. had the appearances of taxis. Is that right?

A. That is correct.

Q. Many of them have some milage meters?

A. That is correct.

Q. Some of the milage meters run too fast. Is that right?

30

A. I would not know if that is correct.

- | | | | |
|----|----|---|-----------------------------------|
| | Q. | Many of the p. c. drivers charged higher fares than taxis. Is that right? | In the Supreme Court of Hong Kong |
| | A. | That is correct. | _____ |
| | Q. | Many p. c. drivers refused to take people to certain areas in Hong Kong and Kowloon. | Respondent's Evidence |
| | A. | That is correct, but they were doing nothing wrong in doing so. | No. 7 |
| | Q. | But it would have been wrong for a taxi driver to do so. | Peter Frederick Leeds |
| | A. | That is correct. | Cross-examination |
| 10 | Q. | In summary therefore, there was unfair competition from taxis operators' point of view with these p. c. | (continued) |
| | A. | That is correct. | |
| | Q. | Have I not summarized the principal reasons at least for Government decision to phase out p. c. ? | |
| | A. | You have. | |
| | Q. | Thank you. | |
| | A. | You have summarized some of the reasons. | |
| 20 | Q. | Perhaps there is another important reason I'll come to. They, p. c., are supposed to be for the benefit of tourists in Hong Kong. | |
| | A. | That is correct, but not exclusively for tourists. | |
| | Q. | The decision to phase them out could be said to be this, could it not, that since the Government could not stop them from being used as taxis, it might as well turn them into taxis so that there could at least be proper supervision over them? Is that not one fair way of looking at it? | |
| | A. | Yes. That was one of the major considerations. | |
| 30 | Q. | There was another class of vehicles in Hong Kong which have constantly given headache to your department the pak pais. Is that right? | |
| | A. | That's correct. | |

In the Supreme
Court of Hong
Kong

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Evidence

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Peter Frederick
Leeds

Cross-
examination
(continued)

Q. I wouldn't bother to give the reasons. We all know it perhaps except my learned friend from England. So Government policy was to legalise illegal activities of p.c. operators by converting them into taxis on one hand and by legalising pak pais on the other hand subject to a permit. Is that right?

A. I would describe it as giving owners of p.c. and pak pais an opportunity of operating a legal service.

Q. Alright. I accept that. The p.c. with their abuses resulted in unfair competition with taxi operators. You agree. 10

A. That's correct.

Q. There is another advantage enjoyed by a p.c. operator compared with a taxi operator because the former did not have to tender for a licence. Is that right?

A. That's correct.

Q. Do you agree that at the height of abuses of p.c., one consequence was that people were deterred from putting in the high tender for taxi licences or at any rate they put in a lower tender than they would have otherwise done so but for such unfair competition from p.c. operators. 20

A. I'm not in a position to know what a tenderer would do in other circumstances.

Q. But what I have just said makes sense to you. Is that right?

A. Yes. It makes sense.

Q. And if I'm right in that, the ultimate loser would be Sir Philip Hadon-Cave? I don't mean him personally. Is that right? 30

A. Yes. It would have had an effect on Revenue.

Q. Am I right that the original intention of the Government was to require the then existing p.c. operators to submit tenders for taxi licences without giving to them any priority or advantage. Is that right?

- | | | | |
|----|----|---|-----------------------------------|
| | A. | That was the original intention. | In the Supreme Court of Hong Kong |
| | Q. | As a result of protests from the then p.c. operators also one speech from the Hon. Mr. T.S. Lo, the L.C., the Government finally fixed a premium for conversion from a p.c. to a taxi at \$75,000. Is that right? | Respondent's Evidence |
| | A. | I can recall there was a submission from Operators Association. I do not recall Mr. Lo's speech, but the final sum of \$75,000 is correct. | No. 7
Peter Frederick Leeds |
| 10 | Q. | The Wong Kwong Shing's case was a very important one from your department's point of view. Is that right? | Cross-examination
(continued) |
| | A. | Was it PLB case? | |
| | Q. | Yes the committed vacancies. | |
| | A. | Yes. That is correct. | |
| | Q. | Presumably you have read judgment of Huggins J. who tried that action in High Court at 1st instance as well as 3 judgments by 3 learned judges in C.A. Is that right? | |
| 20 | A. | I did not read them completely, but the main points were brought to my attention. | |
| | Q. | Were you then the acting Comer. at the date of judgment on 7/4/76? | |
| | A. | I can't recall, I'm afraid. | |
| | Q. | Did you satisfy yourself as to the general effort of those decisions? | |
| | A. | I can recall legal advice was sought on those decisions. | |
| | Q. | Did you obtain legal advice then on the judgments? | |
| 30 | A. | Not me personally, but I know someone in T.D. did. | |
| | Q. | Was that advice in writing or given orally? | |
| | A. | I can't recall. | |

In the Supreme Court of Hong Kong

Respondent's Evidence

No. 7

Peter Frederick Leeds

Cross-examination

(continued)

Q. Do you agree it was your duty at least to try to understand the practical effect of those decisions?

A. Yes.

Q. Did you satisfy yourself, in the light of legal advice, that you have properly understood the legal effect?

A. Yes.

Q. I'll paraphrase your evidence this morning and see if you agree. Judgment in Action 749 brought against the Government or Attorney General by the Pls. in respect of originally the 25 PLB but ultimately reduced to 4 was given on 30/6/77. Is that right?

10

A. That's correct.

Q. But - let me - in that judgment McMullin J., the trial judge, held that your department was wrong in taking into account committed vacancies when working out a total figure to see if the limit had been reached. Is that right?

A. That is my understanding.

Q. Before that judgment was delivered on 30/6/77, had you already or had your department received legal advice to the effect that committed vacancies need not be included in the gazetted limit?

20

A. That is correct.

Q. If that is so, it would mean legal department expected to lose Action 749 even before the judgment was delivered.

A. That view was not conveyed to me.

Q. Looking back with hindsight standing in the box, that must be the logical conclusion. Is that right?

30

A. I took it to mean the limit we imposed previously had been done incorrectly, and this advice was held to put it right.

Q. Will the advice was that you should ignore the committed vacancies.

- A. That's right.
- Q. That advice was given before 30/6/77.
- A. That is correct.
- Q. Until judgment was delivered in 749/76 on 30/6/77 by McMullin J, it was thought by your department that you should take into account all committed vacancies for the purposes of gazetted limit. Is that right?
- A. That's correct.
- 10 Q. Now until that judgment on that day, that policy of your department of taking into account all committed vacancies had not been declared to be wrong. Is that right?
- A. That's correct.
- Q. And yet the Legal Department or 1 or 2 members thereof had advised even before judgment was delivered that your former policy should cease. Is that right?
- A. That's correct.
- 20 Q. Do you know the name of that e.c. who gave you that advice?
- A. I think it was Mr. Frank Wong.
- Q. I see. Do you know that Mr. Frank Wong was counsel for Attorney General in 749/76?
- A. I believe so.
- Q. Did you know that he fought very hard with P1s in that action?
- A. I would assume he would do his best.
- 30 Q. Yes. Were you informed of progress in that case from day to day?
- A. No.
- Q. Did you know at least one thing that he tried his

In the Supreme
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Kong

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Peter Frederick
Leeds

Cross-
examination

(continued)

In the Supreme
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Kong

best to defend the case by contending that the
policy of your department to recognise committed
vacancies was a correct one? Were you aware?

Respondent's
Evidence

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Peter Frederick
Leeds

Cross-
examination

(continued)

A. I was not aware of details of the case.

Q. Not the details, that particular point.

A. I was not aware of that particular point.

Q. Do you know from which person or persons did Mr.
Frank Wong take instructions?

A. I would only assume it was from the head of
Licensing Division and the senior E.O. (Public
Vehs.)

10

Q. Would you give us their names?

A. The senior Ex. O. is Mr. Cheung Yuk Yin. I can't
recall who held the post of Chief Executive as head
of Licensing Division at that time.

Q. And you were quite happy to leave this case in their
able hands. Is that right?

A. That's correct.

Q. Have you got Bundle A before you? Would you look
at p.109 and p.110? I think your evidence was :
originally in GN (E) 16/77 it was proposed that the
max. no. for p.c. should be set at 1,329 as opposed
to actual 1,376. Is that right?

20

A. That's correct.

Q. And the reason you gave for putting down the large
figure 1,376 in GN (E) 15/77 was because it was
thought that it might be improper to cancel 47
vacancies before judgment or before the hearing of
Action 750/76. Is that right?

A. Correct.

30

Q. In other words, Government did not wish to pre-
empt a favourable judgment from being given to the
P1s. Is that right?

A. That is my understanding.

- Q. Did you agree with that? In the Supreme Court of Hong Kong
- A. Yes.
- Q. And you agreed that to bring down the ceiling at that point of time to 1,329 would be both improper and unfair to Pb. Is that right? Respondent's Evidence
No. 7
- A. It may have been. We thought it prudent to do so. Peter Frederick Leeds
- Q. Any way the final gazetted limit under GN (E) 15/77 was the higher 1,376. Cross-examination
- A. That is correct. (continued)
- 10 Q. Now you told the Court - I'm repeating your evidence now - on 6/7/77 you believe a judgment was given in Action 750/77. Nobody would mislead you on that. After judgment in 750 was delivered, you told my learned friend, further legal advice was taken by your department.
- A. That's correct.
- Q. By you or somebody else?
- A. As I recall it, it was myself and Mr. Cheung Yuk Yin.
- 20 Q. I'm reading for your benefit my notes of your question and answer this morning.
- "Q. What was the legal advice you received at that stage?"
- "A. The advice was their application should be entertained, and it could be considered in the context of Government policy of p. c. at that time."
- Is that a correct note? A correct answer?
- A. Yes.
- 30 Q. You confirm it. When you got this advice, did you understand that to mean firstly that the P1s. would be submitting a new application for the registration of another 47 cars as p. c. ?
- A. At that time it was my understanding they had

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Kong

Respondent's
Evidence

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Peter Frederick
Leeds

Cross-
examination

(continued)

already made an application, but we would probably receive new statutory forms for vehicles.

Q. So you knew or expected the P1s. would be submitting a new application soon. Would that be a fair way of putting it?

A. Yes.

Q. And this legal advice you were telling us about, was it given on same day right after judgment or on another day?

A. It was given soon after the judgment, but I can't recall whether it was on same day.

10

Q. Certainly not before. Agree?

A. Agree.

Q. If this advice you were telling us about, were given on the same day as the judgment, it must mean it was given sometime in late morning or afternoon on 6/7/77?

A. I can't recall the time.

Q. I'll jog your memory. Look at doc. A110. Did that legal advice result in publication of this G N ?

20

A. Yes.

Q. The notice itself was dated 6/7/77 although published the following day.

A. Yes.

Q. Perhaps you can now say without fear of contradiction that this advice was given on the same day when judgment was given on 6/7/77 but after the judgment. Is that right?

A. Yes.

Q. By that advice did you understand to mean that when P1s. submitted their new application in due course, your department should entertain it on its merits? Is that right?

30

A. Yes and other considerations.

- | | | | |
|----|----|--|-----------------------------------|
| | Q. | The other considerations I suppose you would mean gazetted limit. | In the Supreme Court of Hong Kong |
| | A. | I would mean Government policy which is reflected in gazetted limit. | Respondent's Evidence |
| | Q. | Meaning no more registration for additional p. c. would be entertained by your department. | No. 7 |
| | A. | That is correct. | Peter Frederick Leeds |
| 10 | Q. | Does it not mean if that is right that no matter how meritorious the P1s.' application might be, it is doomed to fail because of that policy decision you told us about. | Cross-examination
(continued) |
| | A. | Yes unless any vacancy occurred. | |
| | Q. | Does it not mean that if P1s.' application reaches your department and there were vacancies you must entertain it on its merits. Is that right? | |
| | A. | That's correct. | |
| 20 | Q. | Does it not also mean when the P1s.' application reaches your department and there be no more vacancies there the P1s.' application will be rejected without more ado? | |
| | A. | That's correct. | |
| | Q. | In those circumstances, I mean no vacancy situation, there will be no need to entertain P1s.' application on its merits. Do you agree? | |
| | A. | At that time it was correct. | |
| | Q. | I don't want to beat about the bush. The P1s.' application reached your department on 11/7. Is that right? Doc. 113 in Bundle A, Mr. Leeds. | |
| | A. | Yes. | |
| 30 | Q. | So it is common ground, in this action, the P1s.' new application arrived at your department on 11/7. | |
| | A. | Yes. | |
| | Q. | Tell me as a matter of fact, was it entertained on its merits? | |

In the Supreme
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Kong

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Evidence

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Peter Frederick
Leeds

Cross-
examination

(continued)

A. It could not be considered because of Government policy at that time.

Q. "It could not be considered because of Government policy at that time."

A. It could not be approved.

Q. You changed it to "it could not be approved" from "It could not be considered because of Government policy at that time."

A. Yes.

Q. Let me deal with your amended answer first.

10

Scott: It should not be referred to as amended answer.
The witness corrected himself and gave an answer.

Lee: I would change to "corrected answer".

Scott: It was his only answer.

Lee: Y.L. has on record 2 different versions, and I'm entitled to cross-examination.

Court: Would you consider using "changed answer"?

Q. Let me take you on second version of the same answer, namely "It could not be approved because of Government policy at that time." Does it mean even if P1s.' application was 100% satisfactory to your department, you nevertheless your department nevertheless had to reject it. Is that right?

20

A. That's correct.

(DW1 leaves Court at request of counsel)

Scott: The last question is : "Does it mean if the P1s.' application was 100% satisfactory to your department, your department had nevertheless to refuse it?" Mr. Leeds has already given evidence that p. c. had to be phased out, there was a G.N. which imposed a limit on no. of vehicles. That was a notice published pursuant to what the department considered was a proper policy. Now I'll come back to the question put to the witness : "Suppose there was a limit which would be exceeded if the

30

application was granted, it would have to be refused even if it was 100% satisfactory to your department." It is obvious the question was nonsensical with great respect because it cannot be satisfactory to the department if it would cause gazetted limit to be exceeded. I only rise to make this point because we have been listening, for last 15 mins., to cross-examination that if an application is refused because it would cause the limit to be exceeded, it has not been entertained, in my learned friend's words, on its merits. My lord, the merit of my application must include if it can lawfully be granted. That is why I object to this lengthy cross-examination to no purpose.

In the Supreme Court of Hong Kong

Respondent's Evidence

No. 7

Peter Frederick Leeds

Cross-examination

(continued)

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Court: I'm aware of all these intricacies in cross-examination, and that is one of the reasons why I take verbatim notes. I have to give a wide latitude to counsel in cross-examination, and I have to assume leading counsel has a point to make. Eventually I shall have to look at the substance of the evidence fully appreciating that an honest witness, unrehearsed, cannot, on occasions, but give a desired answer to a question involving use of debatable terms. Unless you have any other points to make, I do not propose to intervene.

Scott: I do wish to make the point : the question being put to the witness is contradictory in the light of the witness' own unchallenged evidence.

Lee: I do wish to defend myself as my learned friend has described it as nonsensical, though he said with respect, and contradictory to the witness' unchallenged evidence. I thought I was challenging the witness as I was cross-examining.

Court: It is really different points of view.

(Discussions between Court and Mr. Lee)

(DW1 enters Court)

DW1 reminded of his former oath.

Cross-examination of DW1 continued :

Q. Mr. Leeds, the prescribed form for application for registration of my motor vehicle provides blank

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Kong

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No. 7

Peter Frederick
Leeds

Cross-
examination

(continued)

spaces for an applicant to fill in. Is that right?

A. That is right.

Q. It is the same whether the car is a private car or bus. Is that right?

A. That is correct.

Q. These blanks in the particulars relate to matters pertinent to the applicant himself like name and address. Is that right?

A. That is correct.

Q. Some of the blanks refer to the particulars of the vehicle themselves?

10

A. That is correct.

Q. It also contains blanks for particulars relating to Third Party Risk Insurance.

A. Yes.

Q. My questions are not meant to be exhaustive, understand?

A. (Witness nods)

Q. For a registration of p.c. in the middle of 1977 and indeed in 1976, there are supporting documents of various sorts required.

20

A. Yes.

Q. Am I right the P1s.' application submitted on 11/7/77 was rejected by your department three days later by letter dated 14/7/77 p. 123 Bundle A.

A. Yes. That is correct.

Q. In rejecting that application from the P1s., am I right that your department only looked at the max. gazetted limit for p.c. and did not consider the particulars contained in the prescribed application form nor the other supporting documents. Is that right?

30

- | | | | |
|----|----|--|-----------------------------------|
| | A. | The other documents were considered, but the policy was the overriding consideration. | In the Supreme Court of Hong Kong |
| | Q. | What else was considered apart from the gazetted limit? | -----
Respondent's Evidence |
| | A. | The papers submitted by the applicant. | No. 7 |
| | Q. | You did not know yourself because you did not deal with application yourself. Is that right? | Peter Frederick Leeds |
| | A. | That is correct. | Cross-examination |
| 10 | Q. | As far as you personally know from your personal direct knowledge, you did not know how P1s.' application was dealt with by your department. Is that right? | (continued) |
| | A. | I can only assume it was dealt with as any other applications are dealt with by the Licensing Division of our office except final consideration was given by the Coroner personally. | |
| | Q. | Look at p.123 Bundle A. Can you read it yourself? | |
| | A. | Yes. | |
| 20 | Q. | Do you agree the only reason given for refusing the P1s.' application was that the gazetted limit had been reached? | |
| | A. | That was the reason given in this letter. | |
| | Q. | In short "Sorry no vacancy". | |
| | A. | Yes. | |
| 30 | Q. | Earlier this afternoon, I think you said to H.C. in reply to my question, by the word "entertained" meaning when the P1s.' new application reached your department if there were no vacancy at that time, that application would be rejected without any more ado. Do you remember that? | |
| | A. | Yes. | |
| | Q. | But if there were vacancies when P1s.' application reached your department you would have to entertain them according to their merits. Is that right? | |

In the Supreme
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Peter Frederick
Leeds

Cross-
examination

(continued)

In the light of what I have just reminded you, which was the legal advice you said you got, is it likely that the P1s.' application had been rejected only because there were no vacancies?

A. I think it is likely that the Commissioner would have considered whether a change of policy ought to have been amended to increase the limit.

Q. Because of the P1s.' judgment. Is that right?

A. Because of that and other applications which had been received.

10

Q. At this point of time, I want to show you what happened to 2 applications for 50 p.c. each. P.12 Bundle C, the V.E.E. Ltd. application. Right?

A. Yes.

Q. P.14 the application was on behalf of Mr. Samuel Fernand Ip.

A. Yes.

Q. P.17 C Bundle. That is in relation to second application we have just looked at .. Right?

A. Yes.

20

Q. A reply to Mr. Ip's solicitors. Look at 1st paragraph "I am to inform you that I am unable to following reasons". Secondary colour. I'm just summarizing it. No factory invoice Is that one of usual letters sent out by your department from time to time?

A. It is typical of a letter where the applicant gives insufficient information.

Q. Last paragraph says "All the documents are returned herewith for amendments".

30

A. Yes.

Q. As far as your department is concerned, was that application still being considered or was it turned down?

A. From the terms of the letter, it appeared to be still under consideration.

In the Supreme Court of Hong Kong

Q. So that it is reasonable to expect upon receipt of this letter the applicant would say : "When I amend these irregularities provided they are vacancies I may get my cars or at least some of them registered". Is that right?

Respondent's Evidence

No. 7

A. It indicates the application can be considered.

Peter Frederick Leeds

10 Q. It does appear on the face of this letter that the writer had not yet considered the gazetted limit but had considered the particulars set out in the application. Is that right?

Cross-examination

(continued)

A. That would appear so.

Q. Without repeating a no. of similar questions, would you turn to p. 18, it is also truth for V.E.E. Ltd. ?

A. Yes.

Q. Both letters are dated 9/7/77.

A. Yes.

20 Q. Who is more senior in rank, C.W. Wong or Cheung Yuk Yin?

A. Normally they are of equal rank, but it is possible that Mr. Wong was acting as Chief Ex. O. over Mr. Cheung.

Court: Adjourned 10 a.m. tomorrow.

(Sd)

B. Liu

Judge of the High Court

17/4/80

In the Supreme Court of Hong Kong 18.4.80 (10 - 1.30 & 2.30 - 5.30)
Coram : Hon. LIU, Judge in Court

Respondent's Evidence
No. 7
Appearance as before.
DW1 reminded of his former oath.

Peter Frederick Leeds Cross-examination of DW1 continued.

Cross-examination
(continued)
Q. Mr. Leeds yesterday the last 2 things I cross-examine you on are documents C. 17 and C. 18. Remember?

A. Yes.

Q. I want you now to turn to p.23 and p.24 in same Bundle. Have you read them? 10

A. Yes.

Q. "I have to refuse to register your vehicles", and the reason he gave, Mr. Macpherson, was : no vacancies. Is that correct?

A. Yes.

Q. The last paragraph is a short one (last paragraph read). What do you think is the significance of that?

A. To avoid unnecessary work. 20

Q. "To avoid unnecessary work". Will unnecessary to be done by whom?

A. By the applicant.

Q. I see, so that he would just forget about the whole thing and would not rectify those omissions. Is that right?

A. That is my understanding.

Q. The next letter in p.24 Bundle C is almost in identical language. Is that right?

A. Yes. 30

- Q. Let me summarise the position in relation to V.E.E. In the Supreme Court of Hong Kong
LA and client of Messrs. John Ip & Co. to see whether you agree. Both these applications were considered on their merits. Is that right?
- A. Not entirely because the full information was not given.
- Q. If the full information was not given in spite of the 2 letters both dated 9/7/77, those applications would never been successful as far as merits are concerned. Is that right?
- A. That's correct.
- Q. Before those letters of 9/7 were sent out, Mr. C.W. Wong or may be somebody else in the same department had actually studied the particulars contained in the applications. Is that right?
- A. Yes.
- Q. Mr. Wong or somebody else had been very careful in the examination of these particulars, going into secondary colour of the vehicles and so forth.
- A. Correct.
- Q. Those 2 applications one from V.E.E. and one from John Ip & Co's client were considered very carefully by your department on individual merits. Is that right?
- A. The 2 letters indicate that the process of consideration in details was started.
- Q. Let me now come to P1s.' application and see what happened to it. You have already agreed it was submitted on 11/7/77. P.113 in Bundle A, my lord. I think we have seen that yesterday. The only reply from your department was at p.A123. Is that right?
- A. That is correct.
- Q. Let us see if you agree with this question, and I'm quoting your words :-
In relation to P1s.' application on that occasion there was no "process of consideration in detail". Do you agree?
- A. No.

Respondent's
Evidence

No. 7

Peter Frederick
Leeds

Cross-
examination

(continued)

In the Supreme
Court of Hong
Kong

Respondent's
Evidence

No. 7

Peter Frederick
Leeds

Cross-
examination

(continued)

Q. You don't agree?

A. No.

Q. Why not?

A. Because the applications were dealt with by the
Commissioner in person.

Q. Do you have any direct knowledge of how to deal
with it?

A. No.

Q. I turn to a slightly different matter, my lord. You
gave evidence on Commissioner's decision not to
issue any more new additional licences of p.c.
because of the policy underlying Ord. 45/77. Is
that right?

10

A. That's correct.

Q. This Ordinance, as we know, you can take it from
me, was enacted as law on 26/6/77. Is that right?

A. Yes.

Q. But almost as far back as a year before that there
was wide press publicity about Government's
intention to phase out p.c. as a class. Is that
right?

20

A. That's correct.

Q. Do you agree with me, Mr. Leeds, that the decision
not to issue any more additional licences for p.c.
was never publicised in any way? Is that right?

A. I cannot recall any public announcement.

Q. Well do you accept from me from documents
produced in Court there is none? You can, if you
like, go through it and see. Newspapers cuttings
.... but no public announcement about it.

30

A. I have said I cannot recall any public announcement
about it.

Q. Do you agree with me in fact there has been no

publicity given to this policy decision? Your answer is not good enough for me.

In the Supreme Court of Hong Kong

Court: I don't follow that. If he cannot recall, he cannot recall.

Respondent's Evidence

Lee: But it might have been deliberate.

No. 7

Court: In not recalling?

Peter Frederick Leeds

Lee: Yes.

Cross-examination

Q. (Question repeated).

(continued)

10

A. I cannot remember all public announcements made relating to p. c. Various announcements were made over a period of more than a year.

Q. Those announcements that were made only related to phasing out of p. c. and not as to the policy decision. Is that right?

A. Without a complete record of all the announcements made, I cannot answer that question.

20

Q. Perhaps you can tell me this : is it right that almost as soon as decision was made to recommend to Leg. Co. to pass a law phasing out p. c., your department had already formed or come to a decision that in line with that recommendation to change the law, no further new licences for p. c. would be issued except to the "committed applicants". Is that right?

A. If you add the words, "for the time being", that is correct.

Q. "For the time being" in that context man, do they not, that until the law is changed no new licences would be issued? Is that right?

30

A. The intention at the time was to await a policy decision by the Governor-in-Council.

Q. As to what?

A. As to whether the recommendations made by the Transport Advisory Committee should be implemented.

In the Supreme
Court of Hong
Kong

Respondent's
Evidence

No. 7

Peter Frederick
Leeds

Cross-
examination

(continued)

Q. I see. Do you mean to say pending the decision of the Governor-in-Council on the recommendation of the Transport Advisory Committee no new p.c. licences would be issued.

A. Yes.

Q. The witness said "Yes", my lord. Then of course after If the Governor-in-Council were to accept those recommendations, there would be more reasons not to issue new licences to p.c. Right?

10

A. Yes.

Q. And finally, when p.c. are actually phased out from face of the earth - face of Hong Kong - then you would not issue licences for p.c. Right?

A. That's correct.

Q. In summary therefore as early as middle of 1976 when those recommendations were made by Transport Advisory Committee, as from that date, mid 1976, there was this policy decision of not issuing new licences for p.c.

20

A. Yes.

Q. I want you to look at Bundle A, Mr. Leeds, A72 my lord, that is beginning of affidavit of Mr. Cheung Yuk Yin.

A. Yes.

Q. At p. 77, would you read para. 17 yourself, Mr. Leeds? I'm particularly concerned with 1st line, the year 1975. It says : "In 1975, it was decided by the Government p.c."

A. Yes.

30

Q. In fact, I was wrong to say mid 1976. In fact it went even further back. Is that right?

A. The first decision was taken by Transport Advisory Committee, but I cannot remember the exact date, but prior to that there were discussions among departments concerned.

- Q. But Mr. Cheung was quite specific in his para. 17 : "In 1975, it was decided by the Government in principle to abolish the class of p. c." Is it right or wrong in saying that? In the Supreme Court of Hong Kong
- A. It depends on what he meant by the Government. Respondent's Evidence
- Q. We have only one, neither conservative, nor labour, nor liberal. Do you think the words "the Government" could mean different things? No. 7 Peter Frederick Leeds
- A. Yes. Cross-examination
- 10 Q. Please enlighten us. (continued)
- A. It could mean a decision by a Government department concerned to initiate a change of policy or a recommendation by an Advisory Committee or acceptance by Ex. Co. of the proposals in principle before legislation is drafted.
- Q. The last possibility is the most likely to describe the 2 words "the Government". Do you agree?
- A. That would be the correct interpretation.
- 20 Q. Thank you. You agree, do you not, Mr. Leeds, having read paragraph 17, Mr. Cheung Yuk Yin did not mention the policy decision of not issuing new licences for p. c. Is that right?
- A. That's correct.
- Q. Do you accept it from us the Pls. and their legal advisers were never told about this policy decision until long after judgment was obtained in Action 750? Do you accept it as a fact?
- A. If that was the only application made, yes.
- 30 Q. Perhaps I should - I wasn't very accurate as I am reminded by my junior - "not long after" but "after judgment". Do you accept that?
- A. Yes.
- Q. This policy decision was pretty well guarded and confidential. Is that right?
- A. No.

In the Supreme
Court of Hong
Kong

Respondent's
Evidence

No. 7

Peter Frederick
Leeds

Cross-
examination

(continued)

Q. No? It was not meant to be a secret?

A. No.

Q. Was there any reason why McMullin J. was not told about it before he heard Action 750?

A. I know of no reason.

Q. Do you accept it as a fact that the Pls. had no way of knowing it until after judgment.

Scott: I object to it as Pls. said not a single word in his evidence. It is not for this witness to make concession as to Pls.' state of mind. I object to this question being brought.

10

Lee: I would rephrase it. I concede defeat.

Q. Mr. Leeds. This policy decision was obviously known to you. Right?

A. Yes.

Q. Even before 6/7/77. Right?

A. Yes.

Q. It was known, presumably, also to some members of your department.

A. Yes.

20

Q. It was also known by Transport Advisory Committee even before that date.

A. Yes.

Q. As far as you know was it ever, this decision, released to the press in any way?

A. I cannot recall a press release.

Q. Was there any public announcement in any other way before 6/7/77?

A. I cannot recall any public announcement but the information was given to any individual inquirer.

30

- | | | |
|----|--|---|
| | Q. Before 6/7/77? | In the Supreme
Court of Hong
Kong |
| | A. Yes. | |
| | Q. By whom. | Respondent's
Evidence |
| | A. By the staff of Licensing Office. | No. 7 |
| | Q. Meaning, if asked, they should tell them. Is that right? | Peter Frederick
Leeds |
| | A. Yes. | Cross-
examination |
| 10 | Q. That's a little odd because I have gone through this Bundle A, although Pls. through their solicitors had been applying for registration forms for registration of p.c. as early as 17/11/75, from that date, p. 1 of Bundle A, down to 24/7/77, p.123 of Bundle A, when their final application was rejected, the Pls. and their solicitors were never told by your department of that policy decision. What do you say to that? | (continued) |
| | A. They were told by way of advising them that the limit had been reached. | |
| 20 | Q. That's right. So does that mean if members of the public were to make enquiries, members, staff of your department would tell them : "Sorry, no vacancies". Is that right? | |
| | A. Yes. | |
| | Q. I'm afraid we are speaking at cross purposes. I'm telling you where they are. I am asking you about policy decision for not issuing licences for p.c. Understood? | |
| | A. Yes. | |
| 30 | Q. It may be they are in some way related, but I'm asking about policy decision for not issuing licences for p.c. I am not asking you yet the way in which you can achieve it. Understand? | |
| | A. Yes. | |
| | Q. Do you agree now that policy decision of not issuing any more licences for p.c. was not made known to members of the public before 6/7/77? | |

In the Supreme
Court of Hong
Kong

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Evidence

No. 7

Peter Frederick
Leeds

Cross-
examination

(continued)

A. No because I look upon information of the limit as being the same thing.

Q. I see. But apart from G.Ns., we have been looking at, as to the limit, is there any other document you can point to whereby the public was informed that no new licences would be issued for p.c.?

A. Not at the moment, but I cannot say there was not one.

Q. I see. But presumably if there were these documents, they would have been disclosed. Is that right?

10

A. I do not know.

Q. I would ask you something different now. You told H.C. yesterday - look at p.109 and p.110 in Bundle A, the 2 G.Ns. my lord 15 and 16. Perhaps before I come to that in all fairness to the witness - would you look at Bundle C p.6? Have you read that before?

A. Yes.

20

Q. 1st paragraph. This is a newspapers cutting from S C M P of 23/7/76. (1st paragraph read)
As a matter of fact, that did not prove to be true. Is that right?

A. Yes.

Q. It took longer?

A. Yes.

Q. "Starting from February next year" - that would be February 1977.

A. Yes.

30

Q. (2nd paragraph read). That did not materialise at all because of Ordinance 45. Is that right?

A. That is not correct because any p.c. operator could tender for a taxi licence in a normal way.

- Q. You are right like any other individual? In the Supreme Court of Hong Kong
- A. Yes.
- Q. Did T.D. in fact put up 100 taxi licences per month as from February 1977? Respondent's Evidence
- A. Not from February 1977, but the issue at 100 a month was started later, I think, in early 1978 and has continued ever since. No. 7 Peter Frederick Leeds
- 10 Q. The 3rd paragraph I am not concerned with. The 4th paragraph mentions the legalised pak pais. Right? Cross-examination (continued)
- A. Yes.
- Q. 5th paragraph (5th paragraph read). That was right.
- A. Yes.
- Q. (6th paragraph read). Do you confirm there was such a press conference? If you can't remember, say so.
- A. Yes, I can remember. It was also attended by the then Commissioner for Transport.
- Q. Were you present? Did you attend?
- 20 A. I was not present.
- Q. But you know of it.
- A. Yes.
- Q. (Next paragraph read) "..... by June next year". That means as from June 1977 if I am an operator of a public hired car and my licence expires, say, in July 1977, I would not get it renewed. Right?
- A. That is correct.
- Q. But if I were lucky and got my licence renewed in June 1977, then I would have another year to go. Right?
- 30 A. Certainly at least 11 months.

In the Supreme
Court of Hong
Kong

Q. You are not really quarrelling with me there.

A. (Witness shaking his head).

Respondent's
Evidence

Q. Next sentence : "By the end of June following year".
It must mean 1978.

No. 7

A. Yes.

Peter Frederick
Leeds

Q. "Public hire cars would be completely abolished".
That is why you have this very 1st paragraph "All
1,300 p. hire cars licences". Is that right?

Cross-
examination

A. Yes.

(continued)

Q. By that last paragraph I have just read, 2nd para-
graph in 2nd column, Mr. Armstrong-Wright was
not saying that even from now on no new p.c.
licences would be issued. Do you agree?

10

A. That's correct.

Q. Next paragraph. (read)
"Mr. Armstrong-Wright said are taxis". A
complaint about the then operators of p.c. Right.

A. That was one of the complaints.

Q. (Next paragraph read). That was another reason?
Right?

20

A. Yes.

Q. (Next paragraph read : "The acting environment
chief said to meet the demand"). Even to-
day, the taxi fleet is not adequate to meet the
demand. Is that right?

A. That's correct.

Q. The next 2 paragraphs, perhaps you can read your-
self were official denials that the then p.c. would
get a better treatment than other people. That was
a denial. Is that right?

30

A. Yes.

Q. Come to 6th paragraph in 3rd column : ("Present
p. hire car permits".) These are pak pais
permits. Right?

- A. These are hire permits.
- Q. In fact I'm right.
- A. In layman's terms, it is correct.
- Q. According to that press conference, it was announced that in the not so distant future there would be no more p. c. in Hong Kong.
- A. Yes.
- Q. If p. c. operators wanted to operate taxis instead, they will have to compete with other people on an equal basis. Right?
- 10 A. That was what was said at this press conference.
- Q. But if p. c. operators wished to have permits to operate pak pais instead they would have priority over the others.
- A. Yes.
- Q. Now, in fact p. c. operators were later given much more sympathetic treatment. Right?
- A. Yes.
- Q. As far as conversion to taxis is concerned,
- 20 A. Yes.
- Q. As to other conversion into legalised pak pais, it is not possible even to-day. Right?
- A. No. It was made possible for p. c. operators and 12 permits were issued.
- Q. I see so that - when was that?
- A. At the same time as taxis conversion.
- Q. So there are now 12 legal pak pais on the road?
- A. There are more than that as permits had also been issued for the Airport Hire Car Service, but you are correct in that there has not yet been a general issue of these permits.
- 30

In the Supreme
Court of Hong
Kong

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Cross-
examination

(continued)

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Court of Hong
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Cross-
examination

(continued)

Q. I now turn to A109 and A110, the 2 G.Ns. for limit. You told the Court yesterday although the original intention was to publish in GN 15/77 the lower limit 1,329 c.c. advised against it. Is that right?

A. Yes.

Q. Because of his advice, the larger figure 1,376 was gazetted. Right?

A. Yes.

Q. What was his reason precisely?

10

A. As far as I recall, his reason was that to impose a limit excluding the 47 p.c. would be improper at that time because an action had already been heard.

Q. Was there any reason why you could not wait until after judgment was delivered on 6/7/77 before gazetting that notice?

A. Yes because as long as the limit did not reflect current policy, the number of vehicles could have been increased. The advice was that the revised limit should be set without delay.

20

Q. The original view of your department was to gazette a lower limit of 1,329.

A. Yes.

Q. If Pls. were to win in their action and it should become necessary to give them 47 licences as a result of that judgment, the Commissioner would then increase it by 47. Is that right?

A. That could be done.

Q. That was original intention.

A. Yes.

30

Q. But c.c. advised against that.

A. Yes.

Q. Standing in witness box as you do to-day and looking

back with hind-sight, do you agree original intention to gazette a lower figure was a better idea?

In the Supreme Court of Hong Kong

A. It was more in line with policy, but I felt I had to take into account the advice given by c. c.

Respondent's Evidence

Q. Did you agree with it or did you feel obliged to follow?

No. 7

A. After he had given me the reasons, I agreed with him.

Peter Frederick Leeds

10 Q. Mr. Leeds before the hearing on 6/7/77, anybody who knew of the then gazetted limit of 1,376 and who knew on that date only 1,329 p. c. were actually registered on that day would conclude that therefore there were 47 vacancies on that morning. Is that right?

Cross-examination

(continued)

A. Yes.

Q. If the judge knew of this thing, that is what the judge would have thought. Is that right? That is reasonable.

A. That is reasonable.

20 Q. G N (E) 15/77 which set the limit at 1,376 did not indicate that there was this policy decision of not issuing any further new p. c. licences. Do you agree?

A. That is correct.

30 Q. Thank you. Looking back with hind sight as we do to-day, do you agree with me that it would have been more proper and fairer to the Pls. if you had gazetted the lower figure of 1,329 by G N (E) 15/77 because the Pls. would then know what precisely they were up against and because the learned judge would be in a better position to do justice as that case would deserve? Do you agree?

A. The intention was to be fair.

Q. Do you understand my question? I'm criticising the motive. Looking back with hind sight, would you not agree it would have been better not to follow c. c. 's advice?

A. No.

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Court of Hong
Kong

Respondent's
Evidence

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Peter Frederick
Leeds

Cross-
examination

(continued)

Q. Why not?

A. Because I have heard nothing that would persuade me that c. c. was wrong.

Q. I see. The judge did not know of policy decision.

A. I don't know what the judge knew.

Q. You're not suggesting he knew.

A. I have no way of knowing what he knew.

Q. If he had known this GN 15/77 and if he had known in fact 1,329 p. c. were registered and licensed on morning of 6/7/77, then he would have thought 47 vacancies were available. Is it a fair statement?

10

A. That is a fair assumption.

Q. But let's assume one more thing, had the judge not been told of your department's intention or your department's policy decision of not granting new p. c. licences, is it fair to assume that the judge could not possibly imagine that after he delivered this judgment on the morning on 6/7/77, your department would immediately bring the ceiling down by 47 in yet another GN (E)? Is it a fair assumption to say that?

20

A. I cannot give any comment as to what the judge might assume.

Q. You don't want to give any comment. Tell me, do you know what happened at the hearing that morning before the judge on 6/7/77?

A. I was advised of the result.

Q. Did you read a copy of formal judgment subsequently?

A. I read part of it.

30

Q. It is a short judgment. May be you were thinking of the long judgment in other action. It is on pp. 104-105. Did you read it?

A. Yes.

- Q. Did you know no objection was taken by learned c. c. on the point of ownership?
- A. Not until yesterday.
- Q. So you would not know why such objection was not taken.
- A. No.
- Q. You agree?
- A. Yes.
- 10 Q. Now you then decided later that day on 6/7 to bring the ceiling down for p. c.
- A. Yes.
- Q. By that time you had not read the written judgment, but you were only told of the result. Is that right?
- A. That's correct.
- Q. I think before you decided to bring that ceiling down by 47, you had received certain legal advice from Mr. Frank Wong, yourself. Is that right?
- A. Yes.
- 20 Q. And no advice was to the effect that when the Pls. submit another application for the registration of another 47 p. c. you should consider it. Is that right?
- A. Yes.
- Q. And after considering that application and if the application was in fact not granted then it would be in order to bring the ceiling down. Is that right?
- A. As I recall it : the 2 items were not directly linked.
- Q. Although the meat is correct, but not in that context. Or am I wrong altogether?
- 30 A. It is the linking together of that 2 items of advice.
- Q. Perhaps you tell us.

In the Supreme
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Cross-
examination

(continued)

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Cross-
examination

(continued)

A. They were that any applications should be received and considered and separately that it would be in order to carry out the original intention of putting the limit at 1,329.

Q. Anything to add?

A. No.

Q. But it means unnecessary complications, does it not, that if the Pls. application reaches you immediately on 6/7/77, and you find there is nothing wrong with it at all and the limit had not yet been reduced by 47, then you shall as required by Reg. 6 register it.

10

A. We would have to consider that application and any others.

Q. Yes. You are quite right. Let's assume there were no others, would you then agree with me?

A. As the

Scott: I'm afraid I rise rather late. I do object to it as it is purely a question of law.

Lee: The question follows the earlier one.

20

Court: That is a question of law unless you ask him what his opinion was or what he considered he should do.

Lee: I did ask him about his duties. It would be wrong to shut out that question.

Court: That may well be a question I shall have to consider.

Lee: He shall consider what his duties are although cast on him by law.

Court: But you are not asking him what his duties are.

Lee: I can rephrase it.

30

Q. On those assumed facts :
1. The application reached you immediately or before you had brought down the ceiling. You received and considered as per advice of c. c. and

you found there was nothing wrong with it and assuming for the moment there were no other clean applications for registration of p.c., what did you consider your duties to do in those circumstances in relation to Pls.' application?

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Leeds

Cross-
examination

(continued)

- 10 A. I did not consider it because those circumstances did not exist.
- Q. Supposing they did.
- A. There would then be an apparent conflict between policy and the law and I would have first sought legal advice and if necessary policy guidance.
- Q. Mr. Leeds. I'm reading back my notes what you told the Court yesterday. Perhaps your Lordship could also refer to your notes.
(3rd set of question and answer at p.79 of notes read. Two further following sets of questions and answers at pp. 79 & 80 read).
You said it.
- A. Yes.
- 20 Q. Do you confirm that?
- A. Yes.
- Q. (Next 3 set of questions and answers at p.80 read).
Is that your answer?
- A. Yes.
- Q. You confirm it?
- A. Yes.
- Q. That suggests, does it not, that provided new licences were not granted in the meantime it would be possible to go back to the smaller figure?
- 30 A. Yes.
- Q. Going back to your earlier answer : "The advice was that after considering the applications, it would be in order to adjust the limit". Does it not mean that after your consideration of Pls. application and provided that licences were not granted then it would be in order to reduce the limit?

In the Supreme Court of Hong Kong	A.	What is your question?	
	Q.	(Question repeated)	

Respondent's Evidence No. 7	A.	I can't be too sure about the word "after". My memory of conversations 2 years ago is not too clear.	
Peter Frederick Leeds	Q.	I see. You are not suggesting you did not use that word yesterday. Are you?	
Cross-examination (continued)	A.	No.	
	Q.	You say to H.C. now because it happened sometime ago you are not sure if c.c. used the word "after" then. Is that right?	10
	A.	Right.	
	Q.	Is it fair to say : "He might have used it. He might not have used it. You are not sure"?	
	A.	Correct.	
	Q.	Now you see because you can't rule that out, if c.c. had said : "After considering the application it would be in order to adjust the limit, then that advice would not have been followed by reducing the limit first. Do you agree?	20
	A.	I think what we may have had in mind was the possibility of again increasing by 47. If it had been decided to grant the licences, this would have necessitated a policy decision.	
	Q.	Well do you agree or disagree with my last question? Or have you forgotten it?	
	A.	Would you repeat it?	
	Q.	(Question repeated)	
	A.	It is not necessarily correct if we were to go down and to go up again.	30
	Q.	So to follow that advice, if that advice had been given, then by coming down alone without going up again, it would be contrary to that advice in those circumstances that you said. Is that right?	
	A.	It would appear to be so.	

- Q. As a matter of fact, Mr. Leeds, you brought the ceiling down immediately after you were informed of the judgment.
- A. After advice given following the judgment.
- Q. Alright I'll put it again. Immediately after judgment, you sought legal advice. Right?
- A. Legal Advice was given but not sought.
- Q. Right. Volunteered. Legal Advice was given to you immediately after the judgment. Is that right?
- 10 A. Yes.
- Q. And immediately after that legal advice you brought the ceiling down. Is that right?
- A. Yes.
- Q. You knew once you brought the ceiling down, the Pls.' application was doomed to fail. Is that right?
- A. Unless vacancies are created in some other way or if there was some change in policy.
- Q. Let me deal with those 2 points. Firstly you were not aware of the possibility of their coming into existence 47 vacancies at the time. Is that right?
- 20 A. That's correct.
- Q. Secondly did you think the policy would be changed for the benefit of the Pls. ?
- A. I did not expect this.
- Q. In the light of that, do you now agree with me once you brought the ceiling down, you would expect Pls.' application to be rejected?
- A. That is correct.
- Q. Do you further agree if you had not reduced the limit you would have to consider Pls.' application?
- 30 A. We had to consider the Pls' application in any case because of the judgment.

In the Supreme Court of Hong Kong

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No. 7

Peter Frederick Leeds

Cross-examination

(continued)

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Court of Hong
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Respondent's
Evidence

No. 7

Peter Frederick
Leeds

Cross-
examination

(continued)

Q. Mr. Leeds. I must suggest to you that by reducing the limit by GN (E) No. 16 of 77, the primary object of your department was to defeat the expected application of the Pls.

A. The primary object was to carry out Government policy at that time.

Q. Which was not to issue any more new licences to anybody.

A. Additional licences.

Q. To anybody including Pls.

10

A. Yes.

Q. Your department was afraid that if the limit was not reduced immediately there would be this conflict you told us about. Is that right?

A. That was not in my mind at the time.

Q. I suggest in order to avoid that obvious conflict you reduced the limit.

A. It had that effect, but my prime concern was to go back to original intention of establishing a limit at the number of vehicles already registered and licensed in accordance with the policy.

20

Q. In accordance with policy, no new application must be granted.

A. No additional.

Q. No additional new licences must be granted. Is that right?

A. That's correct.

Q. To follow the policy the Pls. application must be rejected. Is that right?

A. That is the effect.

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Q. The intention in bringing down the limit by GN(E) 16/77 was because to make it impossible for Pls. to succeed in their application. Is that right or not?

Scott: I object to the question. It has been asked at least 5 times.

In the Supreme
Court of Hong
Kong

Lee: The cross examiner is entitled to cross-examine on the same matter but in alternative line if that is the only objection.

Respondent's
Evidence

Court: In order to save time, I would allow it.

No. 7

Q. (Question repeated)

Peter Frederick
Leeds

10 A. The intention was to carry out Government policy and the continuation of that policy was the reason for the application being subsequently rejected.

Cross-
examination

(continued)

Q. One final matter, my Lord. Go back to Bundle C to refresh your memory at pp. 23 and 24. Do you agree with me as from 12/7/77, V.E.E. Ltd. and the other applicant, the client of John Ip & Co. were no longer entitled to have their applications considered by your department?

A. With a change of policy, that is correct.

20 Q. Bearing in mind Pls. application was rejected on 24/7/77, A123 my lord, do you agree on 13/7/77 at any rate, the Pls.' application was the only pending application for registration of p.c. ?

A. I cannot be sure, as I can recall at some stage another application for 150 p.c.

Q. What is the date?

A. I can't be sure.

Q. I'm asking you about 13/7/77.

A. If I can't be sure about the date of the other application for 150, then I can't be sure about 13/7/77.

30 Q. Look, do you know in the Defence filed on behalf of A.G. only these 2 applications were referred to?

A. I have not gone through all the papers, but if you tell me so, yes.

Scott: If it would save time. I'm not suggesting this application for 150 was made on or before 13/7. I say that in an attempt to save time.

In the Supreme Court of Hong Kong

Respondent's Evidence

No. 7

Peter Frederick Leeds

Cross-examination

(continued)

Q. I put it to you that once those other 2 applications by V.E.E. and Messrs. John Ip & Co's client were refused on 12/7/77, they were no longer entitled to be considered thereafter. Do you agree?

A. Unless there was a change of policy, I agree.

Q. Was there a change of policy?

A. There was no change of policy.

Re-examination Re-examination of DW1 :

Q. Mr. Leeds, I think it is suggested to you in signing G.N.16 you acted contrary to the legal advice you had received. Is that any truth whatsoever in any such suggestions?

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A. None at all.

Q. Before you signed GN16, did you obtain legal advice as to whether or not it was in order for you to sign it?

A. I did.

Q. What was that legal advice?

A. The legal advice was that it was in order to establish a limit for p.c. equal to the no. of vehicles registered and licensed.

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Q. Were you ever advised that before reducing the limit, you had to await applications from the Pls. for p.c. registrations?

A. As I recall the advice, it was not necessary to await the applications as in the event of the applications being granted it would be possible to adjust the limit accordingly.

Q. Adjust the limit in which direction?

A. Adjust it upwards.

30

- Q. Would you look please at Bundle A p. 5 ? You were asked a large no. of questions on this. I only wish to ask you one question.
At the time when On 6/1/76, had your department received from Pls. any application for p.c. licenses ?
- A. As far as I can recall only in respect of the letter to which doc. 5 is the reply.
- Q. That is on p. 3, and I think we have conceded that is an application.
- A. We took this as a preliminary application because of the words : "We apply to you for 105 p. c. licences".
- Q. You were asked about Government policy. Was Government policy also policy of your department or did your department disagree ?
- A. The department did not disagree. The Commissioner had a duty to carry out Government policy.
- Q. Dealing simply with yourself personally Mr. Leeds: Did you consider policy of phasing out p. c. was necessary or expedient ?
- Lee: I object. To begin with that is a leading question, but that is my least objection. My main objections are : Firstly it was never pleaded; it was not even alleged in any of the documents before your Lordship whether in this action or the previous one. My second main objection is even if it be permissible to ask this question, the only time to do it if at all is in evidence-in-chief.
The 3rd principal objection is : it does not simply arise out of cross-examination.
- Scott: My Lord, this is the most astonishing moment in the case of ours. The Pls. totally failed to plead the serious suggestion put in cross-examination this morning that Mr. Leeds acted with the intention, "primary object", to quote my learned friend's phrase, "was to defeat the Pls. 'application". That question having been put although, as I say, not pleaded, it is now sought to prevent me to ask Mr. Leeds. What was his objective and what motives actuated his behaviour. To say it does not arise out of cross-examination is palpably untrue.

In the Supreme Court of Hong Kong

Respondent's Evidence

No. 7

Peter Frederick Leeds

Re-examination

(continued)

In the Supreme Court of Hong Kong

In my submission, taken as a whole, the objection is grotesque. As far its leading nature, I am perfectly content to rephrase it to save time.

Respondent's Evidence

Lee: I'm entitled to reply.

No. 7

Scott: In my submission not.

Peter Frederick Leeds

Court: It is customary to hear Counsel in reply. If that is not a good practice here, it is too late to have it changed now.

Re-examination

(continued)

Lee: When I asked in cross-examination yesterday and put to him the primary object of lowering the ceiling in GN16 was to defeat Pls.' application. That was limited to that particular matter, and his answer was "No. It was to follow Government policy of phasing out p.c.". How can my learned friend be entitled on account of this line of cross-examination to ask him now in re-examination as to whether or not Government policy in phasing out p.c. was in terms or in accordance with Reg. 17(1).

10

Court: No one mentions Reg. 17(1).

Lee: "Necessary or expedient" - public safety and regulation of traffic. If that is not the purpose of Mr. Scott's question, then I would not object.

20

Court: But the whole tenor of your cross-examination, even apart from the question put, was on matters taken into consideration by the witness himself.

Lee: Look at the way my learned friend justifies his question. Y.L. must distinguish 1. policy to phase out p.c. and 2. pursuant to that policy no new p.c. would be registered and licenced. It is pleaded by the defendants that the reduction of the limit was a second one - reducing the limit to give effect to the decision of not issuing new licences in the meantime. That is totally different from the reasons behind the Government's policy to phase out p.c. I object it because in my respectful submission this is another last ditch attempt to spring yet another surprise on us which is that the Government policy to phase out p.c. has its root in reg. 17(1), a position which has never been taken by the Commissioner or the defendant in the entire history of this case. Whether my objection is grotesque or whether my learned

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friend's question is grotesque is now to be decided by Y. C.

In the Supreme Court of Hong Kong

Court: I'm of course not deciding as to at whom criticism has been rightly directed or indeed whether any criticisms are justified. On Mr. Scott's intimation to rephrase his question in a non-leading form, I would allow it.

Respondent's Evidence

No. 7

Peter Frederick Leeds

Re-examination

- 10 A. In view of the way in which i. c. were operated, I considered the policy most necessary.

(continued)

Court: 2.30 p. m.

B. Liu
Judge of High Court
18/4/80

2.30 p. m. DW1 reminded of his former oath.

Re-examination of DW1 continued :-

- 20 Q. I think it was suggested to you in cross-examination: the policy not to grant new registrations to p. c. owners was not revealed to the public. I want you to look at p.6 Bundle C in the light of that suggestion please. I simply ask you to re-read yourself 1st para. and 1st para. in second column. I ask you this : Would it have been possible to phase out p. c. in the way proposed if the Commissioner continued to register new p. c. ? By now, I mean additional to those already registered.
- 30 A. It would not have been possible if new registrations continued after the 1st of the existing vehicles was not re-licensed.
- Q. Take that answer and examine it for a moment. For what period was registration granted?
- A. There is no fixed period for registration. Licences are issued for max. of 1 year.
- Q. So if existing licences are not renewed, does it follow they would all expire in not more than 1 year?
- A. That's correct.

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Respondent's
Evidence

No. 7

Peter Frederick
Leeds

Re-examination
(continued)

Q. If p. hire cars are to be completely abolished by a particular date, can that be achieved by issuing additional licences in the meantime?

A. No.

Q. I want to go back, Mr. Leeds, to legal advice you received. You told my learned friend that before judgment on 30/6/77 in Action 749, you had received legal advice to the effect that committed vacancies, in general terms, need not be included in the gazetted limit.

A. That is correct.

Q. Was that advice received before or after the ending of Action 749?

A. It was before ending of the hearing.

Q. Just to be sure we are talking of the same thing : by end of hearing what did you mean?

A. I understood it to be 30/6.

Q. It is common ground, Mr. Leeds, the argument in that case ended in the middle of June. Was the advice about committed vacancies received on or after middle of June.

A. I think it was after the middle of the month, a few days before 30/6.

Q. Look at Bundle C p.10, in the middle of the 2nd para., Mr. Cheung Yuk Yin was saying on your behalf : "c.c. handling the said case is ...

Lee: I don't think I cross-examine on this document.

Court: But that is not a valid ground for objection. Is it?

Lee: Yes.

Court: It is the subject-matter dealt with in cross-examination which principally decides the ambit of re-examination. I'll have to listen to the question first.

Q. I was proposing to go on to ask him, in the light

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of that at what stage before publication GN15 he was advised to keep open the 47 vacancies.

In the Supreme Court of Hong Kong

Lee: I would not object to it if my learned friend would not refer to the document.

Respondent's Evidence

Court: I don't follow that. This document is admitted as to authenticity i. e. that document was a memo making those statements to the Secretary of Environment. I would allow the question and the reference made to the passage.

No. 7

Peter Frederick Leeds

Re-examination

10 (Question repeated by the Court)

(continued)

A. It was after the submission of draft GN to Government Secretariat, and I think the advice to amend the notice was given one or 2 days before the publication of GN15.

20 Q. We know from the document and it is common ground, it was published on 2/7/77. Mr. Leeds, in the light of the advice you had received about keeping open the 47 vacancies, did you consider it would be improper or in any other way wrong not to keep them open until the judgment had been delivered in Action 750?

A. The advice I was given was : it would be better to keep the 47 open.

Q. Did you consider that good or bad advice?

A. Coming from c. c. , I took it as good advice.

Q. Were you ever advised that it would be improper or unfair or in any way wrong to reduce the limit so as to illiminate the 47 vacancies after judgment in Action 750?

30 A. No.

Q. Did you ever think it was in any way whatsoever improper to reduce it at that stage?

A. No. I did not.

Scott: That is Defence case.

Court: Adjourned. 5 mins.

No. 8
Submissions

3.07 p.m.

Scott: (Submissions taped)

Court: Adjourned to 10 o'clock tomorrow morning.

B. Liu
Judge of High Court
18/4/80

19th April, 1980 (10. - 1.00)

Coram : Hon. LIU, Judge in Court

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Appearances as before

10 a.m.

Scott: (Submission filed)

Court: Adjourned to 10 a.m. Tuesday 22/4/80.

B. Liu
Judge of High Court
19/4/80

22.4.80 (10. - 1.07 & 2.30 - 5.15)

Coram : Hon. LIU, Judge in Court.

Appearances as before.

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Lee: I will provide my submissions in note form.

Court: That certainly will help the compilation of the
Court records.

Lee: (Submissions)

Court: Adjourned to 2.30 p.m.

B. Liu
Judge of High Court
22/4/80

2.30 p.m.

Lee: (Continuing)

Court: Adjourned to tomorrow not before 11 a.m.

B. Liu
Judge of High Court
22/4/80.

In the Supreme
Court of Hong
Kong

No. 8

Submissions
(continued)

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(Applications in Mr. Lee's other proceedings
not completed until late in the evening of the
23/4, and all concerned were told to return
not before 11 a.m. on 25/4/80)

25.4.80 (11.20 - 1.00 & 2.30 - 5.00)

Coram : Hon. Liu J. in Court

Appearances as before.

11.20 a.m.

Lee: (Summary of written submissions handed up).

(submissions)

Court: Adjourned to 2.30 p.m.

B. Liu
Judge of High Court
25/4/80.

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2.30 p.m.

Lee: (submissions continued)

Court: Adjourned to 10 a.m. on Monday 28/4/80.

B. Liu
Judge of High Court
25/4/80.

In the Supreme
Court of Hong
Kong

28th April 1980 (10.05 - 11.55)

Coram : Hon. Liu, Judge in Court

No. 8

Appearances as before.

Submissions
(continued)

Lee: (submissions continued)

My learned friend has something further to say,
and I have no objection.

McCallough : Page 30, para. 54(b) of Mr. Lee's sub-
mission :-

The Amended Defence was handed to Mr. Lee on
the morning of 17/4 before, or in any event during
the course of, the evidence-in-chief of Mr. Leeds
which commenced at 11 o'clock.

10

Court: Thank you. Judgment reserved. Gentlemen,
I am afraid I may have to give a very short notice.

Lee: Someone will be taking judgment, and Y.L. will not
take it as discourteous if either my learned junior
or myself will not personally attend.

Court: C.A.V.

B. Liu
Judge of High Court
28/4/80.

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Action 2882/77

8th May, 1980 (11.07 - 12.30)

Coram : Hon. Liu, Judge in Court

Appearances as before Mr. McCallough late.

11.00 a.m. (Written judgment read)

11.30 a.m. (Mr. McCallough enters Court)

Court: (written judgment read)

Lee: I would like to be heard on costs although Y.L. has
given costs to Defendant in the judgment. But then
I have not been heard.

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Normally, costs would follow the events. This is not a usual situation because (1) This case was brought by the Pls. by relying on C.A. decision in Wong Kwong Shing on the ultra vires point and that is the basis of all the Pls' claims.

In the Supreme Court of Hong Kong

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No. 8

Submissions

(continued)

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Y.L. has got my point in my final submissions, and I would not repeat it. Y.L. has held in giving limit under Reg. 18B (1) Commissioner was not solely confined to matters in Reg. 17(1). This is a point which raises a point of great public importance, and it was decided against the Pls. because Y.L. did not read judgments of C.A. as we understood it to mean. I am bound by Y.L.'s judgment, and I bow to it but the point raised here is : Pls. ought to be forgiven for having interpreted those judgments in a different way.

20

(2) The Commissioner without giving any publicity to policy or departmental decision of not issuing any further licences for public cars has unwittingly, in the light of Y.L.'s judgment, portered a false hope in the Pls. In the light of the history of the whole case which culminated in Pls.' applications in July 1977, it is reasonable for the Pls. to feel aggrieved when the Commissioner brought down the limit he did. Hence this action.

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(3) The point on ownership was raised very late in these proceedings by an amendment. Although it was not a main ground in dismissing Pls.' claims, this point was certainly an important point.

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(4) In administrative action such as this when a subject has been misled by the conduct of those in Government no matter how innocent more often than not, costs are not awarded against the subject even though his complaints are found to be groundless. That is to say so long as there is reason for him to feel aggrieved costs will not be awarded against him. It is singularly unfortunate that apart from lack of publicity to Government decision which I have made reference to, Crown counsel should have seen fit to influence the Commissioner into preserving 47 vacancies by gazette Notice 15 which raised false hope.

(5) In Ng Kee v. A.G., at first instance when Cons. J. dismissed Mr. Ng's claim, he did not award costs against Mr. Ng. That Y.L. will recall, the

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Kong

No. 8

Submissions
(continued)

learned judge found for Mr. Ng on some of
declarations sought. He refused to make those
declarations because he held Mr. Ng was guilty
of delay.

(6) Y.L. has always a discretion in matter
relation to costs. The Pls. have already expended
money in obtaining the 2 declarations in N.P. 150
of 1976 and although costs were awarded to Pls.,
Y.L. can take judicial notice that an order for
costs cannot adequately compensate the Pls.
Now that Y.L. has dismissed all Pls. claims. I
respectfully submit justice will best be served if
no costs are awarded against them.

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Court: I do not propose to call upon you. Mr.
McCollough. I can find no real justification in
this action, based in the main on allegations of
ultra vires, malice etc., for any departure from
the usual order for costs. However the defendant
was absent for about $\frac{1}{2}$ the time this morning, and
I would only allow the defendant $\frac{1}{2}$ costs for today.

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Ordered: 1. Action dismissed with costs.

2. The Defendant is to have only $\frac{1}{2}$ the costs
for today.

B. Liu
Judge of High Court
8/5/80

No. 9

Judgment of
Liu, J.

8th May 1980

No. 9

Judgment of Liu, J.

Action No. 2882 of 1977

IN THE SUPREME COURT OF HONG KONG
HIGH COURT

30

BETWEEN LEUNG CHOW PUBLIC
CARS (a firm) Plaintiff
and
ATTORNEY GENERAL Defendant

Coram : Hon. LIU, J. in Court.

Date : 8th May, 1980.

JUDGMENT

In the Supreme
Court of Hong
Kong

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Judgment of
Liu, J.

8th May 1980

(continued)

10 By a Gazette Notice No. 2670 of 1975 dated the 5th
December 1975, the Commissioner for Transport limited
the number of motor vehicles permitted to be registered
and licensed as public cars to 1,388. Having sought
registration for 200 public cars in November 1975 and
105 public cars in December 1975, on the 15th July 1976
the plaintiffs sent in applications for the registration and
licensing of 47 public cars. On the same day, the
10 plaintiffs also sent in applications for 25 public light
buses. As at the date of these 1976 applications, there
were 95 vacancies for public cars and 4 vacancies for
public light buses. The Commissioner intimated that
these vacancies were not available but were considered
as committed. For the purposes of this action, these
vacancies are hereinafter called "committed vacancies".

20 The Commissioner for Transport refused all the
plaintiffs' applications, and proceedings were caused to
be instituted against the Commissioner in the name of
the Attorney General under the provisions of the Crown
Proceedings Ordinance. These proceedings were
intituled High Court Miscellaneous Proceedings Nos.
749 and 750 respectively both of 1976. M.P. 749 in
respect of the intended registration for 25 public light
buses came on for hearing on the 24th, 25th May and
17th June all in 1977. The reserved judgment in those
proceedings was delivered by McMullin J., as he then
was, on the 30th June 1977. It was declared that the
Commissioner was wrong in taking into account any
30 committed vacancies when "entertaining or considering"
the plaintiffs' 25 applications for public light buses. It
was further declared that the Commissioner ought to
have entertained the plaintiffs' 25 applications in pres-
cribed forms "only with like applications, if any". It
was also declared that the plaintiffs were, entitled to
have 4 applications "entertained" alone or together with
other like applications, if any, subject to a determination
by ballot. The question of "ownership" was also raised
by counsel for the Commissioner in M.P. 749, but the
40 learned judge did not proceed to settle the issue which is
described as a "nice question". On the 6th July 1977,
the plaintiffs caused to have applied for the registration
of 4 public light buses. The issue of ownership was not
further pursued, and such applications were duly acceded
to by the Commissioner on the 12th July. There was no
assurance given that such concession would guide or bind
the Commissioner's future course of conduct.

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(continued)

On the 6th July 1977, M.P. 750 in respect of the Commissioner's refusals of the plaintiffs' applications for the registration of 47 public cars were likewise disposed of without further opposition. The Commissioner was similarly declared wrong to have taken into account the committed vacancies when "entertaining or considering" the plaintiffs' 47 applications for registration of public cars. That declaration was followed by a single declaration that the plaintiffs were entitled to have applications for the registration of 47 public cars "entertained". The other declarations made in M.P. 749 for the plaintiffs' applications to be "entertained" "only with like applications" in the statutory prescribed form and for the plaintiffs' applications and these other like applications, if any, to be determined by ballot were omitted for the obvious reason that such was amply provided for in the regulations under the Road Traffic Ordinance. That the plaintiffs must necessarily have their applications for the registration for 47 public cars granted is quite untenable. That is not the stance of the plaintiffs who seek only to argue that their applications must be considered on the merits by virtue of these declarations.

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The plaintiffs' case is based on the Commissioner's alleged ultra vires acts whereby they were deprived of the benefit of the declarations in M.P. 750.

It would not be impertinent to dwell on the early history. In 1975, following discussions on matters such as (1) public cars were not then performing functions for which they were originally created and (2) they might be illegally operated as private taxis without fear of such successful official intervention, the Traffic Advisory Committee recommended to the Governor in Council to phase out public cars as a class. The Road Traffic Ordinance deals, inter alia, with division of vehicles into classes, the purposes for which vehicles may be lawfully used, regulation and control of the driving and use of vehicles including public cars as well as the conduct of their respective users and drivers and the fares which may be lawfully charged. Vide section 2(2) and section 3(1)(cc) and (f). Under section 4(1)(j), the Governor in Council may make regulations for "limiting the number of motor vehicles which may at any time be registered or licensed within any of the classes". Mr. Leeds further told the Court that the Transport Department shared the same view for the phasing out of public cars with the Traffic Advisory Committee for these

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10 same main reasons which he described as principal reasons at another time. Mr. Leeds explained some of the consequential irritations in his cross-examination : Public cars had the appearance of taxis; not infrequently they charged higher fare; they could not effectively be restrained from operating illegally as taxis, and public cars as a whole presented unfair competition to taxi operators. According to Mr. Leeds, instructions were given by the Commissioner for Transport that it was undesirable to continue issuing licences for public cars which might be phased out as a class and that a moratorium should best be imposed to suspend issuing such licences pending a policy decision by the Governor in Council. At or about this time, on the 30th October, 1975 judgment was delivered by Huggins, J., as he then was, in WONG Kwong-shing v. A.G.⁽¹⁾ It was, inter alia, held that a limit set by the Commissioner for the registration and licensing of public light buses pursuant to Regulation 18B(1), even one day after the applications for 50 public light bus licences, could be applied to such slightly earlier applications. Mr. Leeds further disclosed that on or about the 20th November 1975, the Transport Department was advised by Crown counsel that a limit ought to be set for the classes of vehicles for which licences were not to be granted. Thereupon, on the 5th December, 1975, by Gazette Notice 2670 the Commissioner set the limit for registration and licensing of public cars at 1,388 which, according to Mr. Leeds, the present Deputy Commissioner, represented the number of existing registered public cars plus 95 committed vacancies. On the 6th April 1976, the Executive Council met and ordered legislation to be prepared for the implementation of the recommendation of the Traffic Advisory Committee. Mr. Leeds became acting Commissioner on the 22nd June 1977 until the 8th of the following month in July. A few days before the delivery of judgment in M.P. 749 on the 30th of June 1977 and therefore more than a week before the declarations made in M.P. 750 on the 6th of July 1977, Mr. Leeds, then acting Commissioner for Transport, was advised by Crown Counsel that the committed vacancies need not be included in the gazetted limit for the registration of public cars. It was originally intended that the limit be reduced to the number of existing registered public cars at 1,329 and that if the plaintiffs were to score a success finally in M.P. 750, the gazetted limit be raised to comply with any Court order made. At about this juncture, he was ultimately advised by Crown counsel that it might be prudent to keep 47 vacancies open pending

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(continued)

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(continued)

the proceedings in M.P. 750 so as not to run the possible risk of being criticised as improper. It was therefore merely precautionary, and Mr. Leeds considered it good advice. Mr. Leeds was not advised that it was in fact unfair or improper. As a result, a Gazette Notice (Extraordinary) No. 15 of 1977 dated the 30th June 1977 but published on 2nd July 1977 reduced the limit for registration and licensing of public cars by only 12 to 1,376 thus reserving 49 free vacancies. Bearing in mind the original 95 committed vacancies, it is clear that 36 of them had by then been registered and licensed, although there is no evidence as to the circumstances in which they became so registered and licensed. It was also disclosed by the Deputy Commissioner that once a decision favourable to the Traffic Department was given, the gazetted limit would be forthwith reduced to implement Government policy.

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According to Mr. Leeds, on the same day but soon after the order in M.P. 750 dated the 6th July 1977, he was advised by Crown counsel that the plaintiffs' applications should be entertained but that the Department could consider the same in the context of Government policy on public cars. At one time, the Deputy Commissioner did state: "The advice was : after considering the applications, it would be in order to adjust the limit." Mr. Leeds explained that he had no clear recollection whether the word "after" was used by the Crown counsel. In his overall evidence, this must have been an inaccuracy, and in my view no real cause for criticism exists. In effect, Mr. Leeds was given to understand by Crown counsel that the declarations made in M.P. 750 did not enjoin the Commissioner to grant licences for 47 public cars to the plaintiffs. Therefore, Gazette Notice (Extraordinary) No. 16 of 1977 dated 6th July 1977 was published the next day to reduce the limit for registration and licensing of public cars by 47 to 1,329.

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There were two other applications sent in on the 5th July and 6th July for the registration and licensing of 50 public cars each, but these applications were both rejected on the 12th of July.

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On the 11th July 1977, the plaintiffs caused to be applied for the registration and licensing of 47 public cars. Mr. Leeds ceased to act as Commissioner on the 8th July 1977, and the plaintiffs' applications were dealt with and refused by the Commissioner, Mr. Macpherson, on 14th July 1977 in the following terms :

" Dear Sirs,

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(continued)

Your letter of the 11th July 1977 and the enclosed applications for the registration of 47 motor vehicles as public cars had been entertained by this Department under the provisions of Regulation 6 of the Road Traffic (Registration and Licensing of Vehicles) Regulations, Cap. 220.

10 However, I have to refuse to register your 47 vehicles as public cars as the number of motor vehicles actually registered as public cars is equal to the total number of motor vehicles that may be registered by the Commissioner for Transport as public cars in the terms of the Gazette Notice (Extraordinary) of 6th July 1977.

All the supporting documents for your applications and your cheque No. 97428 for \$470 are returned herewith."

20 At counsel's invitation, Mr. Leeds offered the solution that in the event of the plaintiffs' applications being approved by Mr. Macpherson, the Transport Department might consider lifting the gazetted limit by 47. On a similar hypothetical basis, Mr. Leeds conceded the possibility that had the plaintiffs sent in their applications before the gazetted reduction, these would have been in conflict with Government policy and the forthcoming legislation for phasing out public cars as a class and the Department would then have had to seek legal advice and policy guidance.

30 Road Traffic (Amendment) (No. 2) Ordinance 45 of 1977 was passed by the Legislative Council on the 15th June 1977. The Governor's assent was given on the 16th June 1977, and the new Ordinance was published on the 17th June 1977. The operation date was finally gazetted to fall on the 1st November 1977. Section 4A(6) of the principal Ordinance declared that the Commissioner's power to register or license a public car ceased from the same operational date. These amendments in Ordinance 45 were intended and did serve to convert public cars to taxis on the payment of a premium of \$75,000. New
40 taxi licences are 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. The plaintiffs claimed to have been minded to convert the 47 public cars, if granted, into taxis by

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payment of such premia, and the plaintiffs' claim in this action arose from the refusal of the Commissioner to register and license 47 public cars.

The plaintiffs, through their partner one Mr. Tse, applied thereafter for a maximum of 8 taxis, but none of his tenders was successful due to the low figure submitted. Taxis were transferable. The plaintiffs' applications for 47 public cars were rejected on the 14th July 1977. The mean between the maximum and minimum successful tenders was \$188,502.50. The defence was prepared to accept that the plaintiffs would likely have been able to successfully bid for or acquire in the open market a transfer of a taxi at \$188,502.50. It was a reasonable concession, and I so infer the same effect from the evidence. It was urged by the defence that the plaintiffs could have mitigated by obtaining taxis at that price. If the plaintiffs had been granted 47 public cars, they would have had to pay \$75,000 each for conversion. Thus, an extra \$113,502.50 (\$188,502.50 - \$75,000) would be required for financing the plaintiffs' acquisition of a taxi in open market or by way of tender. It was submitted, if I understood counsel for the defendant correctly, that \$113,502.50 per taxi or \$5,334,617.50 for 47 taxis would be the maximum future loss after the time lapse between the 15th July 1976 to the 31st October 1977 or earlier purchase in which 47 public cars could have been operated at a monthly profit of \$1,276. In any event, the defendant maintained that the plaintiffs would never be entitled to more than a 1/3 probability of having his applications accepted by ballot and that consequently the plaintiffs' claim for damages is too uncertain. The defence also made reference to the hard reality that if in fact the maximum limit for the registration and licensing of public cars had not been reduced by Gazette Notice (Extraordinary) No. 16 of 1977, there could have been a flood of applications in addition to those from U.E.E. Limited and Mr. Ip and that the probability of the plaintiffs being successfully granted one or more public cars would then have been even less hopeful.

The substance of the plaintiffs' complaints is : By virtue of the declarations in M.P. 750, the plaintiffs were entitled to have their applications considered on the merits. Gazette Notices 15 and 16 are ultra vires. No point was taken on the propriety of an earlier Gazette Notice 2670. Whilst the plaintiffs queried the alleged ultra vires nature of Gazette Notice 15, with the reserved 47 free vacancies this Gazette Notice need not be directly

10 attacked in this action. In reducing the limit by 47 to 1,329, Gazette Notice 16 was said to have the effect of depriving the plaintiffs of their rightful fruit in litigation in M.P.750. It was thus contended on behalf of the plaintiffs that by reducing the limit to 1,329 in Gazette Notice 16, the Commissioner acted ultra vires and with malice or at least knowledge that he was so acting. Furthermore, as against the defence capitalising on the plaintiffs' failure to establish ownership in support of their applications for registration and licensing both in 1976 and 1977, an estoppel sought to be founded on the Commissioner's conduct and the circumstances of the case was raised by the plaintiffs in Reply. The plaintiffs pleaded a further estoppel precluding the Commissioner from relying on a Government policy to phase out public cars as a class on the allegation that the plaintiffs were misled into believing that 47 free vacancies had been provisionally allocated to their impending applications to be made following the declarations in M.P.750.

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20 On the issue of ultra vires, the plaintiffs relied heavily on the judgments in A.G. v. WONG Kwong-shing ⁽²⁾.

Pickering, J.A., observed :

30 " 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 motor vehicle in the interest of the regulation of vehicular traffic in the colony. So close is the link between the two regulations that in invoking the latter, the Commissioner may fairly be said to be also invoking the earlier."

McMullin, J., as he then was, had this to say of a notice under Regulation 18B(1) :

" A notice under 18B might be regarded as one practical expression of the exercise of his powers under Regulation 17".

40 It is to be observed that in the proceedings in WONG Kwong-shing's case, the practical nexus between

(2) Civil Appeal 58 of 1975 judgment of which was delivered on 7th April, 1976

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Regulation 17(1) and Regulation 18B(1) was analysed for the purpose of illustrating that the Commissioner could not have been totally stripped of his power to process the particulars in an application under Regulation 17(1) when his refusal was expressed in terms of only Regulations 18B(1) and 17(2).

In the judgment in M.P.749 delivered on the 30th of June, 1977, McMullin, J., as he then was, adhered to his realistic approach to the exercise of a power under Regulation 18B(1) :

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" In fixing such a limit the matters which the Commissioner must normally consider are precisely those matters dealt with in Regulation 17(1)(a)(1) and (2), i.e. the public safety and regulation of vehicular traffic in the Colony. These are matters of public concern which entitled him to use his powers under 18B".

Regulation of road traffic, in all its ramifications, must necessarily overlap, but it would be fallacious to advocate that relevant considerations for exercising the power under Regulation 18B(1) are wholly confined to the two factors, i.e. public safety and regulation of vehicular traffic set out in Regulation 17(1).

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Section 4(1)(b) of the Principal Ordinance is the enabling section providing for the making of regulations for the registration and licensing of vehicles. That section specifies no criteria for the exercise of any power created by the regulations, but Regulation 17(1) made under section 4(1)(b) confers a discretionary power of refusal on the Commissioner exercisable on the grounds of public safety and/or the regulation of vehicular traffic. Section 4(1)(j) of the principal Ordinance is the enabling section for limiting the number of motor vehicles which may at any time be registered or licensed. Regulation 18B(1) made thereunder lays down the procedure whereby the number of motor vehicles may be so limited. There is no guideline given, either in the enabling section or in the regulation, as to how the limit may be gauged. A statutory power must be exercised reasonably and not capriciously. But there can be no compelling reason as to why the exercise of the power of limiting the maximum number of cars must be exclusively linked to the two matters of public safety and regulation of vehicular traffic set out in Regulation 17(1).

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The exercise of a statutory power in the absence of any express inhibition or restriction was considered by Huggins, J., as he then was, in CHAN Yat-sun and others v. A.G. (3). At pages 509 and 510, the learned judge observed :

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10 " Even where there is no express limitation on the exercise of a discretion a statutory body must not take into consideration matters which are manifestly irrelevant and if it should appear that it has done so, this Court will interfere. However, as appears from the second passage cited above from the judgment of Lord Denning in Breen v. Amalgamated Engineering Union it is not open to the Court to infer an absence of good reason from the silence of a statutory body in a case where the applicant is seeking a privilege to which he has no particular claim. Putting it in another way, where the statute is silent as to the matters which must be considered the

20 Court would assume that the body exercising the discretion has not acted in an arbitrary and totally unreasonable manner in the absence of any ground for concluding that it has."

The plaintiffs' contention is that the Commissioner was acting ultra vires by taking into account matters outside public safety and regulation of vehicular traffic.

30 That the power created by Regulation 18B(1) is a discretionary one cannot be seriously doubted. At page 84 of "Judicial Review of Administrative Action" by S.A. de Smith, 3rd edition, it is well said that :

" Discretionary powers must be exercised for the purposes for which they were granted; relevant consideration must be taken into account and the irrelevant consideration disregarded; they must be exercised in good faith and not arbitrarily or capriciously. If the repository of the power fails to comply with these requirements, it acts ultra vires."

40 The Road Traffic Ordinance serves, inter alia, to classify vehicles, to specify the purposes for which they may be lawfully used, to control the driving and use of vehicles, to supervise the conduct of users and drivers and to regulate the fares which may be lawfully charged.

(3) 1975 H.K.L.R. 503

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In regulating the whole, it stand to reason that regard must be paid to every integral part.

It is quite untenable to suggest that the main reasons given for the proposed phasing out of public cars were not connected with road traffic in its general terms comprising a variety of elements. Mr. Lee, counsel for the plaintiffs, drew the Court's attention to the fact that since existing public cars were contemplated to be re-registered as taxis and further taxi licences were expected to be gradually issued, his clients' applications could not have been validly objected to on the ground of regulation of vehicular traffic, particularly with a proposed small increase by only 47. Such view fails to appreciate the overall purposes of the Ordinance in the regulation and control of vehicles of all classes, the purposes for which they may be lawfully used, the supervision of the users and drivers and even the fares which may be lawfully charged. The Commissioner must set a limit at some given point of time, and the comparatively small number of 47 is no excuse for frustrating the general guideline in principle. It cannot be denied that for the main reasons given by Mr. Leeds and recommended by the Traffic Advisory Committee, more public cars (however small the addition), to be allowed on the roads at that stage would inevitably create just so much more difficulties.

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In 1975, a recommendation was made by the Traffic Advisory Committee to the Governor in Council for phasing out public cars for the principal reasons given by Mr. Leeds. The steps taken by the Commissioner for Transport to suspend issuing licences for public cars and later to impose a limit for the registration and licensing of these cars were preparatory administrative acts in anticipation of Governmental approval of such a recommendation. It was felt undesirable to continue issuing licences for a class of vehicles which might be abolished altogether. These administrative measures were taken in response to the pending deliberation on the recommendation by the Governor in Council. Whilst the Commissioner also considered these same main reasons as good grounds for rendering the continued existence of public cars as being unacceptable, there is no direct evidence that he specifically related his actions to any of those reasons. However, if the Commissioner had been at variance with these supporting main reasons, it would have been inconceivable for him to seek to restrict the number to the existing registered public cars;

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10 instead he would have been expected to make representations through the proper channel to the Governor in Council. It was not categorically asserted that the Commissioner would have in any case preferred the existing number already registered, but the Commissioner's actions were in effect promoting the spirit of the Ordinance by not increasing the number of a class of vehicles then considered to be undesirable so as to avoid creating more problematic anomalies as reflected in these main objections and their manifestations. Regulation and control of a specific class of vehicles and the number thereof permitted to be on the roads must have been necessary or expedient for the regulation and control of the other classes of vehicles under the Road Traffic Ordinance and for the promotion of the purposes of that Ordinance at large. In my view, by freezing the number of public cars pending Governmental approval of the recommendation forwarded by the Traffic Advisory Committee, the Commissioner acted as well within his power under Regulation 18B(1) as for a legitimate purpose of the Ordinance, though he may be said to have been primarily motivated by a desire for administrative co-ordination. The first Gazette Notice 2670 dated 5th December, 1975, was published before the meeting of the Executive Council on the 6th April, 1976, at which the recommendation was accepted and legislation was ordered to be prepared for its implementation. It became then the confirmed Government desire to phase out public cars. In promoting Government policy recommended on those main reasons, pending it becoming law, the Commissioner must then be all the more acting in furtherance of its objects thus combating the ill by-products brought about by these main pitfalls. The significant difference lies in the fact that whilst the Commissioner was uncertain of legislative indorsement of the main reasons held by himself and the Traffic Advisory Committee before the meeting of the Executive Council, he could thereafter pursue a course dictated by these reasons as he saw fit without such fear of an unfavourable review. It was then more in the nature of statutory control than administrative coordination. Indeed, Mr. Leeds testified that in view of the ways in which public cars were operated, he considered Government policy as most necessary. By lowering the limit, the acting Commissioner was putting into effect matters which he considered as desirable in the prevailing circumstances. Here, not only did the Commissioner guide himself by Governmental policy, but he was very conscious of the unhealthy conditions created by the main complaints

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to which he alluded. The case of Hong Kong Hunters Association Limited (4) is distinguishable at least on one cardinal aspect. In that case, the licensing authority was held to have "failed to exercise his discretion thereby acting contrary to the provisions of the law". There was no failure to exercise a discretionary power in this case.

I will deal with the evidence of Mr. Leeds further when I turn to another facet. I find him an impressive witness and I accept his evidence. In my judgment, it has not been demonstrated that irrelevant considerations had been taken into account or that the acting Commissioner was wrong in the exercise of his power under Regulation 18B(1). The Commissioner was acting *intra vires* in publishing and acting on Gazette Notices 15 and 16. In the circumstances of this case, nothing has disabled the Commissioner from publishing or acting upon these Gazette Notices; nor has there been any event capable of avoiding the full legal effect thereof. Consequently, I hold that the plaintiffs' applications made on the 11th July 1977 were lawfully precluded by the limit in Gazette Notice 16 and properly refused.

It was also charged that by reducing the limit for registration and licensing of public cars, the Commissioner had wrongly, unfairly or unjustifiably flouted the declarations made in M.P. 750. Such declarations in M.P. 750, so it was contended, required the Commissioner to consider the plaintiffs' applications on their merits. In essence, that is the meaning counsel would ascribe to the word "entertained". The same condemnation was sought to latch also onto the allegation of malice. It is quite unnecessary to search for the most appropriate definition for the word "entertained". The tenor of the judgment delivered by McMullin, J. as he then was, in M.P. 749, particularly at the end thereof, suggests that the plaintiffs' applications would have to be entertained on the merits. The learned judge observed :

"It is plain that none of these 25 applications was entertained, and that this was so by virtue of what amounts to pre-emptive disposition of all available places on the grounds of policy commitments."

But the declarations in both M.P. 749 and M.P. 750 must be viewed in their proper perspective. In those proceedings, the Commissioner relied on committed

(4) M.P.No.57 of 1980 - Judgment was delivered on 8th February, 1980

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vacancies and was held to have been incorrect. The learned judge can at best be said to have decided that the Commissioner should entertain the plaintiffs' forthcoming applications on their merits but without regard to the committed vacancies provided, of course, it was or remained legally incumbent upon him to do so. The declarations never purported to compel the Commissioner to consider the applications on their merits whatever the circumstances or consequences; less did it seek to fetter the future lawful exercise of the Commissioner's power to alter the limit of public cars that might be registered or licensed.

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The Commissioner lowered the limit by Gazette Notice 16. Thus, it was futile for the Commissioner to undertake a wasteful and pointless task of appraising the merits when the plaintiff's applications must necessarily be precluded by the lower limit then set. It was not legally incumbent on the Commissioner then to journey further.

If indeed the declarations of the learned judge might be read in the manner advocated by Mr. Lee, then the matter could simply be resolved by proceeding on these declarations in execution, thus compelling the Commissioner to process the plaintiffs' applications on their merits in disregard of the reduced limit set by Gazette Notice 16. In my view, no part of the declarations in M.P. 750 can be taken as seeking to curtail the Commissioner's power to alter the limit under Regulation 18B(1). I have held that in publishing and acting on Gazette Notice 16, the Commissioner was *intra vires*. The plaintiffs' applications were "entertained" in the broader sense of the word but were not considered on their merits. Even if the declarations in M.P. 750 did enjoin the Commissioner from not considering the plaintiffs' applications on their merits, any attempted implementation of the second declaration in M.P. 750 was rendered a thankless exercise in futility by the lawful reduction of the gazetted limit. Mr. Leeds did not act wrongfully, unlawfully or unjustifiably in the circumstances, and in fact throughout he acted on legal advice which he reasonably believe to be sound.

That leads me to the allegation of malice. The question for my determination is: Was Mr. Leeds actuated by malice in publishing or acting on Gazette Notice 16 or alternatively did he publish or act on that notice knowing it to be *ultra vires*? Mr. Leeds is a man of 49. He came to the Colony in 1951, had 5 years with the Hong Kong

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Police and was thereafter posted to various Government Departments. In 1972, he joined the Transport Department. He has acted from time to time as Commissioner. He was made Deputy Commissioner in 1979. He was never deserted by Crown counsel at any stage. He was unaware that he could possibly be in lack of power to do what he did; not did he ever have any notion that what he did was wrong, unfair or unjustifiable. Naturally, it must have been fully appreciated that his action would be unfavourable, at least, to three applicants, but public good must take precedence of all minority interests without much hindrance, and such should be the aspiration of every citizen in an orderly society. 10

It was suggested by counsel for the plaintiffs that the aspects of legal advice in this case have not been pleaded. The amended defence was given to the plaintiffs in any case before the end of the evidence-in-chief of Mr. Leeds. The aspects of legal advice were in the forefront of the minds of counsel, and it cannot be said that the plaintiffs have been misled or prejudiced. The plaintiffs' application to amend was made after counsel's opening, and every effort was made by the defence to meet it by simple amendments so that issues could be readily joined and the proceedings proceeded with. If the aspects or legal advice should be specifically pleaded, I would not feel disposed to consider it as a vital omission in the peculiar circumstances of this case, but to all intents and purposes, if necessary, I would treat the defence as having been duly amended for its inclusion. 20

There is a common law duty not to act maliciously. 30
Takaro Properties Ltd. v Rowling(5) and see also Wade on Administrative Law, 4th edition at page 639. No action lies against a public official for exercising a statutory power in good faith. It would be a sad day for a civilized community to attach any liability for damages to any public official in respect of an honest mistake of a legal nature. I cannot even detect any suspicion of malice on the part of Mr. Leeds nor his Department. The departmental approach happened not to run parallel with the plaintiffs' interest. The evidence, I find, points to a 40
determined effort on the part of Mr. Leeds, by lawful means, to give effect to matters affecting public cars as a class which had outlived most of its intended purposes and had become uncomfortably unmanageable. It is a chilling thought that a public official of the then status of Mr. Leeds would put his personal interest or animosity, if any, above his public duties. The contrary is true. In fact, Mr. Leeds (5) (1976) 2 N.Z.L.R. 657 at 664 line 32

was then also answerable to Mr. Macpherson. I do not find Mr. Leeds performing his duties wrongfully, unfairly or unjustifiably. He was acting intra vires, and at no time was he actuated by malice.

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10 In his final submission, Mr. Scott sought to demonstrate that whatever decision Mr. Leeds made in relation to the reduction of the limit, it would draw a like protest from the plaintiffs. In that direction, Mr. Scott submitted that even if Mr. Leeds had brought the limit down before the delivery of judgment in M.P. 750, his action would have aroused equally unjustified condemnation. Mr. Scott was cautious enough to assure the Court that he had made no concession in his final submission, and I cannot support Mr. Leed's reference to it as an admission.

20 For the sake of completeness, I turn to consider the question of "owner", estoppel and damage. On the 30th June, 1976, the plaintiffs signed an agreement with Honest Motors Ltd. for the acquisition of 100 vehicles for public cars use. The price was inclusive of licence fees, licence plates, insurance and a small sum for a fender mirror. The total purchase price came to almost \$3,500,000 of which only a \$10,000 deposit was paid. The price of the car was stipulated to be subject to change or revision at the time of delivery, and delivery was to be arranged between the parties thereto. By the supplement to that agreement dated 13th July 1976, Honest Motors Ltd. was free to sell any of the vehicles before the plaintiffs taking delivery. I have not overlooked all the relevant surrounding circumstances. Suffice it for me to say that 30 in my view no property had passed, nor was it intended to pass, and that the plaintiffs were not owners. As for the plaintiffs' 1977 applications, a similar agreement was entered into with Honest Motors Ltd. on the 9th July 1977. The contract price, likewise including licence fees, licence plates, insurance and a fender mirror, amounted to slightly over \$1,500,000 of which only the \$10,000 deposit paid previously was held over as deposit. Again, 40 the price of car was subject to change or revision on delivery which was to be thereafter arranged. By a supplement of even date, Honest Motors Ltd. was free to sell any of the vehicles on or after the 20th July. It was further provided that the contract "will automatically become invalid if the buyer fails to take delivery ... within three months". Mr. Lee, counsel for the plaintiffs, sought to attach special significance to the words "available for delivery". Those agreements were

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conditional contracts with a provision for conditional appropriation. The right of disposal was reserved until certain conditions were fulfilled. Having regard to the terms of these contracts, the conduct of the parties and circumstances of the case, I have come to the conclusion that the plaintiffs were plainly not intended to, nor did they become owners of any of the 47 vehicles.

In Ho Choi Yim-fong v Attorney General (6), a divergence of opinion emerged between the learned President and a member of the Court of Appeal as to the meaning of "owner" in Regulation 4. The observations were obiter. The view of the learned President received the support of the remaining member of the Court. The learned President adopted the legal meaning for the word "owner", and McMullin, J., as he then was, opted for a more liberal and practical construction. There is much to be said for both learned opinions. After deliberation, I am content to take shelter behind the view shared by the majority of the Court of Appeal.

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However, I would outline my own analysis conducted with not inconsiderable diffidence. The word "owner" is defined in section 2 of the principal Ordinance as including three categories of persons all of whom may be in possession of less than full ownership. The question to be asked seems to be : Whether the word "owner" in Regulation 4 should be construed realistically in a more liberal and practical sense or should it be construed strictly according to commercial law? Regulation 4(1) reads 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 described by the Commissioner, and shall pay to the Commissioner a fee of \$10." (The underlining is mine).

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It is common ground that by the use of the word "includes" the definition section is not meant to be exhaustive. It would seem that the answer may be found in Regulation 13(1) in relation to transfers. It can readily be seen that "the registered owner" must be in possession and must sign a notice of transfer of "ownership". There is no property in an "owner" in a more liberal and practical sense to feed a transfer under Regulation 13(1).

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(6) Civil Appeal No. 69 of 1978, the judgment of which was delivered on 18th July 1979

It was also contended that the Commissioner is estopped by the circumstances, particularly the notice served under Regulation 17F giving reasons for the refusal, from canvassing the issue "owner" in this action as regards the plaintiffs' 1976 applications and 1977 applications.

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10 In M.P. 750, the plaintiffs abandoned their prayer for the registration of vehicles specified in their 1976 applications. It was conceded that the cars were unavailable. The plaintiffs sought and were granted two declarations and have chosen to proceed in accordance therewith. The rights and obligations at issue were thus crystallized. It is difficult to comprehend the lawful basis of the plaintiffs' claim on their 1976 applications and of their attempted re-introduction of these 1976 applications after the conclusion of M.P. 750. Furthermore, not even an oblique reference has been made to the Commissioner's 1976 refusal as being anything more sinful than an honest mistake.

20 The Commissioner specifically made an issue of "owner" in M.P. 749 and had not in any way suggested that the same objection was to be abandoned in M.P. 750. The question of "owner" was not adjudicated upon; nor was it an issue necessary for the declarations made.

30 As for the plaintiffs' 1977 applications, the Commissioner had, prior to M.P. 750, been in the habit of treating informal enquiries as applications from persons not having property in the vehicles, and the Commissioner might then have been sanctioned for acting arbitrarily or unreasonably if he had insisted on proof of vesting of property in the person of an applicant. The plaintiffs' 1977 applications were made after the declarations in M.P. 750 in which the Court ruled that the Commissioner ought not consider any applications except in prescribed statutory form. Thus, all subsequent applications must be, by virtue of these declarations, made by the "owner" in accordance with Regulation 4. Consequently, not only should the Commissioner not be accused of inconsistent conduct by refusing to process statutory forms signed by persons who are not owners after the declaration in M.P. 750, he was left with little alternative but to take cognizance only of applications from owners in the light of those declarations. I cannot see how the Commissioner can be said to have been estopped by conduct.

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It was further asserted by the plaintiffs that service of a notice of refusal under Regulation 17F was, per se, a misrepresentation intended to be acted upon by the plaintiffs. Regulation 17F requires the Commissioner to serve on the "owners" a notice of refusal specifying general grounds within 7 days. It was not seriously challenged that under Regulation 17(2) a refusal on the force of the gazetted limit would not oblige the Commissioner to give any other reasons including a query as to ownership. Therefore, a notice under Regulation 17F, in these circumstances, could at most be ambiguous, particularly in the light of the events which accentuated the issue of ownership in the contest between the parties to M.P. 750.

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On the facts I find, Gazette Notice 15 was not misleading. It did not even purport to give any assurance that the exercise of the Commissioner's power under Regulation 18B(1) would be suspended or that the plaintiffs were to be endowed with priority. Capital was also sought to be made on the silence or non-disclosure of an alleged determination on the part of the Commissioner throughout to reduce the gazetted limit to 1,329. Mr. Leeds' evidence, which I accept, describes the situation quite clearly: Shortly after Crown counsel's advice prior to the publication of Gazette Notice 15 to the time soon after the making of the declarations in M.P. 750, his original intention to lower the gazetted limit to 1,329 was modified by his belief in and acceptance of such legal advice for the reservation of 47 free vacancies. I can find no substance in the plaintiffs' complaint on a proper understanding of Mr. Leeds' evidence. There could be no failure or omission on the part of the Commissioner to make any disclosure of their original intention to reduce the limit to 1,329. Plainly, at the material time prior to the conclusion of the proceedings in M.P. 750, the Commissioner had adopted a different attitude by reserving 47 free vacancies on the advice of Crown counsel. No good ground in support of an estoppel has been shown.

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In my opinion, if the plaintiffs could be permitted to step back to square one and make an issue of the Commissioner's error in 1976, the Commissioner would not be estopped from raising an objection on ownership. For all the reasons given above, in my judgment the plaintiffs had not established ownership in their completed forms to the satisfaction of the Commissioner in each case, and their 1976 and 1977 applications would not have, in any event, succeeded.

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I do not propose to repeat myself. This is a case of some complexity, and I rest assured that the entire judgment will be read in its proper context. In these circumstances, the Commissioner can in no way be estopped from relying on the Government policy for phasing out public cars. I need only mention in passing some of the obstacles for the alleged inaction pleaded in paragraph 4(a) and (b) of the Reply. If the plaintiffs had applied for immediate registration of 47 public cars, it would have been met with the Commissioner's opposition on the ground of "ownership" which had been ventilated. Such claim and the alleged available claim for damages would also have proved to be too uncertain by reason of Regulation 18B(3) and could have similarly been defeated by the divers other legal objections hereinbefore discussed.

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Lastly, on the question of damages, I entirely assent to the argument, very ably urged by Mr. Lee, that it would be unreasonable to cast a more demanding obligation on the plaintiffs to acquire, by way of mitigation, a similar number of taxis on transfer. The nature of such commercial transaction is different in kind and involve- ment attracting a far heavier capital outlay. The defendant had not proved any failure to mitigate in the circumstances, and in my view the plaintiffs would not for these reasons be debarred from claiming compensation as per the computations submitted by Mr. Lee. However; the plaintiffs cannot, in my opinion, succeed in any event. The view I have taken is that the plaintiffs would not be entitled to damages by reason of the question of "owner" and on account of the reality that their applications would be subjected to the uncertainty of balloting prescribed by Regulation 18B(3). The monetary claims of the plaintiffs must also fail on account of their failure to establish malice or ultra vires with knowledge that the Commissioner was so acting. I consider myself bound by the decision of the Court of Appeal in Civil Appeal No. 8(2) of 1977 A.G. v Ng Kee (7). The question for determination in that appeal was "Has a person a cause of action where he suffered loss by reason of the act of a public officer who has acted ultra vires without malice or knowledge that he was so acting?" A negative answer was given by the Court of Appeal.

Finally, a rider has perhaps to be added to prayer 1 of the Statement of Claim. Apart from matters decided on the merits against the plaintiffs in this action, it would appear that the Commissioner has no power to grant taxi licences outright to an applicant. The Commissioner is

(7) Civil Appeal No. 8(2) of 1977, the judgment of which was delivered on the 16th of January, 1978.

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required to invite tenders for taxi licences. I cannot visualise any circumstances in which the doctrine of estoppel may be so put to use as to bind the Commissioner to act in a way not permitted by the regulations (8).

In conclusion, the plaintiffs' claims against the defendant are dismissed with costs.

(B. LIU)
Judge of the High Court

Mr. Martin Lee, Q.C. with Mr. K.H. Woo instructed by Messrs. K.Y. Woo for Plaintiffs.

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Mr. Scott, Q.C. with Mr. McCallough, counsel for Defendant.

(8) See page 327, Wade on Administrative Law, 4th ed.

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IN THE SUPREME COURT OF HONG KONG
HIGH COURT

BETWEEN LEUNG CHOW PUBLIC CAR
COMPANY (a firm)

Plaintiffs

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and

ATTORNEY GENERAL

Defendant

BEFORE THE HONOURABLE MR. JUSTICE LIU IN COURT

J U D G M E N T

Dated and entered the 8th day of May, 1980

This action having been tried before the Honourable Mr. Justice Liu without a jury on the 14th, 15th to 19th, 22nd, 25th and 28th of April, 1980 at the Supreme Court at Pokfulam Road, and the said Mr. Justice Liu having on the 8th day of May 1980 ordered that the Plaintiffs' action

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be dismissed with costs.

IT IS THIS DAY ADJUDGED that the Plaintiffs' claim be dismissed and that the Plaintiffs do pay the Defendant costs of the action and IT IS FURTHER ADJUDGED that the Plaintiffs to pay only half the costs for 8th of May, 1980.

(L.S.)
Registrar.

In the Supreme
Court of Hong
Kong

No. 10

Judgment Order
of Liu, J.

8th May 1980

(continued)

No. 11

10 Notice of Motion of Appeal

Civil Appeal No. 67

IN THE SUPREME COURT OF HONG KONG
COURT OF APPEAL

(On Appeal from High Court Action No. 2882 of 1977)

BETWEEN LEUNG CHOW PUBLIC CAR
COMPANY (a firm) Appellants
(Plaintiffs)
and
THE ATTORNEY GENERAL Respondent
(Defendant)

No. 11

Notice of
Motion of
Appeal

13th June 1980

20

NOTICE OF MOTION OF APPEAL

TAKE NOTICE that the Court of Appeal will be moved so soon as Counsel can be heard on behalf of the abovenamed Appellants (Plaintiffs) on appeal from the Judgment herein of The Honourable Mr. Justice Liu in Court given on the trial of the action on the 8th day of May 1980 whereby it was adjudged that the Plaintiffs' claim be dismissed with costs, for an Order that the said Judgment may be set aside or reversed or varied and that Judgment may be entered in the above-mentioned
30 action for the Appellants (Plaintiffs) in the said action in the terms of paragraphs (1) and (3) of the prayer for relief in the Amended Statement of Claim herein and/or for damages and costs of the said action to be taxed.

In the Supreme
Court of Hong
Kong

And for an Order that the Respondent (Defendant)
pay to the Appellants (Plaintiffs) the costs of this appeal
to be taxed.

No. 11

Notice of Motion
of Appeal

13th June 1980

(continued)

AND FURTHER TAKE NOTICE that the grounds of
this appeal are that -

1. The learned judge was wrong in law and in fact
in holding that the Plaintiffs were not entitled to any of
the reliefs claimed in the Amended Statement of Claim.

2. The learned judge was wrong in law and in fact in
holding that the Plaintiffs were not entitled to judgment in
the said action. 10

3. The learned judge erred in law in holding at pages
13 and 14 of his said Judgment that the Commissioner
was not acting wrongfully or unjustifiably or unfairly or
ultra vires Regulation 18B of the Road Traffic (Registra-
tion and Licensing of Vehicles) Regulations (hereinafter
called "the said Regulations") in imposing the maximum
limit of public cars to be registered and licensed as such
by Gazette Notices No. 15 and/or No. 16 of 1977 in the
circumstances of the case. 20

4. The learned judge erred in law in holding at pages
13 and 14 of his Judgment that the Commissioner was not
acting wrongfully or unjustifiably or unfairly or ultra
vires Regulation 18B of the said Regulations in imposing
the said maximum limit for the purpose of carrying out a
Departmental decision based upon or following a Govern-
ment policy to phase out public cars as a class even
though no appointed date had been made for the coming
into operation or Ordinance No. 45 of 1977 at the
material time. 30

5. The learned judge erred in fact and in law to have
made the finding or inference or surmise at page 6 of his
Judgment that there could have been a flood of applications
for the registration and licensing of public cars at or
about the time of the Plaintiffs' applications in July 1977
in the absence of any pleading or evidence to this effect.

6. The learned judge erred in law and in fact in failing
to find but should have found that at the time of the
Plaintiffs' application in July 1977 for the registration
and licensing of 47 cars as public cars, the Plaintiffs'
application was the only valid one. 40

7. The learned judge erred in law and in fact in holding at page 6 and 19 of his Judgment that the Plaintiffs' claim for damages was too uncertain by reason of Regulation 18B(3) of the said Regulations and/or that their application would be subject to the uncertainty of balloting prescribed by Regulation 18B(3).

In the Supreme
Court of Hong
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13th June 1980

(continued)

10 8. The learned judge erred in law in holding at page 8 of his Judgment that in the exercise by the Commissioner for Transport of the power conferred upon him under Regulation 18B(1) of the said Regulations, he was not confined to the consideration of only 2 matters, namely, public safety and the regulation of vehicular traffic as set out in Regulation 17(1) of the said Regulations, and that in the exercise of such power, the Commissioner for Transport could refer to other matters.

20 9. Having held at page 12 of his Judgment that McMullin, J. had held in H.C.M.P. Nos. 749 and 750 of 1976 that the Plaintiffs' applications would have to be entertained on their merits, the learned judge was wrong in not holding that it was improper for the Commissioner for Transport to lower the maximum limit for public cars in the purported exercise of a statutory power under Regulation 18B(1) with the intended result that he would thereby disenable himself from complying with the said declarations of McMullin, J. in the said actions.

30 10. Having found that the Commissioner for Transport had been enjoined by McMullin, J. to entertain the Plaintiffs' application on their merits, the learned judge was wrong in holding at page 13 of his Judgment that the Plaintiffs' application were "entertained" in the broader sense of the word but were not considered on their merits.

11. The learned judge was wrong in making the following findings, these being no or no admissible evidence and/or pleading to support them :-

- 40 (a) at page 10 of his Judgment that "more public cars (however small the addition) to be allowed on the roads at that stage would inevitably create just so much more difficulties".
- (b) at page 10 of his Judgment that "the Commissioner's actions were in effect promoting the spirit of the Ordinance by not increasing the number of a class of vehicles

In the Supreme
Court of Hong
Kong

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13th June 1980

(continued)

then considered to be undesirable so as to avoid creating more problematic anomalies as reflected in these main objections and their manifestations".

- (c) at page 11 of his Judgment that on 6th April 1976 "It became then the confirmed Government desire to phase out public cars".
- (d) at page 14 of his Judgment that "public cars as a class had outlived most of its intended purposes".

10

12. The learned judge erred in law in holding at page 11 of his Judgment that by freezing the number of public cars pending Governmental approval of the recommendation forwarded by the Traffic Advisory Committee, the Commissioner had acted within his power under Regulation 18B(1) and for a legitimate purpose of the Ordinance.

13. The learned judge erred in law in holding at page 11 of his Judgment that the case of Hong Kong Hunters Association Limited v. The Director of Agriculture and Fisheries is distinguishable from this action.

20

14. The learned judge erred in law and in fact in holding at page 12 of his said Judgment that "it has not been demonstrated that irrelevant considerations had been taken into account or that the acting Commissioner was wrong in the exercise of his power under Regulation 18B(1)."

15. The learned judge erred in law and in fact in finding the following matters as there was no or no admissible evidence to support them and they were not even pleaded :-

30

- (a) at page 13 of his said Judgment, that in fact throughout he Mr. Leeds had "acted on legal advice which he reasonably believed to be sound."
- (b) at page 13 of his said Judgment that Mr. Leeds was "never deserted by Crown counsel at any stage."
- (c) that advice had been obtained from time to time from Crown Counsel, and that Mr. Leeds had followed the same.

40

16. The learned judge erred in law in holding at page 14 of his Judgment :-

In the Supreme
Court of Hong
Kong

No. 11

Notice of Motion
of Appeal

13th June 1980

(continued)

(a) that the aspects of legal advice needed not be pleaded;

(b) that even if they should be specifically pleaded, he would not feel disposed to consider it as a vital omission in the peculiar circumstances of this case;

10 (c) that he would treat the defence as having been duly amended for its inclusion in the absence of an application by the Defendant for leave to re-amend the Amended Defence.

17. The learned judge erred in law and in fact in holding at page 15 of his Judgment that "By the supplement to that agreement dated 13th July 1976, Honest Motors Ltd. was free to sell any of the vehicles before the Plaintiffs taking delivery" and that "no property had passed, nor was it intended to pass and that the Plaintiffs were not owners."

20 18. The learned judge erred in law and in fact in holding at page 15 of his Judgment that the agreements dated 13th July 1976 and 9th July 1977 were conditional contracts with a provision for conditional appropriation and that the right of disposal was reserved until certain conditions were fulfilled.

19. The learned judge erred in law and in fact in holding at page 16 of his Judgment that the Plaintiffs were plainly not intended to, nor did they become owners of any of the 47 vehicles.

30 20. The learned judge erred in law in holding at page 16 of his Judgment that the word "owner" in Regulation 4(1) of the said Regulations bear the "legal meaning for the word 'owner' " and should be construed strictly according to commercial law.

21. The learned judge erred in law and in fact in holding at page 19 of his Judgment that the Plaintiffs were not the "owners" under Regulation 4(1) of the said Regulations of the vehicles in relation to both their 1976 and 1977 applications.

40 22. The learned judge erred in law and in fact in holding

In the Supreme
Court of Hong
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No. 11

Notice of Motion
of Appeal

13th June 1980

(continued)

at page 18 of his Judgment that a notice of refusal under Regulation 17F did not estop the Commissioner from alleging that the Plaintiffs were not the owners of the vehicles for which applications were made.

23. The learned judge erred in law in holding at page 20 of his Judgment that the Commissioner had no power to grant taxi licences outright to an applicant, and that the Commissioner was required to invite tenders for taxi licences, and in refusing to invoke the equitable principle that equity treats that as done which ought to have been done. 10

24. The learned judge was wrong in holding that the Plaintiffs were not entitled to damages for the wrongful acts of the Commissioner in 1975 and 1977 since the Plaintiffs had failed to establish malice or ultra vires with knowledge that the Commissioner was so acting in that he had failed to appreciate that the Plaintiffs were suing on a breach of statutory duty as opposed to a discretionary one.

AND FURTHER TAKE NOTICE that the abovenamed Appellants (Plaintiffs) propose to apply to set down this appeal in the appeal list. 20

Dated the 13th day of June, 1980.

(Sd.) K. Y. WOO & CO.

Solicitors for the Appellants.

To: Crown Counsel for the abovenamed
Respondent (Defendant) of
the Attorney General's Chambers,
Hong Kong.

No. 12
Respondent's Notice

In the Supreme
Court of Hong
Kong

Civil Appeal No. 69 of 1980

No. 12

IN THE SUPREME COURT OF HONG KONG
COURT OF APPEAL

Respondent's
Notice

(ON APPEAL FROM HIGH COURT ACTION NO. 2882 OF
1977)

BETWEEN : LEUNG CHOW PUBLIC CAR Appellants
COMPANY (a firm) (Plaintiffs)

and

10 THE ATTORNEY GENERAL Respondent
(Defendant)

RESPONDENT'S NOTICE UNDER ORDER 59, RULE 6

Take Notice that the Defendant will contend on the hearing of the appeal that the judgment of the learned Judge should be affirmed on the following additional grounds :

- 20 1. The case of Hong Kong Hunters Association Limited v. the Director of Agriculture & Fisheries (case M.P. No. 57 of 1980 - Judgment delivered on 8th February 1980) was not only distinguishable (as the learned Judge held) but also wrongly decided.
2. The vehicles which were the subject of the Plaintiff's application dated 11th July 1977 were not at any material time in a deliverable state or unconditionally appropriated to any contract of sale to the Plaintiffs.
- 30 3. Even if, contrary to the learned Judge's view, the powers under Regulation 18B(1) of the Road Traffic (Registration & Licensing of Vehicles) Regulations can only be exercised on the basis of the matters set out in Regulation 17(1), the Gazette Notices issued by the Commissioner for Transport were duly and properly issued.
4. Even if, contrary to the learned Judge's findings, the Plaintiffs were in principle entitled to damages, they failed to mitigate their loss by tendering for taxis at the periodical tenders for such vehicles held by the Commissioner for Transport since November 1977.

In the Supreme
Court of Hong
Kong

No. 12

Respondent's
Notice
(continued)

5. The Plaintiff's claim for damages in paragraph 15(a) of the Amended Statement of Claim overlaps with the claims in paragraph 15(b) and (c) thereof, and with the alleged right to the declaration sought in paragraph 1 of the prayer.

And Further Take Notice that the Respondent will apply to the Court of Appeal for an order that the Appellants pay to the Respondent the costs occasioned by this Notice to be taxed.

Dated the _____ day of _____ 1980. 10

(Sd.) R.A. McCallough
Counsel for the Respondent

To: Leung Chow Public Car Company (a firm)
and to K. Y. Woo and Co., their Solicitors.

In the Court of
Appeal of Hong
Kong

No. 13

Judgment Order
of the Court of
Appeal of Hong
Kong

28th January
1981

No. 13

Judgment Order of the Court of Appeal of Hong Kong

Civil Appeal No. 69 of 1980

IN THE COURT OF APPEAL

(On Appeal from High Court
Action No. 2882 of 1977)

BETWEEN LEUNG CHOW PUBLIC CAR Appellants 20
COMPANY (a firm) (Plaintiffs)

and

THE ATTORNEY GENERAL Respondent
(Defendant)

BEFORE THE HONOURABLE SIR ALAN HUGGINS, VICE-
PRESIDENT, THE HONOURABLE MR. JUSTICE LEONARD
AND THE HONOURABLE MR. JUSTICE CONS

O R D E R

DATED THE 28TH DAY OF JANUARY, 1981

UPON reading the notice of appeal dated the 13th day 30
of June 1980 on behalf of the Plaintiffs by way of appeal

from the judgment of the Honourable Mr. Justice Liu given on the 8th day of May 1980, whereby it was adjudged that the Plaintiffs' claim be dismissed with costs.

In the Court of
Appeal of Hong
Kong

No. 13

AND UPON READING the said judgment.

Judgment Order
of the Court of
Appeal of Hong
Kong

AND UPON HEARING Counsel for the Plaintiffs and Counsel for the Defendant.

28th January
1981

10 IT IS ORDERED that the said judgment of the Honourable Mr. Justice Liu dated the 8th day of May, 1980 be affirmed, and that this appeal be dismissed with costs of the appeal to be paid by the Plaintiffs to the Defendant, such costs to be taxed.

(continued)

AND IT IS FURTHER ORDERED that there be liberty to apply on the question of costs of the Respondent's Notice.

(Sd.) N.J. BARNETT (L.S.)

Registrar.

No. 14

No. 14

Judgment of the Court of Appeal of Hong Kong

Judgment of the
Court of Appeal
of Hong Kong

20 IN THE COURT OF APPEAL

1980 No. 69
(Civil)

20th February
1981

BETWEEN Leung Chow Public Car Co. (a firm) Appellant
(Plaintiff)

and

Attorney General Respondent
(Defendant)

Coram: Sir Alan Huggins, V.-P., Leonard and Cons,
JJ.A.

Date: 20th February, 1981.

J U D G M E N T

30 Cons, J.A.:

We gave our decision in this matter at the close of

In the Court of
Appeal of Hong
Kong

No. 14

Judgment of the
Court of Appeal
of Hong Kong

20th February
1981

(continued)

the arguments and indicated that we would reduce our reasons to writing. We do so now.

No motor vehicle may be used on a road unless it is first registered and licensed by the Commissioner for Transport. For these purposes, and others, motor vehicles are divided by the Road Traffic Ordinance (section 2(2)) into various classes. One of those classes is "public cars", which are broadly speaking cars intended for private hire. In practice the class is extinct, for section 4A(6) declared that the Commissioner's power to register or license such vehicles ceased as from 1st November 1977. 10

In 1975 the class was flourishing. There were well over one thousand cars doing good business on the roads. They carried red licence plates and were familiarly known as "hung pais" in distinction from the even more flourishing "pak pais", which are still with us. However, from the official point of view public cars were not a success. Too frequently they operated illegally as pirate taxis. It was decided to phase them out. We use the impersonal deliberately for reasons which will appear later. 20

The phasing out was achieved by offering registered owners the chance to convert their public cars into taxis proper upon payment to the Crown of a premium which was extremely modest in comparison with premia then being tendered by prospective taxi owners whenever there was an increase in the overall number of taxis permitted to be registered. If the owners did not take advantage of that offer the registrations were extinguished at the end of the current licence period. 30

All that, however, did not take place until late in 1977. In the meantime the Commissioner acted as far as he himself could to ensure that no more public cars would come on to the roads. On 5th December 1975 he imposed a limit upon the number that could be registered (GN2670). He was entitled to do that by a Regulation 18B, which has since been repealed. He set the limit at 1,388, the number of public cars already registered and licensed plus 95 "committed vacancies". These related to applications to register which the Commissioner had approved in principle but were not yet complete. To register and license a public car was not a simple matter. The Commissioner had first to be satisfied of many things including, for example, the business reputation and financial resources of the applicant and the sufficiency of parking and maintenance facilities for the car. It was 40

usual and sensible to get these matters out of the way by informal application before the actual vehicle was purchased or the formal application submitted. The Commissioner thought at the time that he was obliged to honour the approvals which he had already so given.

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Kong

No. 14

10 The present Appellant did not share the Commissioner's view. On 15th July 1976, through his solicitors, he submitted 47 formal applications together with the appropriate fees and documentary evidence relating to the matters upon which the Commissioner had to be satisfied. The covering letter added that the solicitors were instructed to take legal proceedings without further notice if the Commissioner should reject the applications. Even so, the Commissioner did reject them, giving as his reason that the number of public cars registered had already reached the prescribed limit. That was, of course, true only if the committed vacancies were included in the count.

Judgment of the
Court of Appeal
of Hong Kong

20th February
1981

(continued)

20 The Appellant took out his threatened proceedings in the December. They came on for hearing on 6th July 1977. He was successful. Indeed, at that stage the Crown no longer resisted and McMullin, J., as he then was, gave a declaration that the Commissioner had been wrong to take into account the so-called "committed vacancies". The Crown no longer resisted at that stage because the same judge had disposed of precisely the same issue only a few days earlier in another action, also brought by the present Appellant, but in relation to public light buses. Judgment had been reserved and was delivered on 30th June (M.P. 749 of 1977 (unreported)).

30 One result of that judgment was the immediate reduction by the Commissioner of the number of public cars permitted to be registered (GN(E) 15 of 77). Apart from two vehicles with which we are not concerned, the Commissioner set the new limit at 47 above the number actually registered. He deliberately reserved 47 "vacancies" in case the Appellant should obtain a further declaration which the Appellant was still seeking in the proceedings yet to be dealt with on 6th July, namely, that the Appellant was entitled to have registered the 47 specific vehicles covered by his applications made the previous year. In the event the Appellant abandoned that relief, because the car sales company had long before then disposed of those vehicles to another customer, and the judge made the declaration we have already indicated. Thereupon the Commissioner again reduced the limit of

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Court of Appeal
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(continued)

permitted vehicles (GN(E) 16 of 77). Thus, as from 7th July 1977, the day the Commissioner's notice was published in the Gazette, there were no "vacancies" at all.

The judge had also given the Appellant another declaration on 6th July - that he was "entitled to have application for registration of 47 vehicles as public cars entertained" by the Commissioner. It has been suggested before us that in some way that declaration put the Appellant in a better position than other persons who might have thought fit to apply for registration. We do not agree. If, as the Appellant contends, that last reduction of the limit was ultra vires and void, the Commissioner would have been duty bound to consider all applications submitted and, if appropriately satisfied, to register vehicles up to the limit properly in force, making his decision between the various applicants, if necessary, by ballot.

10

In fact, there were two other applications, each for 50 vehicles. The Appellant lodged his application, for 47, on 15th July. The others were lodged before him, on 6th and 7th July. It is possible that they may not have succeeded on their merits, but they were ultimately rejected on 12th July on the ground that "the number of motor vehicles actually registered as public cars is equal to the total number of motor vehicles that may be registered". The Appellant's applications were rejected on 14th in precisely the same words. He challenged that rejection in proceedings which came on before Liu, J. This time he was not successful. The judge refused to make any declaration in his favour or to award damages. He now appeals against that refusal. His argument rests entirely upon the one contention that the reduction of the limit on 7th July was ultra vires the power of the Commissioner and void.

20

30

In opening his argument for the Appellant Mr. Martin Lee relied heavily on comments made obiter by this court in Attorney General v. Wong Kwong-shing Civil Appeal 58 of 1975 (unreported). They indicate, he suggests, that the Commissioner's power, given by Regulation 18B, to impose a limit on the number of public cars and other public vehicles is derived from the power, given by Regulation 17(1), to refuse registration of any motor vehicle:

40

"if it appears to him necessary or expedient so

to do in the interests of -

- (i) public safety; or
- (ii) the regulation of vehicular traffic in the Colony;"

Therefore, the power could only be exercised for one or other of those purposes.

10 With respect we find nothing in this point. Regulation 18B, like all delegated legislation, derives its authority directly from the principal legislation, in this case section 4(1)(j) of the Road Traffic Ordinance, now repealed, but in force in 1977. Their Lordships were in that case not called upon to consider the purposes for which Regulation 18B had then been invoked and we do not think that they intended to do anything more than to comment upon the close relationship of the two regulations, for the imposition of a limit upon any class of vehicles is ipso facto regulation of vehicular traffic in the Colony.

20 Counsel puts his main argument in two ways. Firstly, he says that the Commissioner's act was not a true exercise of discretion in that the Commissioner, - then one Mr. Leeds acting as such on behalf of the substantive holder of the office, - allowed himself to be dictated to by "Government" rather than exercise his discretion independently in accordance with the expressed desire of the Legislature that there should be public cars upon the roads. If the facts support this argument it clearly must succeed. For however much a Commissioner may wish to shelter behind what he describes as Govern-
30 ment policy he cannot escape the individual responsibility that is placed upon him directly by the legislation. However, the facts do not support the argument. Taken as a whole the evidence shows that the "policy" which Mr. Leeds enforced was a policy formed by the Commissioner himself, albeit in consultation with the Traffic Advisory Committee, and which was implemented well before the Executive Council made any decision in the matter. Furthermore by the time the actual notice was published on 7th July the Legislature as well had indicated its agree-
40 ment. Ordinance 45 of 1977, which enacted the system of phasing out that we have mentioned earlier, was passed on 16th June. Although it was not to come into effect until such date as the Governor should appoint, we do not accept that it was suspended in the sense that counsel suggests, namely, that it was to be ignored until that date. Its

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(continued)

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(continued)

intent was clear - public cars as a class were to cease. That is confirmed by the explanatory memorandum attached to the Bill put before Legislative Council.

Counsel's second line of attack is that the Commissioner's act was taken deliberately and specifically to thwart the expectations of the Appellant naturally consequent upon the success of his previous action. Again, if the facts show that to be the position the argument would succeed. In Ng Kee v Attorney General 1977 H.K.L.R. 587 at p.592 Pickering, J.A. would not accept that the Commissioner could, by the exercise of discretionary power "stultify the plaintiff's legitimate remedy and the process of the Court". De Smith, in the 4th edition of Judicial Review of Administrative Action at p. 328, refers to Commonwealth authority that the exercise of a power directed "ad hominem" would be invalid.

10

Yet again the facts are against the Appellant. The allegation is inseparable from the allegation of malice and the judge expressly found that at no time was Mr. Leeds actuated by malice.

20

Nor are we persuaded there is any reason to dissent from that finding. Quite apart from demeanour, which must have played an important part in the judge's conclusion, the circumstances do not to our mind indicate any personal vendetta against the Appellant. It is obvious that from December 1975 onwards the Commissioner wished to prevent any increase in the number of public cars upon the roads. As first the moral, and then the possibly legal restraints on his policy were removed, he took steps to see that it was enforced. The result did in fact thwart the Appellant's personal aspirations. It does not necessarily follow that that was the deliberate and dominant intent of the Commissioner.

30

Nor are we prepared to assume malice from the fact that the Commissioner did not adopt a similar course in relation to the Appellant's parallel action with regard to public light buses: M.P. 749 of 1976. There may have been many good reasons for that. The question was not explored in his evidence.

It was argued that the learned trial judge was wrong to rely, when assessing the evidence of Mr. Leeds, upon the fact that Mr. Leeds acted throughout on legal advice, for the fact of advice had not been pleaded in the Amended Defence. We were referred to the 1979 Supreme Court

40

Practice, Note 18/7/5 at p.269, where reference is made to the case of Davie v New Merton Board Mills, Ltd. 1956 1 All E.R. 379. That was an action in negligence for personal injury to a worker. The defence amounted to a total traverse. It was then sought to introduce evidence that the defective tool, which caused the injury, had been purchased by the defendants from a reputable manufacturer and that they had no reason to suspect that it was in fact defective. The court held that to be a ground of defence which "if not raised would be likely to take the opposite party by surprise", as in fact it did, and ought therefore to have been pleaded. But, as counsel for the plaintiff in that case pointed out, what was sought to be proved was more in the nature of a confession and avoidance. We do not think the case assists. In our view the taking of legal advice was, in the instant circumstances, a matter of evidence only and was correctly not pleaded.

In the Court of Appeal of Hong Kong

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Judgment of the Court of Appeal of Hong Kong

20th February 1981

(continued)

10

20

These conclusions are sufficient to dispose of the appeal. But in deference to the argument of counsel, and in case we should be wrong, we turn to two other matters.

The first is the question of ownership. What kind of ownership is necessary to support an application under Regulation 4, which provides that "any person who wishes to register a motor vehicle, of which he is the owner, shall etc. etc."? The Respondent took the point at the trial that the Appellant did not have sufficient ownership in the vehicles proffered in either 1976 or 1977.

30

The Appellant contends that it is not necessary for an applicant to have the property in the vehicles at the time of the application to the Commissioner; it is sufficient if he has the right to obtain that property at the time of the actual registration. This was a contention that found favour at first instance in the Appellant's action in regard to the public light buses: M.P. 749 of 1976 (unreported), in Ho Choi Yim-fong v Attorney General M.P. 775 of 1977 (unreported) and in the judgment of McMullin, J. in the same case on appeal: Civil Appeal 69 of 1978 (unreported). On the other hand, Huggins, J.A., with whose reasons Yang, J. expressly concurred, rejected that contention and applied the strict test of whether the property was in the applicant at the time when the application was lodged. Although the appellant in that case would have lost in either event we cannot disregard such firm statements of the law. The point is no longer open.

40

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Kong

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of Hong Kong

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1981

(continued)

The motor cars mentioned in each of the Appellant's applications were to be obtained from Honest Motors Ltd. Each time the Appellant executed an agreement for the purchase of the appropriate number of cars and to each agreement there was later added a supplement giving details of particular vehicles. The first supplement said that the specified vehicles were "available for delivery", but added that "the seller is entitled to be free to sell to any other customer before buyer's taking delivery". The second supplement was in similar terms, but the seller was not to be entitled to sell elsewhere until on or after 20th July. The document is dated 9th July and the Appellant's application to the Commissioner was made on 11th.

10

It is obvious that no property passed in the first instance. Counsel seeks to distinguish the second by dividing the words into two parts: the first would comprise an unconditional appropriation to the contract of the cars mentioned, at least until 19th July; the Appellant could take advantage of this for it was in his favour - although we note there is no evidence that he ever did; the second part would amount to an exemption clause; but Honest Motors Ltd. could not take advantage of that because it had not been brought home sufficiently to or signed by the Appellant.

20

We are not prepared to accept this ingenious argument. In our view the property had not passed.

The second matter is the question of whether the Appellant could in any event recover damages. In Attorney General v Ng Kee 1978 H.K.L.R. 52 this court, differently constituted, held unanimously that no action in damages will lie against the Commissioner for loss caused by his ultra vires act in the absence of malice or knowledge on his part that he is so acting.

30

Counsel seeks first to distinguish that decision. He says that it was concerned with the exercise of a discretion whereas the present case involves failure to perform a statutory duty - "the Commissioner shall register" (Regulation 6(1)(a) as it then was). He relies upon de Smith at p. 321

40

"One who is injured by the failure of a public authority to perform a public duty may have a right to sue for damages".

With respect there is no such distinction. The Commissioner ought to have renewed the licence in that case. He had a duty to do so, except for good reason. Ultimately it was found that he had no good reason. He had, therefore, failed properly to perform his duty. That was the basis of the plaintiff's action.

In the Court of Appeal of Hong Kong

No. 14

Judgment of the Court of Appeal of Hong Kong

20th February 1981

(continued)

10 Then counsel says that the law has developed since that decision. Thornton v Kirklees Borough Council 1979 1 Q.B. 626 was decided by the Court of Appeal in February 1979. It was an interlocutory appeal, but the court, at the invitation of counsel, gave a firm decision on the law. It was a question of whether the failure of a local authority to make accommodation available in particular circumstances gave a right of damages to the person injured thereby. Section 3(4) of the Housing (Homeless Persons) Act 1977 provided :

20 "If the authority have reason to believe that the person who applied to them may be homeless and have a priority need, they shall secure that accommodation is made available for his occupation pending any decision which they may make as a result of their inquiries (irrespective of any local connection he may have with the area of another housing authority)."

The answer to the question lay in the true construction of the statute. The court referred, inter alia, to Professor Wade on Administrative Law, 4th edition, 1977 at p. 632 :

"Breach of statutory duty

30 Where a statute imposes a duty, it is sometimes to be inferred that any person injured as the result of breach of the duty shall have a remedy in damages, even in the absence of negligence.
..... But everything depends upon the true intent of the statute, which will often be difficult to divine when it says nothing. Some guidance may be obtained from the nature of the duty, which may be intended for the benefit of the public generally or for the benefit of particular persons.
40 The court is usually sympathetic to an action for damages if the statute has no scheme of its own for penalties and enforcement".

In the circumstances the court concluded that Parliament had intended to provide for an action in damages

In the Court of
Appeal of Hong
Kong

No. 14

Judgment of the
Court of Appeal
of Hong Kong

20th February
1981

(continued)

if the local authority should fail in its duties.

Reading as a whole the judgment of Megaw, L.J., with whose reasons Roskill, L.J. expressly agreed, it seems to us that the decision was based on two primary factors. Firstly, that the Act imposed a duty on the public authority for the benefit of a specific category of persons but prescribed no special remedy for breach of that duty. And, secondly, that the appellant had been particularly injured by that breach.

That was the way the argument had been put for the Plaintiff. And it was clear that he was well home on both points. It was not necessary to express the first in the wider form in which it was put by Denning, M.R., in the subsequent case of De Falco v Crawley Borough Council 1980 Q. B. 460 where three other members of the Court of Appeal were content to accept the decision of Thornton, Lord Denning in particular. At p. 476 he said this :

"I am very ready to follow that decision and indeed to carry it further: because this is a statute which is passed for the protection of private persons - in their capacity as private persons. It is not passed for the benefit of the public at large. In such a case it is well settled that, if a public authority fails to perform its statutory duty, the person or persons concerned can bring a civil action for damages or an injunction".

It may be that Megaw, L.J. would have taken the same view, for he quoted (at p.639) the comments of Scrutton, L.J. in Gateshead Union Guardians v Durham County Council 1918 1 Ch. 146 at p.167 :

"... it seems to me that a statutory obligation to provide education without fee and without religious restriction, if broken, gives a right of action to any person specially injured by the breach of such an obligation though he is not expressly mentioned in the statute."

And he referred, apparently with approval, to the argument of counsel (at p.638) :

"The duty is owed to an ascertained individual, not merely to a class of persons. Section 4(2) and (3) point the same way. So does section 8(4),

with the duty imposed of giving reasons for a notification. The purpose of the requirement to give reasons is to enable the individual concerned to see whether the grounds given are valid or invalid - whether they can be challenged: that is, challenged in a court of law. Thus, it appears that there is here an obligation to a particular individual, as contrasted with the obligations which are not infrequently imposed by statute towards a class of persons".

In the Court of
Appeal of Hong
Kong

No. 14

Judgment of the
Court of Appeal
of Hong Kong

20th February
1981

(continued)

10

If this be the correct approach the Appellant in the present instance would seem to be in a favourable position. Regulation 17F requires the Commissioner to give the reasons for his refusal, and although we might be somewhat slow to adopt counsel's suggestion that the Appellant was a member of a class specifically designed to be protected by the statute - namely, worthy applicants for public car licences - he was undoubtedly an individual particularly injured by the Commissioner's refusal. He should then be able to claim damages in law bearing in mind, of course, the warning of Megaw, L.J. that it may not be easy to recover in fact :

20

" ... it is an action in which all the necessary elements would fall to be proved. Amongst other things, it would be necessary for a plaintiff to prove that he had indeed suffered damages which are regarded by the law as being the consequence of the breach of duty; and he would have to prove all the various other matters some of which may often be matters which it would be extremely difficult to prove, particularly where Parliament has expressly left a discretion to the housing authority in such phrases as 'if the housing authority is satisfied that ...' "

30

Should we agree with this approach, are we nevertheless still free to adopt it?

With respect to counsel, courts do not "develop" law in the way in which he suggests. They merely discern and identify the path which the law has already trodden. If the going is difficult and the path so far but lightly trodden, it may not be easily distinguished and courts in different jurisdictions may come to different conclusions as to where its true course runs.

40

However, for our part, we have no alternative.

In the Court of
Appeal of Hong
Kong

No. 14

Judgment of the
Court of Appeal
of Hong Kong

20th February
1981

(continued)

We must follow the course indicated in Ng Kee. None of the exceptions set out in Young v Bristol Aeroplane Co., Ltd. 1944 K.B. 718 apply.

Two minor matters remain. It was argued that the Appellant should have mitigated his loss by tendering for taxi licences or by purchasing them from existing holders. The trial judge did not think that to be a reasonable demand. Nor do we.

It was also said that damages should not be assessed in full for there was no certainty that the Appellant would have succeeded in the ballot into which the Commissioner would probably have put the applications, that is the Appellant's application with the two other sets received also in July 1977. The trial judge did not deal with this aspect but we think it probable that had he done so he would have approached the matter numerically and assessed damages, as the Appellant's counsel conceded in the alternative, upon a basis of fifteen registrations.

For these reasons we dismissed the appeal.

Martin Lee, Q.C. and K.H. Woo (K.Y. Woo & Co.) for
the Appellant.

Peter Scott, Q.C. and R.A. McCallough (Legal Department) for Respondent/Defendant.

No. 15
Notice of Motion for Leave to Appeal to the
Privy Council

In the Court of
Appeal of Hong
Kong

No. 15

IN THE COURT OF APPEAL

1980 No. 69
(Civil)

Notice of
Motion for
Leave to Appeal
to the Privy
Council

BETWEEN LEUNG CHOW PUBLIC
CAR CO. (a firm)

Appellant
(Plaintiff)

2nd March 1981

and

ATTORNEY GENERAL

Respondent
(Defendant)

10 Hon. Leonard, J.A.
Hon. Zimmern, J.A.
Hon. Barker, J.

20 TAKE NOTICE that on Friday, the 27th day of
March, 1981, at ten o'clock in the forenoon or so soon
thereafter as Counsel can be heard the Court of Appeal
will be moved by Counsel for the above-named Appellant
for leave to appeal against the Judgment herein of the
Court of Appeal given on 20th February 1981 and for an
Order that the costs of this application be costs in the
cause of the appeal to the Judicial Committee of the
Privy Council.

Dated the 2nd day of March, 1981.

(Sd.) K. Y. WOO & CO.

K. Y. Woo & Co.,
No. 41-47 Queen's Road, C.,
2nd floor, Lansing House,
Hong Kong, Solicitors for
the above-named Appellant.

30 To: The Honourable Attorney General,
Legal Department,
Lower Albert Road,
Hong Kong.
Estimated Time: Not exceeding 15 minutes

In the Court of
Appeal of Hong
Kong

No. 16

Order of the Court of Appeal of Hong Kong

No. 16

Order of the
Court of Appeal
of Hong Kong
27th March 1981

IN THE COURT OF APPEAL

1980 No. 69
(Civil)

(On Appeal from High Court
Action No. 2882 of 1977)

BETWEEN LEUNG CHOW PUBLIC Appellants
CAR CO. (a firm) (Plaintiffs)

and

THE ATTORNEY GENERAL Respondent
(Defendant)

10

BEFORE THE HONOURABLE MR. JUSTICE LEONARD,
J.A., THE HONOURABLE MR. JUSTICE SILKE
AND THE HONOURABLE MR. JUSTICE BARKER,
JJ.

O R D E R

UPON the application of the abovenamed Appellants
(Plaintiffs) by way of Notice of Motion dated the 2nd day
of March 1981 and UPON hearing Counsel for the Appel-
lants (Plaintiffs) and Crown Counsel for the Respondent
(Defendant), and by consent IT IS ORDERED that :-

20

1. The Appellants do have leave to appeal
against the Judgment herein of the Court of
Appeal given on 20th February 1981;
2. The Appellants do give security of
HK\$100,000.00 in the form of a bank
guarantee to be approved by the Registrar
of Supreme Court within 14 days;
3. The Appellants do have 4 months' time for
the preparation and dispatch of the records;
and
4. Costs of this application be costs in the cause
of the appeal to Privy Council.

30

Dated the 27th day of March 1981.

N. J. BARNETT (L.S.)
Acting Registrar.

EXHIBITS

EXHIBITS

P1
Receipt

P1
Receipt

30th June 1976

合誠汽車有限公司
HONEST MOTORS LTD.
No. 25213
日期 June 30, 76

茲收到
Received from *Leung Chew Public Car Co*
港幣
Dollars *Ten Thousand Only*

HK\$ 10,000

繳付
in payment of *100 unit Cedric Deposit*
for Public Car use

BY *CASHICHEQUE 10/24/30*
HR-53C
For and on behalf of
HONEST MOTORS LTD.
[Signature]
[Signature]
AUTHORIZED SIGNATURES

If payment is made by cheque, this receipt will not serve its intended purpose until the cheque has been duly honoured.
支票支單須俾票單兌安款項方能作實



In the Supreme
Court of Hong
Kong

A1

Originating Summons

A1

1976, NO. 750

Originating
Summons

17th December
1976

IN THE SUPREME COURT OF HONG KONG
HIGH COURT
MISCELLANEOUS PROCEEDINGS

IN THE MATTER of the Road Traffic
Ordinance, Cap. 220 of the Laws of Hong
Kong

and

IN THE MATTER of the Road Traffic
(Registration & Licensing of Vehicles)
Regulations

10

and

IN THE MATTER of applications dated
15th July 1976 for the registration of 47
vehicles as Public Cars

BETWEEN LEUNG CHOW PUBLIC CAR
COMPANY (a firm)

Plaintiffs

and

THE ATTORNEY GENERAL

Defendant

To the Attorney General of Central Government Offices,
Hong Kong

20

Let the Defendant, within 8 days after service of
this summons on him, inclusive of the date of service,
cause an appearance to be entered to this summons which
is issued on the application of the Plaintiffs, Leung Chow
Public Car Company, a firm, of Flat B-3, 12th floor,
Mirador Mansion, No. 60, Nathan Road, Kowloon, in the
Colony of Hong Kong.

By this summons, the Plaintiffs claim against the
Defendant :-

30

- (1) A Declaration that the Commissioner for
Transport was wrong and had no authority

when entertaining or considering the Plaintiff's applications all of the 15th July 1976 for registration of 47 vehicles as public cars to have taken into account applications for the registration of motor vehicles as public cars unless such latter mentioned applications had been made in the form prescribed by the Commissioner under the provisions of Regulation 4 of the Road Traffic (Registration and Licensing of Vehicles) Regulations, Cap. 220 of the Laws of Hong Kong.

In the Supreme Court of Hong Kong

A1

Originating Summons

17th December 1976

(continued)

10

(2) A Declaration that the Commissioner for Transport ought to have entertained the Plaintiffs' said applications made in the form prescribed by the Commissioner under the provisions of Regulation 4 of the Road Traffic (Registration and Licensing of Vehicles) Regulations, Cap. 220 only with like applications, if any, without taking into consideration any other applications not made in the said form or at all.

20

(3) A Declaration that the Plaintiffs are entitled to have 47 vehicles in respect of which applications were made to the Commissioner for Transport for their registration on 15th July 1976 duly registered as public cars under and in accordance with the provisions of the Road Traffic Ordinance, Cap. 220.

30

(4) A Declaration that the Commissioner for Transport had no authority to refuse the registration of the said vehicles as public cars.

(5) Alternatively, a Declaration that the Plaintiffs are entitled to have their applications for the registration of 47 vehicles as public cars together with other like applications by other persons, if any, to be determined by lot under and in accordance with Regulation 18B(3) of the Road Traffic (Registration and Licensing of Vehicles) Regulations, Cap. 220.

40

(6) Further or other relief.

(7) Costs.

If the Defendant does not enter an appearance, such

In the Supreme
Court of Hong
Kong

A1

Originating
Summons

17th December
1976

(continued)

judgment may be given or order made against or in
relation to him as the Court may think just and expedient.

Dated the 17th day of December, 1976.

(Sd.) S. H. MAYO
REGISTRAR.

NOTE: This summons may not be served more than 12
calendar months after the above date unless renewed by
order of the Court.

This summons was taken out by Messrs. K. Y.
Woo & Co., of Tak Woo House, 1st floor, 17-19, D'Aguiar Street, Victoria in the Colony of Hong Kong, Solicitors for
the Plaintiffs. 10

(Sd.) K. Y. WOO & CO.

DIRECTIONS FOR ENTERING APPEARANCE

The defendant may enter an appearance in person or
by a solicitor either (1) by handing in the appropriate forms,
duly completed, at the Registry of the Supreme Court in
Victoria, Hong Kong, or (2) by sending them to the Registry
by post.

A2

Memorandum of Appearance

1976, No. 750

In the Supreme
Court of Hong
Kong

A2

IN THE SUPREME COURT OF HONG KONG
HIGH COURT
MISCELLANEOUS PROCEEDINGS

Memorandum
of Appearance
22nd December
1976

IN THE MATTER of the Road Traffic
Ordinance, Cap. 220 of the Laws of Hong
Kong

and

10 IN THE MATTER of the Road Traffic
(Registration & Licensing of Vehicles)
Regulations

and

IN THE MATTER of applications dated
15th July 1976 for the registration of 47
vehicles as Public Cars

BETWEEN Leung Chow Public Car
Company (a firm) Plaintiffs
and
The Attorney General Defendant

20 Please enter an Appearance for the Attorney
General, the Defendant in this action.

Dated the 22nd day of December, 1976.

(Sd.) R. J. JOHNSON

Counsel for the Defendant.
Whose address for service is
Legal Department, Central
Government Offices, Main Wing,
Hong Kong.

30 c. c. M/S. K. Y. Woo & Co.,
Solicitors for the Plaintiffs,
Tak Woo House, 1st floor,
17-19, D'Aguilar Street,
Hong Kong.

In the Supreme
Court of Hong
Kong

Λ3

Notice of
Appointment to
hear Origina-
ting Summons

4th March 1977

Λ3

Notice of Appointment to hear Originating
Originating Summons

1976, NO. 750

IN THE SUPREME COURT OF HONG KONG
HIGH COURT
MISCELLANEOUS PROCEEDINGS

IN THE MATTER of the Road Traffic
Ordinance, Cap. 220 of the Laws of Hong
Kong

10

and

IN THE MATTER of the Road Traffic
(Registration and Licensing of Vehicles)
Regulations

and

IN THE MATTER of applications dated 15th
July 1976 for the registration of 47 vehicles
as Public Cars.

BETWEEN LEUNG CHOW PUBLIC CAR
COMPANY (a firm) Plaintiffs

and

THE ATTORNEY GENERAL Defendant

20

To: Crown Counsel for the Defendant,
Legal Department,
Central Government Offices,
Hong Kong.

McMullin J.
(25th also
reserved)

TAKE NOTICE that the Originating Summons issued
herein on the 17th day of December 1976, will be heard by
the Judge in Chambers at the Supreme Court in Victoria,
Hong Kong, on Tuesday, the 24th day of May, 1977, at
10 o'clock in the forenoon. You may attend in person,
or by your solicitor or Counsel. If you fail to attend,
such order will be made as the Court may think just and
expedient.

30

Dated the 4th day of March, 1977.

(Sd.) K. Y. WOO & Co.
Solicitors for the plaintiffs.

Estimated time: 2 days.

A4

Affidavit of Tse Kai Chow

In the Supreme
Court of Hong
Kong

1976, NO. 750

A4

IN THE SUPREME COURT OF HONG KONG
HIGH COURT
MISCELLANEOUS PROCEEDINGS

Affidavit of
Tse Kai Chow
4th March 1977

IN THE MATTER of the Road Traffic
Ordinance, Cap. 220 of the Laws of Hong
Kong

and

10 IN THE MATTER of the Road Traffic
(Registration & Licensing of Vehicles)
Regulations

and

IN THE MATTER of applications dated 15th
July 1976 for the registration of 47 vehicles
as Public Cars

BETWEEN LEUNG CHOW PUBLIC CAR
COMPANY (a firm) Plaintiffs

and

THE ATTORNEY GENERAL Defendant

20 I, TSE KAI CHOW of Flat B-3, 12th floor, Mirador
Mansion, Nathan Road, Kowloon in the Colony of Hong
Kong, Merchant, do make oath and say as follows :-

1. I am the managing partner of the plaintiffs and am
authorized by the other partner to make this my affirma-
tion on behalf of the plaintiffs. A copy of the business
registration certificate for the plaintiff firm is now
produced and shown to me and marked "TKC-1".

30 2. By a letter dated 17th November 1975 written by
the solicitors for the plaintiffs, we, the plaintiffs,
requested the Commissioner for Transport (hereinafter
referred to as "the Commissioner") to supply us with the
necessary application forms so as to enable us to make
application for 200 public car licences.

In the Supreme
Court of Hong
Kong

A4

Affidavit of
Tse Kai Chow
4th March 1977
(continued)

3. The Commissioner acknowledge receipt of the said letter of 17th November 1975 by a letter dated 26th November 1975 saying that a further communication would be sent to our solicitors in due course.

4. On 1st December 1975, I went to the Transport Department at No. 2, Murray Road, Hong Kong in order to obtain application forms for public car licences, but a staff-member at the counter refused to give me any saying that as I had instructed solicitors he could not give me any application forms which would be sent to my solicitors.

10

5. On or about 10th December 1975, I learnt that a Gazette Notice being notice number 2670 and dated 5th December 1975 had been published in the Government Gazette whereby the Commissioner in exercise of the powers conferred upon him by regulation 18(B)(1) of the Road Traffic (Registration and Licensing of Vehicles) Regulations, limited the number of motor vehicles which might be registered and licensed as public cars to a maximum number of 1,388 and I also learnt that up till that time, there were altogether 1,283 public cars leaving a balance of 105 public cars remaining unregistered and unlicensed to reach the limit imposed. I therefore immediately went to the Transport Department again in order to obtain application forms for public car licences, but I was again refused.

20

6. As a result, our solicitors wrote to the Commissioner on 12th December 1975 requesting him to supply us with the necessary application forms for 105 public car licences. To this letter there had been no reply before our solicitors wrote a reminder dated 6th January 1976 to the Commissioner.

30

7. By a letter dated 6th January 1976, the Commissioner informed us through our solicitors that our applications could not be entertained as all the remaining licences were "committed" ones, and relied on Regulations 18B(1) and 17(2) of the Road Traffic (Registration & Licensing of Vehicles) Regulations.

8. By a letter dated 9th January 1976, our solicitors wrote to the Commissioner to inquire the circumstances under which the remaining public car licences were "committed". However, by a letter dated 27th January 1976 in reply, the Commissioner only stated that the remaining public car licences were committed for

40

registration as at the day of the said limitation Gazette Notice, and did not inform us as to the circumstances under which such remaining licences had become "committed".

In the Supreme
Court of Hong
Kong

A4

9. On 10th March 1976, I again went to the Transport Department and asked a staff at the counter to supply me with application forms for public car licences, but again I was refused.

Affidavit of
Tse Kai Chow
4th March 1977

10 10. By a letter dated 15th June 1976 by our solicitors, we threatened proceedings against the Commissioner unless he entertained our said application. By a letter dated 5th July, 1976, the Commissioner did not approve our applications for 200 public car licences.

(continued)

11. There are now produced and shown to me copies of the aforesaid correspondence between our solicitors and the Commissioner in chronological order respectively numbered (a) to (i) and marked "TKC-2", and a copy of the said Gazette notice dated 5th December 1975 and marked "TKC-3".

20 12. In or about the end of June, 1976, I was able to obtain some application forms for the registration of vehicles as public cars from garages who had previously obtained them from the Transport Department quite sometime ago.

30 13. By a covering letter dated 15th July 1976, our solicitors sent on our behalf to the Commissioner 47 application forms for registration of 47 vehicles as public cars duly completed, enclosing all the necessary documents, namely, \$10.00 in cash attached to each of the application forms, a contract note showing value of vehicles, chassis numbers and engine numbers, an insurance cover note, a maintenance agreement, a copy of my bank statement, a parking space certificate and a copy business registration certificate. A copy each of the said letter and documents numbered here as (a) to (h) are now produced and shown to me and marked "TKC-4". Exhibit "TKC-4(b)" is a copy of one of the 47 application forms which are, apart from details and particulars, identical.

40 14. All the aforementioned applications were submitted in the form prescribed by Regulation 4 of the Road Traffic (Registration and Licensing of Vehicles) Regulations and the design, construction, adaptation and condition of the

In the Supreme
Court of Hong
Kong

A4

Affidavit of
Tse Kai Chow

4th March 1977

(continued)

vehicles complied in all respects with the Road Traffic (Construction and Use) Regulations and the vehicles were all roadworthy.

15. By another letter dated 16th July 1976, our solicitors again inquired of the Commissioner as to the meaning of the term "committed" licences.

16. Before the Commissioner made any reply to the said letters dated 15th July 1976 and 16th July 1976, on or about 19th July 1976, our solicitor, Mr. K.Y. Woo of Messrs. K.Y. Woo & Co. went with me to the Transport Department. There were able to see a Transport Officer Mr. Cheung Yuk Yin. Mr. K.Y. Woo asked Mr. Cheung Yuk Yin whether there were still vacancies left for public cars before the limit imposed by the aforesaid Gazette Notice was reached, and whether there were vacancies for public light buses. Mr. Cheung said that there were vacancies in both classes of vehicles, but such vacancies had all been "committed". Mr. Cheung refused to explain under what circumstances were those licences "committed". Then Mr. Woo asked Mr. Cheung how many vacancies there were in each of those two classes of vehicles and Mr. Cheung said that he would give Mr. Woo a reply to that question by letter on the coming Wednesday.

10

20

17. However, by a letter dated 22nd July 1976, the Commissioner refused our applications for 47 public cars, and returned our 47 application forms with the \$470.00 cash and parking accommodation certificate.

18. There are now produced and shown to me the said letters dated respectively 16th and 22nd July 1976 numbered (a) to (b) and marked "TKC-5".

30

19. I am informed by our solicitor Mr. Woo Kwok Yin and verily believe that on 23rd July 1976 there was a conference or meeting held between Mr. Russell Johnson, Crown Counsel advising the Commissioner for Transport on the matters relating to these proceedings and Mr. Martin Lee, counsel then acting for us at the Attorney General's Chambers, Central Government Offices for the purpose of obtaining information as to the exact nature of the so-called "committed" licences.

40

20. By a letter dated 12th August 1976 from the Commissioner to our solicitors, he referred to the said meeting between Mr. Johnson, and Mr. Lee and pointed out that

"committed" did not have reference to the supply of application forms to applicants at their request. A copy of this letter is now produced and shown to me and marked "TKC-6".

In the Supreme Court of Hong Kong

A4

10 21. I am advised by my legal advisers and verily believe that the Commissioner has no authority to promise or to commit himself to grant public car licences otherwise than on application under Regulation 4 of the Road Traffic (Registration and Licensing of Vehicles) Regulations, and that the Commissioner ought not and had no authority to take into account any applications under the said "reverse procedure" when entertaining or considering our said 47 applications for registration of public cars, and that he had no authority to refuse registration of 47 public cars to which the plaintiffs are entitled. However, if there were other applications like our said 47 applications which were made in the form prescribed by the Commissioner under the provisions of Regulation 4 of the Road Traffic (Registration and Licensing of Vehicles) Regulations, then the plaintiffs are entitled to have their said 47 applications together with other like applications by other persons to be determined by lot under and in accordance with Regulation 18B(3) of the Road Traffic (Registration and Licensing of Vehicles) Regulations.

Affidavit of
Tse Kai Chow
4th March 1977
(continued)

22. I therefore respectfully ask this Honourable Court to grant me the declaratory relief prayed for in the Originating Summons in these proceedings.

30 And lastly I do make oath and say that the contents of this my affirmation are true.

SWORN at the Courts of Justice,)
Victoria, Hong Kong, this 3rd day)
of March, 1977, the same having)
been duly interpreted to the) (Sd.) TSE KAI CHOW
deponent in the Cantonese dialect)
of the Chinese language by :-)

(Sd.) KWOK YIUT MING
Sworn Interpreter,
Before me,

40 (Sd.) R. D. BIALA
Commissioner for Oaths.

This affirmation is filed on behalf of the plaintiffs.

In the Supreme
Court of Hong
Kong

A5

Exhibits referred to in the Affidavit of Tse Kai Chow

A5

1976, NO. 750

Exhibits
referred to in
the Affidavit of
Tse Kai Chow

IN THE SUPREME COURT OF HONG KONG
HIGH COURT
MISCELLANEOUS PROCEEDINGS

BETWEEN LEUNG CHOW PUBLIC CAR
COMPANY (a firm) Plaintiffs
and
THE ATTORNEY GENERAL Defendant

The exhibits referred to in the Affirmation of Tse Kai Chow affirmed on the 3rd day of March, 1977 10

Exhibits marked

Consists of sheet

"TKC-1"	1 page	
"TKC-2a"	1 page	
"TKC-2b"	1 page	
"TKC-2c"	1 page	
"TKC-2d"	1 page	
"TKC-2e"	1 page	
"TKC-2f"	1 page	
"TKC-2g"	1 page	20
"TKC-2h"	1 page	
"TKC-2i"	1 page	
"TKC-3"	1 page	
"TKC-4a"	1 page	
"TKC-4b"	2 pages	
"TKC-4c"	4 pages	
"TKC-4d"	2 pages	
"TKC-4e"	1 page	
"TKC-4f"	1 page	
"TKC-4g"	1 page	30
"TKC-4h"	1 page	
"TKC-5a"	1 page	
"TKC-5b"	1 page	
"TKC-6"	1 page	

K. Y. WOO & CO.,
Solicitors for the Plaintiffs,
Tak Woo House, 1 st floor,
17-19, D'Aguilar Street,
Hong Kong.

ORIGINAL
DUPLICATE

Form 2

(reg. 5)

In the Supreme
Court of Hong
Kong

Business Registration Regulations

Business Registration Ordinance

A5

BUSINESS REGISTRATION CERTIFICATE

10
NAME OF HOLDER LEUNG CHOW PUBLIC CAR CO. 16.11
ADDRESS Flat B-3, 12/F., Mirador Mansion, No. 60, Nathan Road, Kln. 456086
NATURE OF BUSINESS Public Cars Transportation & P.L.B.
STATUS Partnership

Business
Registration
Office
Hong Kong
2 JUL 1976

Exhibits
referred to in
the Affidavit of
Tse Kai Chow
(continued)

DATE OF COMMENCEMENT

Valid for 12 months from:- Certificate No. Fee
Nov 75 456086 \$150.00

Attention is drawn to the following provisions of the Business Registration Ordinance.

20
Sec. 8 (1) Where there occurs any change in the particulars of a business as set out in the form of application for registration (whether such form was submitted under this Ordinance or under the Business Regulation Ordinance 1952) any person carrying on such business shall within one month of such change notify the Commissioner in writing thereof.

(2) Where a business ceases to be carried on any person who was carrying on such business shall within one month of the cessation notify the Commissioner in writing thereof.

30
Sec. 12 Provides that valid business registration certificate or duplicate thereof shall be displayed at every address where business is carried on.

Sec. 15 Provides penalties for offences against the Ordinance consisting of a fine of \$2,000 and to imprisonment for one year.

RECEIVED FEE

HERE STATED IN 17 XI 75 8606 000.150.00 00456086
PRINTED FIGURES

This is the exhibit marked "TKC-1"
referred to in the affirmation of
Tse Kai Chow this 3rd day of March 1977

Before me,

(Sd.) R. D. BIALA

Commissioner for Oaths.

In the Supreme
Court of Hong
Kong

13635

A5

KCT/5006/75

17th November, 1975

Exhibits
referred to in
the Affidavit of
Tse Kai Chow
(continued)

The Commissioner for Transport,
Transport Department,
Hong Kong.

Dear Sir,

Re: Application for 200 public car licences

We act for Mr. Tse Kai Chow and Mr. Woo Leung,
partners of Leung Chow Public Car Co., who intend to
operate a public car business.

10

For your information, we submit hereunder the
particulars of our clients' application :-

1. 200 brand new Cedric Diesel Engine (5-seaters)
cars are available.
2. 200 parking spaces.
3. The Guarantee of 200 cars' maintenance.
4. Capital in the sum of \$2,000,000.00 cash is
available.
5. 400 public cars' drivers are available for the
driving of the public cars.

20

Kindly let us have the necessary application forms
to enable our clients to complete the same for the
application of 200 public car licences at your earliest
convenience.

Yours faithfully,

This is the exhibit marked "TKC-2a"
referred to in the affirmation of Tse
Kai Chow this day of 197 .
3 MAR 1977

Before me,
(Sd.) R. D. BIALA
Commissioner for Oaths.

TRANSPORT DEPARTMENT,
2 Murray Road,
Hong Kong.

In the Supreme
Court of Hong
Kong

Our ref. CT 1311/274/75(2)

A5

Tel. 5-260121 Ext. 262

26th November, 1975

Exhibits
referred to in
the Affidavit of
Tse Kai Chow

Dear Sirs,

(continued)

Application for 200 Public Car Licences

10 I acknowledge receipt of your letter ref.
KCT/5006/75 dated 17th November 1975. A further
communication will be sent to you in due course.

Yours faithfully,

CHEUNG Yuk-yin

for Commissioner for Transport

Messrs. K. Y. Woo & Co.,
Solicitors,
Unit 1, Tak Woo House,
1st floor,
17-19 D'Aguilar Street,
Hong Kong.

This is the exhibit marked "TKC-2b"
referred to in the affirmation of Tse
Kai Chow this day of 197 .
3 MAR 1977

Before me,

(Sd.) R. D. BIALA

Commissioner for Oaths.

In the Supreme
Court of Hong
Kong

13876

CT 1311/274/75 (2)

A5

KCT/5006/75

12th December, 1975.

Exhibits
referred to in
the Affidavit of
Tse Kai Chow
(continued)

The Commissioner for Transport,
Transport Department,
2, Murray Road,
Hong Kong.

Dear Sir,

Re: Application for Public Car Licences

Thank you for your letter of the 26th November,
1975 and have noted the contents thereof.

10

We understand that according to a Notice being G.N.
2670 published in the Government Gazette of the 5th
December, 1975, you have limited the registration and
licensing of public cars to a maximum number of 1,388.
We further understand that up to date there are altogether
1,283 public cars and leaving a balance of 105 public car
licences remain unregistered and unlicensed.

We are therefore instructed by our clients Mr. Tse
Kai Chow and Mr. Woo Leung, partners of Leung Chow
Public Car Co., to apply to you for 105 public car
licences or the outstanding balance of licences remain
unregistered and unlicensed, and shall be glad if you will
let us have the necessary application forms so as to
enable our clients to complete the same at your earliest
convenience.

20

Yours faithfully,

This is the exhibit marked "TKC-2c"
referred to in the affirmation of Tse
Kai Chow this day of 197 .
3 MAR 1977

Before me,

(Sd.) R. D. BIALA

Commissioner for Oaths.

14632

In the Supreme
Court of Hong
Kong

CT 1311/274/75 (2)

A5

KCT/5006/75

6th January, 1976.

Exhibits
referred to in
the Affidavit of
Tse Kai Chow

The Commissioner for Transport,
Transport Department,
2, Murray Road,
Hong Kong.

(continued)

Dear Sir,

Re: Application for Public Car Licences

10 We refer to our letter to you of the 12th December,
1975, a photostat copy of which is enclosed herewith for
your information, and shall be glad if you will kindly
let us have an early reply.

Yours faithfully,

Encl.

This is the exhibit marked "TKC-2d"
referred to in the affirmation of Tse
Kai Chow this day of 197 .
3 MAR 1977

Before me,

(Sd.) R. D. BIALA

Commissioner for Oaths.

In the Supreme
Court of Hong
Kong

TRANSPORT DEPARTMENT
2, Murray Road,
Hong Kong.

A5

Our ref. CT 1311/274/75(6)

Exhibits
referred to in
the Affidavit of
Tse Kai Chow

Tel. 5-260121 Ext. 262

6th January, 1976

(continued)

Dear Sirs,

Re: Application for Public Car Licences

I refer to your letter ref. KCT/5006/75 of 12th
December 1975 and am to inform you that all the
remaining public car licences are 'committed' ones.
By virtue of Regulations 18B(1) and 17(2) of the Road
Traffic (Registration & Licensing of Vehicles) Regs.,
your clients' application cannot be entertained.

10

Yours faithfully,

CHEUNG Yuk-yin

for Commissioner for Transport

Messrs. K. Y. Woo & Co.,
Solicitors,
1st floor, Tak Woo House,
17-19 D'Aguilar Street,
Hong Kong.

20

This is the exhibit marked "TKC-2e"
referred to in the affirmation of Tse
Kai Chow this day of 197 .
3 MAR 1977

Before me,

(Sd.) R. D. BIALA

Commissioner for Oaths.

14066

CT 1311/275/75 (6)

KCT/5006/75

9th January, 1976.

In the Supreme
Court of Hong
Kong

A5

The Commissioner for Transport,
Transport Department,
2, Murray Road,
Hong Kong.

Exhibits
referred to in
the Affidavit of
Tse Kai Chow
(continued)

Dear Sir,

Re: Application for Public Car Licences

10 With reference to your letter of the 6th January,
1976, we shall be glad if you will kindly let us know when
and under what circumstances the remaining public car
licences are committed so as to enable us to take further
instructions from our clients.

Yours faithfully,

This is the exhibit marked "TKC-2f"
referred to in the affirmation of Tse
Kai Chow this day of 197 .
3 MAR 1977

Before me,

(Sd.) R.D. BIALA

Commissioner for Oaths.

In the Supreme
Court of Hong
Kong

TRANSPORT DEPARTMENT
2, Murray Road,
Hong Kong

A5

Our ref. CT 1311/274/75 (10)

Exhibits
referred to in
the Affidavit of
Tse Kai Chow

Tel. 5-260121 Ext. 262

27th January 1976.

Dear Sirs,

(continued)

re: Application for Public Car Licences

With reference to your letter ref. KCT/5006/75
dated 9th January 1976, I advise that the remaining
public car licences were committed for registration as at
the day of limitation notice, in the course of normal
procedures under the Road Traffic legislation.

10

Yours faithfully,

CHEUNG Yuk-yin

for Commissioner for Transport

Messrs. K. Y. Woo & Co.,
Solicitors,
1st floor,
Tak Woo House,
17-19, D'Aguilar Street,
HONG KONG.

20

This is the exhibit marked "TKC-2g"
referred to in the affidavit of Tse Kai
Chow this 3rd day of March 1977.

Before me,

(Sd.) R.D. BIALA

Commissioner for Oaths.

12463

In the Supreme
Court of Hong
Kong

CT 1311/274/75 (10)

KCT/5006/75

15th June, 1976.

A5

The Commissioner for Transport,
Transport Department,
2, Murray Road,
Hong Kong.

Exhibits
referred to in
the Affidavit of
Tse Kai Chow

(continued)

Dear Sir,

Re: Application for 200 Public Car Licences

10 We refer to our clients' application for 200 Public
Car Licences dated the 17th November 1975 before the
publication of the Gazette Notice dated the 5th December
1975 limiting the number of public cars to a maximum
number of 1,388.

20 In the light of the decision of Mr. Justice Huggins
in the Supreme Court Original Jurisdiction Miscellaneous
Proceedings No. 212 of 1975 and the decisions of the Court
of Appeal being Civil Appeal No. 58 of 1975, we trust that
you will reconsider our clients' application. In default of
your complying with our clients' application, we have
instructions to institute proceedings against you.

Yours faithfully,

This is the exhibit marked "TKC-2h"
referred to in the affirmation of Tse
Kai Chow this day of 197 .
3 MAR 1977

Before me,

(Sd.) R. D. BIALA

Commissioner for Oaths.

In the Supreme
Court of Hong
Kong

RECORDED DELIVERY

A5

Exhibits
referred to in
the Affidavit of
Tse Kai Chow

(continued)

CT 1311/274/75 (15)

5-260121 Ext. 262

TRANSPORT DEPARTMENT

2 Murray Road,

Hong Kong.

5th July, 1976

Dear Sirs,

Re: Application for Public Car Licences

I refer to your letter ref. KCT/5006/75, dated
15th June 1976 and advise that your clients' request to
register and license 200 public cars is not approved
under Regulation 17(1) and Regulations 18B and 17(2) of
the Road Traffic (Registration and Licensing of
Vehicles) Regulations.

10

Yours faithfully,

CHEUNG Yuk-yin

for Commissioner for Transport

Messrs. K. Y. Woo & Co.,
Solicitors,
1st floor, Tak Woo House,
17-19 D'Aguilar Street,
Hong Kong.

20

This is the exhibit marked "TKC-2i"
referred to in the affirmation of Tse
Kai Chow this day of 197 .
3 MAR 1977

Before me,

(Sd.) R. D. BIALA

Commissioner for Oaths.

3752

GAZETTE NO. 49/1975

In the Supreme
Court of Hong
Kong

G.N. 2670

TRANSPORT DEPARTMENT

ROAD TRAFFIC ORDINANCE
(Chapter 220)

—
A5

In exercise of the powers conferred upon me by regulation 18B(1) of the Road Traffic (Registration and Licensing of Vehicles) Regulations, I hereby limit the numbers of motor vehicles which may be registered and licensed as -

Exhibits
referred to in
the Affidavit of
Tse Kai Chow

(continued)

10

- (a) taxis to a maximum number of 4,754; and
- (b) public cars to a maximum number of 1,388.

I. F. C. MACPHERSON,

5th December, 1975. Commissioner for Transport

G.N. 2671

TRANSPORT DEPARTMENT

ROAD TRAFFIC (ROADS AND SIGNS) REGULATIONS
(Chapter 220)

In exercise of the powers vested in me under regulation 18A of the Road Traffic (Roads and Signs) Regulations, I hereby direct that, with effect from 10 a. m. on 5th December, 1975, the Public Light Bus restricted zone on the eastbound carriageway of King's Road, between North Point Road and 443, King's Road, will be extended to a point 100 feet eastward outside 455, King's Road.

20

The Government notice No. 2326 of 24th October, 1975 is hereby revoked.

I. F. C. MACPHERSON,

5th December, 1975. Commissioner for Transport

This is the exhibit marked "TKC-3"
referred to in the affirmation of Tse
Kai Chow this day of 197 .
3 MAR 1977

Before me,

(Sd.) R. D. BIALA

Commissioner for Oaths.

In the Supreme
Court of Hong
Kong

12775

CT 1311/274/75 (15)
KCT/5006/75

15th July, 1976.

A5

Exhibits
referred to in
the Affidavit of
Tse Kai Chow
(continued)

The Commissioner for Transport,
Transport Department,
No. 2, Murray Road,
Hong Kong.

Dear Sir,

Entirely without prejudice to our clients' application
for 200 public cars, we are instructed by our clients
Messrs. Leung Chow Public Cars Co. to apply to you on
their behalf for registration and licensing of 47 public
cars. We send you herewith the following :-

1. 47 Application forms duly completed by our clients.
2. \$10.00 in cash attached to each application form.
3. Insurance cover note.
4. Maintenance Agreement.
5. Copy bank statement of our client Mr. Tse Kai
Chow, one of the partners of Leung Chow Public
Cars Co.
6. Parking Space certificate.
7. Copy of Business Registration Certificate.

We are further instructed to say that in our clients'
application, the motor vehicles comply with the require-
ments as set out in the Road Traffic (Construction and Use)
Regulations.

These applications are filed with you pursuant (inter
alia) to the provisions contained in Regulation 6 of the Road
Traffic (Registration and Licensing) Regulations. We are
instructed to demand that you forthwith register these
vehicles with effect from today and assign to each of them
a registration mark in accordance with your statutory
obligations under Regulation 6(1) of the Road Traffic
(Registration and Licensing) Regulations.

If you refuse to register our clients' said 47 brand
new vehicles as public cars, we have instructions to
institute legal proceedings against you without further
notice.

Yours faithfully,

Encl.

This is the exhibit marked "TKC-4a"
referred to in the affirmation of Tse
Kai Chow this day of 197
3 MAR 1977

Before me,
(Sd.) R. D. BIALA
Commissioner for Oaths.

APPLICATION FOR REGISTRATION AND LICENSING OF A MOTOR VEHICLE
車輛登記及牌照申請表

A5

Exhibits referred to in the Affidavit of
Tse Kai Chow (Continued)

Please read the attached notes carefully before completing this form. All items should be completed in BLOCK LETTERS. Items in boxes are for official use only.
填寫前請細閱表格之說明。本表所需之各項資料，均須以正楷填寫。表格內之項目不必填寫。

Prefix	Number
--------	--------

Doc. No.

PART A 甲部

PARTICULARS OF APPLICANT (See Notes 1 and 2)
申請人摘要 (請參閱註解第一及第二條)

Name: 姓名
• Mr. 先生
• Mrs. 夫人
• Miss 小姐
Ltd. Co. 有限公司

In English 請用英文填寫
LEUNG CHOW PUBLIC CAR CO.
Surname 姓氏
Other Names 其他名字
Chinese Characters 中文姓名

Residential Address
(Complete each item applicable to your address. If any item does not apply, leave blank. In the case of a limited company give the address of the registered office.)
住宅地址
(如有適用者，請填寫。如無適用者，請留空。如為有限公司，請填寫註冊地址。)

B-3 12/F.
Flat 單位 Block 座 Floor 樓
Name of building 大廈名稱
60, Nathan Road
Number and name of street
District 地區
Kln. 九龍
C.C.C. No. 註冊號碼
Certificate of Incorporation No. 公司註冊號碼
H.K. Identity Card No. 香港身份證號碼
must be produced at the time of application. 交回申請表格時必須呈示此證件。

PART B 乙部

PARTICULARS OF VEHICLE 車輛摘要

Class of Vehicle 車輛類別: Public Car
Type of Body 車身類型: Sedan
Name of Manufacturer and Model 廠名及款式: Nissan Datsun 220C
Year of Manufacture 年份: 1976
Country of origin 來源國: Japan
Engine No. 引擎號碼: S1D22-157909
Chassis No. 車身號碼: Q330-003893
Cylinder capacity 汽缸容積: 2164 c.c.
Seating Capacity (excluding driver) 座位數額 (司機除外): Five (5)
Steering 駕駛盤: Right hand / 右舵

FOR GOODS VEHICLES, OMNIBUSES, AND LIGHT BUSES ONLY 本欄祇適用於貨車、巴士及小型巴士
Unladen weight 淨重
Maximum permitted load 最高載重
Gross vehicle weight 總重量
Tire Size 輪胎尺寸
Overall Dimensions: Length 全長, Width 全闊, Height 全高
Turning Circle 轉向圓度
Swept Circle 掃地圓度
Standing capacity 站立乘客數額

ANSWER ONLY IF THE VEHICLE HAS BEEN PREVIOUSLY REGISTERED IN HONG KONG 如該車輛以前曾在香港登記 (驗牌) 則須填寫本欄
Date of Registration 登記日期
Class of Vehicle 車輛類別
Ex-Registration Mark 以前之登記號碼 (車牌)
Prefix 字首
Number 號碼

PART C 丙部

THIRD PARTY INSURANCE (Certificate MUST be produced) 第三者保險 (必須呈示保險單)

Name of Insurance Company (not agent) 保險公司 (非代理人) 之名稱
Policy/Cover Note No. 保單/臨時保單號碼
Expiry Date 屆滿日期

DECLARATION

I hereby apply to register the above vehicle and to licence it for a period of One Year. I declare that to the best of my knowledge and belief the information given above is true and complete. I understand that if I willfully give any false or incomplete information, I shall render myself liable under Section 33 of the Road Traffic Ordinance (Cap. 220) to a fine of \$1,000 and imprisonment for six months.
茲將者，本人申請登記上述車輛及領取一年有效期之牌照。本人並聲明以上所填報之一切情節全屬詳盡確實。本人亦明悉，如故意提供失實資料或漏報部份資料者，則根據香港法例第220章道路交通條例第三十三節之規定，本人可受罰款一千元及監禁六個月之處分。

Signature of applicant 申請人簽署
Date 日期: 15 JUL 1976

This is the exhibit used of "TKC 46" referred to in the affidavit/affirmation of Tse Kai Chow this day of 1976.
Before me,
J. R. D. Biala
Commissioner for Oaths.

A5

Exhibits referred to in the Affidavit of Tse Kai Chow (continued)

I certify that I have inspected this vehicle and that the vehicle complies with the provisions of the Road Traffic (Construction and Use) Regulations

茲證明本人已檢驗該車，一切均符合道路交通（構造及使用）規例。

Date
日期

Motor Vehicle Inspector

驗車主任

PART E 戊部

Place and date of previous registration of vehicle in any country outside Hong Kong:
該車以前在外地登記之地點及日期

Date of entry into Hong Kong 抵港日期	Invoice No. 發票號碼	Currency in which purchased: 購買時所付之貨幣	Rate of Exchange 兌換率
	<i>In Foreign Currency</i> 外幣	<i>In Hong Kong Dollars</i> 港幣	
Factory Cost 出廠價
Inland Freight 內陸運費
Marine Freight 海運費
Marine Insurance 海上保險
Additional Cost (if any) 任何附加費用
Total Value 總值	HKS 港幣	(1)

For assessment of Commonwealth Preference Tax the total value of the vehicle as shown at (1) above may be reduced by the value of all tyres, and spare wheel and any spare parts. Any reductions claimed must be specified below:—
必須說明如下：

Less value of tyres: make 扣除輪胎價值 廠名	description 種類	HKS 港幣
No. of tyres @ HKS less % discount net total 輪胎數目 每個港幣 折扣 輪胎總淨值	
Others 其他		HKS 港幣
Total reduction: 總扣除額：		HKS 港幣
Reduced value of vehicle: 除淨車價：		HKS 港幣

DECLARATION 聲明

I hereby certify that to the best of my knowledge and belief the information given in part E of this form is true.
茲證明，據本人所知，申請書內之戊部所填報之一切資料全屬真確。

Signature of Owner/Agent Date
車主/代理人簽名 日期

(OFFICIAL USE 本欄不必填寫)

First Registration Tax at 15% on depreciated value of vehicle after years months, based on (1) at Part E HKS
Commonwealth Preference Tax at 15% on depreciated value of vehicle after years months based on (1) at Part E HKS

Calculations checked by:

Vehicle Registration Clerk

Date

Registration approved by:

Off Commissioner for Transport

Date

Registration Fee \$ R/No.
Licence Fee \$ R/No.
F.R. Tax \$ R/No.
C.P. Tax \$ R/No.
Total: \$

此合約簽訂於一九七 年 月 日由合誠汽車有限公司
Agreement made the 30th day of June 197 6 between HONEST MOTORS LIMITED
地址香港中環道西廿三號至廿三號A (以下簡稱賣方) 與 Leung Chow Public
of 23 23A Canal Road West G/F. Hong Kong (hereinafter called the "Sellers") and Mr./Car Co.

60, Nathan Road, 12/F, Flat B-3, Hongkong. (hereinafter called the "Buyer")
雙方同意根據此合約背面所列之條款賣方出售及買方
whereby the sellers agree to sell and the buyer agrees to purchase the goods specified below subject
購入下列之商品
to the terms and conditions contained on the back hereof.

合誠汽車有限公司
HONEST MOTORS LTD.

輛		Nissan Datsun Cedric 2200 Diesel Sedan.			
100 unit(s)		For Public Car Use.		1 unit	100 units
其他	1 unit	100 units			
other terms					
Licence Fee 牌費	\$ 910.-	91,000.-	訂價	34,900.-	3,490,000.00
Registration Fee 註冊費	\$		List Price @ \$	HK\$	
Accessories 附件	\$		折扣	Discount:	2,617.50 261,750.00
Licence Plate 車牌	\$ 28.-	2,800.-	實價	\$	
Body Painting 噴油	\$		Net	HK\$	
Insurance 保險	\$ 450.-	145,000.-		32,282.50	3,228,250.00
Licence Retention 留牌	\$				
H/P Settlement 結會	\$			2,408.00	240,800.00
Fender Mirror	20.-	2,000.-		\$	
			加	合計	
			Plus	Total HK\$	34,690.50 3,469,050.00

Trade-in car 收入車輛

Make & Model 牌子及型式	
Lic. No. 車牌	Year 年份

H/P Investment 車會 (months 月) \$
Down Payment 首期 Deposit: \$ 10,000.00 Minus \$ 10,000.00

REMARKS: The above deposit will be subject to refund to buyer provided that the application for the said 100 units of public car licence would be rejected by Hong Kong Government in due course and Important! that such refund will be made upon presentation of such written notice

- for the above concerns as evidence. The above price and licence fee are subject to change or be revised at the time of delivery of the vehicle(s).
- 車如非由本公司安裝冷氣機或其它附件因而引致該車機件失常或損壞，本公司不負該車保用責任。 Any deterioration in motoring performance resulting from an air conditioning installation or any accessories other than our own will not be regarded as liability for "new car" warranty.

referred to in the affirmation/affidavit of Tse Kai Chow this day of 197 - - 3 MAR 1977 Before me,

船期 / Delivery: To Be Arranged
營業代表 Company (Tse Kai Chow)
Salesman:

For and on behalf of
COMMISSIONER
HONEST MOTORS LIMITED

貴客付款請索公司收據

[Signature]
買方 Buyer

[Signature]
賣方 Sellers

In the Supreme
Court of Hong
Kong

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Exhibits
referred to in
the Affidavit of
Tse Kai Chow
(continued)

1. If after having been notified by the sellers of their readiness to deliver the goods the buyers fail to take delivery of and pay for the same in accordance with this contract they shall pay to the sellers monthly thereafter a sum equal to 12% per annum on the overall contract price to cover interest godown rent and fire insurance without prejudice to the right of the sellers at any time to call on the buyers to pay for and take delivery of the goods forthwith. In the event of the buyers failing to comply with this clause the sellers shall be at liberty on their own account to sell or otherwise deal with and dispose of the goods in such manner as they may deem fit and the buyers shall be liable for all losses and expenses that the sellers may incur thereby.
2. The sellers shall not be responsible for any delay in fulfilling or for the non-fulfilment of this contract caused by fire, strikes, war, warlike operations, civil commotions, epidemics, floods, typhoons, lockouts, Government prohibitions, restriction, requisition, or any Government action of whatsoever nature, scarcity of tonnage, breakdown of machinery or by the detention, deviation, delay or loss owing to any cause whatsoever of the steamer by which the goods are shipped or by any other incidents or circumstances beyond the control of the sellers whether of a similar nature to the foregoing or not. If the arrival of the goods or any portion thereof be delayed owing to the above causes the buyers shall nevertheless take delivery of and pay for the same on arrival according to the terms hereof. Should the goods be lost in transit this contract shall be considered null and void and the buyers shall have no claim whatsoever against the sellers.
3. The sellers may in their discretion insure against war risk and in the event of such insurance being effected the same shall be for the account of the buyers but the sellers shall not incur any liability by reason of such insurance not having been effected.
4. No claim in respect of the goods or under this contract shall be made against the sellers unless it be made in writing within seven days after the arrival of the goods in Hongkong nor shall any such claim be made after delivery has been taken and the goods have been removed from the place of delivery by the buyers.
5. Fire insurance in respect of the goods while the same shall be stored in a godown in Hongkong prior to delivery thereof the buyers shall also be effected by the sellers (subject nevertheless to the conditions of the preceding clause) but any loss or damage to the goods caused by typhoons, floods and any other risk to the same not covered by fire insurance shall be for account of the buyers.
6. Any breach by the buyers of any of the terms of this contract shall entitle the sellers to forfeit without notice any deposit paid to them by the buyers without prejudice to any other claims which the sellers may have against the buyers in respect of any such breach.
7. Notwithstanding anything herein contained sellers have the option of demanding payment for the said goods or any portion thereof before delivery is made to the buyers.
8. Should any dispute arise between the buyers and sellers in relation to this contract which they are unable themselves to settle the same shall be referred to the arbitration of two persons one to be nominated by the Hongkong Chamber of Commerce and the other (who must be a British Merchant) by the buyers and the provision of the Hongkong Code of Civil Procedure with reference to arbitrations are incorporated in this contract.
9. Sellers shall recognise only specifications in accordance with manufacturers' current standards and shall not be responsible for fittings, equipment and accessories other than those specified herein.
10. Sellers shall not be responsible for any fittings equipment and accessories constructed not by the manufacturer although such fittings equipment and accessories are constructed by sellers in Hongkong at the request and full cost and risk of the buyers.
11. The terms & conditions of this contract will not prejudice the conditions of manufacturer's warranty.
12. Sellers will not be bound by any conditions rebates, or any other matter which are not expressly contained in their contracts.

HONEST MOTORS LTD.
23-23A, Canal Road, W., G/F., Hong Kong

In the Supreme
Court of Hong
Kong

Cable Address
"HONEMOTOR" HONG KONG
Telex 74731 Honemo HX
Telephones:
5-740301 (10 Lines)

A5

Exhibits
referred to in
the Affidavit of
Tse Kai Chow

Supplement to Contract Nos.
T1647 to T-1746 dated 13 JUL 1976
30th June, 1976.

(continued)

10

We, Honest Motors Ltd. (hereinafter referred to as seller) hereby give in the following the engine and chassis numbers of forty-seven (47) units Datsun Cedric 220C Diesel Sedan being partial quantity available for delivery of the related contract to M/s. Leung Chow Public Car Co. (hereinafter referred to as buyer). However, seller is entitled to be free to sell the above mentioned vehicles to any other customer before buyer's taking delivery of the vehicles.

20

<u>MODEL</u>	<u>CHASSIS NO.</u>	<u>ENGINE NO.</u>
Q330SU 40	Q330- 003818	SD22-157987
"	003796	157983
"	003711	157824
"	003871	158072
"	003806	157990
"	003671	157041
"	003672	157658
"	003673	157118
"	003674	157579
30	" 003675	157040
"	003676	157042
"	003677	157191
"	003678	157908
"	003679	157498
"	003724	157823
"	003725	154154
"	003727	157497
"	003728	157825
"	003729	157738
40	" 003730	157418
"	003731	157267
"	003764	157904
"	003765	157984
"	003788	157986
"	003789	157989
"	003790	157985

To be cont'

In the Supreme
Court of Hong
Kong

A5

Exhibits
referred to in
the Affidavit of
Tse Kai Chow

(continued)

HONEST MOTORS LTD.
23-23A, Canal Road, W., G/F., Hong Kong

Cable Address
"HONEMOTOR" HONG KONG
Telex 74731 Honemo IIX
Telephones:
5-740301 (10 Lines)

13 JUL 1976

- 2 -

<u>MODEL</u>	<u>CHASSIS NO.</u>	<u>ENGINE NO.</u>	
Q330SU 40	Q330- 003791	SD22- 158065	10
"	003792	157988	
"	003793	157991	
"	003794	158063	
"	003841	158149	
"	003842	158153	
"	003843	158236	
"	003845	158229	
"	003846	158231	
"	003847	157907	
"	003848	158228	20
"	003890	158234	
"	003891	158232	
"	003892	158067	
"	003893	157909	
"	003894	158314	
"	003895	158313	
"	003930	158393	
"	003931	158391	
"	003932	158064	
"	003935	158066	30

for and on behalf of
HONEST MOTORS LTD.

(Sd.)

(Sd.)

Authorized Signature

ORIENTAL FIRE & GENERAL INSURANCE CO., LTD.
C/N855

In the Supreme
Court of Hong
Kong

Hongkong 15th July, 1976.

A5

10 M/s. Leung Chow Public Car Co. having proposed for insurance in respect of the Motor Vehicle described in the Schedule below and having paid the sum of the risk is hereby held covered in terms of the Company usual form of Public Hire Car Policy applicable thereto for a period of 30 days that is to say from 14/7/76 a. m. / p. m. on the above date to the same time on the thirtieth day after such date unless cover be terminated by the Company by notice in writing in which case the insurance will thereupon cease and a proportionate part of the annual premium otherwise payable for such insurance will be charged for the time that the Company has been on risk.

Exhibits
referred to in
the Affidavit of
Tse Kai Chow
(continued)

SCHEDULE

Index Mark and Regis- tration No. (if known)	Horse Power or	Used only for the following
or Chassis or Frame No.	Make	purposes
- AS PER LIST ATTACHED -		Cubic Capacity
		Social Domestic and Pleasure Pur- poses and for the Insured's Business or Profession

MOTOR VEHICLES INSURANCE (THIRD PARTY RISKS)
ORDINANCE, 1951
CERTIFICATE OF INSURANCE

30 I HEREBY CERTIFY that this covering note is issued in accordance with the provisions of the abovementioned Ordinance.

for ORIENTAL FIRE & GENERAL INS.CO.LTD.
The Pacific Marine & General Ins.Co.Ltd.

(Sd.)

Chief Agents

This is the exhibit marked "TKC-4d"
referred to in the affirmation of Tse
Kai Chow this day of 197 .
3 MAR 1977

Before me,

(Sd.) R.D. BIALA

Commissioner for Oaths.

In the Supreme Court of Hong Kong	<u>Model</u>	<u>Make</u>	<u>Chassis No.</u>	<u>Cubic Capacity</u>	<u>Engine No.</u>	<u>Year of Manu- facture</u>
-----	Q330SU	Nissan Datsun	Q330-	2164 cc.	SD22 -	1976
A5	40	Cedric 220C	003818		157987	
	"	"	003796	"	157983	"
Exhibits	"	"	003711	"	157824	"
referred to in	"	"	003871	"	158072	"
the Affidavit of	"	"	003806	"	157990	"
Tse Kai Chow	"	"	003671	"	157041	" 10
(continued)	"	"	003672	"	157658	"
	"	"	003673	"	157118	"
	"	"	003674	"	157579	"
	"	"	003675	"	157040	"
	"	"	003676	"	157042	"
	"	"	003677	"	157191	"
	"	"	003678	"	157908	"
	"	"	003679	"	157498	"
	"	"	003724	"	157823	"
	"	"	003725	"	154154	" 20
	"	"	003727	"	157497	"
	"	"	003728	"	157825	"
	"	"	003729	"	157738	"
	"	"	003730	"	157418	"
	"	"	003731	"	157267	"
	"	"	003764	"	157004	"
	"	"	003765	"	157084	"
	"	"	003788	"	157086	"
	"	"	003789	"	157989	"
	"	"	003790	"	157985	" 30
	"	"	003791	"	158065	"
	"	"	003792	"	157088	"
	"	"	003793	"	157991	"
	"	"	003794	"	158063	"
	"	"	003841	"	158149	"
	"	"	003842	"	158153	"
	"	"	003843	"	158236	"
	"	"	003845	"	158229	"
	"	"	003846	"	158231	"
	"	"	003847	"	157907	" 40
	"	"	003848	"	158228	"
	"	"	003890	"	158234	"
	"	"	003891	"	158232	"
	"	"	003892	"	158067	"
	"	"	003893	"	157909	"
	"	"	003894	"	158314	"
	"	"	003895	"	158313	"
	"	"	003930	"	158393	"
	"	"	003931	"	158391	"
	"	"	003932	"	158064	" 50
	"	"	003935	"	158066	"

HONEST MOTORS LTD.
23-23A, Canal Road, W., G/F., Hong Kong

In the Supreme
Court of Hong
Kong

Cable Address
"HONEMOTOR" HONGKONG
Telex 74731 Honemo HX
Telephones:
5-740301 (10 Lines)

A5

Exhibits
referred to in
the Affidavit of
Tse Kai Chow

30th June, 1976.

(continued)

10 for Commissioner for Transport
Transport Office,
No. 2, Murray Rd.,
Hong Kong.

Dear Sir,

Re: 100 Units Public Car for
Messrs. Leung Chaw Public Car Company
(Mr. Tse Kai Chow)

Please be advised that the above vehicles will be
under our company's service and maintenance from the
date of licensing for one year.

20 Your kind attention to the above will be highly
appreciated.

Yours very truly,
for HONEST MOTORS LTD.,

(Sd.) HENRY KWOK,

Manager.

This is the exhibit marked "TKC-4e"
referred to in the affirmation of Tse
Kai Chow this day of 197 .
3 MAR 1977

Before me,

(Sd.) R. D. BIALA

Commissioner for Oaths.

In the Supreme
Court of Hong
Kong

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Exhibits
referred to in
the Affidavit of
Tse Kai Chow

(continued)

BANK OF AMERICA

Bank of America Building
1, Kowloon Park Drive
P.O. Box 2294
Kowloon Central Post Office
Kowloon, Hong Kong

July 14, 1976

Hong Kong Transport Dept.
Hong Kong

Gentlemen:

10

We are pleased to inform you that Mr. Tse Kai
Chow maintains a substantial Time Deposit Open Account
with us since August 24, 1973 with balances averaging in
low seven figures.

Should you require any further information please
let us know.

Sincerely yours,

(Sd.) THOMAS K.K. HO

Pro-Assistant Cashier

TKKH/vl

20

This is the exhibit marked "TKC-4f"
referred to in the affirmation of Tse
Kai Chow this day of 197 .
3 MAR 1977

Before me,

(Sd.) R.D. BIALA

Commissioner for Oaths.

To: Commissioner for Transport Department, Hong Kong. From: Leung Chow Public Car Co. Name (in Block Letter) of Registered Owner of Vehicle No. Q330-003893 In the Supreme Court of Hong Kong A5

Declaration of *Taxi/*Public Car Parking Accommodation on renewal of licence or transfer of ownership Exhibits referred to in the Affidavit of Tse Kai Chow (continued)

(Road Traffic (Taxis, Public Omnibuses, Public Light Buses and Public Cars) Regulations, Cap. 220, Regulation 5(2))

(N.B. One form should be completed in respect of each vehicle)

I hereby declare that my vehicle No. Q330-003893 is, and continues to be, accommodated as follows:-

1. This ~~*H.K./Kowloon taxi~~/*public car has been accommodated continuously at STT No. 25, Ha Kwai Chung, T.W.N.T. since _____ up to present. A certificate issued by the carpark owner to this effect is appended.
2. I undertake to renew the certificate on its expiry.
3. I understand that, if I wilfully give any false information, I shall render myself liable under section 33(2) of the Road Traffic Ordinance. (Cap. 220) to a fine of \$1,000 and imprisonment for six months.

Date: 15 JUL 1976 Signature of Registered Owner of Vehicle No. Q330-003893 (Sd.) _____

Certificate of *Taxi/*Public Car Parking Accommodation

I hereby certify that I have provided parking accommodation at STT No. 25, Ha Kwai Chung, T.W.N.T. for Vehicle No. Q330-003893.

2. I further certify that the accommodation is adequate for the abovementioned vehicle and any other vehicles using it, all parked at the same time.
3. I understand that, if I wilfully give any false information, I shall render myself liable under section 33(2) of the Road Traffic Ordinance (Cap. 220) to a fine of \$1,000 and imprisonment for six months.

Date: 15 JUL 1976 Signature of (Sd.) CHAU PING carpark owner CHAU PING Name (in BLOCK LETTER)

This is the exhibit marked "TKC-4g" referred to in the affirmation of Tse Kai Chow this day of 197 . 3 MAR 1977

Before me, (Sd.) R. D. BIALA Commissioner for Oaths.

In the Supreme
Court of Hong
Kong

A5

Exhibits
referred to in
the Affidavit of
Tse Kai Chow
(continued)

ORIGINAL
DUPLICATE

Form 2

(reg. 5)

Business Registration Regulations
Business Registration Ordinance

BUSINESS REGISTRATION CERTIFICATE

NAME OF HOLDER	LEUNG CHOW PUBLIC CAR CO. 16.11	Business Registration Office
ADDRESS	Flat B-3, 12/F., Mirador Mansion, No. 60, Nathan Road, Kln. 456086	Hong Kong 2 JUL 1976
NATURE OF BUSINESS	Public Cars Transportation & P.L.B.	
STATUS	Partnership	

10

DATE OF COMMENCEMENT

Valid for 12 months from:-	Certificate No.	Fee
Nov 75	456086	\$150.00

Attention is drawn to the following provisions of the Business Registration Ordinance.

Sec. 8 (1) Where there occurs any change in the particulars of a business as set out in the form of application for registration (whether such form was submitted under this Ordinance or under the Business Regulation Ordinance 1952) any person carrying on such business shall within one month of such change notify the Commissioner in writing thereof.

20

(2) Where a business ceases to be carried on any person who was carrying on such business shall within one month of the cessation notify the Commissioner in writing thereof.

Sec. 12 Provides that valid business registration certificate or duplicate thereof shall be displayed at every address where business is carried on.

30

Sec. 15 Provides penalties for offences against the Ordinance consisting of a fine of \$2,000 and to imprisonment for one year.

RECEIVED FEE

HERE STATED IN 17 XI 75 8606 000.150.00 00456086
PRINTED FIGURES

This is the exhibit marked "TKC-4h"
referred to in the affirmation of
Tse Kai Chow this day of 197 .
3 MAR 1977

Before me,

(Sd.) R. D. BIALA

Commissioner for Oaths.

CT 1311/274/75 (15)

KCT/5006/75

16th July, 1976

A5

The Commissioner for Transport,
Transport Department,
No. 2, Murray Road,
Hong Kong.

Exhibits
referred to in
the Affidavit of
Tse Kai Chow
(continued)

Dear Sir,

Re: Application for Public Car Licences

10 We refer you to your letters to us dated respectively
6th and 27th January 1976 and our replies thereto dated
respectively 9th January, 1976 and 15th June 1976.

We have now retained Mr. Martin Lee of counsel to
represent our client in this matter.

20 Counsel has expressed surprise in your use of the
word "committed" in your said two letters. It appears
that you are not saying that the applicants for the Public
Car Licences have already been registered as such.
Counsel wonders whether by the word "committed" you
mean that the statutory application forms have been
supplied to the applicants at their request.

Please furnish us with a reply at your earliest
convenience as to what you mean by the word "committed".

Yours faithfully,

This is the exhibit marked "TKC-5a"
referred to in the affirmation of Tse
Kai Chow this day of 197 .
3 MAR 1977

Before me,

(Sd.) R.D. BIALA

Commissioner for Oaths.

In the Supreme
Court of Hong
Kong

BY HAND

TRANSPORT DEPARTMENT,
2, Murray Road,
Hong Kong.

A5

Exhibits
referred to in
the Affidavit of
Tse Kai Chow

Our ref. CT 1311/274/75 (18)
Tel. 5-260121 Ext. 262

22nd July, 1976

Dear Sirs,

Application for Public Car Licences

(continued)

I refer to your letter ref. KCT/5006/75 dated 15th July 1976 and regret to inform you that your application for registration of 47 public cars is not approved under Reg. 17(1) of the Road Traffic (Registration & Licensing of Vehicles) Regulations and is barred from consideration in consequence of the Gazette Notice 2670 of 5th December 1975 limiting the number of motor vehicles that may be registered as public cars.

10

In future, if 'vacancies' for public cars arise, any applications received by this Department before the vacancies exist may be determined by lot in accordance with Regulation 18B(3) of the Road Traffic (Registration & Licensing of Vehicles) Regulations.

20

I return herewith \$470.00 in cash together with 47 application forms and parking accommodation certificates.

Yours faithfully,

(Sd.) CHEUNG Yuk-yin

for Commissioner for Transport

Messrs. K.Y. Woo & Co.,
Solicitors,
1st floor, Tak Woo House,
17-19 D'Aguilar Street,
Hong Kong.

30

This is the exhibit marked "TKC-5b" referred to in the affidavit of Tse Kai Chow this 3rd day of March 1977.

Before me,

(Sd.) R.D. BIALA

Commissioner for Oaths.

TRANSPORT DEPARTMENT,
2, Murray Road,
Hong Kong.

In the Supreme
Court of Hong
Kong

Our ref. CT 1311/274/75 (21)
Tel. 5-260121 Ext. 262

12th August, 1976

A5

Dear Sirs,

Re: Application for Public Car Licences

Exhibits
referred to in
the Affidavit of
Tse Kai Chow

(continued)

10 With reference to your letter ref. KCT/5006/75
dated 16th July 1976, I understand you visited Crown
Counsel at the beginning of the last week in July together
with Mr. Martin Lee, Barrister, to discuss the meaning
of the word "committed" in relation to this matter. I
assume therefore that the matter has been clarified for
you in somewhat more detail than would be possible by
letter.

There is one point I should make clear however,
and that is that "committed" does not have reference to
the supply of application forms to applicants at their
request.

20

Yours faithfully,

(Sd.) CHEUNG Yuk-yin

for Commissioner for Transport

Messrs. K.Y. Woo & Co.,
Solicitors,
1st floor, Tak Woo House,
17-19 D'Aguilar Street,
Hong Kong.

This is the exhibit marked "TKC-6"
referred to in the affidavit of Tse Kai
Chow this 3rd day of March 1977.

Before me,

(Sd.) R.D. BIALA

Commissioner for Oaths.

In the Supreme
Court of Hong
Kong

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Affirmation of
Woo Kwok Yin
4th March 1977

A6
Affirmation of Woo Kwok Yin

1976, NO. 750

IN THE SUPREME COURT OF HONG KONG
HIGH COURT
MISCELLANEOUS PROCEEDINGS

IN THE MATTER of the Road Traffic
Ordinance, Cap. 220 of the Laws of Hong
Kong

and

IN THE MATTER of the Road Traffic
(Registration & Licensing of Vehicles)
Regulations

10

and

IN THE MATTER of applications dated 15th
July 1976 for the registration of 47 vehicles
as Public Cars

BETWEEN LEUNG CHOW PUBLIC CAR
COMPANY (a firm) Plaintiffs
and
THE ATTORNEY GENERAL Defendant

I, WOO KWOK YIN of 1st floor, Tak Woo House,
17-19 d'Aguilar Street, Victoria in the Colony of Hong Kong
Solicitor of the Supreme Court, do solemnly, sincerely and
truly affirm and say as follows :-

20

1. I am the principal of Messrs. K. Y. Woo & Co.,
solicitors for the plaintiffs herein, and have been having
the conduct of these proceedings and the preliminary steps
taken before the institution of these proceedings.

2. I crave leave to refer to paragraph 16 of the affirma-
tion of Mr. Tse Kai Chow affirmed herein on 3rd March
1977, and I confirm the contents thereof.

3. On 23rd July 1976, I was present at a conference
held between Mr. Russell Johnson, Crown Counsel advising
the Commissioner for Transport on the matters relating to

30

these proceedings and Mr. Martin Lee, counsel then instructed by my firm to act on behalf of the plaintiffs herein at the Attorney General's Chambers, Central Government Offices. The purpose of the said conference was to enable the plaintiffs and their legal advisers to obtain information as to the exact nature of the so-called "committed" licences. During the said conference Mr. Johnson stated that all vacancies in respect of public car licences were "committed" and not available because of the "reverse procedure" of application for the said vacancies. Mr. Johnson explained the "reverse procedure" as follows :-

10

- (a) an applicant wrote in to the Transport Department to inquire whether licence(s) would be issued to him;
- (b) the Transport Department would write back in certain cases and prescribe the conditions for the issuance of licence(s) to that particular applicant;
- (c) the applicant would then relying on the said letter of reply purchase the appropriate vehicles and comply with the conditions so prescribed; and
- (d) after all compliance with the said conditions, the Transport Department would then issue the licence(s).

20

In short, "committed" meant that the Commissioner promised to issue a licence on compliance of certain conditions prescribed by him in a letter setting out the promise and the conditions.

30

4. At the end of the said conference, Mr. Johnson said that there were other cases in the course of being tried concerning similar matters to those of the present one; and told Mr. Martin Lee that he would let Mr. Lee know the outcome of the plaintiffs' applications when those cases would be decided in the light of such decisions. However, there has been so far no indication or information from Mr. Johnson or the Commissioner in that respect.

And lastly I do solemnly, sincerely and truly affirm and say that the contents of this my affirmation are true.

AFFIRMED AT the Courts of)
Justice, Victoria, Hong Kong,) (Sd.) K. Y. WOO
this 3rd day of March, 1977.)

40

Before me,
(Sd.) CHUNG HOW TING Senior Bailiff (Judiciary)
Commissioner for Oaths.

This affirmation is filed on behalf of the plaintiffs.

In the Supreme
Court of Hong
Kong

A6

Affirmation of
Woo Kwok Yin

4th March 1977

(continued)

In the Supreme
Court of Hong
Kong

A7

Affidavit of Cheung Yuk Yin

A7

1976, No. 750

Affidavit of
Cheung Yuk Yin

19th May 1977

IN THE SUPREME COURT OF HONG KONG
HIGH COURT
MISCELLANEOUS PROCEEDINGS

IN THE MATTER of the Road Traffic
Ordinance, Cap. 220 of the Laws of Hong
Kong

and

IN THE MATTER of the Road Traffic
(Registration and Licensing of Vehicles)
Regulations

10

and

IN THE MATTER of application dated 15th
July 1976 for the registration of 47
vehicles as Public Cars

BETWEEN LEUNG CHOW PUBLIC CAR
COMPANY (a firm) Plaintiffs
and
THE ATTORNEY GENERAL Defendant

I, CHEUNG Yuk-yin, Senior Executive Officer,
Public Vehicles, Transport Department, Hong Kong
Government, do make oath and say as follows :- 20

1. I am conversant with these matters and am able
and authorised to depose to the matters following.

2. "Public cars" were first introduced into Hong Kong
by the Road Traffic Ordinance, No. 39 of 1957. In 1961,
it was amended to be named as "hire cars". It was
renamed as "public cars" in 1964 and the meaning of
which is now defined in section 2(2)(c) of the Road Traffic
Ordinance, Cap. 220. The issue of licences for public
cars is not subject to public tender, nor to payment of
any premium. 30

3. In June 1973, as it was felt that there was a growing tendency of public cars being used by their operators as "pirate taxis" the Transport Advisory Committee advised that certain criteria and conditions had to be observed in the processing of application for registration of public cars and these criteria and conditions are summarised in the letter from the Transport Department to the Hong Kong Tourist Association dated 26th June 1973 which is exhibited hereto and marked "CYY - 1". Some of these criteria and conditions are also incorporated into the prescribed form entitled the "Application for Public Car Licences" for the information of the general public. Exhibit hereto and marked "CYY-2" is the said prescribed form.

In the Supreme Court of Hong Kong

A7

Affidavit of
Cheung Yuk Yin

19th May 1977

(continued)

4. At the end of October 1975, as a result of the case WONG KWONG SHING v A.G.M.P. No. 212 of 1975, it was decided to publish in the Gazette a limit on the number of public cars to 1,388 that may be registered and licensed. But owing to administrative delay the Gazette notice was not actually published until 5th December 1975. This figure 1,388 was the added total at the end of October 1975 of the number of vehicles actually registered and licensed as public cars and the number reserved for operators whose special prescribed application form for public cars had been duly investigated and approved in principle. This reserved number had been referred by me as "committed ones" in my letter to the plaintiff dated 6th January 1976 (Exhibit TKC-2e).

5. I crave leave to refer to paragraph 4 of the plaintiff's affirmation. It is impossible to ascertain whether or not the plaintiff called on the department as therein stated. However, it would be most unlikely that the plaintiff was refused to have the special application form for public cars on the ground as he alleged, namely, he had instructed solicitors to apply on his behalf.

6. I crave leave to refer to the last sentence of paragraph 5 of the plaintiff's affirmation. Again it is impossible to ascertain whether or not the plaintiff called on the department as therein stated. If there was any refusal, which is denied, it would be on the ground that a Gazette limit on public cars had been published on 5th December 1975.

7. I crave leave to refer to paragraph 7 of the plaintiff's affirmation and Exhibit TKC-2e. At the time of writing the letter (Exhibit TKC-2e) I was thinking of

In the Supreme
Court of Hong
Kong

A7

Affidavit of
Cheung Yuk Yin
19th May 1977
(continued)

giving the plaintiff a simple reply and quoted therefore only Regulations 18B(1) and 17(2) of the Road Traffic (Registration and Licensing of Vehicles) Regulations but I like to stress that my approach to the whole case right from the start was to rely also on the general application of Regulation 17(1) of the said Regulations.

8. I crave leave to refer to paragraph 9 of the plaintiff's affirmation. Again it is impossible to ascertain whether or not the plaintiff called on the department as therein stated. If there were any refusal, which is denied, it would be on the ground that a Gazette limit on public cars had been published on 5th December 1975.

10

9. I crave leave to refer to paragraph 12 of the plaintiff's affirmation. I presume that the application forms referred to therein by the plaintiff were general application form, T.D.22 as shown in Exhibit TKC-4b and not as Exhibit CYY-2.

10. I crave leave to refer to paragraph 13 of the plaintiff's affirmation. The evidence therein as to the documents forwarded by the letter of 15th July 1976 is inaccurate as the contract note of the Honest Motors Ltd. (Exhibit TKC-4e) was not submitted to the Transport Department with the letter of 15th July 1976 as alleged. Apart from the fact that it was not submitted, the contract note (Exhibit TKC-4e) was not referred to in the plaintiff's covering letter of 15th July 1976. It is to be noted that the plaintiff's application letter of 15th July 1976 was sent after the publication of the Gazette Notice of 5th December 1975 (Exhibit TKC-3).

20

11. The contract of purchase of vehicles (Exhibit TKC-4c) purports to be entered into prior to obtaining the approval in principle from the Transport Department to register and license public cars. The motor vehicle dealer concerned therefore seemed to be departing from what I understand to be the usual practice of selling vehicle only after an approval in principle is obtained. It should also be noted that this contract of sale relates to 100 vehicles whereas the letter of application of 15th July 1976 relates to 47 vehicles only. That letter also seeks registration and licensing of 47 vehicles whereas fees were only paid for registration.

30

40

12. I crave leave to refer to paragraph 14 of the plaintiff's affirmation. It is not admitted that the vehicles concerned are qualified in all respects with the

Road Traffic (Registration and Licensing of Vehicles) Regulations or the Road Traffic (Construction and Use) Regulations. It is to be noted that in page 3 of the Contract Note of Sale (Exhibit TKC-4c) part of the conditions mentioned is that "the seller is entitled to be free to sell the above-mentioned vehicles to any other customer before buyer's taking delivery of the vehicles". In my three years' experience in the Transport Department, I have never come across such a clause in a contract of sale of public service vehicles. In view of that clause, he cannot be regarded as the owner of a motor vehicle as required under Regulation 4 of the Road Traffic (Registration and Licensing of Vehicles) Regulations. Besides, after receipt of a valid "clean" application under Regulation 4 of the Road Traffic (Registration and Licensing of Vehicles) Regulations inspections pursuant to Regulation 18A(1) et seq have to be carried out whether the vehicles are new or used. These have not been done.

In the Supreme Court of Hong Kong

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Affidavit of Cheung Yuk Yin

19th May 1977

(continued)

10

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30

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13. According to the record of the Transport Department, 12 of the 47 vehicles referred to in the letter of application of 15th July 1976 (Exhibit TKC-4c), and general application form T.D. 22 (Exhibit TKC 4-b) were sold to persons other than Tse Kai Chow or Leung Chow Public Car Co. by the Honest Motors Ltd. in the month of July 1976. In fact, two of these vehicles were registered respectively as a private car (Engine No. SD22-157990) and as a Hong Kong and Kowloon Taxi (Engine No. SD22-157825) on the very day of my sending out the letter of refusal (Exhibit TKC-5b), namely, 22nd day of July 1976. Exhibits hereto and marked "CYY-3" and "CYY-4" are the certified first registration certificates of the said vehicles. Of the remaining 35 vehicles referred above, 20 were registered for the first time in August 1976, 7 in September 1976 and 1 in October 1976, all in the names of persons other than that of Tse Kai Chow or Leung Chow Public Car Co. As for the remaining 7 vehicles in question, the Honest Motors Ltd. confirmed that they had exported those vehicles out of Hong Kong.

14. Exhibit hereto and marked "CYY-5" is the certified first registration certificate of vehicle, Engine No. SD22-157909, Chassis No. Q330-003893, in the name of registered owner Cheung Shun Choi. This is the same vehicle which Tse Kai Chow declared as the registered owner in Exhibit TKC-4g.

15. I crave leave to refer to paragraphs 19 and 20 of the plaintiff's affirmation and paragraphs 3 and 4 of the affirmation of Mr. Woo Kwok Yin, the plaintiff's solicitor

In the Supreme
Court of Hong
Kong

A7

Affidavit of
Cheung Yuk Yin

19th May 1977

(continued)

herein. I was informed by Crown Counsel Mr. R. J. Johnson and verily believe that he has sworn on 12th April 1977 an affidavit in respect of that meeting with Mr. Martin Lee and that he has filed that affidavit in the case High Court M.P. 749 of 1976. I respectfully ask this Honourable Court to refer to that affidavit of Mr. R. J. Johnson.

16. I crave leave to refer to paragraph 21 of the plaintiff's affirmation. I am advised by my legal advisers and verily believe that the application of Regulation 4 is affected by Regulations 6 and 17 of the Road Traffic (Registration and Licensing of Vehicles) Regulations.

10

17. I wish to add that in 1975, it was decided by the Government in principle to abolish the class of public cars and to introduce a contract hire car permit to allow private cars to be used for carrying passengers for hire or reward. It has been announced in the press by the Government in 1976 that licensees of public cars will be given an opportunity of converting their public cars to Hong Kong and Kowloon taxis on payment of a premium or to private cars with or without a contract hire car permit. This will take place as soon as the new legislation comes into force.

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And lastly I do make oath and say that the contents of this my affidavit are true.

SWORN at the Courts of)
Justice, Victoria, Hong Kong,) (Sd.)
this 19th day of May 1977)

before me:

(Sd.) R. D. BIALA

30

Commissioner for Oaths.

This affidavit is filed on behalf of the defendant.

A8

Exhibits referred to in the Affidavit of Cheung Yuk Yin

In the Supreme
Court of Hong
Kong

1976, No. 750

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IN THE SUPREME COURT OF HONG KONG
HIGH COURT
MISCELLANEOUS PROCEEDINGS

Exhibits
referred to in
Affidavit of
Cheung Yuk Yin

IN THE MATTER of the Road Traffic
Ordinance, Cap. 220 of the Laws of
Hong Kong

and

10

IN THE MATTER of the Road Traffic
(Registration and Licensing of Vehicles)
Regulations

and

IN THE MATTER of application dated
15th July 1976 for the registration of
47 vehicles as Public Cars

BETWEEN LEUNG CHOW PUBLIC
CAR COMPANY (a firm) Plaintiffs

and

THE ATTORNEY GENERAL Defendant

20

LIST OF EXHIBITS REFERRED TO IN THE AFFIDAVIT
OF CHEUNG YUK-YIN

<u>Exhibits Marked</u>	<u>No. of Sheets</u>
"CYY-1"	1
"CYY-2"	3
"CYY-3"	1
"CYY-4"	1
"CYY-5"	1

In the Supreme
Court of Hong
Kong

—
A8

Exhibits
referred to in
Affidavit of
Cheung Yuk Yin

(continued)

Tel.: 5-282724 Ext. 22

Ref.: CT 33/19 (58)

2, Murray Road,
Hong Kong.

26th June 1973.

Dear Sir,

Licensing of Public Cars

Before the 15th Annual General Meeting of your Association to be held on 28th June 1973, I trust you would like to know the present policy regarding the licensing of public cars.

It is the current policy to limit the issue of public car licences to organisations carrying on a business for which transport of tourists and visitors is an essential service. On the advice of the Transport Advisory Committee, the following licensing criteria and conditions have been adopted :-

10

Licensing criteria

(1) The applicant must be able to show satisfactorily that parking spaces (other than in a public car park) are available exclusively for the number of vehicles to be licensed.

20

(2) For hotels situated in districts well covered by taxis and hire cars, one public car licence may be considered for every 100 hotel rooms or any fraction thereof to the nearest 100, provided :

(a) that no public car licence will be considered in the case of a hotel with 50 rooms or less;

(b) that not more than 3 public car licences will be considered on first application.

(3) For hotels situated in outlying districts, one licence may be considered for every 50 rooms, or any fraction to the nearest 50, provided that not more than 3 licences will be considered on first application.

30

(4) For tourism firms whose business involves the carriage of passengers en masse, public omnibus licences should be considered instead.

Conditions of Issue

(1) A vehicle presented for licensing must be a new vehicle. A secondhand vehicle is not acceptable.

- (2) The licence is not transferable and must be surrendered for cancellation when it is no longer required and the registration is cancelled under Regulation 17B(b) of the Road Traffic (Registration and Licensing of Vehicles) Regulations. In the Supreme Court of Hong Kong

 A8
- (3) A vehicle must be clearly marked in English and Chinese writing, of uniform size not less than one inch in height, on the near and off side of the vehicle, with the name of the company to which the vehicle belongs. Exhibits referred to in Affidavit of Cheung Yuk Yin
 (continued)
- 10 (4) Before licensing, the applicant must file with the Licensing Office :-
- (a) a certificate signed by the owner of the car park that off-road parking spaces (equivalent in number to the vehicles) are available exclusively for accommodation of the vehicles;
- (b) an undertaking that the vehicle's registered owner will notify the Commissioner for Transport of any change in the location of the parking spaces. 20
- (5) A licence offered must be taken out within 9 months from the date of the offer. The offer lapses on the expiry of that period.

Yours faithfully,

(KWAN Tai-yan)
 for Commissioner for Transport

30 J. H. Pain, Esq.,
 Executive Director,
 Hong Kong Tourist Association,
 Realty Building,
 Connaught Road Central,
HONG KONG.

This is the exhibit marked "CYY-1" referred to in the Affidavit of Cheung Yuk Yin filed herein on the 19th day of May 1977.

Before me,

(Sd.)

A Commissioner for Oaths.

APPLICATION FOR PUBLIC CAR/~~FOR THE PURPOSES OF LICENSING~~

出租汽車公共巴士牌申請書
 Regulation 19 of the Road Traffic (Registration and Licensing of Vehicles)
 Regulations, Chapter 220.

道路交通(車輛登記及領牌)規例第220章第十九款

IMPORTANT

重要

- All appropriate sections must be completed. An incomplete form will be returned to the applicant.
 全部適填之欄均須填好。未填好之申請書將被退回與申請人。
- Completed forms should be sent, together with all supporting documents, to the Licensing Office, Murray Street,clamation, Hong Kong.
 填好之申請書，連所有支持申請之文件，應遞交香港上環林士街新填地交通處。
- Any change in particulars must be notified immediately.
 任何細節有改變時須立即通知本處。

TRANSPORT DEPARTMENT
 2, MURRAY ROAD,
 HONG KONG

To: Commissioner for Transport

香港英利道2號
 運輸署

Section A

Particulars of Applicant

第一欄

申請人詳情

Full name of applicant (in block capital)		Chinese Characters
申請人全名(請用正楷)		中文姓名
Surname 姓氏	Name 名字	
<ul style="list-style-type: none"> Mr. 先生 Mrs. 夫人 Miss. 小姐 Messrs. 商號 		

Hong Kong Identity Card No. or Passport No.

香港身份証號碼 或 護照號碼

Hong Kong Driving Licence No.

香港駕駛執照號碼

Address

地址

Telephone No.

電話號碼

Residential:

住宅

Business:

新商號

Company Name

商號名稱

Name - Business Registration Certificate No.

商業登記証號碼

herein on the 17th day of May 1977

Before me,

A Commissioner

頁二

Section B

Sole Proprietor

第二欄

全業

Nature of business :

營業性質

Present capital :

現金資本

Section C

Partnership

第三欄

股東

Name of firm :

商號名稱

Name of other partners :

其他股東姓名

Nature of business :

營業性質

Capital :

資本

Section D

Corporate Body

第四欄

團體

Name of Company :

商業名稱

Nature of business :

營業性質

Address of registered office :

註冊辦事處地址

Authorised capital :

法定資本

Names of directors/officials (Only directors and officials authorized to enter into contracts on behalf of the Company should be given) :

董事及職員姓名(祇將獲授權代表公司簽署合約之董事及職員姓名)

Full Name

Chinese Characters

(a) (A)

全名

中文姓名

(b) (B)

(c) (C)

(d) (D)

(e) (E)

(f) (F)

In the Supreme Court of Hong Kong

A8 Exhibits referred to in Affidavit of Cheung Yuk Yin (continued)

Section E

第五欄
No. of licences required (insert number in box)

申請牌照數目
(填於數目於格內)
Type of body:

(Please put a tick in the appropriate box)

車型(請填上一「✓」於合適之格內)

Name of manufacturer:

製造廠名稱:

Year of manufacture:

製造年份:

Used vehicles in respect of transfers only (registration Number/)

Previous owner (車牌號碼/前任車主):

Country of origin (出廠地點):

Type of engine (petrol/diesel):

引擎類型(汽油/柴油):

Seating capacity (excluding driver)

座位數額(司機除外):

Licences applied for

Public Cars
公共汽車
出牌汽車
公共巴士

Saloon
Sedan
Limousine

Limousine
(with Deck)
豪華巴士

轎車

Section F

Garage/Off Street Accommodation

第六欄

車房/街道以外停泊處

Address of premises

泊車處地址

Name of firm and/or proprietor

商號及/或業主姓名

Telephone No.

電話號碼

Total area available

可用之總面積:

sq. ft.

方尺

Area for applicant's use:

申請人可用面積

sq. ft.

方尺

Type of business conducted on premises

於停泊處經營之商業種類

Permit/Lease No.

執照/租約號碼

N.B. (a) approved premises must be available at all times. If such accommodation is not the property of the applicant, a copy of the agreement of tenancy between the prospective licensee and the landlord will be required for record purposes.
注意
認許之泊車處須隨時可用。如該泊車處並非申請人之產業，則應將一份未來持照人與業主簽署之租約副本存案。

(b) Evidence must also be produced to show that the use of the proposed premises does not infringe the Crown Lease or Permit for such property.
證人亦須證明所建議泊車處之用途並不抵觸該產業之政府地契或執照內之規定。

Section G

Details of Operations:

In the Supreme Court of Hong Kong

A8

Exhibits referred to in Affidavit of Cheung Yuk Yin

(continued)

服務週期：
服務週期：

Routes and Collection points :

路線及上落地點：

Section II

Additional Information

第八欄

附註

Has the applicant ever been convicted of an indictable offence?

申請人曾否因犯法被控訴而罪名成立？

Has applicant applied previously for licences to operate public service vehicles? If so, give details.

申請人以前曾否申請牌照經營公共車輛？如是請詳述。

Has applicant been granted public service vehicles? If so, give details.

申請人曾否獲准發給公共車輛？如是請詳述。

Class of Vehicle

Reg. No.

車輛類別

登記號碼

A8 Exhibits referred to in Affidavit of Cheung Yuk Yin (continued)

Section I

Supporting Documents

第九欄

證明文件

I forward herewith the following documents in support of my application :-

茲付上下列文件以證明本人之申請：-

(i)

(ii)

(iii)

(iv)

(v)

(vi)

(vii)

(viii)

(ix)

(x)

N.B. Please read carefully the notes on pages 6, 7, 8 and 9

注意請小心參閱六,七,八與九頁內之註解

Section J

Declaration

第十欄

聲名

I declare that to the best of my knowledge and belief the information given above is true. I understand that if I wilfully give any false or incomplete information, I shall render myself liable under 33(2) of the Road Traffic Ordinance, Cap. 220 to a fine of \$1,000 and imprisonment of 6 months.

茲聲名盡本人所知, 上列填報各情均屬真實, 本人亦明悉, 如故意提供失實或錯誤資料時則根據香港法例第二十二條道路交通規則第三十三條第二款之規定本人可受罰款一千元或監禁六個月。

Date:

Usual Signature of applicant:

日期

申請人簽署

出租汽車公共巴士牌照申請書註解

A. Public Car Licences
出租汽車牌照

A8
Exhibits referred to in Affidavit of Cheung Yuk Yin (continued)

1. Public car licences are issued only to organisations carrying on a business for which transportation of tourists in an essential service.

出租汽車牌照只發出與經營旅遊為主要之機構。

2. Licences are approved only where it is satisfactorily shown that omnibus licences will not serve the purpose and that the demand of transport service cannot be adequately met by other existing transport facilities.

倘申請人能證明巴士牌照並不合用，而其他現有之交通工具又不足以應付旅遊服務之需求，才獲批准發給牌照。

3. The following documents should be forwarded at the time of submission of the application form:

下列文件於呈遞申請書時應一併付來：-

(a) Certificate of Incorporation in the case of an incorporated body (copy only).

公司註冊證書副本(如屬團體)

(b) Memorandum and Articles of Association.

組織章程

(c) Business Registration Certificate (copy only).

商業登記証(副本)

(d) A brief description of business and detailed statistics showing the number of tourists handled in the past, the number of hotel rooms, etc.

營業概況與詳細統計表顯示過去所接待之旅客及酒店房間數目等。

(e) Audited accounts for the previous year where applicable.

已審核之去年賬目(如適用者)

(f) Reasons for the application (copies of agreements, etc. in support should be attached where available).

申請理由(如已備有合約之副本須付來以助申請)

(g) A statement of operation particulars (i.e. date, time, details of journeys, purpose, number of passengers carried, etc.) of all existing vehicles owned by the applicant's company for the past six months. Copies of agreements, etc. in support should be attached. (where appropriate).

一簡陳述有關過去六個月來申請人公司所擁有之全部車輛之運作詳情(日期、時間、旅程、目的、乘客數目等)之

(h) A statement of hired transport for the past three months together with supporting documents (where appropriate).

一簡陳述有關過去三個月來租賃運輸公共之有證明文件請一併付來。

(i) Parking accommodation certificate. (Section F refers).

泊車處証書(第199. 閱第六欄)

In the Supreme Court of Hong Kong

A8

No. A 086727

Exhibits referred to in Affidavit of Cheung Yuk Yin (continued)

TRANSPORT DEPARTMENT HONG KONG 香港運輸署

Road Traffic (Registration and Licensing of Vehicles) Regulations (Cap. 220)

道路交通(車輛登記及發牌)規例(第二二〇章)

CERTIFICATE OF PARTICULARS OF MOTOR VEHICLE

SUPPLIED UNDER REGULATION 8(2)

根據規例第八條第二節所供給之車輛登記細節證明書

This is to certify that on the (date) 22/7/76 the particulars in the register of motor vehicles maintained under regulation 8(1) in respect of motor vehicle registration mark B.L.1077 were as follows: 茲證明於(日期) 22/7/76 關於根據規例第八條第二節而設之車輛登記冊內之車輛細節如下

(1) Date of Registration 登記日期			(2) Registration Mark 登記號碼			
Day 日	Month 月	Year 年	Prefix 字首	Number 號碼		
22	7	1976	B.L.	1077		
(3) Full Name of the Registered Owner 註冊車主姓名						
Mr. (先生) 40			PUN SUM			
Mrs. (夫人)			(Surname) 姓			
Miss (小姐)			(First Name(s)) 名			
MENS (公司)						
(4) The Full Postal Address of the Registered Owner 註冊車主郵寄地址						
BLK. J, 11/F, 24A, SHAN KWONG RD. HAPPY VALLEY,						
(5) Name of Maker of the Motor Vehicle 車輛之廠名		(6) Country of Origin of the Motor Vehicle 車輛原產地		(7) Engine Number 機件號碼		
NISSAN		JAPAN		157990-5022		
(8) Cylinder Capacity 汽缸容量		(9) Weight Unladen and Maximum Permissible Laden Weight (if Applicable) 淨重及獲准之最高負重(如有規定者)				
164 c.c. 立方厘米		Unladen Weight 淨重		Maximum Permissible Laden Weight 獲准之最高負重		
2164		1 cwt. 擔(磅)		1 cwt. 擔(磅)		
(10) Type of Body (Saloon, Tourer, etc.) 車身款式 (房車、遊客車等)		(11) Colour of Body 車身顏色		(12) Seating Capacity, and in the case of an omnibus the number of standing passengers which may be lawfully carried on the vehicle 車輛依法可以載客之人數以及(如係一輛巴士)依法可載站立之搭客人數		
SALOON		WHITE		5 FIVE		
(13) Classification of Vehicle 車輛類別		(14) Licence Fee 牌費		(15) Amount of Tax Paid under the Commonwealth Preference (Motor Vehicles) Ordinance and Number of Receipt in respect thereof 依照英聯邦車輛特惠稅條例規定所繳之稅額及收據號碼		
PRIVATE CAR		\$750.00		HK\$ 港幣(元) 1		

FEE PAID: \$15 證費拾伍元繳訖

運輸署署長授權簽署

Date 19/7/77
 日期
 Shriff
 收據員
 T.D. 61 (S)

(代行)
 Commissioner for Transport
 運輸署署長
 LEUNG HING WING 157990-5022
 梁興榮 157990-5022
 referred to in the Affirmation Affidavit
 (Full name in block letters)
 (姓名——用正楷書寫)

herein on the 17th day of 1977
 Before me,

A Commissioner

J. G. Roy
 Acting Registrar
 28 JUL 1981

In the Supreme
 Court of Hong
 Kong

A8

Exhibits
 referred to in
 Affidavit of
 Cheung Yuk Yin
 (continued)

No. A 086725

TRANSPORT DEPARTMENT HONG KONG 香港運輸署

Road Traffic (Registration and Licensing of Vehicles) Regulations (Cap. 220)

道路交通(車輛登記及發牌)規例(第二二〇章)

CERTIFICATE OF PARTICULARS OF MOTOR VEHICLE

SUPPLIED UNDER REGULATION 4(2)

根據規例第八條第二節所供給之車輛登記細節證明書

This is to certify that on the (date) 22/7/81 the
 茲證明於 (日期) the
 particulars in the register of motor vehicles maintained under regulation 4(1) in respect of
 關於根據規例第八條第二節而設之車
 motor vehicle registration mark B.L.1105 were as follows:—
 輛登記冊內之 號車輛細節如下

(1) Date of Registration 登記日期			(2) Registration Mark 登記號碼		
Day 日	Month 月	Year 年	Prefix 字首	Number 號碼	
22	7	1976	B.L.	1105	
(3) Full Name of the Registered Owner 註冊車主姓名					
Mr. (先生) Mrs. (夫人) Miss (小姐) Messrs (公司) <u>LEE</u> (Surname) 姓			MING KEE (First Name(s)) 名		
(4) The Full Postal Address of the Registered Owner 註冊車主郵寄地址					
<u>FAT B, 13/F, 82, HING FAT ST., H.K.</u>					
(5) Name of Maker of the Motor Vehicle 車輛之廠名		(6) Country of Origin of the Motor Vehicle 車輛原產地		(7) Engine Number 機件號碼	
<u>NISSAN</u>		<u>JAPAN</u>		<u>157825-5022</u>	
(8) Cylinder Capacity 汽缸容量		(9) Weight Unladen and Maximum Permissible Laden Weight (If Applicable) 淨重及獲准之最高負重(如有規定者)			
		Unladen Weight 淨重		Maximum Permissible Laden Weight 獲准之最高負重	
<u>164</u> c.c. 立方厘米		<u>()</u> cwt. 磅(磅)		<u>()</u> cwt. 磅(磅)	
(10) Type of Body (Saloon, Tourer, etc.) 車身款式 (房車、遊客車等)		(11) Colour of Body 車身顏色		(12) Seating Capacity, and in the case of an omnibus the number of standing passengers which may be lawfully carried on the vehicle 車輛依法可以載客之人數以及(如係一輛巴士)依法可載站立之搭客人數	
<u>SALOON</u>		<u>RED-GREY</u>		<u>(5) FIVE</u>	
(13) Classification of Vehicle 車輛類別		(14) Licence Fee 牌費		(15) Amount of Tax Paid under the Commonwealth Preference (Motor Vehicles) Ordinance and Number of Receipt in respect thereof 依照英聯邦車輛特惠稅條例規定所繳之稅額及收據號碼	
<u>H.K. & K.L.N. TAXI</u>		<u>\$220.00</u> 港幣		<u>()</u>	

FEE PAID: \$15 證費拾伍元繳訖 運輸署署長授權簽署

Date 日期 19/5/81
 Shred 收銀

19/5/81

OFFICIAL - No Fee

(代行)
 For Commissioner for Transport
LEUNG HING WAI
 referred to in the Affidavit
 (Full name in block letters)
 (姓名——用正楷書寫)

herein on the 17 day of Aug 1981
 Before me,

A Commissioner

In the Supreme Court of Hong Kong

A 8

Exhibits referred to in Affidavit of Cheung Yuk Yin (continued)

No. A 086726

TRANSPORT DEPARTMENT HONG KONG 香港運輸署
Road Traffic (Registration and Licensing of Vehicles) Regulations (Cap. 220)
道路交通(車輛登記及發牌)規例(第二二〇章)
CERTIFICATE OF PARTICULARS OF MOTOR VEHICLE
SUPPLIED UNDER REGULATION 8(2)
根據規例第八條第二節所供給之車輛登記細節證明書

This is to certify that on the (date) 2/9/76 the particulars in the register of motor vehicles maintained under regulation 8(1) in respect of motor vehicle registration mark B L 3 9 1 4 were as follows:—
茲證明於(日期) 2/9/76 根據規例第八條第一節而設之車輛登記冊內之 B L 3 9 1 4 號車輛之細節如下

(1) Date of Registration 登記日期			(2) Registration Mark 登記號碼			
Day 日	Month 月	Year 年	Prefix 字首	Number 號碼		
2	9	1976	BL	3914		
(3) Full Name of the Registered Owner 註冊車主姓名						
Mr. (先生) <u>CHEUNG</u> Mrs. (夫人) Miss (小姐) Messrs. (公司) (Surname) 姓			SHUN CHOI (First Name(s)) 名			
(4) The Full Postal Address of the Registered Owner 註冊車主郵寄地址						
31A, BROADWAY RD., 17/F, HEI FOO EST., Kow.						
(5) Name of Maker of the Motor Vehicle 車輛之廠名			(6) Country of Origin of the Motor Vehicle 車輛原產地		(7) Engine Number 機件號碼	
NISSAN			JAPAN		15709-SD22	
(8) Cylinder Capacity 汽缸容量			(9) Weight Unladen and Maximum Permissible Laden Weight (If Applicable) 淨重及獲准之最高負重(如有規定者)			
164 c.c. 立方厘米			Unladen Weight 淨重		Maximum Permissible Laden Weight 獲准之最高負重	
164			— cwt. 磅(磅)		— cwt. 磅(磅)	
(10) Type of Body (Saloon, Tourer, etc.) 車身款式 (房車、遊客車等)		(11) Colour of Body 車身顏色		(12) Seating Capacity, and in the case of an omnibus the number of standing passengers which may be lawfully carried on the vehicle 車輛依法可以載客之人數以及(如係一輛巴士)依法可載站立之搭客人數		
SALOON		PEE-GRAY		(5) FIVE		
(13) Classification of Vehicle 車輛類別		(14) Licence Fee 牌費		(15) Amount of Tax Paid under the Commonwealth Preference (Motor Vehicles) Ordinance and Number of Receipt in respect thereof 依照英聯邦車輛特惠稅條例規定所繳之稅額及收據號碼		
H.K. & Kow. TAXI		\$300.00		HK\$ 港幣(元) /		

FEE PAID: \$15 證費拾伍元繳訖 運輸署署長授權簽署

Date 日期
Shrop 收銀員

T.D. 61 (S)

19/5/77
OFFICIAL - No Fee

For Commissioner for Transport (代行)
LEUNG HING WAH SPENCER
(Full name in block letters)
(姓名用正楷書寫)

herein on the 17 day of May 1976
Before me,

A Commissioner

A9
Affirmation of Joseph Chiu

In the Supreme
Court of Hong
Kong

1976, NO. 750

A9

IN THE SUPREME COURT OF HONG KONG
HIGH COURT
MISCELLANEOUS PROCEEDINGS

Affirmation of
Joseph Chiu
24th May 1977

IN THE MATTER of the Road Traffic
Ordinance, Cap. 220 of the Laws of
Hong Kong

and

10 IN THE MATTER of the Road Traffic
(Registration & Licensing of Vehicles)
Regulations

and

IN THE MATTER of applications dated
15th July 1976 for the registration of
47 vehicles as Public Cars

BETWEEN LEUNG CHOW PUBLIC
CAR COMPANY (a firm) Plaintiffs
and
THE ATTORNEY GENERAL Defendant

20 I, JOSEPH CHIU, of 23-23A, Canal Road West,
Ground Floor in the Colony of Hong Kong, sales manager,
do solemnly, sincerely and truly affirm and say as
follows :-

1. I am and was at all material times the sales
manager of Honest Motors Limited, and was one of the
signatories to Contract No. T-1647 to T-1746 for the sale
of the motor vehicles mentioned therein on behalf of
Honest Motors Limited to Leung Chow Public Car Com -
pany (hereinafter called "the buyers").

30 2. I crave leave to refer to the said Contract and the
Supplement to the said Contract dated 13th July 1976,
being exhibit "TKC-4c" to the affidavit of Tse Kai Chow

In the Supreme Court of Hong Kong

A9

Affirmation of Joseph Chiu
24th May 1977
(continued)

sworn and filed herein on respectively the 3rd and 4th March 1977.

3. I on behalf of Honest Motors Limited had by the said Contract and Supplement committed Honest Motors Limited to the sale of the said motor vehicles to the buyers. On the other hand, I was informed that the Transport Department would process the buyers' applications for registration of the said motor vehicles as public cars within a short time. Therefore it was agreed that if the buyers could not obtain registration of the said motor vehicles with the Transport Department as public cars, ownership of the said motor vehicles would revert to Honest Motors Limited who would be entitled to sell the said motor vehicles to others. It was further agreed that I should be informed of the progress of the buyers' said applications.

10

4. On or about the 19th July 1976, I received a telephone call from Mr. Tse Kai Chow, who informed me that following a meeting on that date at the Transport Department, the buyers' said applications were refused by the Transport Department and Honest Motors Limited could sell the said motor vehicles to others. Other members of staff of Honest Motors Limited and I thereafter sold the said motor vehicles to our other customers.

20

And lastly I do solemnly, sincerely and truly affirm and say that the contents of this my affirmation are true.

AFFIRMED at the Courts of Justice,)
Victoria, Hong Kong, this 24th day)
of May, 1977, the same having been)
duly interpreted to the affirmant in)
the Cantonese dialect of the Chinese)
language by :-)

(Sd.) J. CHIU

30

(Sd.) SHAN WAI HAN

Sworn Interpreter,
Before me,

(Sd.) R. D. BIALA

Commissioner for Oaths.

This affirmation is filed on behalf of the Plaintiffs.

A10
Affidavit of Cheung Yuk Yin

In the Supreme
Court of Hong
Kong

1976, No. 750

A10

IN THE SUPREME COURT OF HONG KONG
HIGH COURT
MISCELLANEOUS PROCEEDINGS

Affidavit of
Cheung Yuk Yin
25th May 1977

IN THE MATTER of the Road Traffic
Ordinance, Cap. 220 of the Laws of
Hong Kong

and

10

IN THE MATTER of the Road Traffic
(Registration and Licensing of Vehicles)
Regulations

and

IN THE MATTER of application dated
15th July 1976 for the registration of
47 vehicles as Public Cars

BETWEEN LEUNG CHOW PUBLIC
CAR COMPANY (a firm) Plaintiffs
and
THE ATTORNEY GENERAL Defendant

20

I, CHEUNG Yuk-yin, Senior Executive Officer,
Public Vehicles, Transport Department, Hong Kong
Government, do make oath and say as follows :

1. I am conversant with these matters and am able
and authorised to depose to the matters following.
2. This affidavit is to supplement the one which I
swore on 19th May 1977 and filed on 20th May 1977 herein.
3. As for the request for further and better particulars
by the plaintiff on 24th May 1977 of paragraph 4 of my
affidavit sworn on 19th May 1977 and filed on 20th May
1977 in respect of the explanation that the figure 1,388
was the added total at the end of October 1975 of the
number of vehicles actually registered and licensed as

30

In the Supreme
Court of Hong
Kong

—
A10

Affidavit of
Cheung Yuk Yin
25th May 1977
(continued)

public cars and the number reserved for operators whose special prescribed application form for public car had been duly investigated and approved in principle, my answer to the question, namely,

"(i) what was the number actually registered at the end of October 1973"

is 1,283,

my answer to the question, namely,

"(ii) whether the number actually registered on 13th July 1976 was the same as at the end of October 1975"

10

is No,

my answer to the question, namely,

"(iii) if the number actually registered on 15th July 1976 was different, stating what that number was",

is 1,293,

my answer to the question, namely,

"(iv) whether the operators referred to in paragraph 4 as aforesaid had submitted any application for registration and/or licensing apart from the form marked "CYY-2",

20

is No and

it is not necessary for me to answer the question, namely,

"(v) if the answer to (iv) above is yes, stating whether the application or applications were oral or in writing if oral identifying the parties the time and the place of each application; if in writing identifying the document or documents".

30

4. Although not raised by the questions for further and better particulars by the plaintiff in paragraph 3 above, I like to add that between the period from the end of October 1975 to 15th July 1976, 17 public cars were actually registered and licensed as the owners of 7 then

existing registered public cars have requested that their registrations as public cars be cancelled for the purpose of disposing these vehicles but requested to have the right to register, and license their new vehicles when available as public cars. These 7 cases were then treated as additional "committed vacancies". The position of public car registrations on 15th July 1976 was that there were 1,283 public cars actually registered and 95 "committed vacancies".

In the Supreme
Court of Hong
Kong

A10

Affidavit of
Cheung Yuk Yin
25th May 1977

(continued)

10 5. In respect of the request for further and better particulars by the Plaintiff on 24th May 1977 in respect of paragraph 9 of my said affidavit, my answer to the question, namely,

"(i) whether it is alleged by the Defendant that the form T.D. 22 was at the material time not a form prescribed under Regulation 4 of the Road Traffic (Registration and Licensing of Vehicles) Regulations for applying for the registration of motor vehicles as public cars"

20 is No, and

there is no necessity to answer the question, namely,

"(ii) if the answer to (i) above is yes, stating whether there was at the material time some other form prescribed, identifying the same and stating when such form was prescribed".

SWORN at the Courts of Justice,)
Victoria, Hong Kong, this 25th) (Sd.)
day of May 1977)

before me,

30 (Sd.) R. D. BIALA

Commissioner for Oaths.

This affidavit is filed on behalf of the defendant.

In the Supreme
Court of Hong
Kong

A11

Affidavit of Cheung Yuk Yin

A11

1976, No. 750

Affidavit of
Cheung Yuk Yin
9th June 1977

IN THE SUPREME COURT OF HONG KONG
HIGH COURT
MISCELLANEOUS PROCEEDINGS

IN THE MATTER of the Road Traffic
Ordinance, Cap. 220 of the Laws of
Hong Kong

and

IN THE MATTER of the Road Traffic
(Registration and Licensing of Vehicles)
Regulations

10

and

IN THE MATTER of application dated
15th July 1976 for the registration of 47
vehicles as Public Cars

BETWEEN

LEUNG CHOW PUBLIC
CAR COMPANY (a firm)

Plaintiffs

and

THE ATTORNEY GENERAL Defendant

I, CHEUNG Yuk-yin, Senior Executive Officer,
Public Vehicles, Transport Department, Hong Kong
Government, do make oath and say as follows :-

20

1. I am conversant with these matters and am able and authorised to depose to the matters following.
2. This is to supplement my further affidavit sworn and filed herein on 25th May 1977.
3. I have read what purports to be a copy of the affirmation of Mr. Joseph Chiu, affirmed and filed herein on 24th May 1977 and crave leave to refer to paragraph 4 therein. I did not, nor to my knowledge, information or belief did any officers in the Transport Department notify

30

the plaintiffs on 19th July, 1976 verbally or in writing, of the result of the plaintiffs' application for registration of 47 public cars. Neither did Mr. TSE Kai-chow mention this alleged refusal from the Transport Department on 19th July 1976 in his affidavit sworn and filed herein on 3rd and 4th March 1977 respectively.

Dated the 9th day of June, 1977.

10 Sworn at Court of Justice,)
Victoria, Hong Kong, the) (Sd.)
9th day of June, 1977)

Before me,

(Sd.)

Commissioner for Oaths.

This affidavit is filed on behalf of the defendant.

A12

Statement of Agreed Facts

H. C. M. P. No. 750 of 1976

STATEMENT OF AGREED FACTS

- 20
1. In respect of the 95 "committed vacancies" referred to in paragraph 4 of the affidavit of Cheung Yuk-yin filed herein on 25th May 1977 no forms prescribed under Regulation 4(1) of the Road Traffic (Registration & Licensing of Vehicles) Regulations had been submitted at any time.
 2. It is admitted that the forms delivered by the Plaintiffs' solicitors to the Commissioner for the registration of 47 motor vehicles as public cars on 15th July 1976 were forms prescribed by the Commissioner under the said Regulation 4(1).

In the Supreme
Court of Hong
Kong

A11

Affidavit of
Cheung Yuk Yin
9th June 1977
(continued)

A12

Statement of
Agreed Facts

In the Supreme
Court of Hong
Kong

A13
Judgment

1976, NO. 750

A13
Judgment
6th July 1977

IN THE SUPREME COURT OF HONG KONG
HIGH COURT
MISCELLANEOUS PROCEEDINGS

IN THE MATTER of the Road Traffic
Ordinance, Cap. 220 of the Laws of
Hong Kong

and

IN THE MATTER of the Road Traffic
(Registration & Licensing of Vehicles)
Regulations

10

and

IN THE MATTER of application dated
15th July 1976 for the registration of
47 vehicles as public cars

BETWEEN LEUNG CHOW PUBLIC
CAR COMPANY (a firm) Plaintiffs

and

THE ATTORNEY GENERAL Defendant

BEFORE THE HONOURABLE MR. JUSTICE McMULLIN
IN CHAMBERS

20

J U D G M E N T

Dated the 6th day of July, 1977

UPON HEARING Counsel for the Plaintiffs and

10 Counsel for the Defendant and UPON READING the affidavit of Tse Kai Chow sworn herein on 3rd March 1977 and filed on 4th March 1977 and the exhibits thereto; the affirmation of Woo Kwok Yin affirmed herein on 3rd March 1977 and filed on the 4th March 1977; the affidavit of Cheung Yuk Yin sworn herein on 19th May 1977 and filed on 20th May 1977 and the exhibits thereto; the affirmation of Joseph Chiu affirmed and filed herein on 24th May 1977; the further affidavit of Cheung Yuk Yin
10 sworn and filed herein on 25th May 1977 and the still further affidavit of Cheung Yuk Yin sworn and filed herein on 9th June 1977.

In the Supreme Court of Hong Kong

A13
Judgment
6th July 1977
(continued)

IT IS DECLARED AND ORDERED

- 20 (1) that the Commissioner for Transport was wrong and had no authority when entertaining or considering the Plaintiffs' applications all of 15th July 1976 for the registration of 47 vehicles as public cars to have taken into account applications for the registration of motor vehicles as public cars unless
20 such latter mentioned applications had been made in the form prescribed by the Commissioner under the provisions of Regulation 4 of the Road Traffic (Registration and Licensing of Vehicles) Regulations Cap. 220 of the Laws of Hong Kong;
- (2) that the Plaintiffs are entitled to have application for registration of 47 vehicles as public cars entertained under the provisions of Regulation 6 of the Road Traffic (Registration and Licensing of Vehicles) Regulations.

30 AND THAT the costs of this action be the Plaintiffs' with certificates for two counsel.

S.H. MAYO

Registrar.

I assent,

MURRAY MACLEHOSE,

Governor.

16th June, 1977

10

As Ordinance to amend the Road Traffic Ordinance.

[]

Enacted by the Governor of Hong Kong, with the
advice and consent of the Legislative Council thereof.

1. (1) This Ordinance may be cited as the Road
Traffic (Amendment) (No. 2) Ordinance 1977.

(2) The Governor may by notice published in the
Gazette appoint the day on which this Ordinance, or any
part or provision of this Ordinance, shall come into
operation and may at different times, appoint different
days for different parts or provisions.

20

Amendment section 2 (Cap. 220)

2. Section 2(2) of the principal Ordinance is amended
in paragraph (d) by inserting after "reward" the following-
"save with the permission in writing of the
Commissioner".

Amendment section 3

3. Section 3(1) of the principal Ordinance is amended
by inserting after paragraph (g) the following new para-
graph -

30

"(ga) the granting and cancellation by the Commissioner of permits authorizing the use of private cars for the carriage of passengers for hire or reward,"

In the Supreme Court of Hong Kong

Λ14

Addition of new section 4A

Gazette Notice (Ord. 45/77)

4. The principal Ordinance is amended by adding after section 4 the following new section -

17th June 1977

"Registration of public cars as taxis

(continued)

10 4A. (1) Subject to subsection (2), the Commissioner shall, on application by the registered owner, reregister as a taxi a motor vehicle which immediately prior thereto was registered as a public car.

(2) A premium of \$75,000 shall be payable in respect of the registration of such motor vehicle as a taxi, and the Commissioner shall not register such vehicle as a taxi unless a first instalment of \$50,000 has been paid.

20 (3) The second instalment of \$25,000 shall be payable not later than 12 months after the registration of such vehicle as a taxi, and until instalment is paid the Commissioner shall refuse to issue a further vehicle licence in respect of that vehicle as a taxi.

(4) The premium payable under this section shall be in addition to the registration and licence fee payable under the regulations and may not be refunded.

(5) With effect from the expiry of the vehicle licence in force at the commencement of this section in respect of a motor vehicle registered as a public car, the registration of that vehicle as a public car shall cease to have effect".

30 5. Part IVA of the principal Ordinance is repealed and replaced by the following -

"PART IVA

TRANSPORT TRIBUNAL

Transport Tribunals' panel

26A. (1) There shall be a panel from which members of Transport Tribunals, other than public officers, may be appointed under this Ordinance.

(2) The panel shall consist of such persons, not

In the Supreme
Court of Hong
Kong

A14

Gazette Notice
(Ord. 45/77)

17th June 1977
(continued)

being public officers, as the Chief Secretary may appoint.

(3) The appointment of any person as a member of the panel shall have effect for not more than 3 years and a member of the panel shall be eligible for re-appointment.

(4) A member of the panel may resign at any time by notice in writing to the Chief Secretary.

Powers of Transport Tribunal

26B. (1) The chairman of a Transport Tribunal may by notice in writing summon any person to appear before the Tribunal to produce any document or to give evidence.

10

(Cap. 8) (2) A Transport Tribunal may receive such evidence as it thinks fit, and neither the provisions of the Evidence Ordinance nor any other rule of law relating to the admissibility of evidence shall apply in the proceedings before the Tribunal.

(3) Any question arising in proceedings before a Transport Tribunal, not being a question relating to the practice and procedure of the Tribunal, shall, in the event of a difference between the members, be decided by the majority.

20

(4) Any person who being summoned to appear before a Transport Tribunal, refuses or fails without reasonable excuse to appear or to answer any question put to him by or with the consent of the Tribunal commits an offence and is liable on conviction to a fine of \$500 and to imprisonment for 3 months:

Provided that no person shall be bound to incriminate himself and every witness shall, in respect of any evidence given by him before the Tribunal be entitled to the privileges to which he would be entitled if giving evidence before a court of justice.

30

(5) Any person who behaves in an insulting manner or uses any threatening or insulting expression to or in the presence of a Transport Tribunal commits an offence and is liable on summary conviction to a fine of \$500 and to imprisonment for 3 months.

Practice and procedure of Transport Tribunal

In the Supreme
Court of Hong
Kong

A14

26C. (1) Save in so far as provision is made therefor in this Ordinance, the practice and procedure in and in connexion with any hearing before a Transport Tribunal shall be such as the chairman of the Tribunal may determine.

Gazette Notice
(Ord. 45/77)

17th June 1977

(continued)

(2) In proceedings before a Transport Tribunal, any person may appear in person or be represented by counsel, solicitor or agent".

10 Addition of new Part IVB

6. The principal Ordinance is amended by adding after Part IVA the following new Part -

"PART IVB

SUSPENSION OF LICENCES OF MOTOR VEHICLES

Interpretation in this Part

26D. In this Part, unless the context otherwise requires -

"Commissioner" means the Commissioner for Transport and any Assistant Commissioner for Transport;

20 "fixed penalty" means, in relation to an offence specified in the First Schedule, the fixed penalty specified for that offence in the Schedule to the Fixed Penalty (Criminal Proceedings) Ordinance;

First
Schedule
(Cap. 240)

"panel" means the panel appointed under section 26A;

"registered owner" means the person in whose name a motor vehicle is registered.

Appointment of Transport Tribunals

26E. (1) The Chief Secretary may appoint such Transport Tribunals as may from time to time be necessary for the purposes of this Part.

30 (2) Each such Transport Tribunal shall consist of the Commissioner as chairman and two members of the panel.

In the Supreme Court of Hong Kong

A14

Gazette Notice (Ord. 45/77)

17th June 1977

(continued)

Notice of intention to suspend on the conviction of a driver

26F. (1) Where the driver of a motor vehicle has been convicted of an offence specified in the First Schedule, or the fixed penalty for such an offence has been paid, the Commissioner shall, within 14 days after the date of the conviction or payment of the fixed penalty, cause a notice to be served on the registered owner of the motor vehicle.

(2) A notice under this section shall -

(a) specify -

(i) the offence of which the driver of the motor vehicle was convicted or for which the fixed penalty has been paid and the date of conviction or payment of the fixed penalty;

10

(ii) the date on which the offence took place;

(iii) the time when and place where the offence occurred;

(iv) the registration mark of the motor vehicle; and

(v) the name of the driver;

(b) notify the registered owner that a Transport Tribunal may under section 261 suspend the licence of the motor vehicle for the period specified in column 3 or 4 of the First Schedule; and

20

(c) notify the registered owner that he may, within 14 days after the date of service of the notice, -

(i) make representations in writing to the Commissioner showing cause why a Transport Tribunal should not suspend the licence of the motor vehicle; or

30

.....

A15
Gazette Notice G.N. (E.) 15 of 1977

THE HONG KONG
GOVERNMENT GAZETTE EXTRAORDINARY

Published by Authority

Saturday, 2 July, 1977

No. 6 Vol. CXIX

NOTICE

G.N. (E.) 15 of 1977

10

ROAD TRAFFIC ORDINANCE
(Chapter 220)

In exercise of the powers conferred upon me by regulation 18B(1) of the Road Traffic (Registration and Licensing of Vehicles) Regulations, I hereby limit the numbers of motor vehicles which may be registered and licensed as :-

20

- (a) Hong Kong and Kowloon taxis to a maximum number of 5,054;
- (b) New Territories taxis to a maximum number of 750; and
- (c) public cars to a maximum number of 1,376.

P.F. LEEDS,

Commissioner for Transport (Acting).

30th June, 1977.

End of Main Gazette of this issue

In the Supreme
Court of Hong
Kong

A15

Gazette Notice
G.N. (E.)
15 of 1977

30th June 1977

In the Supreme
Court of Hong
Kong

A16

Gazette Notice
G.N. (E.)
16 of 1977
6th July 1977

A16
Gazette Notice G.N. (E.) 16 of 1977

THE HONG KONG
GOVERNMENT GAZETTE EXTRAORDINARY

Published by Authority

Thursday, 7 July 1977

No. 7 Vol. CXIX

NOTICE

G.N. (E.) 16 of 1977

ROAD TRAFFIC ORDINANCE

10

(Chapter 220)

In exercise of the powers conferred upon me by regulation 18B(1) of the Road Traffic (Registration and Licensing of Vehicles) Regulations. I hereby limit the number of motor vehicles which may be registered and licensed as public cars to a maximum number of 1,329.

P.F. LEEDS,

Commissioner for Transport (Acting).

6th July, 1977.

End of Main Gazette of this issue

20

A17

Letter from K. Y. Woo & Co.
to Commissioner for Transport

In the Supreme
Court of Hong
Kong

A17

16143

KYW/77

7th July 1977

Letter from
K. Y. Woo & Co.
to Commissioner
for Transport

7th July 1977

The Commissioner for Transport,
Transport Department,
No. 2, Murray Road,
Hong Kong.

URGENT

10 Dear Sir,

Re: High Court Miscellaneous Proceedings Actions
Nos. 749 and 750 of 1976
Leung Chow Public Car Co. v. The Attorney
General

As you are aware, we act for the Plaintiffs in the
above two matters in which the Plaintiffs have succeeded
in obtaining judgment for the declarations sought.

20 In respect of the declarations made in Action No.
749 of 1976, the Attorney General on your behalf applied
to the court to "vary, modify or extend" the declarations
made by the Honourable Mr. Justice McMullin on 30th
June 1977. This matter came before the court on
Wednesday, 6th July 1977.

30 We should like to place it on record that the reason
stated by Crown counsel for the application was because,
since the date of the judgment, applications from other
members of the public for the registration of vehicles as
public light buses and public cars had been received.
The Crown sought clarification as to whether our clients
the Plaintiffs in the above actions had prior right to the
registration of the number of vehicles covered by the
declarations.

In dealing with the application, the court made
observations to the following effect :

"If there are applications from the Plaintiffs
within a reasonable time of the judgment then the
Plaintiffs have their applications over others in
priority of time as if their applications had been

In the Supreme
Court of Hong
Kong

—
A17

Letter from
K. Y. Woo & Co.
to Commissioner
for Transport

7th July 1977

(continued)

A18

Letter from
K. Y. Woo & Co.
to Commissioner
for Transport

9th July 1977

made at the date of the original applications,
i. e. 15th July 1976. The Plaintiffs have prior
right over any other applicant who put in applica-
tions after the time when the applications of the
Plaintiffs should have been entertained."

Yours faithfully,

A18

Letter from K. Y. Woo & Co.
to Commissioner for Transport

16173

KYW/77

9th July, 1977

10

The Commissioner for Transport,
Transport Department,
No. 2, Murray Road,
Hong Kong.

Dear Sir,

We shall be glad if you will kindly supply us with
the following :-

1. 47 applications forms for registration and
licensing of public cars (Form T.D. 22).
2. 47 forms of Declaration of Taxi and Public
Cars Parking Accommodation.

20

Thanking you.

Yours faithfully,

A19

Letter from K. Y. Woo & Co.
to Commissioner for Transport

In the Supreme
Court of Hong
Kong

A19

16172

KYW/77

11th July, 1977

The Commissioner for Transport,
Transport Department,
No. 2, Murray Road,
Hong Kong.

Letter from
K. Y. Woo & Co.
to Commissioner
for Transport

11th July 1977

URGENT

10 Dear Sir,

Re: High Court Miscellaneous Proceedings Action
No. 750 of 1976 - Applications for registration
of 47 vehicles as public cars

We act on behalf of Leung Chow Public Car Company,
the Plaintiffs in the captioned action.

20 Pursuant to the consent order and the judgment of
The Honourable Mr. Justice McMullin delivered on 6th
July 1977 in the captioned action, we on behalf of our
clients submit herewith 47 applications contained in 47
duly completed prescribed forms for the registration of
47 vehicles as public cars. We enclose herewith
\$470.00 in cash for the registration fee.

Kindly inform us the date and time appointed for
the inspection of the vehicles concerned in due course.

Yours faithfully,

Encl.

A20 Application Forms 11th July 1977

PUBLIC CAR C-9641

APPLICATION FOR REGISTRATION AND LICENSING OF A MOTOR VEHICLE 車輛登記及牌照申請書

(OFFICIAL USE 申請人不須填寫本欄)

Vehicle Regn. Mark FRNM/FRWM VLO4/VL12 \$10.

Please read the notes overleaf carefully before completing this form. All items should be completed in BLOCK LETTERS. It is an offence to make any false statement.

PART A (甲) 欄 PARTICULARS OF APPLICANT 申請人之資料

Name: L E U N G I C H O W P U B L I C C A R C O M P A N Y Ltd. Co. 有限公司

Residential Address: B B 112 60 NATHAN ROAD

(Complete each item applicable to your address. If any item does not apply, leave blank. In the case of a Limited Company give the address of its registered office.)

Number and name of street: 門牌號碼及街道名稱

PART B (乙) 欄 PARTICULARS OF VEHICLE 車輛登記細節

FOR ALL TYPES OF VEHICLE 所有類型之車輛均適用

Class: PUBLIC CAR; Make: DATSUN CEDRIC 220-C; Year of Manufacture: 1191717; Cylinder Capacity: 211614; Seating Capacity: Five 5; Colour: RED; Body Type: SEDAN; Country of Origin: JAPAN

ADDITIONAL ITEMS FOR GOODS VEHICLES, OMNIBUSES, AND LIGHT BUSES 貨車、巴士及小型巴士之附加項目

Unladen Weight, Max. Laden Weight, Axle Load, Overall Dimensions: Length, Width, Height

FURTHER ADDITIONAL ITEMS FOR OMNIBUSES: 巴士之附加項目

Turning Circle, Swept Circle, Standing Capacity

PART C (丙) 欄 THIRD PARTY INSURANCE (Certificate MUST be produced) 第三者保險 (必須出示保險單)

Name of Insurance Company: THE ORIENTAL FIRE & GENERAL INSURANCE CO., LTD. Policy/Cover Note No.: CN/MC77 Expiry Date: 8-8-77

PART D (丁) 欄 DECLARATION 聲明

I hereby apply to register the above vehicle and to license it for a period of One Year. I declare that to the best of my knowledge and belief the information given above is true and complete.

Signature of applicant: [Signature] Date: 11 JUL 1977

PART E (成) 圖

VEHICLE INSPECTION 車輛檢驗

I certify that I have inspected this vehicle and that the vehicle complies with the provisions of the Road Traffic (Construction and Use) Regulations.
茲證明本人已檢驗該車，該車一切均符合道路交通（構造及使用）規例。

Date 日期.....

Motor Vehicle Inspector. 驗車督察

PART F (己) 圖

VEHICLE TAXATION 車輛課稅

Place and date of previous registration of vehicle in any country outside Hong Kong: London, Pa
該車以前在香港以外地區登記之地點及日期

Date of entry into Hong Kong: 20.7.77 Invoice No. 1-6888 Currency in which purchased: Yen Rate of Exchange: 118.0
抵港日期 發票編號 購買時所付之貨幣 兌換率

	In Foreign Currency 外幣	In Hong Kong Dollars 港幣
Factory Cost 出廠價	<u>3,180,000</u>	
Inland Freight 內陸運費		
Marine Freight 海運費		
Marine Insurance 水險	<u>2,100.00</u>	
Additional Cost (if any) 任何附加費用		
Total Value 總值	<u>3,182,100</u>	<u>HK\$ 375,714</u>
First Registration Tax at 首次登記稅 (稅率百分之)	%	HK\$ 港幣

DECLARATION 聲明

I hereby certify that to the best of my knowledge and belief the information given in part F of this form is true.
茲證明，據本人所知，申請書內(己)欄所填報之一切資料均屬確實。

Signature of Owner/Agent 車主/代理人簽名 Joe Date 日期 11 JUL 1977
LIMITED

PART G (庚) 圖

DO NOT COMPLETE THIS PART UNLESS YOU CANNOT NORMALLY BE REACHED BY POST AT YOUR RESIDENTIAL ADDRESS. 台端之住址如係通常郵遞無法到達者，則須填寫本圖。

Correspondence Address 通訊地址

Flat/Room 室	Block 座	Floor 樓	Name of building 大廈名稱
Number and name of street 門牌號數及街道名稱			
District 地區			* H.K. 香港 1 Kin. 九龍 2 N.T. 新界 3

(OFFICIAL USE 本欄不必填寫)

S. Code

First Registration Tax at % on depreciated value of vehicle after years months, based on total value of vehicle HK\$

Calculations checked by:	Registration Fee \$ R/No.
Vehicle Registration Clerk	Licence Fee \$ R/No.
Registration approved by:	F.R. Tax \$ R/No.
for Commissioner for Transport.	Total: \$ R/No.

In the Supreme
Court of Hong
Kong

A21

Two Car Parking Accommodation Certificates

A21

Two Car Parking
Accommodation
Certificates
11th July 1977

From:

Name (in Block Letter) of
Registered Owner of

To: Commissioner for Transport Vehicle No. _____
Transport Department
Hong Kong

Declaration of *H.K. and Kowloon Taxi/*Public Car
Parking Accommodation on renewal of licence or transfer
of ownership

10

(Road Traffic (Taxis, Public Omnibuses, Public Light
Buses and Public Cars) Regulations, Cap. 220, Regulation 5(2))

(N. B. One form should be completed in respect of each vehicle)

I hereby declare that my vehicle No. _____ is, and
continues to be, accommodated as follows :-

1. This *H.K. and Kowloon taxi/*public car has been
accommodated continuously at _____
since _____ up to present. A certi-
ficate issued by the carpark owner to this effect is
appended.
2. I undertake to renew the certificate on its expiry.
3. I understand that, if I wilfully give any false informa-
tion, I shall render myself liable under section 33 of
the Road Traffic Ordinance. (Cap. 220) to a fine of
\$1,000 and imprisonment for six months.

20

Signature of Registered LEUNG CHOW
Owner of Vehicle No. PUBLIC CARS CO.
(Sd.)

Date: _____ Managing Partner

*Delete where inappropriate.

30

Certificate of *H.K. and Kowloon Taxi/*Public Car Parking
Accommodation

I hereby certify that I have provided parking accom-
modation at _____ for Vehicle No. _____.

2. I further certify that the accommodation is adequate
for the above-mentioned vehicle and any other vehicles
using it, all parked at the same time.
3. I understand that, if I wilfully give any false informa-
tion, I shall render myself liable under section 33 of the
Road Traffic Ordinance (Cap. 220) to a fine of \$1,000 and
imprisonment for six months.

40

Signature of
carpark owner _____

Date: _____

Name (in BLOCK LETTER)

Insurance Certificate and List of Engine and Chassis Nos.

In the Supreme Court of Hong Kong

THE ORIENTAL FIRE & GENERAL INSURANCE CO. LTD.

Λ22

CN/MC77

Insurance Certificate and List of Engine and Chassis Nos.

Hongkong 11th July, 1977

11th July 1977

10

Mr. LEUNG CHOW PUBLIC CAR COMPANY having proposed for insurance in respect of the Motor Vehicle described in the Schedule below and having paid the sum of C. M. V. the risk is hereby held covered in terms of the Company usual form of COMPREHENSIVE Policy applicable thereto for a period of 30 days that is to say from 9.00 a. m. / ~~p. m.~~ on the above date to the same time on the thirtieth day after such date unless cover be terminated by the Company by notice in writing in which case the insurance will thereupon cease and a proportionate part of the annual premium otherwise payable for such insurance will be charged for the time that the Company has been on risk.

SCHEDULE

20

Index Mark and Registration No. (if known) or Chassis or Frame No.	Make	Horse Power or Cubic Capacity	Used only for the following purposes
as per list attached	Datsun Cedric 220-C 2164cc Diesel		Social Domestic and Pleasure Purposes and for the Insured's Business or Profession

30

MOTOR VEHICLES INSURANCE (THIRD PARTY RISKS) ORDINANCE, 1951

CERTIFICATE OF INSURANCE

I HEREBY CERTIFY that this covering note is issued in accordance with the provisions of the above-mentioned Ordinance.

This cover note is covering the attached 47 units of Public car.

40

This Cover Note will not be valid unless Counter-signed by HONEST MOTORS LTD.

for The Oriental Fire & Gen. Ins. Co. Ltd. The Pacific Insurance Co. Ltd.

(Sd.)

(Sd.)

Chief Agents

In the Supreme Court of Hong Kong	<u>MODEL</u>	<u>CHASSIS NO.</u>	<u>ENGINE NO.</u>	
	Q330SU40	Q330-013941	SD22-170864	
	"	Q330-030103	SD22-176700	
	"	Q330-020108	SD22-176702	
A22	"	Q330-019805	SD22-176404	
	"	Q330-020453	SD22-177084	
Insurance Certificate and List of Engine and Chassis Nos.	"	Q330-022301	SD22-175002	
	"	Q330-022225	SD22-176501	
	"	Q330-021987	SD22-178025	
	"	Q330-022229	SD22-176500	
11th July 1977	"	Q330-022219	SD22-177413	10
(continued)	"	Q330-022231	SD22-177318	
	"	Q330-021976	SD22-178022	
	"	Q330-019957	SD22-176703	
	"	Q330-019807	SD22-176403	
	"	Q330-019965	SD22-175911	
	"	Q330-019954	SD22-175910	
	"	Q330-020104	SD22-176699	
	"	Q330-019955	SD22-176202	
	"	Q330-020102	SD22-176701	
	"	Q330-019814	SD22-176198	20
	"	Q330-019810	SD22-176799	
	"	Q330-019817	SD22-175909	
	"	Q330-020251	SD22-176798	
	"	Q330-020247	SD22-176887	
	"	Q330-020253	SD22-177206	
	"	Q330-019813	SD22-176795	
	"	Q330-017172	SD22-173070	
	"	Q330-017614	SD22-172984	
	"	Q330-017089	SD22-173068	
	"	Q330-016846	SD22-173252	30
	"	Q330-016845	SD22-173081	
	"	Q330-014697	SD22-172100	
	"	Q330-014525	SD22-171901	
	"	Q330-017412	SD22-173247	
	"	Q330-013128	SD22-169780	
	"	Q330-017088	SD22-173069	
	"	Q330-015286	SD22-172295	
	"	Q330-017009	SD22-172978	
	"	Q330-014706	SD22-172089	
	"	Q330-016931	SD22-172985	40
	"	Q330-016928	SD22-172975	
	"	Q330-017612	SD22-174918	
	"	Q330-017332	SD22-174550	
	"	Q330-017493	SD22-173246	
	"	Q330-017010	SD22-172990	
	"	Q330-015398	SD22-172618	
	"	Q330-017090	SD22-172988	

A23

Letter from Senior Crown Counsel to K. Y. Woo & Co.

In the Supreme Court of Hong Kong

A23

LEGAL DEPARTMENT,
Central Government Offices,
(Main Wing)
Hong Kong.

Letter from Senior Crown Counsel to K. Y. Woo & Co.

Our Ref:

Your Ref: KYW/77

BY HAND

12th July, 1977

12th July 1977

10 Messrs. K. Y. Woo & Co.,
Solicitors,
1st floor, Tak Woo House,
17-19, D'Aguilar Street,
Hong Kong.

Dear Sirs,

Re: High Court Miscellaneous Proceeding Actions
Nos. 749 and 750 of 1976
Leung Chow Public Car Co. v. The Attorney General

20 Your letter of 7th of July, 1977 to the Commissioner for Transport has passed onto me for attention.

I am surprised that you attempt to influence any decision of the Commissioner for Transport by quoting matters which are not part of the court's record. The Summons filed on 5th day of July 1977 was withdrawn with leave on 6th day of July, 1977. Whatever said in court is therefore a nullity.

30 In any event, McMullin J. changed his view and did not insist your client could have priority over the other members of the public upon later argument put forth by Counsel for the Defendant. The summons filed on 5th July 1977 was therefore granted to be withdrawn with leave.

Yours faithfully,

(Sd.) K. C. WONG

Senior Crown Counsel

KCW/nc

In the Supreme
Court of Hong
Kong

A24

Letter from
Commissioner
for Transport
to K. Y. Woo
& Co.

14th July 1977

A24

Letter from Commissioner for Transport
to K. Y. Woo & Co.

TRANSPORT DEPARTMENT,
2, Murray Road,
Hong Kong.

CT 1311/274/75 (39)

Tel. 5-756541

Your ref. KYW/77

14th July 1977

Dear Sirs,

Your letter of 11th July 1977 and the enclosed
applications for the registration of 47 motor vehicles
as public cars have been entertained by this Department
under the provisions of Regulation 6 of the Road Traffic
(Registration and Licensing of Vehicles) Regulations,
Cap. 220.

10

However, I have to refuse to register your 47
vehicles as public cars as the number of motor vehicles
actually registered as public cars is equal to the total
number of motor vehicles that may be registered by the
Commissioner for Transport as public cars in the terms
of the Gazette Notice (Extraordinary) of 6th July 1977.

20

All the supporting documents for your applications
and your cheque No. 974289 for \$470.00 are returned
herewith.

Yours faithfully,

(Sd.) I. F. C. MACPHERSON

Commissioner for Transport.

Messrs. K. Y. WOO & Co.
Solicitors & Notaries
1st floor, Tak Woo House
17-19, D'Aguiar Street
Hong Kong

30

Encls.

G.N. 1741

TRANSPORT DEPARTMENT
Gazette Notice
G.N. 1741

It is hereby notified for information that the following
tenders for the right to register Hong Kong and Kowloon
taxis, recently invited, have been accepted :-

22nd July 1977

	Name	Number of Taxis	Total Premium Tendered \$
10	LEE Fook-tin	1	196,005
	CHOW Ming-sang	1	190,100
	KWAN Chi-kong	1	190,000
	YIP Sheung	1	188,100
	LEUNG Woon-keung		
	Peter	1	188,000
	YIP Sheung	2	375,200
	CHANG Fung-chiu	1	187,500
	LEUNG Woon-keung,		
	Peter	1	187,000
20	LEUNG Woon-keung,		
	Peter	1	186,800
	WONG Sau-kwan	1	186,800
	LEUNG Woon-keung,		
	Peter	1	186,500
	MOK Yat-hung	1	186,300
	LEUNG Woon-keung,		
	Peter	1	186,000
	CHOW Ming-sang	1	185,600
	LEUNG Woon-keung,		
30	Peter	1	185,500
	LEUNG Wai-kau	2	370,600
	Yau Wing Motors Ltd.	2	370,398
	LEUNG Wai-kau	2	370,200
	CHAN Chui-har,		
	Margaret	1	185,000
	HO Chung-ming	1	185,000
	CHUNG Seung	1	185,000
	CHEUNG Kai-tai	1	185,000
	WONG Kwong	1	185,000
40	Yau Wing Motors Ltd.	2	369,998
	Yau Wing Motors Ltd.	2	369,796
	WONG To	3	553,680
	YUEN King-man	2	369,000
	Yau Wing Motors Ltd.	2	368,378

In the Supreme Court of Hong Kong	Name	Number of Taxis	Total Premium Tendered \$	
_____	Yau Wing Motors Ltd.	2	367,998	
A25	KO Po-oi	1	183,998	
Gazette Notice	LEE Ngar-chun	1	183,980	
G.N. 1741	CHAN Yim-pui	2	367,960	
22nd July 1977	LEUNG Ping	3	551,697	
(continued)	CHUI Chi-chuen	1	183,890	
	CHU Yim-jan	1	183,890	
	WONG Dau-wen	1	183,890	10
	CHUI Kum-wah	1	183,890	
	CHUI Tak	1	183,890	
	FONG Yuk-kwan	3	551,550	
	YU Chik-kuen	10	1,838,300	
	YUEN Wai-pui	5	919,000	
	FUNG Kam-cheung	2	367,200	
	WONG To	3	550,680	
	YUEN King-man	3	550,500	
	LEE Kwok-kuen	1	183,500	
	CHAN Wai	5	916,650	20
	NG Fong	5	916,500	
	LO Kan	2	366,600	
	LEUNG Ping-hung	1	183,300	
	MOK Yat-hung	1	183,300	
	LAU Mo-ching	1	183,200	
	CHEN Hon-keung	1	183,200	
	LAM Kwok-leung	1	183,190	
	WONG Hoi-shan	1	183,180	
	Yau Wing Motors Ltd.	2	366,310	
	Yau Wing Motors Ltd.	2	366,244	30
	Yau Wing Motors Ltd.	2	366,222	
	Yau Wing Motors Ltd.	2	366,196	
	Yau Wing Motors Ltd.	2	366,110	
	NG Yuk-mei	1	183,000	
	FUNG King-siu	3	548,997	
	Yau Wing Motors Ltd.	2	365,998	
	LEUNG Chok-shu	1	182,999	
	CHEONG Chau-yuet	2	365,996	
	Yau Wing Motors Ltd.	2	365,978	
	Yau Wing Motors Ltd.	2	365,976	40
	Yau Wing Motors Ltd.	2	365,974	
	LEE Shun-yeon	1	182,980	
	WONG Yu-kuen	1	182,980	
	Yau Wing Motors Ltd.	2	365,932	
	Yau Wing Motors Ltd.	2	365,932	
	Yau Wing Motors Ltd.	2	365,916	
	Yau Wing Motors Ltd.	2	365,776	
	CHEUNG Kwong-sang	1	182,888	
	CHEUNG Kwong-sang	1	182,888	

Name	Number of Taxis	Total Premium Tendered \$	In the Supreme Court of Hong Kong
Yau Wing Motors Ltd.	1	182,878	_____
YUEN Wai-piu	5	914,000	A25
LI Kwok-sun	1	182,750	Gazette Notice
WONG To	3	548,130	G.N. 1741
LAI Yuet-ming	2	365,378	22nd July 1977
WONG To	3	547,680	(continued)
LIU Kam-pang	1	182,560	
10 YUEN King-man	4	730,000	
HO Yin-wah	1	182,500	
CHEUNG Wai	1	182,388	
HO Chiu-yee	1	182,388	
WONG Yuk	1	182,388	
CHAN Ping-kwong	1	182,200	
CHU Hee-yan	1	182,199	
HO Wai-to	1	182,105	
CHAN Yau-yik	40	7,284,000	
CHUNG Shiu-king	1	182,000	
20 Hang Ying Land & Motors Investment Ltd.	2	364,000	
KWAN Suk-han	1	182,000	
LAM Kuen, Banary	2	364,000	
NG Tak-ngo	1	182,000	
CHAN Sui-hing	1	182,000	
WONG Choi-choi	1	182,000	
WOO Ha-nam	1	182,000	
LAM Biu	1	182,000	
FUND King-siu	2	363,998	
30 Yau Wing Motors Ltd.	1	181,999	
NG Sim-fung	1	181,918	
Yau Wing Motors Ltd.	2	363,832	
LUK Wai-ha	1	181,899	
CHEUNG Chun-chuen	1	181,888	
CHEUNG Yuk-lai	1	181,878	
NG Kwok-hon	1	181,850	
YU Chik-kuen	10	1,818,500	
YUEN Wai-piu	5	909,000	
CHOW Ah-fong	1	181,800	
40 CHEUNG Chuen-ho	1	181,800	
CHAN Chuek	1	181,800	
LI Kwok-sun	1	181,789	
LI Kwok-sun	1	181,789	
NG Sin-hung	1	181,738	
LEE Kwan	1	181,699	
LANG Yin-shing, Peter	1	181,688	
LANG Yin-shing, Peter	1	181,688	
LEE Kit-fai	1	181,678	

In the Supreme Court of Hong Kong	Name	Number of Taxis	Total Premium Tendered \$	
A25	WONG Wai-han	1	181,600	
	CHAN Yuk-hung	1	181,555	
Gazette Notice	HO Mun-fung	1	181,500	
G.N. 1741	YIU Yee	1	181,500	
22nd July 1977	MA Sou-loy	1	181,500	
(continued)	POON Shu-yan	1	181,400	
	LI Wing-chi	1	181,388	
	NG Kwok-hon	1	181,350	10
	CHAN Wai	4	725,320	
	LAM Kim-hung	1	181,300	
	LEUNG Ping-hang	10	1,813,000	
	LO Kan	2	362,600	
	HO Mun-fung	1	181,300	
	FOK So	1	181,230	
	CHAN Wai-man	1	181,210	
	HUI May-lin	1	181,200	
	LAM Tze-yuen	1	181,150	
	FONG Yuk-kwan	3	543,450	20
	LAM Yuk-sim	1	181,120	
	MOK Chui-ping	1	181,100	
	TONG Chow	1	181,050	
	LAI King-sin	1	181,000	
	NG Mei-chun	1	181,000	
	IP Wai-chi	1	181,000	
	NG Lai	1	181,000	
	YAN Lai-fong	13	2,353,000	
		<hr/>		
	Total	300		
		<hr/>		

22 July 1977

I. F. C. MACPHERSON

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Commissioner for Transport

A26

Letter from K. Y. Woo & Co. to Senior Crown
Counsel

In the Supreme
Court of Hong
Kong

A26

16332

KYW/77

25th July 1977

Letter from
K. Y. Woo & Co.
to Senior Crown
Counsel

25th July 1977

Frank Wong, Esq.,
Senior Crown Counsel,
Attorney General's Chambers,
Legal Department,
Hong Kong.

URGENT

10

Dear Sir,

Re: H.C.M.P. 749 and 750 of 1976

We refer to the above-mentioned matters generally and in particular to the occurrences before Mr. Justice McMullin in Chambers on 6th July 1977. As you are aware, on that date the summons of the Commissioner for Transport dated 5th July 1977, to vary, modify or extend the declarations granted in H.C.M.P. 749 of 1976 was withdrawn by leave. At the same time, upon the Commissioner for Transport neither consenting nor objecting, declarations were made in H.C.M.P. 750 of 1976.

20

In relation to H.C.M.P. 750 of 1976 you drew the Court's attention to G.N. (E) 15 of 1977 dated 30th June, 1977, whereby the Commissioner for Transport limited to 1376 the maximum number of vehicles that could be registered and licensed as public cars and informed the Court that the Commissioner for Transport had done so as a result of the declarations granted on 30th June, 1977, in H.C.M.P. 749 of 1976, the number 1376 being 47 more than the number of public cars actually registered and licensed on 30th June, 1977. Our clients' applications, of course, related to 47 such vehicles. You also informed the Court that the Commissioner for Transport had received clean applications for the registration and licensing of 50 vehicles as public cars. G.N. (E) 16 of 1977 was not brought to the attention of the Court or of ourselves and, as we have said, the declarations were made.

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As we now know, G.N. (E) 16 of 1977 was dated

In the Supreme Court of Hong Kong

_____ A26

Letter from K. Y. Woo & Co. to Senior Crown Counsel

25th July 1977

(continued)

6th July, 1977, the same date upon which the declarations in H.C.M.P. 750 of 1976 were made. As we also now know, by that extraordinary Gazette Notice the maximum number of vehicles that can be registered and licensed as public cars was purportedly reduced from the previous 1376 to 1329, again a reduction of 47, exactly the number of our clients' aforesaid applications.

For the sake of completeness we would mention that pursuant to the declarations made in H.C.M.P. 750 of 1976, on behalf of our clients we lodged applications with the Commissioner for Transport for the registration and licensing of 47 vehicles as public cars under cover of a letter dated 11th July, 1977. By a letter dated 14th July, 1977, the Commissioner for Transport stated that he had 'entertained' those applications but refused them because the number of vehicles actually registered as public cars was equal to the total number that may be registered under the aforesaid G.N. (E) 16 of 1977.

10

In all of the circumstances we are astonished at what has happened but we will save further comments for the appropriate time and place. We must, however, call upon you to inform us :-

20

- (a) Of the date upon which it was decided by the Commissioner for Transport to reduce the number from 1376 (as in G.N. (E) 15 of 1977) to 1329 (as in G.N. (E) 16 of 1977).
- (b) Whether the aforesaid reduction was effected after advice from the Legal Department.
- (c) If the answer to (b) hereof be in the affirmative, the dates upon which the advice was sought and given and the identity of the person or persons giving such advice.
- (d) Having regard to the fact that by G.N. 2670 dated 5th December, 1975, the maximum number was limited to 1388, which number included a large amount of 'committed vacancies' and which number was then reduced to 1376 by the aforesaid G.N. (E) 15 of 1977, the reason or reasons for the reduction to 1329 by G.N. (E) 16 of 1977 and in particular whether that last reduction by exactly 47 was designed to defeat any declarations to be made by the Court in relation to our clients'

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applications, or to defeat our clients' applications or was in any way related to our clients' aforesaid applications and if so then the manner in which it was so related.

In the Supreme Court of Hong Kong

_____ A26

10 Our clients take a very serious view of what has occurred. It does seem that the last limitation has been purportedly imposed to defeat the declarations which might have been and which in fact have been obtained and to defeat their applications. Our clients are determined to pursue this matter with utmost vigour and reserve all of their rights.

Letter from K. Y. Woo & Co. to Senior Crown Counsel

25th July 1977

(continued)

Would you kindly deal with this letter as a matter of extreme urgency. Failing a satisfactory reply within three days of the date hereof our clients will take such steps as they are advised without further notice.

Yours faithfully,

A27

Letter from K. Y. Woo & Co. to Commissioner for Transport

16339

A27

Letter from K. Y. Woo & Co. to Commissioner for Transport

26th July 1977

20 KYW/77

26th July 1977

The Commissioner for Transport,
Transport Department,
No. 2, Murray Road,
Hong Kong.

Dear Sir,

We shall be glad if you will kindly permit our clerk, bearer of this letter, to have the following :-

1. 47 sets of Form T.D. 22, (Application forms for registration and licensing of public cars),
- 30 2. 47 sets of forms of Declaration of Taxi and Public Cars Parking Accommodation.

Thanking you.

Yours faithfully,

In the Supreme
Court of Hong
Kong

A28

Letter from
Senior Crown
Counsel to
K. Y. Woo & Co.
28th July 1977

A28

Letter from Senior Crown Counsel to K. Y.
Woo & Co.

LEGAL DEPARTMENT,
Central Government Offices,
(Main Wing),
Hong Kong.

Our Ref.
Your Ref. KYW/77

28th July, 1977

Messrs. K. Y. Woo & Co.,
Tak Woo House,
1st floor,
17 - 19 D'Aguilar Street,
HONG KONG.

10

Dear Sirs,

Re: H.C.M.P. 749 and 750 of 1976

I am in receipt of your letter dated 25th July, 1977.

I have been instructed by the Commissioner for Transport to inform you that he decided to limit the number of motor vehicles which could be registered as public cars because of the situation created by the publication in the Gazette of the Road Traffic (Amendment) (No. 2) Ordinance 1977, No. 45 of 1977. Such publication was made on 17th June, 1977 and section 1(2) of the Ordinance provides that the Governor may by notice published in the Gazette appoint the day on which the Ordinance or any part thereof shall come into operation. To date no such notice has yet been published.

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Section 4 of No. 45 of 1977 amends the principal Ordinance by adding after section 4 a new section 4A which deals with the registration of public cars as taxis. For your convenience the new section is here quoted in full -

30

" 4A (1) Subject to subsection (2), the Commissioner shall, on application by the registered owner, reregister as a taxi a motor vehicle which immediately prior thereto was registered as a public car.

(2) A premium of \$75,000 shall be payable in respect of the registration of such motor vehicle as a taxi, and the Commissioner shall not register such vehicle as a taxi unless a first instalment of \$50,000 has been paid.

In the Supreme
Court of Hong
Kong

—
A28

(3) The second instalment of \$25,000 shall be payable not later than 12 months after the registration of such vehicle as a taxi, and until instalment is paid the Commissioner shall refuse to issue a further vehicle licence in respect of that vehicle as a taxi.

Letter from
Senior Crown
Counsel to
K. Y. Woo & Co.

28th July 1977

(continued)

(4) The premium payable under this section shall be in addition to the registration and licence fee payable under the regulations and may not be refunded.

(5) With effect from the expiry of the vehicle licence in force at the commencement of this section in respect of a motor vehicle registered as a public car, the registration of that vehicle as a public car shall cease to have effect."

The Commissioner for Transport was aware that the purpose of this section was to effect the cessation of public cars as a class of vehicle and he considered that following such publication he should give effect to Government's policy by not registering any further public cars. On 28th June, 1977 the Commissioner decided to limit the number of public cars to the actual number registered on that day and this decision was publicised in G.N. (E) 16 of 1977.

I have been asked by the Commissioner for Transport to point out that Government has already announced its intention to replace public cars by private cars with permits to carry passengers for hire and reward. The permit will cost \$500 and it is anticipated that this class of vehicle will be created and come into operation about the end of this year. It is hoped that disappointed applicants for a public car licence will take advantage of this new scheme when it comes into force.

Before concluding I feel I must comment upon certain statements contained in the second paragraph of your letter. I deny that I informed the Court that the Commissioner for Transport had issued G.N. (E) 15 of 1977 as a result of the declarations granted on 30th June,

In the Supreme
Court of Hong
Kong

A28

Letter from
Senior Crown
Counsel to
K. Y. Woo & Co.
28th July 1977
(continued)

1977 in H. C. M. P. 749 of 1976. Neither did I inform the Court that the Commissioner for Transport had received clean applications for the registration of licensing of 50 vehicles as public cars. I only mentioned to Mr. H. Litton, Q. C. your Counsel before the start of the proceedings on 6th July, 1977 that I was informed that 50 applications for public cars had been handed into the office of the Transport Department that morning.

Yours faithfully,

(Sd.) K. C. WONG

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Senior Crown Counsel.

A29

Gazette Notice
G.N. 2424

22nd September
1978

A29

Gazette Notice G.N. 2424

GAZETTE NO. 38/1978

G.N. 2424

TRANSPORT DEPARTMENT

It is hereby notified for information that the following tenders for the right to register Hong Kong and Kowloon taxis, recently invited, have been accepted :-

Name	Number of Taxis	Total Premium Tendered \$	20
KWOK Sik-tung	1	291,500	
CHAN Shiu-kwong	1	248,888	
CHAN Lai-king	1	248,300	
WONG Cheong-wai	1	248,000	
WONG Cheong-wai	1	248,000	
YUEN Yuk-chun	1	248,000	
LO Yuk-man	1	248,000	
SHIU Cheu	1	248,000	
LEE Man-mau	1	247,700	
MAN Kwong-chi	1	247,334	30
CHAN Lai-king	1	247,300	
CHAN Kam-chiu	1	247,000	
CHAN Shiu-kwong	1	247,000	
CHENG Hung-kwong	2	494,000	
LAM Yau-tim	1	246,800	
MAN Kwong-chi	1	246,777	
LO Tai-shing	1	246,777	

Name	Number of Taxis	Total Premium Tendered \$	In the Supreme Court of Hong Kong
CHIAN Shiu-kwong	1	246,388	-----
CHIAN Shiu-kwong	1	246,388	A29
CHIAN Lai-king	1	246,300	Gazette Notice
CHAN Lai-king	1	246,300	G.N. 2424
FU Chuen-foo	1	246,110	
LO Yuk-man	1	246,000	22nd September
WONG Cheong-wai	1	246,000	1978
10 WONG Cheong-wai	1	246,000	
LEE Fai-huen	1	245,678.90	(continued)
KWOK Hang-chi	2	491,200	
AU Sui-lin, Linda	1	245,555	
CHUN May-see, Edwina	1	245,500	
WONG Hung-kai	1	245,380	
CHEUNG Tat-ming	1	245,380	
CHU Fai	1	245,333	
CHAN Lai-king	1	245,300	
CHAN Lai-king	1	245,300	
20 CHAN Lai-king	1	245,300	
FU Chuen-foo	1	245,110	
CHU Hee-yan	1	245,110	
CHENG Chun-chuen	1	245,000	
YUEN Wai-piu	10	2,450,000	
WONG Cheong-wai	1	245,000	
SHIU Cheu	1	245,000	
LO Him-wo	1	245,000	
CHAN Suet-ying	1	244,800	
LUI Chen-chung	1	244,600	
30 CHUNG Lai-ying	1	244,500	
CHUNG Lai-ying	1	244,500	
CHUNG Lai-ying	1	244,500	
CHUNG Lai-ying	1	244,500	
CHUNG Lai-ying	1	244,500	
CHUNG Lai-ying	1	244,500	
CHUNG Lai-ying	1	244,500	
CHUNG Lai-ying	1	244,500	
CHUNG Lai-ying	1	244,500	
CHUNG Lai-ying	1	244,500	
40 CHUNG Lai-ying	1	244,500	
CHUNG Lai-ying	1	244,500	
CHUNG Lai-ying	1	244,500	
CHUNG Lai-ying	1	244,500	
CHUNG Lai-ying	1	244,500	
CHUNG Lai-ying	1	244,500	
CHUNG Lai-ying	1	244,500	
CHUNG Lai-ying	1	244,500	
CHUNG Lai-ying	1	244,500	

In the Supreme Court of Hong Kong	Name	Number of Taxis	Total Premium Tendered \$	
-----	CHUNG Lai-ying	1	244,500	
A29	CHUNG Lai-ying	1	244,500	
Gazette Notice	CHUNG Lai-ying	1	244,500	
G.N. 2424	CHUNG Lai-ying	1	244,500	
22nd September	CHUNG Lai-ying	1	244,500	
1978	CHUNG Lai-ying	1	244,500	
(continued)	CHUNG Lai-ying	1	244,500	10
	CHUNG Lai-ying	1	244,500	
	CHUNG Lai-ying	1	244,500	
	CHUNG Lai-ying	1	244,500	
	CHUNG Lai-ying	1	244,500	
	CHUNG Lai-ying	1	244,500	
	CHUNG Lai-ying	1	244,500	
	CHUNG Lai-ying	1	244,500	
	CHUNG Lai-ying	1	244,500	
	CHUNG Lai-ying	1	244,500	
	CHUNG Lai-ying	1	244,500	20
	CHUNG Lai-ying	1	244,500	
	CHUNG Lai-ying	1	244,500	
	CHUNG Lai-ying	1	244,500	
	CHUNG Lai-ying	1	244,500	
	CHUNG Lai-ying	1	244,500	
	CHUNG Lai-ying	1	244,500	
	CHUNG Lai-ying	1	244,500	
	CHUNG Lai-ying	1	244,500	30
	CHUNG Lai-ying	1	244,500	
	CHUNG Lai-ying	1	244,500	
	CHUNG Lai-ying	1	244,500	
	YUEN Wai-piu	10	2,445,000	
	CHUN May-see, Edwina	1	244,500	
	KEUNG Kwai-cheung	1	244,300	
	CHEUNG Tat-ming	1	244,300	
	CHENG Siu-chow	1	244,300	
	CHEUNG Siu-chow	1	244,300	
	CHAN Lai-king	1	244,300	
	CHAN Lai-king	1	244,300	40
	CHAN Lai-king	1	244,300	
	KEUNG Kwai-cheung	1	244,200	
	AU Yat-pong	2	488,376	
	FUNG King-siu	1	244,115	
	LAI Sau-wan	2	488,040	
	SHIU Cheu	1	244,000	
	WONG Cheong-wai	1	244,000	
	KWOK Hon-chiu	1	244,000	
	LAI Sau-wan	2	488,000	

Name	Number of Taxis	Total Premium Tendered \$	In the Supreme Court of Hong Kong
CHENG Chun-chuen	1	244,000	-----
TSANG Yee-wan	1	244,000	A29
YUEN Wai-piu	10	2,439,000	Gazette Notice
CHAN Shiu-kwong	1	243,888	G.N. 2424
CHAN Shiu-kwong	1	243,888	22nd September
WONG Hung-kai	1	243,880	1978
WONG Hung-kai	1	243,880	
10 CHAN Fuk-choi	1	243,850	(continued)
CHAN Fuk-choi	1	243,850	
MAK Ching	1	243,830	
LAM Yau-tim	1	243,800	
HO Ying-kan	5	1,218,890	
LEE Man-mau	1	243,700	
TONG Pui-wing	1	243,668	
LEUNG Hee	2	487,320	
LAI Shing-chow	4	974,400	
CHUN Chun-kai	1	243,500	
20 LAI Sau-wan	2	487,000	
LEE Chung-hon	2	486,776	
LI Tsung-pui	2	486,676	
SO Kee	1	243,333	
CHU Fai	1	243,333	
LO Yin-fong	2	486,660	
LEE Kwei-sun	5	1,216,640	
CHAN Fuk-choi	4	973,312	
SUEN Oi-yau	1	243,300	
LAI Yan-sai	1	243,300	
30 CHENG Siu-chow	1	243,300	
CHENG Siu-chow	1	243,300	
LAI Yun-chat	1	243,300	
SUEN Oi-yau	1	243,300	
SUEN Oi-yau	1	243,300	
CHENG Siu-chow	1	243,300	
CHENG Siu-chow	1	243,300	
SUEN Oi-yau	1	243,300	
LAI Yan-pat	1	243,300	
LAI Yan-pat	1	243,300	
40 SUEN Oi-yau	1	243,300	
LAI Yan-sai	1	243,300	
SUEN Oi-yau	1	243,300	
LAI Yan-pat	1	243,300	
WAN Nam-ho	1	243,300	
LAI Yan-sai	1	243,300	
LAI Yun-chat	1	243,300	
SUEN Oi-yau	1	243,300	
SUEN Oi-yau	1	243,300	

In the Supreme Court of Hong Kong	Name	Number of Taxis	Total Premium Tendered \$	
-----	LAI Yan-pat	1	243,300	
A29	SUEN Oi-yau	1	243,300	
Gazette Notice	LAI Yan-sai	1	243,300	
G.N. 2424	WAN Nam-ho	1	243,300	
	LAI Yun-chat	1	243,300	
22nd September	LAI Yan-sai	1	243,300	
1978	SUEN Oi-yau	1	243,300	
(continued)	LAI Yan-pat	1	243,300	10
	SUEN Oi-yau	1	243,300	
	TONG Leung	1	243,300	
	TONG Leung	1	243,300	
	SUEN Oi-yau	1	243,300	
	LEE Kok-keung	1	243,300	
	LAI Yun-chat	1	243,300	
	SUEN Oi-yau	1	243,300	
	LAI Yun-chat	1	243,300	
	SUEN Oi-yau	1	243,300	
	SUEN Oi-yau	1	243,300	20
	LAI Sau-wan	2	486,500	
	WONG Chor-ting	5	1,216,000	
	CHUN Yuk-woon	3	729,600	
	HO Ping	1	243,280	
	HO CHOI Yim-fong	5	1,215,890	
	KWONG Kwan	1	243,130	
	AU Sui-lin, Linda	2	486,222	
	FU Chuen-foo	1	243,110	
	LEUNG Sau-wai	2	486,200	
	LEUNG Sau-wai	2	486,200	30
	HO Kwai-hung	1	243,100	
	NG Fong	2	486,006	
	LEE Hoi	2	486,000	
	CHENG Chun-chuen	1	243,000	
	TSANG Yee-wan	1	243,000	
	LEUNG Mai-chun	3	729,000	
	LO Chuk-cheung	1	243,000	
	CHONG Hon-chung	1	243,000	
	KWOK Hon-chiu	1	243,000	
	MOK Kwan	5	1,215,000	40
	LAM Shak-kuen	1	242,990	
	LAM Shak-kuen	1	242,898	
	MAK Ching	5	1,214,445	
	LO Chek-wing	5	1,214,445	
	POON Wai-man	5	1,214,445	
	MOK Keng-tim	5	1,214,445	
	POON Kam	4	971,532	
	HO Kwok-keung	1	242,833	

Name	Number of Taxis	Total Premium Tendered \$	In the Supreme Court of Hong Kong
MOK Wai-man, Patrick	2	485,666	-----
CHAN Fuk-choi	1	242,828	A29
LEE Kwei-sun	2	485,656	Gazette Notice
	---		G.N. 2424
Total	300		22nd September 1978

I. F. C. MACPHERSON

(continued)

Commissioner for Transport.

10 22 September 1978.

STATEMENT OF AGREED FACTS

1. On 21st February 1975 the Commissioner by notice in the Gazette (GN. 420) in exercise of his power under Reg. 18B(1) of the Road Traffic (Registration and Licensing of Vehicles) Regulations limited "to a maximum of 4,331 the number of motor vehicles that may be registered or licensed as public light buses".

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2. On 21st May 1976 the Commissioner by notice in the Gazette (GN. 1065) limited "to a maximum of 4,350 the number of motor vehicles that may be registered or licensed as public light buses".

3. On 15th July 1976 the Solicitors for the Plaintiffs delivered to the Commissioner 25 applications for the registration of 25 Nissan Minibuses as public light buses. The said applications were made in forms TD22, that is, forms prescribed by the Commissioner under Regulation 4 of the said Regulations.

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4. On 22nd July 1976 the Commissioner replied to the effect that the applications for registration of 25 public light buses were "not approved under Reg. 17(1)" and were "barred from consideration in consequence of the Gazette Notice 1065 of 21st May 1976" limiting the number of motor vehicles that might be registered as public light buses.

5. The number of motor vehicles registered on 15th July 1976 as public light buses was 4,346.

6. With regard to the difference as at 15th July 1976 between the limit imposed under Regulation 18B and the actual number of vehicles registered as public light buses, namely 4, at no time had any application been made to the Commissioner in form TD22 for the registration of any vehicle as public light buses.

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7. There were, at all material times, no other applications delivered to the Commissioner for the registration of motor vehicles as public light buses in form TD22,

apart from the 25 applications lodged by the Solicitors for the Plaintiffs as stated in fact 3 above.

In the Supreme Court of Hong Kong

(Sd.)

(Sd.)

B1

Counsel for the Plaintiffs

Counsel for the Deft.

Statement of Agreed Facts

25th May 1977

25th May, 77

25th May 1977

(continued)

B2

B2

Judgment in Action No. 749 of 1976

Judgment in Action No. 749 of 1976

1 976, NO. 749

30th June 1977

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IN THE SUPREME COURT OF HONG KONG
HIGH COURT
MISCELLANEOUS PROCEEDINGS

IN THE MATTER of the Road Traffic Ordinance, Cap. 220 of the Laws of Hong Kong

- and -

IN THE MATTER of the Road Traffic (Registration and Licensing of Vehicles) Regulations

- and -

20

IN THE MATTER of application dated 15th July 1976 for the registration of 25 vehicles as Public Light Buses

BETWEEN LEUNG CHOW PUBLIC CAR COMPANY (a firm) Plaintiffs

- and -

THE ATTORNEY GENERAL Defendant

BEFORE THE HONOURABLE MR. JUSTICE McMULLIN
IN CHAMBERS

J U D G M E N T

Dated the 30th day of June, 1977

UPON HEARING Counsel for the Plaintiffs and

In the Supreme
Court of Hong
Kong

B2

Judgment in
Action No. 749
of 1976

30th June 1977

(continued)

Counsel for the Defendant and UPON READING the Affidavit of Tse Kai Chow sworn herein on 3rd March 1977 and filed on 4th March 1977 and the exhibits thereto; the affirmation of Woo Kwok Yin affirmed herein on 3rd March 1977 and filed on 4th March 1977; the affidavit of Cheung Yuk Yin sworn and filed herein on 6th May 1977 and the exhibits thereto; the affidavit of Russel Joseph Johnson sworn herein on 12th April 1977 and filed on 6th May 1977; the further affidavit of Tse Kai Chow sworn and filed herein on 20th May 1977; the further affidavit of Cheung Yuk Yin sworn and filed herein on 20th May 1977; the affirmation of Joseph Chiu affirmed and filed herein on 24th May 1977; the further affidavit of Cheung Yuk Yin sworn and filed herein on 25th May 1977 and the still further affidavit of Cheung Yuk Yin sworn and filed herein on 9th June 1977, AND UPON HEARING evidence of Cheung Yuk Yin viva voce,

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IT IS DECLARED AND ORDERED

- (1) that the Commissioner for Transport was wrong and had no authority when entertaining or considering the Plaintiffs' applications all of 15th July 1976 for registration of 25 vehicles as public light buses to have taken into account applications for the registration of motor vehicles as public light buses unless such latter mentioned applications had been made in the form prescribed by the Commissioner under the provisions of Regulation 4 of the Road Traffic (Registration and Licensing of Vehicles) Regulations, Cap. 220 of the Laws of Hong Kong;
- (2) that the Commissioner for Transport ought to have entertained the Plaintiffs' said applications made in the form prescribed by the Commissioner under the provisions of Regulation 4 of the Road Traffic (Registration and Licensing of Vehicles) Regulations, Cap. 220 only with like applications, if any, without taking into consideration any other applications not made in the said form or at all;
- (3) that the Plaintiffs are entitled to have four applications for registration of four vehicles as public light buses entertained under the provisions of Regulation 6 of the Road Traffic (Registration and Licensing of Vehicles) Regulation; and
- (4) that in the alternative to (3), the Plaintiffs are

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entitled to have applications for the registration of four vehicles as public light buses entertained together with other like applications by other persons, if any, such applications to be determined by lot under and in accordance with Regulation 18B(3) of the Road Traffic (Registration and Licensing of Vehicles) Regulation.

AND THAT the costs of this action be the Plaintiffs' with certificates for two counsel.

In the Supreme Court of Hong Kong

B2

Judgment in Action No. 749 of 1976

30th June 1977

(continued)

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S. H. MAYO (L.S.)

Registrar.

In the Supreme
Court of Hong
Kong

C1

Memo from
Commissioner
for Transport
to Secretary of
Environment
with Draft
Gazette Notice
5th May 1976

C1

Memo from Commissioner for Transport to
Secretary of Environment with Draft Gazette
Notice

ROAD TRAFFIC ORDINANCE
(Chapter 220)

In exercise of the powers conferred upon me by regulation 18B(1) of the Road Traffic (Registration and Licensing of Vehicles) Regulations, I hereby limit to a maximum of 4,350 the number of motor vehicles that may be registered or licensed as public light buses.

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I. F. C. Macpherson

Commissioner for Transport.

Date:

MEMO

From Commissioner for
Transport

To Secretary for the
Environment

Ref. (15) in L/M in 4996/
276/75

Your Ref. (5) TC 255/75
(ENV 30/01/17 IV)

Tel. No. 5-260121 E. 221

dated

20

Date 5th May 1976.

Registration and Licensing of Public Light Buses

I enclose for your information a copy of the order made by the Court of Appeal on the 7th April 1976 and a copy of the judgment of Mr. Justice Huggins of the 30.10.75 (the subject of the appeal).

2. I have had a meeting with the Solicitor General to discuss the implications of the decision of the Court of Appeal. Upon his advice it is proposed :

(a) to proceed with the registration and licensing of 34 public light buses in the name of the client of Messrs. Deacons, as he was adjudged to be so entitled by the Court of Appeal;

30

(b) that the gazetted limit (GN 420 of 21-2-75) of

4,331 PLBs be raised to 4,350 to accommodate the 34 at (a), the figure of 4,350 being arrived at as follows :

In the Supreme Court of Hong Kong

	No. of Public Light Buses registered on 31-3-76	4,308
	No. of 'committed' licences	8
	No. of licences to be issued as a result of Civil Appeal No. 58 of 1975	____ 34
	The new limited no.	____ 4,350
10	The difference between the old and the new limited no.	4,350
		- 4,331

		= 19

C1

Memo from Commissioner for Transport to Secretary of Environment with Draft Gazette Notice

5th May 1976
(continued)

(c) to do nothing about the outstanding claims for 319 PLBs against former NT taxis;

20 (d) that the 'applications' by letter for 1,477 PLBs can be ignored, as these were not applications within the meaning of regulation 4 of the Road Traffic (Registration and Licensing of Vehicles) Regulations;

(e) that similar 'applications' for public car licences can equally be disregarded;

(f) not to proceed with the applications filed in accordance with regulation 4 for 20 public car licences, which were received after the date of the GN (5-12-75) limiting the number of public cars to 1,388.

30 3. A draft GN in accordance with (b) is attached. I am not certain whether this revised limit requires the attention of the Governor, but I suggest that it may not be necessary once a limit has been imposed - para. 2 of your memo (20) in ENV TC 55 of 27-3-75 is relevant.

(I. F. C. Macpherson)
Commissioner for Transport.

c. c. Solicitor General (AGC 2/1625/66 II)
CT 3/114/71
CT 2/113 III
Legal Advice File
CT 1311/274/75

In the Supreme
Court of Hong
Kong

C2

Memo from Commissioner for Transport to
Secretary of Environment with Draft Gazette
Notice

C2

Memo from
Commissioner
for Transport
to Secretary of
Environment
with Draft
Gazette Notice
29th June 1977

CONFIDENTIAL

MEMO

VERY URGENT

From Commissioner for
Transport

To Secretary for the
Environment

Ref. (29) in CT 1311/264/75

Your Ref. TC 255/75
(ENV 30/01/17 IV)

Tel.No. 5-260121 Ext. 35

10

Date 29th June, 1977

dated

Limitation as to Numbers of Public Service Vehicles

G.N. 2290 was published on 15th October, 1976 limiting the numbers of motor vehicles which may be registered and licensed as Hong Kong and Kowloon taxis, New Territories taxis and public cars.

2. A court case H.C.M.P. No. 750/76 which involves a claim for the registration of 47 new public cars is about to be heard. The dates of hearing have not been fixed yet. There are at present 1,329 public cars registered with this department but the number limited in the gazette is 1,388. The vacancies are reserved for those operators who have not taken out the outstanding public car licences offered to them in principle some years ago or whose licences were cancelled/revoked previously. The Crown Counsel handling the said case is of the opinion that we do not have to reserve these vacancies for the operators concerned who have failed to comply with Regulations 4 and 6 of the Road Traffic (Registration and Licensing of Vehicles) Regulations. He further considers that the figure to be limited may be the number of public cars actually registered and that if we lose the said case, the limited figure may then be enlarged to comply with the court order. The publication of a reduced figure will therefore avoid further litigations of this nature and bar any application for registering new public cars which are owned by the applicant or the plaintiffs if they fail in the said case.

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3. I should therefore be grateful if arrangements can be made for the attached draft Gazette Notice to be

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published in the Gazette in the earliest opportunity. Any arrangements for the publication should be done in strict confidence. The draft notice also includes a larger number in respect of Hong Kong and Kowloon taxis to accommodate the registration of 300 additional taxis in the current tender exercise.

In the Supreme
Court of Hong
Kong

C2

4. By copy of this memorandum, the Attorney General is requested to confirm the last three sentences in paragraph 2 above.

Memo from
Commissioner
for Transport
to Secretary of
Environment
with Draft
Gazette Notice

29th June 1977

(continued)

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(Sd.) CHEUNG Yuk-yin
for Commissioner for Transport.

c. c. Attorney General
(Attn: K. C. Wong, Esq.)
Your Ref. AGC 81/230/76)
CTC 120/24

G.N. _____

Road Traffic Ordinance
(Chapter 220)

20 In exercise of the powers conferred upon me by regulation 18B(1) of the Road Traffic (Registration and Licensing of Vehicles) Regulations, I hereby limit the numbers of motor vehicles which may be registered and licensed as :-

- (a) Hong Kong and Kowloon taxis to a maximum number of 5,054;
- (b) New Territories taxis to a maximum number of 750; and
- (c) public cars to a maximum number of 1,329.

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I. F. C. Macpherson
Commissioner for Transport.

In the Supreme
Court of Hong
Kong

C3

Letter from U.E.E. Ltd. to Commissioner
for Transport

C3
Letter from
U.E.E. Ltd. to
Commissioner
for Transport

U.E.E. LIMITED
United Engineering Enterprises
222 Chatham Road,
Kowloon, Hong Kong.

Cable Address
UNIENPRISE

Telephones
3-621963-631559

5th July 1977

By hand

Commissioner for Transport,
Transport Department,
2 Murray Road,
Hong Kong.

5th July, 1977

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Dear Sir,

We (formerly known as Hay Kay Public Car Co.
Ltd. and now U.E.E. LTD.) very much wish to operate
50 public cars. We now attach the following documents:-

- (1) 50 application forms.
- (2) Insurance cover note.
- (3) 50 parking accommodation certificates.
- (4) A maintenance certificate.
- (5) A valid B.R.C. (copy)
- (6) A cheque for the registration of the vehicles
as public cars.
- (7) Certificate of Incorporation (copy)
- (8) Memorandum and articles of association of
U.E.E. Ltd.
- (9) Vehicle purchase contract.

20

Please proceed with the registration procedure as
soon as possible. I have been advised that the invoice
and receipts to support payment of registration tax will
be supplied by the motor dealer on request.

30

Yours faithfully,

(Sd.)

ACKNOWLEDGMENT SENT
ON 6 JUL 1977

C4

Memo from Commissioner for Transport to
Secretary for Environment

In the Supreme
Court of Hong
Kong

C4

CONFIDENTIAL

MEMO

VERY URGENT
BY HAND

Memo from
Commissioner
for Transport
to Secretary of
Environment

6th July 1977

From Commissioner for
Transport

To Secretary for the
Environment
(Attn.: Mrs. R.M.
Cartland)

10 Ref. (34) in C.T.1311/274/75

Tel. No. 5-756541 Ext. 17

Your Ref. TC 255/75
(ENV 30/01/17 IV)

Date 6th July, 1977

dated

Limitation as to Number of Public Cars

The Senior Crown Counsel's memorandum AGC
81/230/76 (KCW) of 29th June 1977 addressed to me and
copied to you refers.

20 2. On the verbal advice given subsequently on 30.6.77
by Mr. K.C. Wong, the Senior Crown Counsel, the
gazetted limit in respect of public cars in G.N. (E) 15 of
1977 dated 30th June 1977 was changed prior to the
publication of the Notice from 1,329 to 1,376.

30 3. Yesterday morning Mr. K.C. Wong had a discussion
with Mr. P.F. Leeds, Acting Commissioner for Transport
about the limitation and it was eventually agreed after
consulting the Crown Solicitor that the gazetted limit in
respect of public cars should be reduced from 1,376 to
1,329 (which is the number of public cars actually
registered as at to-day) to avoid further litigation and
bar any further claim for registering new public cars
from the public.

4. Accordingly, I forward herewith for immediate
publication a draft Gazette Notice (Extraordinary).

(C.W. Wong)

for Commissioner for Transport

c. c. Attorney General
(Attn.: Mr. K.C. Wong)
Deputy Clerk of Councils
CTC 120/24

In the Supreme
Court of Hong
Kong

C5

Letter from C. J. Gilman of John Ip & Co. to Commissioner
for Transport

C5

Letter from
C. J. Gilman of
John Ip & Co. to
Commissioner
for Transport

6th July 1977

CHRISTOPHER J. GILMAN

Tel. 3-916603

KOWLOON OFFICE:

Room 603 Hang Seng Bank Building,
No. 677 Nathan Road.

Tel. 3-946603

3-950052

Our Ref. J/JI

6th July, 1977

10

The Commissioner for Transport,
Transport Department,
No. 2 Murray Road,
Hong Kong.

Dear Sir,

Re: Application for registration of public cars

We act for our client, Mr. Samuel Fernand Ip
carrying on business under the style of New Transport
Company.

Pursuant to Regulations 4 of the Road Traffic
(Registration and Licensing of Vehicles) Regulations under
the Road Traffic Ordinance Cap. 220, we are instructed to
apply to you for the registration of fifty (50) vehicles,
which have been purchased by our client, as public cars,
and licensing thereof.

20

In anticipation of any points of law which may be
raised by you, we would invite your kind attention to the
following authorities :-

- (1) The case of Wong Kwong Shing v/s The Attorney
General under Original Jurisdiction Miscellaneous
Proceedings No. 212 of 1975 and the Judgment of
Mr. Justice Huggins therein. The said Judgment
was affirmed and upheld by the Full Court on appeal.
- (2) The recent case of Leung Chow Public Car Company
v/s The Attorney General and the Judgment of Mr.
Justice McMullin.

30

As you are doubtless aware, the Attorney General was the nominal defendant in each of the cases cited above, and you were in fact the substantive party involved therein.

In the Supreme Court of Hong Kong

C5

10 It is respectfully submitted that on the strength of the foregoing authorities you are empowered and required by the provisions of the Road Traffic Ordinance Cap. 220 and the said Regulations thereunder to proceed to register the said vehicles under Regulation 6 of the said Regulations.

Letter from C.J. Gilman of John Ip & Co. to Commissioner for Transport

6th July 1977

Our client's said application is also made on the following basis :

(continued)

(1) By a notice in the Government Gazette you have declared a limit on the number of vehicles which may be registered as public cars to 1376. However, it appears from the latest statistics published by the Government that the number of vehicles registered as Public Cars so far is in the region of 1327 or thereabouts.

20 (2) There is thus a surplus of vehicles registrable as public cars.

30 In these circumstances, we are instructed to deliver to you herewith, pursuant to the said Regulation 4 cited herein, 50 applications (on Form No. 22 prescribed by you) duly completed and duly signed by our client together with our cheque for \$500:00 being the total registration fees, at the rate of \$10:00 for each application, payable therefor. At the same time, our client will produce his business registration certificate and insurance documents relating to the said 50 vehicles and will attend at your department personally.

Of course, our client will comply with the procedures for licensing of the said 50 vehicles including payment of the licence fees in all respects as required by you.

40 We shall be glad if you will kindly give this matter your immediate attention and let us know whether you decide to register and license the said 50 vehicles or the maximum number of registrable vehicles, as public cars pursuant to our client's said applications.

In this connection, our principal, Mr. John David

In the Supreme
Court of Hong
Kong

C5

Letter from
C.J. Gilman of
John Ip & Co. to
Commissioner
for Transport

6th July 1977
(continued)

Ip, Solicitor will call at your department together with
this letter.

Yours faithfully,

(Sd.) JOHN IP & CO.

JI:ES
Encls.

c. c. The Commissioner for Transport
Guardian House Carpark,
Hong Kong.

Client.

10

ACKNOWLEDGMENT SENT
ON 7 JUL 1977

C6

Letter from
C.J. Gilman of
John Ip & Co. to
Commissioner
for Transport

7th July 1977

C6

Letter from C. J. Gilman of John Ip & Co. to Commissioner
for Transport

CHRISTOPHER J. GILMAN
Tel. 3-916603

KOWLOON OFFICE:
Room 603 Hang Seng Bank Building,
No. 677 Nathan Road.

Tel. 3-946603
3-950052

URGENT

Our Ref. J197/JI

7th July, 1977

20

The Commissioner for Transport,
Transport Department,
Guardian House, 6th Floor,
Oi Kwan Road,
Hong Kong.

Dear Sir,

Re: Application for registration of Public Cars

Yesterday, the 6th instant at shortly after 9:30 a. m.
our Mr. John Ip together with our client Mr. Samuel

Fernand Ip called at your offices at Guardian House to see your goodself in connection with the above-mentioned application but were informed that neither you nor your Assistant Commissioner were available.

In the Supreme Court of Hong Kong

C6

Eventually at about 5:00 p.m. yesterday, our Mr. John Ip accompanied by our Chief Clerk Mr. Eddie Sit called again at your office and were eventually met by Mr. C.W. Wong who kindly interviewed them.

Letter from C.J. Gilman of John Ip & Co. to Commissioner for Transport

10 During the interview, our Mr. Ip handed over to Mr. Wong our letter to you dated the 6th instant containing our client's application for registration of 50 vehicles as Public Cars and the following enclosures :-

7th July 1977

(continued)

- (1) 50 sets of applications (on Form No.22) duly completed and duly signed by our client.
- (2) Our cheque for \$500:00 being the total registration fees payable for such applications.

Our Mr. Ip also produced and handed over to Mr. Wong the following documents :-

- 20 (1) Our client's Business Registration Certificate of his firm New Transport Company.
- (2) A Purchase Agreement made by our client for the said 50 vehicles.
- (3) 50 sets of Cover Notes relating to the said 50 vehicles.

Your Mr. Wong kindly received the said letter and enclosures, and the said documents.

30 In the circumstances, we take it that you do not require our client or us to attend at your licensing office at No.2 Murray Road, Ground Floor, Hong Kong to present the said applications cheque and documents. However, if you still require such attendance at No.2 Murray Road, Ground Floor, Hong Kong to present said applications, cheque and documents, kindly return us all such documents immediately so that we may do so accordingly.

As our client is determined to proceed with the registration and licensing of his said 50 vehicles expeditiously, we shall be glad to know what decision has been made by you on his said applications.

40 Accordingly, we are instructed to request you to send us your written confirmation that the registrations and licences of the said 50 vehicles would in principle be issued after the usual processing and procedures of our client's said applications, by 1:00 p.m. to-morrow, failing which we have definite instructions to commence legal proceedings against you to obtain the appropriate reliefs and remedies in the Court.

Jl:ES

Yours faithfully,
(Sd.) JOHN IP & CO.

In the Supreme
Court of Hong
Kong

C7

Letter from
Commissioner
for Transport
to John Ip & Co.

9th July 1977

C7

Letter from Commissioner for Transport to
John Ip & Co.

(4) in CT 1488/274/77
Your Ref. J197/JI
5-756541 Ext. 17

9th July, 1977

Dear Sirs,

Applications for registration of public cars

With reference to your letters ref. J/JI dated 6th July 1977 and ref. J197/JI of 7th July, 1977 respectively applying on behalf of your client Mr. Samuel Fernand Ip for the registration and licensing of fifty (50) vehicles as public cars, I am to inform you that I am unable to process your client's applications because of the following reasons :-

10

- (a) the secondary colour of the vehicles is not indicated in the application forms (T.D. 22 (Rev.));
- (b) no factory invoice of the 4 vehicles is attached to the applications;
- (c) the chassis numbers and engine numbers of the vehicles are not given in the purchase agreement with Honest Motors;
- (d) there is no indication of the period of licence applied for in each of the 50 application forms;
- (e) in the application forms in respect of vehicles with the following chassis numbers, the seating capacity is not recorded :-

20

Q330-022234, Q330-022233
Q330-021971, Q330-022302
Q330-021717, Q330-021037
Q330-021710, Q330-021034

30

and Q330-021988

- (f) no parking accommodation certificates and

maintenance certificates for the 50 vehicles are attached to the applications;

- (g) the Hong Kong Identity Card number of the applicant is not given on three of the application forms.

Before any consideration may be given to your client's applications, it is necessary for you to arrange with your client to rectify the above omissions.

10 All the relevant documents including the 50 application forms (T.D. 22 (Rev.)) and the duplicate copy of the purchase agreement No. 2518-2567 of 5th July 1977 between your client and Honest Motors Limited are returned herewith for necessary amendments.

Yours faithfully

(C.W. Wong)

for Commissioner for Transport

20 John Ip & Co.,
Solicitors etc.,
Room 1003 Swire House,
HONG KONG.

Encls.
CWW/pf

In the Supreme
Court of Hong
Kong

C7

Letter from
Commissioner
for Transport
to John Ip & Co.

9th July 1977

(continued)

In the Supreme
Court of Hong
Kong

C8

Letter from Commissioner for Transport to
U.E.E. Ltd.

C8

Letter from
Commissioner
for Transport
to U.E.E. Ltd.
9th July 1977

(5) in CT 1486/274/77

5-756541

9th July, 1977

Dear Sir,

Applications for registration of public cars

With reference to your letter dated 5th July 1977 which was handed in at the Public Vehicles Section of this department on 6th July 1977 applying for the registration of fifty (50) motor vehicles as public cars, I am to inform you that I am unable to deal with your applications because of the following reasons :-

- (a) the expiry date of the respective third party insurance certificate for each of the 50 motor vehicles was wrongly entered in Part C of the relevant application form (T.D. 22 (Rev.)) and in the relevant parking accommodation declaration; 10
- (b) in the application for the registration of the vehicle with chassis number Q330-021037 no certificate of incorporation number in respect of your company is recorded; 20
- (c) the chassis numbers and engine numbers of the 50 vehicles are not given in the 5 purchase agreements dated 5th July 1977;
- (d) no factory invoice in respect of the 50 vehicles was attached to the applications.

Before any consideration may be given to your application, it is necessary for you to rectify the above-mentioned errors and omissions. 30

All the relevant documents including the five purchase agreements of 5th July 1977 signed between yourselves and Honest Motors Limited, the 50 sets of application forms, parking accommodation declarations and third party insurance certificates are returned herewith for necessary amendments.

Yours faithfully,

(C.W. Wong)
for Commissioner for Transport

U.E.E. Ltd.
222, Chatham Road,
Ground Floor, KOWLOON.
Enclosures
CWW/pf

40

此合約簽訂於一九七 年 月 日 由合誠汽車有限公司
Agreement made the 9th day of July 1977 between HONEST MOTORS LIMITED
地址：香港西區西甘廿三號至廿五號A (以下簡稱賣方) 與 Leung Chow Public
of 23-25A Canal Road West G/F, Hong Kong (hereinafter called the "Sellers") and Mr./Car Co.

60, Nathan Road, 12/F, Flat B-3, Kowloon. (hereinafter called the "Buyer")
雙方同意根據此合約背面所列之條款賣方出售及買方
whereby the sellers agree to sell and the buyer agrees to purchase the goods specified below subject to
購入下列之商品
the terms and conditions contained on the back hereof.

47 輛 unit(s) Datsun 220C Diesel Sedan for Public Car Use.

Other terms 其他

Air Conditioner	冷氣機	\$
Automatic	自動波	\$
Licence Fee	牌費	\$ 910.- 42,770.-
Registration Fee	註冊費	\$
Accessories	附件	\$
Licence Plate	車牌	\$ 28.- 1,316.-
Body Painting	噴油	\$
Insurance	保險	\$ 450.- 68,150.-
Licence Retention	留牌	\$
H/P Settlement	贖會	\$
Fender Mirror		20.- 940.-
		\$ 4,408.- 113,176.-

訂價	1 Unit	47 Un
List Price @\$	HK\$ 35,300.-	1,659,10
折扣		
Discount: 15%	5,295.-	248,86
實價		
Net :	HK\$ 30,005.-	1,410,23

加 Plus → \$ 2,408.- 113,176

Trade-in car 收入車輛

Make & Model 牌子及型式	
Lic. No. 車牌	Year 年份

合計 Total HK\$ 32,413.- 1,523,41

H/P Investment 車會 (months 月) \$

減 Minus

Down Payment 首期 \$

應付餘額 Balance Payable HK\$ 32,413.- 1,523,41

敬請注意
Important!

- (1) 上列之價格及牌費等以交車時所簽訂之價格為準
The above price and licence fee are subject to change or be revised at the time of delivery of the vehicle(s).
- (2) 車如非由本公司安裝冷氣機或其它附件因而引致該車機件失常或損壞，本公司不自負該車保用責任
Any deterioration in motoring performance resulting from an air conditioning installation or any accessories other than our own will not be regarded as our responsibility within our new car warranty.
- (3) "此用若增加或減低稅率，增減之稅額由買家負責。"
"Any increase or decrease in tax on the vehicle, and/or on the body, from the taxes ruling today will be for the account or benefit of the buyer."

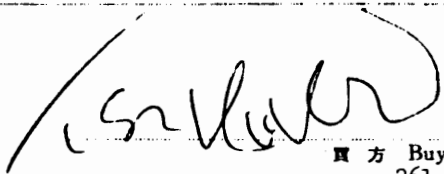
期 / Delivery to be arranged

營業代表 Company (Tse Kai Chow)

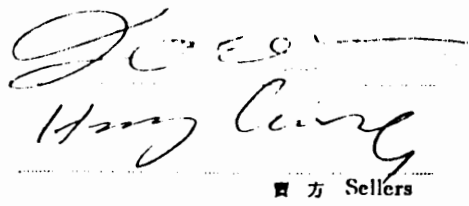
Salesman :

買客付欸請索公司收據

for and on behalf of
HONEST MOTORS LIMITED



買方 Buyer
261.



賣方 Sellers

合誠汽車有限公司

In the Supreme
Court of Hong
Kong

C9

Contract No.
1647A - 1693A

(continued)

1. If after having been notified by the sellers of their readiness to deliver the goods the buyers fail to take delivery of and pay for the same in accordance with this contract they shall pay to the sellers monthly thereafter a sum equal to 12% per annum on the overall contract price to cover interest godown rent and fire insurance without prejudice to the right of the sellers at any time to call on the buyers to pay for and take delivery of the goods forthwith. In the event of the buyers failing to comply with this clause the sellers shall be at liberty on their own account to sell or otherwise deal with and dispose of the goods in such manner as they may deem fit and the buyers shall be liable for all losses and expenses that the sellers may incur thereby. 10

2. The sellers shall not be responsible for any delay in fulfilling or for the non-fulfilment of this contract caused by fire, strikes, war, warlike operations, civil commotions, epidemics, floods, typhoons, lockouts, Government prohibitions, restriction, requisition, or any Government action of whatsoever nature, scarcity of tonnage, breakdown of machinery or by the detention, deviation, delay or loss owing to any cause whatsoever of the steamer by which the goods are shipped or by any other incidents or circumstances beyond the control of the sellers whether of a similar nature to the foregoing or not. If the arrival of the goods or any portion thereof be delayed owing to the above causes the buyers shall nevertheless take delivery of and pay for the same on arrival according to the terms hereof. Should the goods be lost in transit this contract shall be considered null and void and the buyers shall have no claim whatsoever against the sellers. 20 30

3. The sellers may in their discretion insure against war risk and in the event of such insurance being effected the same shall be for the account of the buyers but the sellers shall not incur any liability by reason of such insurance not having been effected.

4. No claim in respect of the goods or under this contract shall be made against the sellers unless it be made in writing within seven days after the arrival of the goods in Hongkong nor shall any such claim be made after delivery has been taken and the goods have been removed from the place of delivery by the buyers. 40

5. Fire insurance in respect of the goods while the same shall be stored in a godown in Hongkong prior to

delivery thereof the buyers shall also be effected by the sellers (subject nevertheless to the conditions of the preceding clause) but any loss or damage to the goods caused by typhoons, floods and any other risk to the same not covered by fire insurance shall be for account of the buyers.

In the Supreme
Court of Hong
Kong

C9

Contract No.
1647A - 1693A

(continued)

10 6. Any breach by the buyers of any of the terms of this contract shall entitle the sellers to forfeit without notice any deposit paid to them by the buyers without prejudice to any other claims which the sellers may have against the buyers in respect of any such breach.

7. Notwithstanding anything herein contained sellers have the option of demanding payment for the said goods or any portion thereof before delivery is made to the buyers.

20 8. Should any dispute arise between the buyers and sellers in relation to this contract which they are unable themselves to settle the same shall be referred to the arbitration of two persons one to be nominated by the Hongkong Chamber of Commerce and the other (who must be a British Merchant) by the buyers and the provision of the Hongkong Code of Civil Procedure with reference to arbitrations are incorporated in this contract.

9. Sellers shall recognise only specifications in accordance with manufacturers' current standards and shall not be responsible for fittings, equipment and accessories other than those specified herein.

30 10. Sellers shall not be responsible for any fittings equipment and accessories constructed not by the manufacturer although such fittings equipment and accessories are constructed by sellers in Hongkong at the request and full cost and risk of the buyers.

11. The terms & conditions of this contract will not prejudice the conditions of manufacturer's warranty.

12. Sellers will not be bound by any conditions rebates, or any other matters which are not expressly contained in their contracts.

In the Supreme
Court of Hong
Kong

C10

Supplement to Contract T/1647A - 1693A

C10
Supplement to
Contract
T/1647A-1693A
9th July 1977

HONEST MOTORS LTD.
23-23A, Canal Road., W.,
G/F., Hong Kong

Cable Address:
"Honemotor" Hongkong
Telex 74731 Honemo HX
Telephones:
5-740301 (10 lines)

9th July, 1977

Supplement to Contract Nos. T-1647A to T-1693A
dated 9-7-77

10

We, HONEST MOTORS LTD., Hongkong (hereinafter referred to as seller) hereby give in the following the engine and chassis numbers of forty-seven (47) units Datsun Cedric 220-C Diesel Sedan being the entire quantity available for delivery of the related contract to Messrs. Leung Chow Public Car Company (hereinafter referred to as buyer). However, seller is entitled to be free to sell the concerned vehicles to any other customers on or after 20th July, 1977 and in that case seller will re-arrange delivery to buyer from stock and or from their further arrivals.

20

This contract will be automatically become invalid if buyer fails to take delivery the whole or balance quantity of the contract within 3 months from the date hereof whereby the deposit will be refunded to buyer.

<u>MODEL</u>	<u>CHASSIS NO.</u>	<u>ENGINE NO.</u>	
Q330SU40	Q330-013941	SD22-170864	
"	Q330-020103	SD22-176700	
"	Q330-020108	SD22-176702	
"	Q330-019805	SD22-176404	30
"	Q330-020453	SD22-177084	
"	Q330-022301	SD22-175002	
"	Q330-022225	SD22-176501	
"	Q330-021987	SD22-178025	
"	Q330-022229	SD22-176500	
"	Q330-022219	SD22-177413	
"	Q330-022231	SD22-177318	
"	Q330-021976	SD22-178022	
"	Q330-019957	SD22-176703	
"	Q330-019807	SD22-176403	40
"	Q330-019965	SD22-175911	

	<u>MODEL</u>	<u>CHASSIS NO.</u>	<u>ENGINE NO.</u>	In the Supreme Court of Hong Kong
	Q330SU40	Q330-019954	SD22-175910	
	"	Q330-020104	SD22-176699	_____
	"	Q330-019955	SD22-176202	C10
	"	Q330-020102	SD22-176701	
	"	Q330-019814	SD22-176198	Supplement to
	"	Q330-019810	SD22-176799	Contract
	"	Q330-019817	SD22-175909	T/1647A-1693A
	"	Q330-020251	SD22-176798	9th July 1977
10	"	Q330-020247	SD22-176887	
	"	Q330-020253	SD22-177206	(continued)
	"	Q330-019813	SD22-176795	
	"	Q330-017172	SD22-173070	
	"	Q330-017614	SD22-172984	
	"	Q330-017089	SD22-173068	
	"	Q330-016846	SD22-173252	
	"	Q330-016845	SD22-173081	
	"	Q330-014697	SD22-172100	
	"	Q330-014525	SD22-171901	
20	"	Q330-017412	SD22-173247	
	"	Q330-013128	SD22-169780	
	"	Q330-017088	SD22-173069	
	"	Q330-015286	SD22-172295	
	"	Q330-017009	SD22-172978	
	"	Q330-014706	SD22-172089	
	"	Q330-016931	SD22-172985	
	"	Q330-016928	SD22-172975	
	"	Q330-017612	SD22-174918	
	"	Q330-017332	SD22-174550	
30	"	Q330-017493	SD22-173246	
	"	Q330-017010	SD22-172990	
	"	Q330-015398	SD22-172618	
	"	Q330-017090	SD22-172988	

Agreed and Confirmed by:-
M/s. Leung Chow Public
Car Co.

(Sd.) TSE KAI CHOW

Mr. Tse Kai Chow

for and on behalf of
HONEST MOTORS LIMITED

(Sd.)

(Sd.)

Authorized Signature

In the Supreme
Court of Hong
Kong

C11

Letter from
Commissioner
for Transport
to U.E.E. Ltd.

12th July 1977

C11

Letter from Commissioner for Transport to
U.E.E. Ltd.

(6) in CT 1486/274/77

5-756541 Ext. 249

12th July, 1977

Dear Sirs,

Application for registration of public cars

Your letter dated 5th July 1977 applying for the registration of 50 motor vehicles as public cars, which was submitted to this department on 6th July 1977 has now been brought to my personal attention for consideration.

10

However, I have to refuse to register your vehicles as public cars as the number of motor vehicles actually registered as public cars is equal to the total number of motor vehicles that may be registered by the Commissioner for Transport as public cars in the terms of the Gazette Notice (Extraordinary) of 6th July 1977.

Please disregard the previous letter ref. (5) in CT 1486/274/77 of 9th July 1977 addressed to you.

Yours faithfully,

20

(Sd.)

(I.F.C. Macpherson)
Commissioner for Transport

U.E.E. Ltd.,
222, Chatham Road,
Ground Floor,
KOWLOON.

C12

Letter from Commissioner for Transport to
John Ip & Co.

In the Supreme
Court of Hong
Kong

C12

CT 1488/274/77 (5)

5-756541 Ext. 249

12th July, 1977

Letter from
Commissioner
for Transport
to John Ip & Co.

12th July 1977

Dear Sirs,

Applications for Registration of Public Cars

10 Your letters ref. J/JI of 6th July 1977 and ref.
J197/JI of 7th July 1977 respectively applying on behalf
of your client, Mr. Samuel Fernand Ip for the registration
of 50 motor vehicles as public cars have now been brought
to my personal attention for consideration.

However, I have to refuse to register your vehicles
as public cars as the number of motor vehicles actually
registered as public cars is equal to the total number of
motor vehicles that may be registered by the Commis-
sioner for Transport as public cars in the terms of the
Gazette Notice (Extraordinary) of 6th July 1977.

20 Please disregard the previous letter ref. (4) in
CT 1488/274/77 of 9th July 1977 addressed to you.

Yours faithfully,

(Sd.)

(I. F. C. Macpherson)
Commissioner for Transport.

Messrs. John Ip & Co.,
Solicitors etc.,
Room 1003 Swire House,
HONG KONG.

IFCM/CWW/tl

In the Supreme
Court of Hong
Kong

C13

Letter from U.E.E. Ltd. to Commissioner
for Transport

C13

Letter from
U.E.E. Ltd. to
Commissioner
for Transport

U.E.E. LIMITED
United Engineering Enterprises
222 Chatham Road,
Kowloon, Hong Kong.

Cable Address:
UNIENPRISE

Telephones:
3-621963 - 634559

13th July 1977

By hand

Commissioner for Transport,
Transport Department,
2 Murray Road,
Hong Kong.

13th July, 1977

10

Dear Sir,

We thank you for your letter (your ref. (5) in CT
1486/274/77) dated 9th July, 1977.

We return all the relevant documents which have
been amended accordingly in respect of our applications
for registrations of fifty public cars.

We forward also a letter dated 5th July, 1977 from
the Honest Motors Ltd. concerning the delivery to us the
fifty saloon cars in question. The factory invoice will
be presented by the motor dealer.

20

Yours faithfully,

FOR AND ON BEHALF OF
U.E.E. LTD.

(Sd.)

Director

ACKNOWLEDGMENT SENT
ON 13 JUL 1977

C14

Letter from Commissioner for Transport to
U.E.E. Ltd.

In the Supreme
Court of Hong
Kong

C14

CT 1486/274/77 (9)

BY HAND

5-260121 Ext. 35

15th July 1977

Letter from
Commissioner
for Transport
to U.E.E. Ltd.

15th July 1977

Dear Sir,

Applications for Registration of Public Cars

10 I refer to your letter dated 13th July 1977 and
regret to inform you that I have to refuse your applications
for registration of fifty public cars for the reason stated
in my letter ref. (6) in CT 1486/274/77 dated 12th July
1977.

I return herewith the following documents :-

- (a) Fifty application forms (T.D. 22 (Rev.)).
- (b) Fifty insurance cover notes.
- (c) Fifty parking accommodation certificates.
- (d) A letter dated 5th July 1977 from the Honest
Motors Ltd., addressed to your company.
- (e) Five vehicle purchase agreements.

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Yours faithfully,

(Sd.) CHEUNG Yuk-yin

for Commissioner for Transport

The Director,
U.E.E. Ltd.,
222 Chatham Road,
Ground floor,
KOWLOON.

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

B E T W E E N :

LEUNG CHOW PUBLIC CAR COMPANY (a firm) Appellants

- and -

THE ATTORNEY GENERAL Respondent

RECORD OF PROCEEDINGS

Messrs. Hui & Ko,
1, Gerrard Place,
4th Floor,
London, W1V 7LL.

Solicitors for the Appellants

Charles Russell & Co.,
Hale Court,
Lincolns Inn,
London, WC2A 3UL.

Solicitors for the Respondent