IN THE GENERAL DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2022] SGHC 253

Suit No 1041 of 2021 (Summons No 1644 of 2022)

Between

Dai Yi Ting

… *Plaintiff*

And

Chuang Fu Yuan

… *Defendant*

And

(1) Grabcycle (SG) Pte Ltd
(2) National University of Singapore

… *Third Parties*

GROUNDS OF DECISION

[Civil Procedure — Trial — Bifurcation order]
[Civil Procedure — Bifurcation of proceedings — Personal injury cases]

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Dai Yi Ting
v
Chuang Fu Yuan
(Grabcycle (SG) Pte Ltd and another, third parties)

[2022] SGHC 253

General Division of the High Court — Suit No 1041 of 2021 (Summons No 1644 of 2022)
Goh Yihan JC
4 August 2022

11 October 2022

Goh Yihan JC:

Background

1 This summons was the defendant's application to bifurcate the trial in HC/S 1041/2021 ("Suit 1041"), pursuant to O 33 r 2 of the Rules of Court (2014 Rev Ed) ("ROC 2014"). In Suit 1041, the plaintiff, Ms Dai Yi Ting, is claiming against the defendant, Mr Chuang Fu Yuan, in negligence for personal injuries arising from an accident on 27 February 2019. Broadly, Suit 1041 involves an e-scooter rented from the first third party, Grabcycle (SG) Pte Ltd, that was driven within the premises of the second third party, the National University of Singapore. The defendant was operating the e-scooter and the plaintiff was a pillion rider.

2 At the end of the hearing before me, I granted the defendant's application and ordered that Suit 1041 be bifurcated, with the trial on liability to be heard separately from, and prior to, the hearing for the assessment of damages (if necessary). Nevertheless, because of the lack of specific case law on bifurcation in relation to personal injury cases like the present one, I now provide the full grounds for my decision.

The parties' arguments

3 At the hearing before me, Ms Istyana Putri Ibrahim ("Ms Ibrahim") submitted on behalf of the defendant that it was just and convenient to bifurcate the trial. To begin with, Ms Ibrahim suggested that there are broadly three issues for determination at trial:

(a) whether the defendant is liable to the plaintiff for allegedly causing the accident;

(b) whether one or more of the third parties are liable to indemnify for or contribute to any liability of the defendant; and

(c) how much the plaintiff can claim from the defendant in damages.

4 With these broad issues in mind, Ms Ibrahim advanced three reasons for the trial to be bifurcated:

(a) There may be multiple parties liable for the accident, and so issues of liability should be tried and heard together before the issue of quantum of damages.

(b) There could be substantial time and costs saved if the issues of liability are heard before those concerning damages.

(c) The issues of liability and quantum of damages between the plaintiff and defendant are distinct and inherently complex.

5 The plaintiff was against bifurcation. Ms Michelle Kaur ("Ms Kaur") submitted on behalf of the plaintiff that the plaintiff is a "sensitive" plaintiff. Specifically, the plaintiff has sustained multiple injuries that have impaired her brain's functioning. As such, it would be unjust and unfair for the plaintiff to attend court twice: she would be faced with the strain of being on the stand twice and would also have to re-live the accident while struggling with the impairments caused by her brain injuries.

6 To substantiate this point, Ms Kaur showed me a report from the plaintiff's psychiatrist, Dr Calvin Fones, which stated that "protracted litigation has been a major source of stress and serves as a maintaining factor of her depression". However, I attached little or no weight to the report as it was not exhibited by way of an affidavit. Instead, the letter was attached as an annex to the plaintiff's submissions for the hearing. In gist, however, the plaintiff's case was that she dreads seeing the defendant twice over, as she would have to, should the trial be bifurcated.

7 Ms Kaur also submitted that bifurcation would not be cost-effective as more costs would be involved in attending court. Ms Kaur disagreed with the defendant's position that costs would be saved if bifurcation was ordered, such that parties would not have to prepare for issues of quantification at the initial phase. In this regard, Ms Kaur further explained that the parties have been discussing the prospect of attending mediation and the third parties have requested an updated quantification of the plaintiff's claim so that they can take instructions on mediation. As such, regardless of whether the matter is resolved at the trial on liability, the documents relating to the updated quantification must

still be obtained so that the parties may attempt mediation. Accordingly, there was no need to bifurcate the trial.

8 Finally, Ms Kaur suggested that the defendant's application for bifurcation was premature as the parties may reach a resolution at mediation and there would therefore be no need for further litigation in court.

The applicable law

The power to order bifurcation

9 In considering the parties' arguments, I adopted as my starting point O 33 r 2 of the ROC 2014, which gives the court the power to order bifurcation to begin with. Order 33 r 2 provides that:

> **Time, etc., of trial of questions or issues (O. 33, r. 2)**
>
> **2.** The Court may order any question or issue arising in a cause or matter, whether of fact or law or partly of fact and partly of law, and whether raised by the pleadings or otherwise, to be tried before, at or after the trial of the cause or matter, and may give directions as to the manner in which the question or issue shall be stated.

10 Being framed as a discretion with the use of the word "may", it is implicit in O 33 r 2 that the normal practice is for a unified trial of all issues of fact and law, including issues of liability and damages. As such, the burden is on the party applying for bifurcation to convince the court that it is appropriate to make such an order.

11 Further, as the learned authors of *Singapore Civil Procedure 2021* vol 1 (Cavinder Bull gen ed) (Sweet & Maxwell, 2021) ("*White Book*") note (at para 33/3/3), O 33 r 2 should be read together with O 33 r 3(2) since they both deal with the general power of the court to order the separate trials of separate

issues or questions. Order 33 r 3(2) provides that "[i]n any [action begun by writ] different questions or issues may be ordered to be tried by different modes of trial and one or more questions or issues may be ordered to be tried before the others". Broadly, the learned authors state that these rules:

> … provide the machinery for avoiding the trial of unnecessary issues or questions, by isolating particular issues or questions for separate trial and thus eliminating or reducing delay and expense in the preparation and the trial of issues or questions which may ultimately never arise for trial or which otherwise warrant being separately tried …

By this view, the primary purpose behind the power to order bifurcation as provided for by O 33 r 2 read with O 33 r 3(2) of the ROC 2014 is to ensure the efficient conduct of a trial. Indeed, by avoiding (or potentially avoiding) the trial of unnecessary issues or questions, there will be a corresponding elimination or reduction of delay and expense in both the preparation for the trial and of the trial itself.

12 While this was not relevant for the present application, which proceeded under the ROC 2014, the power to order bifurcation is provided for more directly in the new Rules of Court (2021 Rev Ed) ("ROC 2021"). Order 9 r 25(2) of the ROC 2021 now provides that:

> (2) The Court may order a bifurcated hearing in that the issues concerning liability are to be heard by a Judge before the issues concerning the amount of damages or the taking of accounts are heard by a Judge or the Registrar.

If bifurcation is ordered pursuant to O 9 r 25(2), then the court must, pursuant to O 9 r 25(12), give the appropriate directions, as set out in O 9 r 25(9), for the assessment of damages or the taking of accounts. Further, O 15 r 15 of the ROC 2021 also applies in relation to the subsequent directions needed on the assessment of damages following the hearing on liability.

13 An important distinction between the provisions providing for the power to order bifurcation in the ROC 2014 and the ROC 2021 is the presence of O 3 r 1 in the latter, which provides for the attainment of certain Ideals in civil procedure. In particular, O 3 r 1(3) provides that "[t]he Court must seek to achieve the Ideals in all its orders or directions". As such, the power to order bifurcation provided for by O 9 r 25(2) of the ROC 2021 must be applied with the Ideals in O 3 r 1(2) in mind. These Ideals are "akin to constitutional principles by which the parties and the Court are guided in conducting civil proceedings" and they are "to be read conjunctively" (see *Civil Justice Commission Report* (29 December 2017) at Chapter 1, para 3 (Chairman: Justice Tay Yong Kwang)). The court is empowered to do what is right and necessary based on the facts of the case before it to ensure that justice is done, provided it is not prohibited from doing so and its actions are consistent with the Ideals (see *Singapore Civil Procedure 2022* vol 1 (Cavinder Bull gen ed) (Sweet & Maxwell, 2022) at para 3/1/4, citing *Public Consultation on Civil Justice Reforms*, Recommendations of the Civil Justice Review Committee and Civil Justice Commission (26 October 2018) at para 21).

14 At this juncture, it suffices to note that these Ideals relate to the promotion of expeditious (O 3 r 1(2)(*b*)) and cost-effective proceedings (O 3 r 1(2)(*c*)) that are achieved by the efficient use of court resources (O 3 r 1(2)(*d*)), and are all ultimately tailored towards the achievement of fair and practical results (O 3 r 1(2)(*e*)), which ensures the fair access to justice (O 3 r 1(2)(*a*)).

General principles on the power to order bifurcation

15 Having considered the source of the power to order bifurcation, I turned to the general principles concerning the power to order bifurcation. These principles are "general" in so far as they apply to any kind of case, whether

relating to commercial matters or personal injuries. I will order my discussion along the relevant precedent, principles, and policy.

Precedent

16 I start with the relevant *precedent*. In Singapore, the governing case is the Court of Appeal decision of *Lee Chee Wei v Tan Hor Peow Victor and others and another appeal* [2007] 3 SLR(R) 537 ("*Lee Chee Wei*"). V K Rajah JA, writing for a unanimous court, held that an application prior to trial under O 33 r 2 (of the then-applicable Rules of Court) for a bifurcation of the hearing on liability and damages would inevitably succeed if the circumstances render it "just and convenient" to so order (at [64]). In that case, the court noted that the question of damages was somewhat controversial as it required the assistance of expert evidence on share valuation and incorporated potentially complex issues. Thus, the court was of the view that substantial costs and time could have been saved if the liability issues had been resolved first. This is because if there was found to be no liability, then the controversial question of damages could be avoided. It was therefore "just and convenient" to have bifurcated the trial, but this had not been done in that case because no such application was made prior to trial.

17 In the subsequent High Court decision of *Scintronix Corp Ltd v Ho Kang Peng and another* [2011] SGHC 28 ("*Scintronix*"), Kan Ting Chiu J similarly had to decide whether the hearing of the plaintiff's action against the two defendants should be bifurcated. The plaintiff's action against the first defendant was for breaches of his contractual, fiduciary and/or statutory duties, and the action against the second defendant was for breaches of his contractual duties.

18 Kan Ting Chiu J took as his starting point the "just and convenient" test from *Lee Chee Wei* (at [16]). After undertaking a thorough examination of the relevant English cases, Kan J explained that the rules of bifurcation are not unchanging. Rather, bifurcation should be regarded as "intrinsically related to case management" (at [25]). Therefore, when policies on case management change, the judicial rulings on bifurcation will also change. Kan J then discerned that Singapore's current policies on case management have resulted in a greater willingness on the part of courts to order bifurcation. He explained as follows (at [26]):

> … Courts in Singapore, as their counterparts in England, have been more amenable to bifurcate hearings. The Court of Appeal's observation in *Lee Chee Wei* that the hearing should have been bifurcated reflects the present attitude. This development may be a response to the increased caseload of the courts. Bifurcation enables the courts to deal with more cases, and depose with those cases where liability is not established. Even in a case where liability is established, there is still savings of court time, as the damages can be dealt with by a registrar, allowing the judge to go on and hear other cases.

19 On the facts of *Scintronix* itself, Kan J held that it was "just and convenient" to bifurcate the trial (at [33]). He did not accept the defendant's submissions that there was no clear demarcation between issues of liability and of damages. Indeed, the learned judge held that even if there had been some degree of overlap between the issues, that did not necessarily weigh against bifurcation if the facts of the case made bifurcation an appropriate order in the circumstances (at [28]). Further, the learned judge also said that the case for bifurcation would be stronger in cases where there are multiple claims (and, hence, multiple issues of liability) and multiple forms of damages claimed (and, hence, multiple issues of damages). This is because an order for bifurcation would isolate the issues of damages to be determined separately from those of liability (at [27]).

Principle

20 Accordingly, the *principle* that emerges from *Lee Chee Wei* and *Scintronix* is that the court should order bifurcation where it is "just and convenient" in the circumstances of the case to do so. Both cases concluded that on their particular facts it was "just and convenient" to order bifurcation.

21 The two cases also laid out some relevant factors in considering whether it is "just and convenient" to order bifurcation. For example, the Court of Appeal in *Lee Chee Wei* placed some emphasis on the fact that substantial costs and time could have been saved if the liability issues had been resolved first. Thus, bifurcation should be allowed where the issue directed to be tried first will, when decided one way or the other, be likely to dispose of the entire case (at [64]). Kan J in *Scintronix* also alluded to the saving of court time and resources (at [26]). In addition, he pointed to the degree of demarcation between issues of liability and damages as another relevant factor to be considered in deciding whether bifurcation should be ordered (at [28]).

22 Looking beyond Singapore, the Northern Ireland High Court decision of *Gibney v MP Coleman Ltd* [2020] 11 WLUK 568 ("*Gibney*") was also helpful. In that case, McFarland J upheld a Master's order for bifurcating the trial of an employee's claim against his employer following an accident at work, such that liability would be determined before quantum. The employee was working atop an asphalt storage bin clearing material from a ramp. The employee fell to the bottom of the bin and then onto the ground, suffering severe injuries. He brought claims against his employer alleging negligence and breach of statutory duty. The employer denied liability on the basis that the employee was carrying out a forbidden task in a forbidden area. In the event of a finding of liability, the employer asserted contributory negligence on the part of the employee. The

Master hearing the case at first instance ordered that there should be split hearings, to first determine liability and then to determine quantum. On the issue of whether to order bifurcation, the court referred to the multi-factorial framework set out by Hildyard J in *Electrical Waste v Philips Electronics* [2012] EWHC 38 to guide its decision-making:

> Hildyard J in *Electrical Waste v Philips Electronics* [2012] EWHC 38, refused to order split hearings, first to determine quantum and then, if required, to determine liability. At [5] - [7] the test was described as ultimately a "*common sense approach*" applying a "*pragmatic balancing exercise*". The factors which were considered relevant were –
>
> > (a) whether the prospective advantage of saving the costs of an investigation of the preliminary issue if other issues are not established, outweighs the likelihood of increased aggregate costs if a further trial is necessary;
> >
> > (b) what are likely to be the advantages and disadvantages in terms of trial preparation and management;
> >
> > (c) whether a split trial will impose unnecessary inconvenience and strain on witnesses who may be required in both trials;
> >
> > (d) whether a single trial to deal with both liability and quantum will lead to excessive complexity and diffusion of issues, or place an undue burden on the Judge hearing the case;
> >
> > (e) whether a split trial may cause particular prejudice to one or other of the parties (for example by delaying any ultimate award of compensation or damages);
> >
> > (f) whether there are difficulties in defining an appropriate split or whether a clean split is possible; what weight is to be given to the risk of duplication, delay and the disadvantage of a bifurcated appellate process;
> >
> > (g) generally, what is perceived to offer the best course to ensure that the whole matter is adjudicated as fairly, quickly and efficiently as possible.
> >
> > (h) whether a split hearing would assist or discourage mediation and/or settlement; and

> (i) whether an order for a split late in the day after the expenditure of time and costs might actually increase costs.

23 McFarland J then applied these factors to the facts and concluded that bifurcation was appropriate for reasons including: (a) the issues of liability and quantum were compartmentalised, and apart from the need for the legal representatives to attend both hearings, there would be no other duplication save for the plaintiff giving evidence twice; (b) the liability hearing (three days) would be much shorter than the quantum hearing (two weeks); (c) the liability case was ready for hearing, whilst the quantum case still required a significant amount of preparatory work to be carried out as it was complicated and required twelve different experts to give evidence; (d) a dismissal on liability would conclude the matter and conversely, a finding of liability (though not avoiding a final hearing on quantum) would still operate as an incentive to both parties to settle the action, reducing costs and delay; and (e) there was no evidence to suggest that the defendant, which opposed the proposed split hearing, would be prejudiced in any way, *etc*.

24 I drew on the factors articulated in *Lee Chee Wei* and *Scintronix*, as well as the multi-factorial framework that was applied in *Gibney*, to arrive at a list of relevant factors which I applied in deciding to order bifurcation in the present case.

Policy

25 However, leaving aside the factors that may have been identified in *Lee Chee Wei*, *Scintronix*, and *Gibney*, to state the test as being premised on whether it is "just and convenient" to order bifurcation invited the further question of, "just and convenient" by what standard? This is because, on its own, the expression "just and convenient" is value-neutral. In order to understand

precisely *when* it would be "just and convenient" to order bifurcation, I regarded it necessary to consider the *policy* or purpose behind bifurcation. Only then would there be a sound basis to elucidate the relevant principles, which would include the relevant factors that a court should consider in deciding whether it is "just and convenient" to order bifurcation.

26 In this regard, as I alluded to above at [11], the learned authors of the *White Book* opine that the primary purpose behind bifurcation is to ensure the efficient conduct of a trial. This view is further bolstered by Kan J's opinion in *Scintronix* (at [25]) that bifurcation is intrinsically related to case management. Indeed, as Kan J pointed out, the prevailing sense among courts at present may be that bifurcation is an important, if not necessary, tool in ensuring that judicial resources are utilised in the most efficient manner possible. Accordingly, I construe the "just and convenient" test set out in *Lee Chee Wei* as being concerned with whether it is "just and convenient" to order bifurcation so as to achieve, as a *primary* purpose, the expeditious and cost-effective conduct of proceedings. In so construing, I have deliberately used the words found in the Ideals contained in O 3 r 1(2) of the ROC 2021 because the "just and convenient" test should be applied with these Ideals in mind for cases governed by the new ROC 2021.

27 However, it should also be noted that the test in *Lee Chee Wei* is not that bifurcation should be ordered merely where it is "convenient" from a case management perspective. Instead, the test is whether it is "*just* and convenient". Ultimately, in my respectful view, case management is not something that is done *only* to achieve certain benchmarks or attain some accolade; at the heart of case management is the desire to ensure that judicial resources are applied in the best possible way to achieve fair access to justice and, through that, the attainment of justice between parties in a particular case. As such, while the

primary purpose of the "just *and* convenient" test is premised on the expeditious and cost-effective conduct of proceedings, it must not be lost in applying the test that that purpose must ultimately yield to the attainment of justice as between the parties in a particular case, to whom the case will be of the greatest importance (see, in this regard, the Ideal encompassed in O 3 r 1(2)(*e*) of the ROC 2021). Above all else, the test must be applied taking all of the circumstances of the case into account.

28 In sum, proceedings must progress at an appropriate pace so that the right balance can be struck between achieving justice and convenience. It is a truism to say that justice delayed is justice denied (see the High Court decision of *Attorney-General v Au Wai Pang* [2015] 2 SLR 352 at [73]). But expedition for the sake of prompt resolution without any consideration of the other aspects of justice such as those contained in the Ideals wholistically would be missing the forest for the trees – for example, if the court determines a matter too quickly such that the decision does not yield a fair and practical result, justice would also not be achieved (see Jeffrey Pinsler SC, "The Ideals in the Proposed Rules of Court" (2019) 31 SAcLJ 987 at para 24). In my view, it is important to keep this bigger picture in mind when considering when it may be "just and convenient" to make an order for bifurcation.

Summary of the general principles

29 Having considered the relevant precedent, principle, and policy, I concluded that the "just and convenient" test set out in *Lee Chee Wei* should be applied as being primarily concerned with whether it is "just and convenient" to order bifurcation so as to achieve the expeditious and cost-effective conduct of proceedings. It has to be borne in mind that the normal practice is for a unified trial of liability and damages. As such, the burden is on the party applying for

bifurcation to convince the court that it is "just and convenient" to so order. From this starting point, I now set out a summary of the relevant factors I considered when applying the "just and convenient" test in the present application. Drawing from the materials cited above, I considered that there were *four* such factors.

(1) Degree of demarcation between issues of liability and of damages

30 First, as alluded to by both *Lee Chee Wei* and *Scintronix*, the greater the degree of demarcation between the issues of liability and of damages, the more likely it will be for an order for bifurcation to be made (see also, *White Book* at para 33/3/5, citing the decision of *Marks v Chief Constable of Greater Manchester Police* (1992) 156 L.G.Rev. 900). This is because if the issues of liability and of damages are clearly demarcated, it will likely be more expeditious and cost-effective to deal with issues of liability first. As Kan J explained in *Scintronix* (at [26]), this will either dispose of the case without the need to consider damages (if liability could not be established) *or* allow a registrar to deal with the issues of damages (if liability could be established). However, as was the case in the English Court of Appeal decision of *Polskie Towarzystwo Handlu Zagranicznego dla Elektrotechniki "Elecktrim" Spolka Z Ograniczona Odpowiadziolnoscia v Electric Furnace Co Ltd* [1956] 1 WLR 562 ("*Polskie*"), if the issues of liability and of damages overlap and are inextricably bound up, then bifurcation should not be ordered. This could be the case where loss is an element that must be proved to establish liability, and the defendant is seeking to show that it is not liable because the plaintiff suffered no loss at all. In such a case, the defendant would have to give evidence which went towards damages as well as liability.

(2) The complexity of the issues of liability and of damages

31 Second, depending on the degree of demarcation between the issues of liability and of damages, the more complex the issues of liability and/or of damages are, the more likely it will be for an order for bifurcation to be made. Thus, the Court of Appeal in *Lee Chee Wei* was of the view that bifurcation should have been ordered due to, among others, the complexity of evidence needed in respect of damages in that case (at [64]). Similarly, Kan J in *Scintronix* held that the case for bifurcation would be stronger where there are either multiple issues in liability or multiple issues in damages (see [18] above). The rationale behind these sentiments is that, if indeed the issues of liability and/or damages are so complex, then if there is a chance for a court to need only to deal with one set of issues (or fewer issues of damages which remain after determining liability), bifurcation should be ordered to realise that chance. In this connection, I would add that the multiplicity of parties would also contribute towards making the issues more complex.

(3) The prevailing policies on case management

32 Third, as a general consideration, it is relevant to consider what the prevailing policies on case management are. This is due to, as Kan J explained in *Scintronix*, the intrinsic connection between bifurcation and case management. Therefore, in a climate where case management is more rigorously pursued, an order to bifurcate, all things being equal, may be more easily made. Indeed, this change in attitude towards case management (and hence bifurcation) can be observed from the evolution of bifurcation being described as a "rare occasion" in the English Court of Appeal decision of *Polskie* to becoming a more readily available order in the subsequent English Court of Appeal decision of *Coenen v Payne* [1974] 1 WLR 984 ("*Coenen*").

33 Indeed, the changing sentiments on case management were also considered in *Gibney*. McFarland J said this at [6]:

> The leading authority in this jurisdiction relating to split hearings is [*Millar v Peeples*] [1995] NI 6. This in turn reflected the changing attitude to the matter in England, resulting first from the report of the *Winn Committee on Personal Injuries Litigation* (1968 Cmnd 3691) and the Court of Appeal decision in *Coenen v Payne* [1974] 2 All ER 1109. The report and the decisions heralded a movement away from the earlier practice not to make an order for split trials save in exceptional circumstances or on special grounds. The new approach was summarised by Lord Denning MR in *Coenen* at 1112 (d) as follows –
>
> > 'In future the courts should be more ready to grant separate trials than they used to do. The normal practice should still be that liability and damages should be tried together. But the courts should be ready to order separate trials wherever it is just and convenient to do so.'
>
> Justice and convenience are now the modern touchstones, and as Carswell LCJ in [*Millar*] at 10(a) observed, the approach that a court should take is a "broad and realistic view of what is just and convenient, which should include the avoidance of unnecessary expense and the need to make effective use of court time.
>
> [emphasis in original omitted]

It was emphasised that *Coenen* heralded a movement away from the earlier practice of shying away from split trials (*ie*, bifurcating the trial) save in exceptional circumstances, and instead, the modern approach is that the courts should be more ready to grant separate trials when just and convenient to do so.

(4) Effect of bifurcation on party opposing bifurcation

34 Fourth, it is important to consider, as an overarching consideration, whether an order for bifurcation will impose not insubstantial injustice on the party opposing the order for bifurcation. Such injustice should go beyond mere inconvenience (even if it is particularly serious to the party concerned) but

amount to infringing on the other party's fair access to justice. Thus, in the English Court of Appeal decision of *Abbey Life Assurance Co Ltd v Sackville and others* [1982] Lexis Citation 932 ("*Abbey Life Assurance*"), Templeman LJ held that an application for bifurcation was subject to the same considerations, whether the applicant was the plaintiff or the defendant. He said:

> … If the plaintiff applies for a split trial he is in fact submitting that the action will be shortened and will be cheaper if the plaintiff loses, because all the evidence on quantum on both sides will then be unnecessary, and he is submitting that the costs of the action and the length of the action will not be substantially increased if the plaintiff wins, because the two issues can be put into water-tight compartments and neither side need embark on the evidence relating to quantum until liability has been decided. But the same thing is true if the defendant applies for a split trial. He also must be submitting that the action will be cheaper if the plaintiff loses and will not be substantially dearer or longer if the plaintiff wins. *Whoever makes the application, the judge must be satisfied that the applicant is justified in contending that a split trial will have the effect which the applicant urges and will not impose injustice on the party who opposes the order for a split trial.*
>
> [emphasis added]

35 In *Abbey Life Assurance*, the Vice-Chancellor had concluded that a bifurcated trial would be beneficial as, if the plaintiff lost on liability, there would be no need to spend a further four to six weeks on issues of damages. On appeal, the defendant argued that the Vice-Chancellor, in granting the order to bifurcate, had only considered the benefit of a shortened trial from the perspective of the plaintiff, but not the defendant. Templeman LJ held that, while the Vice-Chancellor's analysis appeared correct from the plaintiff's perspective, he had erred in not considering the matter from the defendant's perspective. In his view, an order for bifurcation, while clearly beneficial to the plaintiff, would have prejudiced the defendant. This was because the defendant was considering the possibility of defeating the plaintiff's claim on liability by calling evidence to show that the plaintiff had not suffered any damage at all. If

the defendant chose to do so, it may well have needed to call its witness on damages at the bifurcated trial for liability. In such a situation, an order for bifurcation would not result in any cost savings for the defendant at all.

36 More importantly, Templeman LJ considered that the trial in *Abbey Life Assurance* from the defendant's perspective would become distorted. This is because, if the defendant failed to convince the trial judge that the plaintiff had not suffered any loss, then there would remain the trial for damages. However, by then, because of the way it would have run its case, the defendant would have "fired off all [its] artillery in the form of [its] evidence on quantum". This would give the plaintiff an unfair benefit because, in the time between judgment for liability and trial for damages, the plaintiff would be able to prepare itself extensively, having already had prior knowledge of the defendant's evidence on damages. The defendant would be caught in a difficult position of deciding between recalling the same witnesses who may have already given evidence on quantum during the trial for liability and duplicating them by calling other witnesses. Whichever course the defendant ended up choosing, its evidence would be of a less profound effect than if it had been able to wait until after the plaintiff had shown its hand on the question of damages.

37 While modern attitudes towards rules of civil procedure may discourage parties from keeping their cards close to their chest until the last possible moment, the facts and holding of *Abbey Life Assurance* serve as a good reminder that, over and above the expeditious and cost-effective conduct of proceedings, it is always important to consider, as an overarching consideration, whether an order for bifurcation will impose not insubstantial injustice on the party opposing the order for bifurcation.

Specific principles on the power to order bifurcation in personal injury cases

Particular concerns in personal injury cases

38 Having considered the general principles on the power to order bifurcation, I turned to consider the specific principles in relation to personal injury cases. As recognised by the learned authors of *Clerk & Lindsell on Torts* (Michael A Jones gen ed) (Sweet & Maxwell, 22nd Ed, 2018) at para 31-21, the "problem for claimants arising from the rule that damages for one cause of action must be recovered once and for all has tended to be *at its most acute in claims for personal injuries*" [emphasis added]. The authors then go on to make the following pertinent observations (at para 31-21):

> … The court has long had the power to postpone trial of the issue of damages, or order the separate trial of liability and damages, a procedure most appropriate to cases of personal injuries where the claimant's medical prognosis has not settled. This can be combined with the power to make an interim award of damages. Separate trials may be ordered whenever it is just and convenient to do so [citing *Coenen*]. …

39 In this regard, I considered that there had been some debate in the United States ("US") concerning the bifurcation of personal injury cases. Although the US system is markedly different from ours, I regarded the debate in that jurisdiction as potentially relevant, if only to conceptualise the concerns particular to personal injury cases.

40 In an article, "To B…or Not to B…: B… Means Bifurcation" (2000) 74(10) Florida Bar Journal 14, Judge David L Tobin discusses the advantages and disadvantages of bifurcation in personal injury cases. The advantages listed by Judge Tobin are quite similar to those discussed above, namely, the promotion of expeditious and cost-effective proceedings. However, the disadvantages are quite particular to the jury system, such as by removing the

issues of damages from a case, the plaintiff is less likely to be able to present a sympathetic view of his case. Further, if a new jury were to be constituted for the trial on damages, this would take considerable time and effort. If the first jury is told to come back to decide damages, that would be prejudicial to the plaintiff since the natural tendency of the jury is to do that which does not require them to return for too long. However, in the end, Judge Tobin argues in favour of bifurcation since bifurcated cases settled at almost twice the rate of non-bifurcated cases, at least in Florida at the time of his writing.

41 In response to Judge Tobin's article, Dan Cytryn in "Bifurcation in Personal Injury Cases: Should Judges be Allowed to Use the 'B' Word" (2001) 26(1) Nova Law Review 249 suggests that bifurcation should be the exception rather than the rule in personal injury cases. Cytryn's view is that bifurcation should only be ordered when "the benefits of bifurcating the proceedings clearly outweigh the detriment and prejudice to any party opposing the bifurcation" (at 266). This stems from Cytryn's belief that bifurcation in personal injury cases is a procedure that is highly favourable to the defence because the jury would not be presented with the complete picture of the plaintiff's claim. As with Judge Tobin's article, these concerns about the bifurcation of personal injury cases stem from the jury system in the US. Quite obviously, this is not a concern in our system.

42 Apart from the plaintiff not being able to present his entire claim if a trial for personal injury is bifurcated, there are other unique characteristics of personal injury cases. First, there could be uncertainty as to the plaintiff's future, including that the plaintiff's life expectancy may be shortened by the accident. Second, unlike in commercial cases where the loss has been set at the moment of breach, there may not be a firm prognosis of the plaintiff's condition until some years after the accident. Third, unlike commercial cases where there will

often be a lengthy trail of documentary records, there is unlikely to be such a trail for personal injury cases. In the end, all of these unique characteristics, including the concern that the plaintiff is not able to present a complete (and sympathetic) picture of its case, stem from the very *personal* nature of personal injury cases. I therefore had to consider whether this ultimate attribute should lead to particular factors being considered in deciding whether to order a bifurcation in personal injury cases.

Particular factors to personal injury cases

(1) Two general considerations

(A) NO GENERAL CONCERN AGAINST BIFURCATION IN PERSONAL INJURY CASES

43 In considering these particular factors, I started with two general considerations. First, while there may have been concerns against bifurcated trials in personal injury cases in the past, these concerns no longer exist. As Carswell LJ said in the Northern Ireland Court of Appeal decision of *Millar (a minor) v Peeples and others* [1995] NI 6 ("*Millar*") (at 9–10), albeit in the Northern Irish context, jury trials in their system have become exceptional in personal injury cases. As such, the reasons for keeping an action in a unitary trial, such as those relevant in the US system, have been reduced. This may be why, as Lord Denning MR noted in *Coenen* (at 988), Winn LJ's Committee recommended in the *Report of the Committee on Personal Injuries Litigation* (1968, Cmnd 3691) at para 494(b) "a more robust and less restrictive" approach towards the order of bifurcation in personal injury cases. This analysis applies equally in our context, which eschewed the use of juries decades ago. Accordingly, while the starting point is the same as with commercial cases, in that the normal practice is for a unified trial of liability and damages for personal

injury cases, there should *not* be a presumption *against* bifurcation in personal injury cases, as some of the older cases appear to suggest.

(B) THE GENERAL IRRELEVANCE OF ANY TACTICAL ADVANTAGE ACCRUING TO THE PLAINTIFF

44 Second, the tactical advantage that might accrue to a plaintiff in a personal injury case by not ordering bifurcation should not be a relevant consideration. In *Millar*, the plaintiff suffered severe injuries when he was hit by a car driven by the first defendant while crossing a road to attend a fete (an outdoor public function usually organised for charity) at his school. Traffic was heavy on that day. Furthermore, a line of stationary vehicles had built up behind a fire engine, which was one of the attractions at the fete. The plaintiff sued the first defendant for negligent driving. He also sued the North Eastern Education and Library Board ("the Board") in negligence for failing to take steps to protect children who might be at risk from traffic around the fete. On the Board's application, the Master granted an application for bifurcation. On appeal, a judge reversed the Master's decision. The Board then appealed to the Court of Appeal. The plaintiff's primary argument before the Court of Appeal was that it would be hard on him to give evidence twice, and that if the trial were not split, there would be a greater incentive for the defendants to settle.

45 Carswell LJ restored the Master's decision and ordered that the trial be bifurcated. Writing for a unanimous court, the learned judge held that, in deciding if it was just and convenient to order bifurcation, the court should balance the advantages and disadvantages to each party and consider the public interest that unnecessary expenditure of time and money in a lengthy trial should not be incurred. In this regard, Carswell LJ emphasised that a court should not place undue weight on the tactical advantage that might accrue to a plaintiff by refusing to order a bifurcated trial. Such an advantage may occur because a

defendant who is faced with a lengthy trial may be more inclined to settle on terms favourable to the plaintiff. However, Carswell LJ rejected the relevance of such considerations on the premise that the paramount duty of a court is to look at the interests of *all* parties in determining whether to order bifurcation. Thus, on the facts of *Millar*, while the plaintiff's strain in having to give evidence twice should not be minimised, that had to be balanced against the considerable disadvantages that would result if the trial was not bifurcated. This included the quite important factor that the trial would become far longer and more expensive if it were not bifurcated.

46 Similarly, McFarland J in *Gibney* was confronted with the defendant's argument that the plaintiff's application for bifurcation was merely a tactical device to ground an interim payment application. In response, the learned judge pithily noted that it was his experience that "most applications, of whatever type, made by parties tend to be motivated to gain tactical advantage". This is the self-evident essence of adversarial proceedings. However, McFarland J maintained that each case must be dealt with on its own facts and appeared to discount the primary relevance of any supposed tactical advantage accruing to the plaintiff.

(2) Four particular factors

47 Having taken into account these general considerations, I now turn to explain the particular factors that may affect the order for bifurcation in personal injury cases.

(A) DEGREE OF UNCERTAINTY IN PLAINTIFF'S FUTURE

48 First, the greater the uncertainty in the plaintiff's future, the more likely it will be for an order for bifurcation to be made. In the English Court of Appeal

decision of *Stevens v William Nash Ltd* [1966] 1 WLR 1550, the plaintiff suffered multiple injuries to his right arm and hand. The prognosis for his future was uncertain. However, the plaintiff desired to take a training course of six months' duration to qualify as a capstan lathe setter operator. While he would lose his earnings during training, he could, within 18 months of qualifying, earn a similar wage to that prior to the accident. The unified trial for liability and damages took place two years after the accident. The plaintiff's arm had only been released from a plaster cast three days before the trial. Winn LJ, in allowing the plaintiff's appeal to increase the damages awarded, also suggested that it might have been preferable for the trial judge to have tried the issue of damages sometime after the issue of liability. This was because the trial judge simply had little certainty on the plaintiff's future so as to be able to make an appropriate order on the damages to be awarded (at 1554–1555).

(B) THE POINT AT WHICH FIRM PROGNOSIS OF THE PLAINTIFF CAN BE MADE

49 Second, the later a firm prognosis of the plaintiff can be made after the incident, the more likely it will be for an order for bifurcation to be made. In the Court of Appeal decision of *Hawkins v New Mendip Engineering Ltd* [1966] 1 WLR 1341, the plaintiff suffered a head injury at work. While drugs helped to keep his condition in check, there remained a 50% chance of major epilepsy developing but no firm prognosis could be made until five years after the accident. If the plaintiff did develop major epilepsy, he could become virtually unemployable. The defendant appealed against the trial judge's award, arguing that it was too high. Winn LJ commented that this would have been a suitable case for bifurcation, and for the trial for damages to take place five years after the trial for liability, when there would be greater certainty in terms of the plaintiff's prognosis (at 1347–1348).

(C) THE COMPLEXITY OF THE FACTS AND AVAILABILITY OF EVIDENCE

50 Third, depending on the complexity of the facts, as well as the existence of video or other documentary evidence, it may be better for the trial for liability to take place before damages. This will be especially the case if an earlier determination on liability is made easier because the facts are fresher in everyone's memory (see *White Book* at para 33/3/5).

(D) POSSIBILITY FOR CONSOLIDATION OF SEVERAL ACTIONS

51 Fourth, if an order may be made for several actions arising out of the same accident to be consolidated up to the determination of liability, with liberty to each claimant to have his own damages assessed separately, then this ought to be considered when deciding whether to make a bifurcation order (see *White Book* at para 33/3/5 citing *Healy v A Waddington & Sons Ltd* [1954] 1 WLR 688). In this connection, it is relevant to point out the fact that *Coenen* was a case with two consolidated actions concerning a road traffic collision between two vehicles.

My decision: this was an appropriate case for bifurcation

52 With the principles discussed in mind, I decided that this was an apt case for bifurcation. The onus was on the defendant to show why it was necessary to bifurcate the matter. Applying the "just and convenient" test, I agreed that this was an apt case for bifurcation for the following reasons that were advanced before me.

The defendant's reasons for bifurcation

53 First, I found that there was a clear demarcation between the issues of liability and of damages. Indeed, I saw no indication that the plaintiff intended

to run a case which would result in issues of liability and of damages being intertwined. As such, I agreed that there could be substantial cost savings if the issues of liability are decided before the quantum of damages. There will be no abortive work for the damages issue should the liability issue be decided in favour of the plaintiff.

54 Second, I agreed with the defendant that there are potentially difficult issues arising from the multiplicity of parties involved. This is especially the case since the defendant, as he is entitled to do, has brought in the two relevant third parties in the action. In particular, I also agreed with the defendant that the issues of damages might be inherently complex. They may potentially require a rather involved process. It would therefore be more efficient and in the interests of justice for issues of liability to be decided first.

The plaintiff's reasons against bifurcation

55 In my view, the defendant had established a good case for bifurcation to be ordered. I turned then to consider the plaintiff's objections. In sum, while I sympathised very much with the plaintiff's plight, I concluded that the reasons she advanced were not *legally* material to a determination on bifurcation.

56 First, as important as they are, the plaintiff's difficulties, such as having to attend trial twice over, were personal in nature. As with the case in *Millar*, these were therefore not strictly relevant to the determination on bifurcation, which is more focused on the broader questions of efficiency (which is in the public interest) and whether substantive justice can be better achieved for all parties (including the plaintiff but *also* the defendant).

57 Second, I disagreed that bifurcation may not be cost-effective. Instead, as I have explained in relation to the defendant's reasons, given the potentially

difficult issues raised at the liability stage, including the liability of the third parties, it may be more cost-effective for the liability issues to be decided first. Indeed, if the liability issues are eventually determined against the plaintiff, then all parties can save costs through the avoidance of assessment proceedings.

58 Third, the plaintiff also alluded to the fact that the third parties had already been asking for a quantification of her claims so that they could take instructions on mediation. I did not think that this assisted the plaintiff. Whether proceedings are bifurcated (or not) should not stop her or her solicitors from providing this information, which would necessarily be tentative prior to the final judicial disposition of the matter, to the third parties.

Conclusion

59 For all the above reasons, I ordered for the trial to be bifurcated with costs of the application to be paid to the Director of Legal Aid.

Goh Yihan
Judicial Commissioner

Sandhu Viviene Kaur and Michelle Kaur (Clifford Law LLP) for the plaintiff;
Istyana Putri Ibrahim, Zheng Shaokai, Sivabalan s/o Thanabal and Goh Yi Ling (Legal Aid Bureau) for the defendant;
Parmar Karam Singh and Low Huai Pin (Tan Kok Quan Partnership) for the first third party;
Pan Xingzheng Edric, Sim Zhi Quan Sean and Soh Joh Ming Jonathan (Dentons Rodyk & Davidson LLP) for the second third party.
