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PRECEDENTS OF
PLEADINGS

General Editor
Jeffrey Pinsler, S.C.

SWEET & MAXWELL

Bullen & Leake & Jacob's Singapore Precedents of Pleadings

General Editor
Jeffrey Pinsler, S.C.

and a team of
expert contributors

SWEET & MAXWELL



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Foreword

I am hugely pleased and gratified to be asked to write this Foreword. For the name *Bullen & Leake & Jacob* means a lot not only to the common law but also to me personally. I turn to explain each of these.

First, the place of pleadings in the common law. A, perhaps the, defining feature of the common law is its manner of conducting a civil action. A bedrock component of that is the system of pleadings. This has a technical meaning in the common law – it does not mean a general mix of evidence and argument as most civilian lawyers take it to mean – or even the oral argument. The common law is more precise. A “pleading” is a document setting out what facts the party intends to prove at a later stage – the stage we call the trial when the parties join battle in open court. A pleading is not proof in itself (in England and Wales the pointless Woolfian addition of a “statement of truth” has modified that somewhat – but not so as to make any significant difference). The responsive pleading sets out what facts the party admits, those he denies (or challenges the other party to prove) and those he intends to prove for himself. The pleadings do not say how any of the facts are to be proved. The pleadings set the battle lines – they are not the battle itself.

Drawing a pleading is an art. The pleader must think clearly. He or she has to know the substantive law which applies to the case and to work out each fact that must be proved to win. Then those facts must be set out in a logical and clear order. A long rambling legal and factual argument/evidence document is not the way of a common law pleading. That is not to say a pleading cannot also be a piece of advocacy also. My late father used to say that a Statement of Claim should in effect say “The defendant is a s..t”. And a favourite story of the late Sir James Comyn was of a Statement of Claim which began “Prior to the matters complained of herein there stood, in its own grounds laid out by Capability Brown, a beautiful Georgian Manor”. The defendant is condemned before one even knows who he is or what is alleged he did.

Bullen & Leake on Pleadings (as it was until my father’s name was added) is one of the oldest trade marks in the common law. The first edition was in 1860. My father had a copy of the 3rd edition of 1868. I have it now. It once belonged to Scrutton LJ and has the bookplate “Mr Justice Scrutton” and a stamp “Lord Justice Scrutton”. It was the last edition by Bullen and Leake themselves and was the last edition before the Judicature Acts. Its full title was “Precedents of Pleadings in Personal Actions in the Superior Courts of Common Law.”

Why has this title endured? Indeed more than endured for it has flourished with not only this Singaporean edition but also a Hong Kong edition added to the original English and Welsh edition. It is because *Bullen & Leake & Jacob* was, is and will for the foreseeable future be a vital tool in any litigator's armoury. It shows you by example just how to do it. For each subject there is a first section on the law – a summary rather than a detailed exposition. The summary is just what is needed. Then you get the detailed precedents. From these you can work out how to plead the case you yourself have. The teaching value, particularly for young lawyers, is immense. But it does more than teach – it makes better lawyers. I have some familiarity with other legal systems, particularly a variety of civil law systems; they do not have books of precedents at all, still less one as good as this. I think their absence may be one of the reasons the common law is so strong as a basis for international agreements. Singapore is a great common law centre. Its prosperity depends in part on the working of its legal system. It needs and deserves its own edition of *Bullen & Leake & Jacob*.

Now to more personal matters. My father's connection with *Bullen & Leake* was immense. Editing it is an immense task. He joined the team for the 11th (1959) edition but I guess could not have done much for that. Sweet & Maxwell asked him to take on the next edition in about 1960. He was 15 years late in delivering it! There was a good reason: over the years the book had become encrusted with additions and amendments. It was a muddle and it was time for an almost total rewrite. That my father achieved. By way of tribute Sweet & Maxwell offered to add his name to that of the original authors. Not even Alfred T Denning, lead author of the 1935, 9th edition achieved that! Almost the last thing my father saw before he died was the 14th edition. I was able to show it to him in his nursing home.

The fact there is specific Singaporean edition of *Bullen & Leake & Jacob* is exciting and important. It shows the common law is alive and well in Singapore. Every litigator should have a copy to hand. The result will surely be a better litigation process in Singapore – both for cases that come to trial and for the many more which settle on the way once the parties can see how the pleadings have defined the lines of the proposed battle.

Rt Hon Professor Sir Robin Jacob
Faculty of Laws, University College London

October 2015

Foreword

This foreword is written in the year 2015, just fifty years after the independence of Singapore.

In this jubilee year, the Singapore edition of *Bullen & Leake & Jacob* is testament to the excellence of legal services available in this jurisdiction for all fields of civil work, and also to the maturity of Singapore as a pre-eminent centre for litigation and dispute resolution.

Pleadings are the agenda for trial. The centrality of pleadings to the trial process was quintessentially expressed by Lord Griffiths in his Foreword to the 13th edition of *Bullen & Leake & Jacob*:

The first document that the judge will read will be the pleadings. A coherent and compelling statement of the case providing a sturdy framework on which to hang the written evidence will be an invaluable contribution to the success of the cause.

It is fitting that the iconic name of Sir Jack Jacob should be so closely associated with this Singapore edition. In his seminal Hamlyn Lecture of 1987, he said at p 67:

The supremacy of procedural law points towards the pathway to justice.

As Sir Jack so shrewdly recognised, the practice of pleading lies at the heart of civil procedural law and in adopting Sir Jack's framework for this work, Singapore sends forth a powerful message that from a standpoint of juridical integrity, it sees itself as a focal pathway to justice.

The fields of practice in this work are divided alphabetically into time-honoured subject headings such as Admiralty, Banking, Carriage by Air, etc.

Each subject is prefaced by a commentary setting out the legal principles relevant to the drafting of a focussed, succinct and issue-driven pleading. For any civil practitioner, this work should be a first port of call, even before reaching for the specialist practice manuals in the field.

There then follows for each subject heading, a selection of model pleadings. A disciplined analysis of each of the model pleadings reveals the relevant legal principles, firmly anchored in the context of practice.

The General Editor, Professor Jeffrey Pinsler SC, is to be congratulated for his having harnessed the skills of an array of specialist Singapore practitioners to bring to fruition a work which will further enhance the reputation of Singapore worldwide as being a centre of legal excellence.

I commend this work to the legal profession of Singapore, and beyond. Sir Jack Jacob would have been proud to know that the mould he broke with *Bullen & Leake & Jacob* some decades ago would now be bearing his name in Singapore.

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October 2015

Preface

In my preface to the original Work, *Singapore Precedents of Pleadings* ('the Work'), which was published in looseleaf form in 2006, I had stated that it was the Legal Profession's response to its need to have a home-grown book of pleading precedents. This need became particularly acute in the face of the civil justice reforms in England in the late 1990s. The Civil Procedure Rules, which replaced the Rules of the Supreme Court, radically altered the pleading procedure there. Singapore decided to keep faith with her pleading rules so that there has been a gulf between the pleading practices of the two countries for over 15 years. English precedent books, which have been heavily relied upon by lawyers in many common law systems since the 19th century, are no longer sacrosanct in countries which have not adopted the Civil Procedure Rules. The differences in pleading practice in Singapore and England are examined in the Introduction.

This updated Work is now entitled *Bullen & Leake & Jacob's Singapore Precedents of Pleadings*, which signifies international recognition for the quality of this publication. For 155 years, *Bullen & Leake's Precedents of Pleadings* (subsequently *Bullen & Leake & Jacob's Precedents of Pleadings*) has been an indispensable resource for civil litigation practitioners in most jurisdictions of the common law world. It is my hope that this Work will continue the long tradition of the English precedent books, albeit in the specific context of Singapore practice. Its readers will find that the precedents for each topic or sub-topic are preceded by a commentary giving a brief and convenient account of the principles of law involved and, where appropriate, specific guidelines on pleading (for example, when special rules, practice directions or case law requirements apply). However, the commentaries are not intended to be substitutes for the more extensive treatment of the law available in specialist commentaries on the Rules of Court. Readers will also find that some of the precedents are not strictly pleadings. Nevertheless, they have been included because their link or similarity to pleadings should prove useful to the practitioner. For example, the chapter on Admiralty includes pleadings, the preliminary act, references to the registrar as well as other vital applications. The chapter on Corporate Insolvency consists of a variety of proceedings concerning the company. The commentaries and precedents have been entirely updated and new precedents have been added to take into account developments in civil practice. There is also a new chapter on Equity and Trusts.

It is important to emphasise that while this Work is intended to be comprehensive, practitioners should not assume that the precedents can be followed without thought. Every case has its own factual construct and may require a specifically tailored precedent. Therefore, where necessary, practitioners should adapt the precedent they wish to use to the specific facts of their case. Most of the law practices involved ('the contributors') were asked to supply precedents for a variety of topics so that a selection process could operate in the interest of maximising the quality of this publication. Therefore, the reader will find that a topic often combines precedents from two to five contributors. In several instances, commentaries from various contributors on a particular topic have been adapted and synchronised to greater effect. The contributors are accredited for their work on the commentaries and precedents. I am extremely grateful to them for having given so generously of their valuable time and I am honoured to have had this opportunity to work with them on such an important project.

I am grateful to Rachel Jaques (Publishing Director), Kevin Peng Khoon Ooi (Managing Editor) and Munmun Chawla (Commissioning Editor) for their critical roles in ensuring the publication of this Work. I wish to express my appreciation to Sweet & Maxwell for permitting the Singapore work to be published as *Bullen & Leake & Jacob's Singapore Precedents of Pleadings*.

Jeffrey Pinsler

October 2015

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CHAPTER 1

INTRODUCTION TO THE PLEADING PROCESS

INTRODUCTION

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CHAPTER 1

INTRODUCTION

TO THE PLEADING PROCESS

Jeffrey Pinsler, S.C.

INTRODUCTION

1.01 The purpose of this chapter is to introduce the subject of pleadings. After considering the historical background, the nature and structure of the governing rules will be addressed. It is also necessary to examine the differences between the pleading practices in England and Singapore so that English judgments on pleadings are appropriately distinguished or put in context. The process of drafting of pleadings is not merely a matter of complying with the relevant rules. As will be evident from the wide variety of precedents in this work, style and technique are vital components of an effective pleading. Of paramount importance is the integrity of the advocate and solicitor as an officer of the court. As has been pointed out elsewhere,¹ the nature of the adversarial process and the Rules of Court (ROC) is such that civil justice is ultimately dependent on the willingness of lawyers to plead their clients' cases honestly, accurately and without ulterior strategy, so that the spirit and purposes of pleadings are properly manifested.

Historical background

1.02 Pleadings constitute the backbone of civil litigation. Without them, the issues in dispute would be unclear (even unknown) making the effective presentation of a case impossible. Trials would be rambling affairs and the process of adjudication would be clouded by irrelevant evidence and arguments. Injustice would be a very real consequence if the court is not able to adjudicate on the real points of contention. As a father exhorted his son over 500 years ago:

1 See J Pinsler, *Principles of Civil Procedure* (LexisNexis, 2012), paras [16.050]-[16.055]; *Singapore Court Practice* (LexisNexis, 2014) (online at <<http://lexisnexis.com/sg/legal/>>), in the introductory segment of O 18: 'Preliminary notes and overview of principles and practice' (sub-para (j)).

... it is one of the most honourable, laudable, and profitable things in our law, to have the science of well pleading and therefore I counsel thee especially to set all thy courage and care to learn that.²

1.03 The importance of pleadings is the reason why they have been an integral part of civil litigation at least from Roman times.³ In England, pleadings took the form of oral pleas at the bar of the court until the 16th century. The plaintiff would state his claim and the defendant would respond. The parties would continue to reply to each other through rebuttal and surrebuttal until the issues in dispute were as clear as possible. The 'pleadings' would then be officially recorded and they bound the parties so that new issues could not be raised. Eventually, in the 1600s, parties began to deliver written pleadings to each other but such was the emphasis on the form of the pleading (even the most insignificant formal error could be detrimental to a party's case),⁴ that one judge commented: 'pleading has now got all into paper and since that, of late, men make it but a snare and trap and a piece of skill'.⁵

1.04 The current rules of procedure (including those affecting the pleading process) have their roots in the English Judicature Act of 1875.⁶ The Civil Procedure Ordinances of 1878⁷ and of 1880⁸ were the first Singapore statutes to formally adopt the English system. Subsequently, the Civil Procedure Codes of 1907⁹ and of 1926¹⁰ applied England's first Rules of the Supreme Court, 1883. Singapore introduced her own Rules of the Supreme Court, which consolidated existing civil procedure, in 1934.¹¹ In England, the 1883 rules underwent a complete revision between 1962 and 1965. This exercise resulted in the introduction of a new set of rules – the Rules of the Supreme Court, 1965 (RSC) – which came into operation in October 1966 (the 1883 rules were repealed). These changes led to the

2 *Lyttleton's Treatise on Tenures* (1481), s 534 (also see Co Litt 1 302a). In *Slade v Drake* (1617) Hob 295; 80 ER 440, Sir Henry Hobart, Lord Chief Justice of Common Pleas, observed that pleading 'is the principal art of the law' for it is the means by which issues '... are cast into form and made evident, clear and easier...'.

3 In Roman law, oral pleas would be heard by the Praetor and subsequently recorded as the 'formula' that had binding effect on the parties.

4 According to Coke CJ, 'more jangling and questions grow upon the manner of pleading, and exceptions to form, than upon the matter itself, and infinite causes [are] lost or delayed for want of good pleading'. This statement was pronounced in 1628. See JH Baker in *An Introduction to English Legal History* (3rd Ed) (Butterworths, London, 1990) at p 102.

5 This was the lament of Hale CJ (JH Baker at p 102 (see n 4 above)).

6 38 & 39 Vict c 77. See, in particular, the Schedules to that Act.

7 Ordinance No 5 of 1878.

8 Ordinance No 8 of 1880.

9 Ordinance No 31 of 1907.

10 Ordinance No 102 of 1926.

11 S 2941/34.

introduction in Singapore of the Rules of the Supreme Court, 1970.¹² The 1970 Rules were eventually superseded by new revisions that culminated in the ROC.¹³

Rules of pleading

1.05 The primary provisions on pleading may be found in Order 18 of the ROC. There are a variety of other rules and statutory provisions which may apply to specific proceedings (for example, defamation and admiralty suits) and these will be revealed by the commentaries and precedents in this work. It should also be mentioned that certain Orders, though general in nature, may have particular importance with regard to pleadings. Order 20, which governs the amendment of court documents, Order 2, which concerns irregularity, and Order 3, which, *inter alia*, addresses the extension of time for serving court documents, are examples of such Orders.

1.06 Order 18 is one of the few Orders in the ROC that has remained largely intact despite the great many reforms over the last 20 years.¹⁴ The reason for this outcome may be because, as one English reform committee put it in 1968: 'No set of rules could have been more carefully devised.'¹⁵ In England, a new mindset emerged in the late 1990s, which resulted in the Civil Procedure Rules (CPR), a radically different set of rules to the former Order 18 of the Rules of the Supreme Court, 1965. Singapore has maintained her long established rules which means that practitioners here have to exercise considerable care in respect of English pleading procedure and precedents. The differences between the two systems will be addressed shortly.¹⁶

1.07 The provisions of Order 18 can be divided into 4 categories: content; formal requirements; effect; and timing. Taking these in reverse order, the timing provisions are found in rr 1-4 (time for service of pleadings,¹⁷ which includes filing (r 21)). Rules 13 and 14 specify the effect of a plea or non-plea or pleading or omission to serve a pleading. With regard to formal requirements, r 6 provides instructions concerning the drafting format. The content of a pleading is governed by rr 7-12, 15-19 and 23. There are

¹² S 274/70.

¹³ For a history of the pleading process in the 20th century, see J Pinsler, *Civil Justice in Singapore: Developments in the Course of the 20th Century* (Lexis Nexis, 2000), Chapter 7.

¹⁴ Apart from the changes affecting particulars of pleading (Ord 18 r 12(1A-1C)) and the extension of the process of trial without pleadings to hitherto excluded proceedings (Ord 18 r 22), the amendments have been mainly formal in nature (generally incidental to the amendment of other Orders). These changes have not affected the basic principles of pleading.

¹⁵ These words are taken from the Report of the Committee on Personal Injuries Litigation (the Winn Committee), (1968) Cmnd para 237, at p 71.

¹⁶ See paras 1.09–1.13 below.

¹⁷ Rule 5, which used to concern service in the court vacation, has been deleted.

circumstances in which pleadings are not appropriate, in which case an application may be made for a trial without pleadings (r 22).

1.08 Readers will find that all the above rules are fully annotated in *Singapore Civil Procedure 2015* (Sweet & Maxwell Asia, 2015) and *Singapore Court Practice 2014* (LexisNexis, 2014).¹⁸ However, it is appropriate to spend a little time here on the fundamental principles governing the content of pleadings. The primary provision governing content is r 7(1). All other rules (including the other sub-rules of r 7) which affect content flow from r 7(1). The general rule is that every pleading must contain only the material facts on which the party pleading relies for his claim or defence. The primary function of the pleadings is to ensure, through the parties' respective allegations and counter-allegations of fact, that they are aware of, and can focus their preparation on, the issues in dispute. Therefore, it is the material facts that form the mainstay of the pleading process. Rule 8 is an extension of the principle in r 7 to pleadings subsequent to the statement of claim (i.e., normally the defence and reply). Rule 23 applies this principle to the specific situation of defences under the Merchant Shipping Act (Cap 179). Rule 15(1) emphasises the inclusion of certain material facts (reliefs and remedies). Rules 16 and 17 concern conditions relating to specific assertions of material facts (defence of tender and set-off respectively). Rule 9 tells us that, subject to certain qualifications (set out in rr 10 and 15(2)), the material fact can be pleaded whether it has arisen before or after the issue of the writ. Rule 10 prohibits the inclusion of material facts that are inconsistent with the pleader's previous pleading subject to the possibility of amendment. In a similar vein, material facts may not be pleaded in a statement of claim if they are irreconcilable with the content of the writ of summons (r 15(2)). The general rule that requires only material facts to be pleaded may be qualified by specific rules. Therefore, certain matters may be pleaded even though they are not material facts. For example, points of law may be set down if they are of sufficient significance (r 11), as may non-material subsidiary facts that are necessary to particularise material facts (r 12). The principles governing material facts in a statement of claim also apply to a counterclaim (r 18). Sanctions operate where the pleading contravenes a rule, as when the material facts are not pleaded or the content of the pleading is otherwise improper (r 19). To conclude, Order 18 provides a code of pleading which seeks to address a variety of circumstances that, in the absence of regulation, may defeat the objective of clarifying the scope of the dispute.

18 This work is updated online: <<http://lexisnexis.com/sg/legal/>>.

Singapore and English practice compared

1.09 There is considerable divergence between the pleading procedure under Order 18 of the Singapore ROC and under the English CPR. The following illustrations of these differences should underline the need for circumspection on the part of the Singapore pleader when considering the system of the CPR. In England, the pleading is referred to as a 'statement of case' which includes the claim, the defence and the reply.¹⁹ The term 'material,' so fundamental to Order 18 of the ROC, is absent. Instead, the claim form must, *inter alia*, 'contain a concise statement of the nature of the claim', specify the remedy sought and contain any matters required by the applicable practice direction.²⁰ Vital to the claim are the 'particulars of claim', which are required to be incorporated in, or served with, the claim form. If they are not incorporated in, or served with, the claim form, there must be an indication in the claim form that the particulars will follow.²¹ In the Singapore ROC, particulars are to be pleaded if necessary.²² Although there is no mention of 'material facts' in the English CPR, the 'particulars of claim' require 'a concise statement of the facts on which the claimant relies'.²³ This means that all facts that establish the claim must be pleaded and this would include material facts. However, the wording does not limit the claim (or, indeed, other statements of case such as the defence and reply) to material facts. A party would not be prevented from pleading non-material facts that he wishes to rely on in making the claim.²⁴ Evidence is not specifically excluded as it is under the Singapore ROC.²⁵ In England, he may refer to his witnesses in his statement of case and attach any documents that he considers to be necessary²⁶ (including contractual documents).²⁷ He may also plead evidence in relation to a judicial finding that he wishes to cite in his favour.²⁸ Although in Singapore a party 'may raise a point of law'²⁹ and usually does so when he wishes to rely on a statutory provision, international convention or other source of law, points of law do not feature too often in pleadings here. The position under the CPR is that a party is invited to refer to matters of law on which he relies

19 CPR, Pt 16.

20 *Ibid*, Pt 16.2(1)(a), (b), (d), Pt 16.2(2) and Pt 16.4. If the claim is for money, the claim form must contain a statement of value (Pt 16.2(1)(c) and Pt 16.3).

21 *Ibid*, Pt 16.2(2), Pt 16.4 and Practice Direction 16, para 3.3.

22 See ROC, Ord 18 r 12.

23 CPR, Pt 16.4(1)(a).

24 Although this is not likely to be the normal practice.

25 See ROC, Ord 18 r 7(1).

26 Practice Direction 16, para 13.3(2), (3).

27 Practice Direction 16, para 7(3).

28 See Practice Direction 16, para 8.1 concerning the evidence that may be pleaded.

29 See ROC, Ord 18 r 11.

in the interest of clarification of the area of dispute.³⁰ Unlike in Singapore, the plaintiff in English proceedings who asserts that he has mitigated his damages must make this plea in his claim form.³¹ Whereas in Singapore, lawyers have to consider various Orders in the ROC and even specific statutes³² to ascertain the nature of particulars they have to plead in specific proceedings, the CPR has accumulated many of these 'special particulars' in a practice direction.³³ The nature of these particulars can differ quite markedly between the two systems.³⁴

1.10 The differences between the ROC and the CPR in respect of the drafting of the defence are even more significant than those pertaining to the claim. A mere denial of the plaintiff's allegation, which is normal in Singapore (assuming a specific plea is not required by Ord 18 r 8 or other statutory provision), is contrary to current English practice. Under the CPR, where a defendant denies an allegation in the claim, he must 'state his reasons for saying so' and, if 'he intends to put forward a different version of events from that given by the claimant, he must state his own version'.³⁵ Furthermore, in Singapore, the defendant must specifically traverse (i.e., deny or not admit) an allegation in the statement of claim, failing which that allegation will be deemed to be admitted.³⁶ Under the CPR, the omission of a specific traverse would not have this effect if the defendant has included facts in his defence substantiating his version of the events.³⁷ The CPR is characterised by a high standard of specificity.

30 Practice Direction 16, para 13.3(1). See *Barclays Bank v Boulter* [1999] 1 WLR 1919, at 1923, where Lord Hoffmann encourages this practice.

31 Practice Direction 16, para 8.2(8).

32 See, e.g. s 20 of the Civil Law Act (Cap 43) in relation to claims by the estate of a deceased person.

33 See, e.g. Practice Direction 16, paras 4-6 in relation to personal injury claims, fatal accident claims and hire purchase claims. Particulars may also be governed by other parts of the CPR.

34 Compare, for example, the more detailed particulars required by Practice Direction 16, para 4 (in relation to personal injuries) with Ord 18 r 12(1A)–(1C) of ROC.

35 CPR, Pt 16.5(2)(a) and (b). He does not have to deny the amount of a money claim as such a claim has to be proved unless the defendant has expressly admitted it (CPR, Pt 16.5(4)).

36 See ROC, Ord 18 r 13(1)–(3).

37 CPR, Pt 16.5(3)(a) and (b).

Therefore, the general traverse (*seriatim* clause)³⁸ and 'general rejoinder' paragraph,³⁹ so common in Singapore defence and reply pleadings respectively, are no longer recognised in England.⁴⁰ Another specific point of pleading in the CPR which has no parallel in the ROC is the requirement of a specific and detailed plea in the defence in response to the claimant's statement of value if this is disputed.⁴¹

1.11 Apart from these specific areas of difference, there are important general distinctions between pleading practice in Singapore and England. Every statement of case, (whether a claim, defence or reply) must be verified by a statement of truth.⁴² Either the party or his legal representative (on the party's behalf) must sign the statement of case certifying the party's belief that the facts are true. The basis of this approach is that the statement of case is 'less likely to include assertions that are speculative and fanciful and designed to obfuscate'.⁴³ The intention of the CPR is to preclude the former practice under the Rules of the Supreme Court whereby '...pleaders strove to keep their options open and to avoid restricting issues, leaving room for manoeuvre as the case developed'.⁴⁴ This was possible under the former English rules and the current Singapore rules because Order 18 does not prevent the pleader from relying on facts the truth of which cannot be established at the time of the pleading but which will or may be proved at trial.

1.12 Defence pleadings, in particular, might include various alternative defences, based on facts that are not known with certainty to be true at the time, so that the defendant can keep his options open. The availability of the discretionary remedy of amendment enables pleaders to change initial stances taken in their pleadings. Under the CPR, the facts pleaded in a

38 The general traverse or *seriatim* clause essentially states that the defendant denies every allegation in the statement of claim which has not been expressly admitted. The general rule is that an allegation of fact made in a statement of claim or counterclaim which a party does not intend to admit must be specifically traversed by the defending party in his defence or defence to counterclaim (Ord 18 r 13(3)). A general denial is not a sufficient traverse of such allegations. Accordingly, the general denial clause cannot be used as a substitute for the specific traverse. Its use lies in the fact that it can cover such material as introductory averments and other matters (for instance, 'filling-in' information) which do not go to the root of the case, as opposed to issue-orientated allegations which must be specifically traversed. For a further discussion of this principle, see *Singapore Court Practice 2014* (Lexis Nexis, 2014) at para 18/13/1-2 and 4; *Singapore Civil Procedure 2015* (Sweet & Maxwell Asia, 2015), at para 18/13/6.

39 This essentially states that the plaintiff denies every allegation in the defence pleading unless that allegation is expressly limited.

40 This is because the defendant must deal with every allegation in accordance with Pt 16.5(1) and (2) (Practice Direction 16, para 10.2).

41 CPR, Pt 16.5(6).

42 CPR, Pt 22.

43 Access to Justice, Interim Report to the Lord Chancellor (June 1995), p 161.

44 Access to Justice, Interim Report, at p 153.

statement of case must be believed to be true at the time of pleading. It is also probably true to say that the former English RSC and Singapore's current ROC focus on causes of action and defences in contrast to the factually oriented approach of the CPR.⁴⁵ The result is that Singapore lawyers have more flexibility in pleading under Order 18 than English lawyers do under the CPR.⁴⁶

1.13 Although the Singapore pleader may have to answer to the court in a pre-trial conference if his pleading is so poorly drafted so as to hinder the progress of a case, the court does not regularly interfere with the pleading process. Applications for further and better particulars, interrogatories, notices to admit facts, amendments are not discouraged if legitimate. Under the CPR, the 'procedural judge' will consider the statements of case and give appropriate directions to ensure that they meet their expected objectives (most importantly, the clarity of issues in dispute). A major aim of the case management conference in England is to produce a statement of the issues in dispute so that the issues are clarified quickly without the need for additional procedures such as requests for further and better particulars, notices to admit facts and documents and interrogatories. There is provision for clarification of the statement of case including further information,⁴⁷ although such orders are unlikely to be made as frequently as in the past given the new approach to pleadings in England. The English pleader is now very much more constrained than his Singapore counterpart. Furthermore, the Singapore pleader should not forget that while he may consider the rich and vast source of English cases which were a vital guide to practice under the former RSC, and now Singapore's ROC, this advantage is no longer enjoyed under the CPR.⁴⁸ Therefore, post-CPR cases (i.e. English judgments given after 1998) must be carefully considered in order to determine their applicability to Singapore civil practice.

45 Compare, for example, Ord 18 rr 7 and 8 of the ROC with Pt 16 of the CPR. Also note the observations of Lord Woolf set out in the following footnote.

46 Lord Woolf decried the practice under the former RSC: '(a) they [the pleadings] often fail to set out the facts clearly and so impede the identification of issues; (b) they concentrate too much on causes of action and defences, rather than on facts ... ; (c) affirmative defences are not pleaded; (d) longwindedness; (e) the original pleadings get out of date as they are superseded by amendments and further and better particulars ...' (Access to Justice, Interim Report, Chapter 20, para 4).

47 In CPR, Pt 18 (which is entitled 'Further information').

48 This was made clear by Lord Woolf in *Biguzzi v Rank Leisure Plc* [1999] 1 WLR 1926.

CHAPTER 2

ADMIRALTY

PRECEDENTS

- P2.01 Claim for personal injury
- P2.02 Claim for fatal accident
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- P2.04 Claim for damage done by a ship in a collision
- P2.05 Preliminary Act
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RELATED DOCUMENTS

- P2.19 Warrant of arrest
- P2.20 Affidavit leading to arrest
- P2.21 Request for caveat against warrant of arrest
- P2.22 Request for withdrawal of caveat
- P2.23 Undertaking (for arrest)
- P2.24 Release of vessel
- P2.25 Request for caveat against release and payment
- P2.26 Application for intervention
- P2.27 Affidavit in support of intervention

- P2.28** Order of court concerning intervention
- P2.29** Application for omnibus order
- P2.30** Affidavit in support of omnibus order
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- P2.38** Bail bond

CHAPTER 2

ADMIRALTY

PRECEDENTS

P2.01 Claim for personal injury

[Drew & Napier LLC and Haridass Ho & Partners]

1. At all material times, the Defendants were the owners of the ship or vessel "A" ("the Vessel").
2. At all material times, the Plaintiff was employed by the Defendants as a fitter on board the Vessel by or pursuant to a contract evidenced by or contained in a shipboard contract dated [date]. The Plaintiff had been working on the vessel since [date].
3. It was an implied term of the contract of employment and/or alternatively, it was the duty of the Defendants to take all reasonable precautions for the safety of the Plaintiff while he was employed on board the Vessel to ensure that the Plaintiff is adequately protected from the risk of injury. Further, the Plaintiffs were obliged to provide and/or maintain adequate and suitable appliances and devices to enable the Plaintiff to carry out his duties safely and/or to provide or maintain a safe place and system of work for the Plaintiff.
4. On or about [date], while the Vessel was anchored in the Eastern Anchorage of Singapore, the Plaintiff was injured whilst on board the Vessel and in the course of employment, as particularised below:

Particulars

- (1) On the morning of [date], the Plaintiff was instructed by the Chief Engineer and the 1st Engineer of the Vessel to attend to the maintenance of the antenna of the Vessel's satellite navigation system.
- (2) In order to attend to the matters as aforesaid, the Plaintiff proceeded to a storeroom near the engine room to retrieve certain spare parts.
- (3) The Plaintiff observed two spare valves for the main engine that were stored at the lift landing immediately outside the storeroom, which were not secured to the frames on the landing used to prevent the spare valves from shifting.

- (4) At or about the same time, the Plaintiff observed that the 1st Engineer was attempting to hook one of the valves to the engine room crane, to one of the two slings of the said crane.
- (5) The Plaintiff informed the first Engineer that he should utilise both slings, and attempted to assist the 1st Engineer in so doing.
- (6) Whilst the Plaintiff was in the course of doing so, one of the valves shifted and landed on the Plaintiff, causing him injury.
5. By reason of the aforesaid matters, the Plaintiff suffered loss, damage and expense as particularised hereunder.

Particulars of Injury

[Particulars of injury, effects of injury, pain and suffering and treatment received; medical report to be attached pursuant to Order 17 Rule 12(1A)]

Particulars of General Damages

[Particulars of General Damages such as pain and suffering, loss of amenities, loss of future earnings, etc.]

Particulars of Special Damage

[Particulars of Special Damage]

6. The Plaintiff's aforesaid pain and suffering, loss of amenities, injuries, loss, damage and expense were caused by the breach of duty and/or contract of employment and/or negligence of the Defendants, their servants and/or their agents, as particularised hereunder:

Particulars

- (1) The Defendants failed to secure and/or properly secure the spare valves so as to prevent the same from shifting.
- (2) In the premises, exposing the Plaintiff to a risk of injury or damage of which they knew or ought to have known and/or failing to provide or maintain a safe and proper system or place of work for the Plaintiff and/or failing to or to properly instruct their other employees or workmen on the storage, handling, removal or replacement of the spare valves.

These are the best particulars the Plaintiff is able to provide at this time. The Plaintiff reserves the right to supplement these matters upon the administration of interrogatories and/or conclusion of discovery.

AND the Plaintiff claims:

- (1) General damages pursuant to paragraph 5 to be assessed;
- (2) Special damages pursuant to paragraph 5;
- (3) Interest;
- (4) Costs; and
- (5) Such further or other relief as the Honourable Court may think fit.

P2.02 Claim for fatal accident

[Haridass Ho & Partners]

1. The Plaintiff is the widow [or state other relationship with deceased] and executrix [administratrix] of the estate of John Doe, deceased ("the Deceased"), Grant of Probate [Letters of Administration] having been given on [date].
2. The Plaintiff brings this claim on her own behalf, and on behalf of the other dependants of the Deceased and on behalf of the estate of the Deceased pursuant to Section 20 of the Civil Law Act (Cap 43).

Particulars pursuant to Section 20(6) of the Civil Law Act

The names of the persons for whose benefit this action is brought are as follows:

- (1) [Name], the widow of the Deceased, aged [age of widow], born on the [date];
- (2) [Name], a daughter of the Deceased, aged [age of daughter], born on the [date];
- (3) [Name], a son of the Deceased, aged [age of son], born on the [date].

The nature of the claim in respect of which damages are sought are set out in paragraph [...] below.

3. The Defendants were at all material times and are the owners of the vessel "ABC" ("the Vessel").
4. At all material times, the Deceased was employed by the Defendants under a contract of employment dated [date] and served on board the Vessel as the Chief Engineer [or other rank/occupation].
5. It was an implied term of the contract of employment that the Defendants would provide a safe working environment and that the Defendants would also provide all employees with equipment and/or appliances of good and working condition.
6. On or about [date], the Deceased received instructions from the Master of the Vessel to rectify a fault in the vessel's main engine. While descending the stairs to the Vessel's engine room, the Deceased slipped and fell. The Deceased fell head first and broke his neck. He received medical treatment for his injuries. Despite this, the Deceased succumbed to his injuries and died 3 days later, on [date].

7. It was subsequently determined by the Master of the Vessel that the Deceased had stepped on some grease on the stairway and had slipped and fallen. At the material time, the light near the stairway had failed due to a bulb fuse. The grease on the stairway would not have been apparent in the dark.
8. The above accident was caused by the negligence and/or breach of contract and/or breach of duty of the Defendants, their servants or agents.

Particulars

- (1) The Defendants, their servants or agents failed to promptly replace the bulb that was fused.
- (2) The Defendants, their servants or agents failed to provide a safe working environment in that the grease was not cleaned up and removed from the stairway leading to the Vessel's engine room.

[Other particulars as may be the case]

9. By reason of the matters aforesaid, the Deceased sustained injuries, pain and suffering. The Deceased succumbed to his injuries from which he died on [date].

Particulars of Injury

[Particulars of the deceased, his injuries, pain and suffering]

10. His estate and dependants have suffered loss and damage as a result of the Deceased's death.

Particulars of Loss

- (1) Special Damages:
 - (a) Medical Expenses;
 - (b) Funeral Expenses;
 - (c) Costs of Probate;
 - (d) Loss of Earnings (if any) for the period between the date of occurrence of the accident and the death of the Deceased.
 - (2) General Damages
 - (a) Loss of Earnings (for the period after the death of the Deceased)/ Loss of Dependency (e.g. loss of support and services);
 - (b) Pain and Suffering.
11. The Plaintiff also claims damages for bereavement pursuant to Section 21(1) of the Civil Law Act (Cap 43).

AND the Plaintiff claims:

- (1) Damages aforesaid on behalf of the dependants;
- (2) Damages aforesaid on behalf of the estate of the Deceased;
- (3) Damages for bereavement;
- (4) Interest at the rate of [amount] per cent per annum pursuant to Section 12 of the Civil Law Act (Cap 43);
- (5) Costs.

P2.03 Claim in mortgage action¹

[Allen & Gledhill LLP]

1. The Plaintiff is a [type of company] incorporated in [place of incorporation] and was at all material times the mortgagee of the vessel “HAPPY SUE” ([vessel registration number or IMO number]) of the port of [place of registration] (the “Vessel”) under a [type] mortgage entered on [date] in the [name of Registry of Ships or equivalent, if registered] (the “Mortgage”).
2. The Defendant, [name of Defendant], is and was at all material times the lawful and registered owner of the Vessel.
3. On or about [date], the Defendant entered into a loan agreement dated [date] with the Plaintiff as the lender and the Defendant as the borrower (the “Loan Agreement”). Pursuant to the Loan Agreement, the Plaintiff agreed to make available to the Defendant the sum of [loan amount] for [purpose of the loan] on, amongst other things, the following terms and conditions:

[List salient terms, including in particular, provisions setting out the applicable law, payment obligations, interest, fees, costs and other expenses payable, indemnities, right to accelerate the loan repayment and the stipulated events of default]
4. By the Mortgage, the Defendant mortgaged the Vessel to the Plaintiff to secure the obligations under the following documents:
 - (1) The Loan Agreement; and
 - (2) [List other agreements, if any, e.g. deed of covenants and assignments, which are also secured by the Mortgage]
5. The [document name] provided, amongst other things, as follows:

[List other salient terms, if any, including in particular, provisions setting out the applicable law, payment obligations, interest, fees, costs and other expenses payable, indemnities, right to accelerate the loan repayment and the stipulated events of default]
6. The Plaintiff will refer to the Mortgage, the Loan Agreement and [other document(s) which the Plaintiff is relying on for its claim] as may be necessary for their full terms and effect.
7. The Mortgage has been duly entered into and registered in accordance with the laws of [governing law of mortgage or flag/

¹ Also see P2.13.

place of registration, if registered] and is recognised as valid and enforceable under those laws.

[Set out the contents of foreign law relied upon to prove the registration, validity and enforceability of the Mortgage as may be applicable]

8. A total sum of [amount] was drawn down in [number of tranches] tranches on the following dates:

[List the date(s) and amount(s) on which the loan was drawn down]

9. In breach of the Loan Agreement, the Defendant failed to [set out the nature of the breach, e.g. failure to pay the third instalment due under the Loan Agreement] thereby causing an Event of Default under Clause [clause number, if there is a provision for events of default] of the Loan Agreement to occur. [Describe other breaches relied upon under other documents which the Plaintiff is relying on for its claim, if applicable]
10. By a [insert type of correspondence, e.g. letter] dated [date], the Plaintiff sent a Notice of Default to the Defendant in accordance with Clause [clause number] of the Loan Agreement, and Clause [clause number] of the [other relevant document(s), if any], demanding the repayment of the balance then outstanding (inclusive of all interest, fees and other applicable expenses up to [date]) amounting in total to the sum of [amount].
11. In breach of the terms of the Loan Agreement, the Mortgage and/or [other document(s) which the Plaintiff is relying on for its claim, if any], the Defendant has neglected and/or refused and/or failed to repay the aforesaid sum demanded or any part thereof.
12. There is now due and owing to the Plaintiff from the Defendant under the Mortgage, the Loan Agreement and [other document(s) which the Plaintiff is relying on for its claim, if any], the principal sum of [amount] plus the sum of [amount] being accrued interest for the period from [date] to [date] calculated in accordance with Clause [clause number] of the Loan Agreement and which is continuing to accrue at the rate of [interest rate] until full payment is received.

AND the Plaintiff claims:

- (1) A declaration that the Mortgage is valid and enforceable;
- (2) [Amount] being the principal amount due;

- (3) [Amount] being the accrued interest for the period from [date] to [date] pursuant to Clause [clause number] of the Loan Agreement;
- (4) Further interest at the contractual rate continuing to accrue [frequency of accrual of interest] at the rate of [interest rate] from [date] till the date full payment of all outstanding sums owed under the Loan Agreement are received;
- (5) Alternatively, interest under the Civil Law Act and/or under the inherent jurisdiction of the Court at such rate and for such period as this Honourable Court deems fit;
- (6) Costs on an indemnity basis pursuant to Clause [clause number] of the Loan Agreement, or on such basis as this Honourable Court deems fit; and
- (7) Such further or other order or relief that this Honourable Court deems fit.

P2.04 Claim for damage done by a ship² in a collision³

[Drew & Napier LLC]

1. The Plaintiffs are, and were at all material times, the owners and/or occupiers and/or lessees and/or operators of the installation known as the Utopia Oil Terminal at Jurong Island, Singapore ("the Terminal").
2. The Terminal and its facilities comprise, *inter alia*, two jetties, which were built and operated by the Plaintiffs. Vessels load and discharge cargo at the Terminal by coming alongside these jetties for such operations.
3. The Defendants are, and were at the material times, the owners of the ship or vessel "AB" ("the Vessel") registered in the port of Panama with a gross tonnage of [number] tonnes and a summer deadweight tonnage of [number] tonnes.
4. At or about [time] hours on [date], the Vessel approached Jetty 1 of the Terminal where she was due to berth for loading operations.
5. At or about [time] hours, during berthing operations, the bow or forward section of the Vessel collided into structures at Jetty 1 [or as may be]. [These are the best particulars that can be given prior to discovery and/or interrogatories herein.]
6. As a result of the collision, Jetty 1 of the Terminal was damaged, and the Plaintiffs have suffered loss and damage and have been put to expense as particularised in paragraph 8 below.
7. The collision, loss, damage and expense were caused solely by the negligence of the Defendants, their servants or agents:

Particulars of Negligence

- (1) The Plaintiffs will rely on the facts set out above as *prima facie* evidence of negligence and will, if necessary, rely upon the maxim *res ipsa loquitur*;
- (2) The Defendants, their servants or agents were negligent in the following particular aspects:
 - (a) They failed to keep any or any proper lookout;

2 Actions for damage done by a ship, whether in a collision or otherwise, are typically governed by the International Regulations for Prevention of Collisions by Sea 1972. For the details relating to such claims reference should be made to Marsden, *Collisions at Sea* (13th Ed) (Sweet & Maxwell, 2003).

3 A preliminary act is required when a claim for damage, loss of life or personal injury results from a collision between ships. See P2.05.

- (b) They failed to make proper and timely use of the navigational equipment and/or other manoeuvring equipment on board, and/or failed to observe and/or act upon its indications in due time and/or with proper or seaman like skill and care or at all;
- (c) They proceeded and/or approached Jetty 1 and/or the Terminal at an excessive and/or unsafe speed;
- (d) They failed to ease, stop, or reverse their engines in due time or at all;
- (e) They negligently steered and/or altered the course of the "AB" and/or proceeded on a collision with the Terminal in circumstances where it was neither safe nor proper to do so;
- (f) They failed to manage, control or navigate the "AB" so as to avoid the collision;
- (g) They failed to make any or any adequate or proper use of tug assistance in manoeuvring;
- (h) They failed to make any or any proper allowance for the effect of the wind or tide;
- (3) They failed to comply with, *inter alia*, rules 2, 5, 6, 7 and/or 8 [or as may be] of the International Regulations for Preventing Collisions at Sea 1972/Merchant Shipping (Prevention of Collisions by Sea) Regulations;
- (4) They failed to comply with, *inter alia*, [relevant terminal or port rules if applicable].

[The above are the best particulars the Plaintiffs are able to provide pending discovery and interrogatories.]

- 8. By reason of the aforesaid, the Defendants were deprived of the use of their berth/s/Terminal and suffered loss and damage and incurred expense.

Particulars

[Particulars of loss and damage and expense such as cost of repairs, costs relating to diversion of vessels which would otherwise utilise the berth/Terminal, loss of profits, etc.]

AND the Plaintiffs claim:

- (1) [Claim amount], alternatively such sums or damages to be assessed;
- (2) Interest;

- (3) [A declaration that the Plaintiffs be fully indemnified by the Defendants for any damages suffered and/or any and all such claims that may be made against the Plaintiffs by third parties in any respect as a result of the collision];
- (4) [An indemnity for item (3) prayed for above];
- (5) Costs; and
- (6) Such further or other relief as this Honourable Court deems fit.

P2.05 Preliminary Act⁴

[Drew & Napier LLC]

Part 1

I	
The names of the ships which came into collision and their ports of registry	(1) "AB" of [name of port] (2) "CD" of [name of port]
II	
The length, breadth, gross tonnage, horsepower and draught at the material time of the ship and the nature and tonnage of any cargo carried by the ship;	Length: [number] metres Breadth: [number] metres Gross Tonnage: [number] metric tonnes Horsepower: [number] kw at [number] rpm Draught: [number] metres forward, [number] metres aft Cargo: [number] metric tons of [e.g. maize] in [bags]
III	
The date and time (including the time zone) of the collision;	[date] at about [time] local time (GMT [+ 8] hours)
IV	
The place of the collision;	Approximately latitude [number] [number] ' North, longitude [number] [number] ' East on the westbound lane of the Traffic Separation Scheme along the Singapore Strait [or as may be]

4 Where a claim for damage, loss of life or personal injury arises out of a collision between ships, each party sets out its case in a preliminary act. The conventional pleading process (statement of claim, defence, etc.) does not apply in these circumstances. See Ord 70 r 17; *The Teng He* [2000] 3 SLR 114. Merchant Shipping (Prevention of Collisions at Sea) Regulations (Rg 10, Cap 179) (Colregs) apply.

V	
The direction and force of the wind;	[South-Easterly], of about [Force 3]
VI	
The state of the weather;	Sky: [Partly cloudy] Seas: [Slight] Visibility: [Good]
VII	
The state, direction and force of the tidal or other current;	The tide was flooding and setting South-West at a rate of approximately 1.8 knots [or as may be]
VIII	
The position, the course steered and speed through the water of the ship when the other ship was first seen or immediately before any measures were taken with reference to her presence, whichever was the earlier;	At about [number] hours "AB" was steering a course of [number] (T) at a speed of approximately [number] knots on the westbound lane of the Traffic Separation Scheme along the Singapore Strait [or as may be]
IX	
The lights or shapes (if any) carried by the ship;	Regulation masthead, stern and side lights [or as may be]
X	
(a) The distance and bearing of the other ship if and when her echo was first observed by radar; (b) The distance, bearing and approximate heading of the other ship when first seen;	About [number] mile and around [number] (T) Approximately [number] points on the starboard bow of "AB" distance [number] miles on a heading estimated to be easterly
XI	
What light or shape or combination of lights or shapes (if any) of the other ship was first seen;	Deck lights only [or as may be]

XII	
What other lights or shapes or combination of lights or shapes (if any) of the other ship were subsequently seen before the collision, and when;	Deck lights only [or as may be]
XIII	
What alterations (if any) were made to the course and speed of the ship after the earlier of the 2 times referred to in Article VIII up to the time of the collision, and when, and what measures (if any) other than alterations of course or speed, were taken to avoid the collision, and when;	Alteration to starboard at [number] hours. At [number] hours main engine stopped and on double right full astern and continuous signal on "AB"'s whistle, i.e. 5 short and rapid blasts, repeated call on VHF and signalling on ALDIS Lamp, i.e. 5 short and rapid flashes [or as may be]
XIV	
The heading of the ship, the parts of each ship which first came into contact and the approximate angle between the 2 ships at the moment of contact;	The starboard bow of "CD" struck the portside abreast No. 2 segregated ballast tank of "AB" at an acute angle
XV	
What sound signals (if any) were given, and when;	5 short and rapid blasts at frequent intervals on "A"'s whistle just before the collision [or as may be]
XVI	
What sound signals (if any) were heard from the other ship, and when;	None [or as may be]

Part II

1. The Plaintiffs repeat the facts and matters set out in Part 1 hereof and incorporate the same herein.
2. [Set out details of collision as appropriate]

3. The said collision was caused by the breach of duty and/or negligence of the Defendants, their servants and/or agents, *inter alia*, in the following aspects and in breach of, *inter alia*, rules 2, 5, 7, 8, 10, 14, 16 and 34 of the Merchant Shipping (Prevention of Collisions at Sea) Regulations 1972 (Rg 10, 1990 Ed) (“Colregs”):

Specimen particulars

- (1) That they failed to assess the risk of collision and were therefore in breach of rules 2 and 7 of the Colregs;
 - (2) That they failed to maintain a good and/or proper lookout or at all and were therefore in breach of rule 5 of the Colregs;
 - (3) That they failed to take any action to avoid the collision and were therefore in breach of, *inter alia*, rules 8, 14 and 16 of the Colregs;
 - (4) That they were steering the “CD” east in or along the west bound lane of the Traffic Separation Scheme and were therefore in breach of rule 10 of the Colregs;
 - (5) That they failed to take heed of warning signals sounded by the “AB” and/or omitted to sound the requisite signals in accordance with rule 34 of the Colregs and were therefore in breach of rule 2 of the Colregs.
4. By reason of the abovementioned collision, damage was done to the “AB” and the Plaintiffs have thereby suffered loss, damage and/or expense.

AND the [Plaintiffs or Defendants] [claim or counterclaim]:

- (1) Damages;
- (2) A reference, if necessary, to the Registrar to assess the damages;
- (3) Interest;
- (4) Costs; and
- (5) Any other relief or remedy as this Honourable Court deems fit.

P2.06 Claim for master's wages and disbursements⁵

[Allen & Gledhill LLP]

1. The Plaintiff is or was at all material time the Master of the vessel "HAPPY SUE" [vessel registration number or IMO number] of the port of [place of registration] (the "Vessel").
2. The Defendant, [name of Defendant], is and was at all material times the lawful and registered owner of the Vessel.
3. On or around [date], the Plaintiff was engaged by and/or for and on behalf of the Defendant to work and serve on board the Vessel as its Master under a contract of service dated [date] ("the Contract"), for the period between [date] and [date]. The Contract incorporated the provisions of the collective agreement made in [place] on [date].
4. It was an express term of the Contract that:
 - (1) The Plaintiff was to be paid wages for his services at the rate of [amount] per month;
 - (2) The Plaintiff would be reimbursed for all the disbursements made for and on behalf of the Defendant and/or the Vessel during the period of his service on board the Vessel;
 - (3) The Plaintiff would be entitled to [include such other claims as may be applicable e.g. overtime wages, bonuses, overtime allowances, bonuses, special allowances and any other emoluments and expenses required for repatriation]; and
 - (4) [set out any other relevant provision(s) of the Contract, e.g. any provision for interest]
5. Pursuant to the terms the Contract, the Plaintiff faithfully and diligently served on board the Vessel and performed his obligations as Master of the Vessel from [date] to [date] (both dates inclusive).
6. In the premises there is due and owing to the Plaintiff the following wages and [overtime wages, bonuses, overtime allowances, bonuses, special allowances, and any other emoluments (e.g. leave allowances, retirement allowances), and expenses required for repatriation, as may be applicable or provided for under the Contract and/or the applicable law] amounting to [amount] (the "Outstanding Wages").

⁵ Also see P2.14.

Particulars of Outstanding Wages

[Set out breakdown of how the outstanding wages inclusive of all overtime wages, bonuses, overtime allowances, bonuses, special allowances, and any other emoluments (e.g. leave allowances, retirement allowances), and expenses required for repatriation due to him, are arrived at]

7. Further, on or about the following dates, the Plaintiff, as Master of the Vessel, properly incurred the following disbursements for and on account of the Vessel amounting to [amount] (the “Outstanding Disbursements”).

Particulars of Outstanding Disbursements

[List and describe the dates on which, the amounts for which and the purpose for which these disbursements were incurred]

8. However, in breach of the terms of the Contract, the Defendant failed to pay the Plaintiff the Outstanding Wages and/or to reimburse him the Outstanding Disbursements.
9. The Defendant has also failed to pay the Plaintiff the reasonable costs of repatriation to his home in the sum of [amount].

Particulars of Costs of Repatriation

[Set out the breakdown of how the costs of repatriation were arrived at]

AND the Plaintiff claims:

- (1) [Amount] or its Singapore Dollar equivalent, or alternatively a reference to the Registrar to assess the amounts due to the Plaintiff for the Outstanding Wages;
- (2) [Amount] or its Singapore Dollar equivalent, or alternatively a reference to the Registrar to assess the amounts due to the Plaintiff for the Outstanding Disbursements;
- (3) [Amount] or its Singapore dollar equivalent, or alternatively a reference to the Registrar to assess the amounts due to the Plaintiff for his costs of repatriation;
- (4) Interest;
- (5) Costs; and
- (6) Such further or other order or relief as this Honourable Court deems fit.

P2.07 Claim for crew's wages

[Haridass Ho & Partners]

1. The Plaintiffs' claims are for wages earned by them as seamen on board the Defendants' vessel "ABC" and for other emoluments namely (bonus, etc.) and for passage money for their return home in repatriation ("Repatriation Expenses").
2. The Plaintiffs served on board the said "ABC" in the capacities and for the periods set out in the particulars hereunder, pursuant to an agreement made between each of them and the Defendants. The Plaintiffs said employment under their respective contracts of service were terminated on [date] by the Defendants after the arrest of the said "ABC" at [port].

Particulars

S/No.	Name	Rank	Period of Service	
			Commencement date	Termination date
(1)				
(2)				

3. There are now due and owing to the Plaintiffs respectively under the aforesaid Agreements, the wages and other emoluments set forth pleaded hereunder. The passage monies for their return home in repatriation are also set forth pleaded hereunder.

Particulars

S/No.	Name	Wages due and owing	Other Emoluments	Other Expenses	Repatriation Expenses
(1)					
(2)					

4. Despite demands, the Defendants have failed to pay the Plaintiffs the aforesaid sums or any part thereof.

AND the Plaintiffs claim:

- (1) Judgment for the sums claimed by each of them as set out herein and particularised under paragraphs 2 and 3 hereinabove and/or damages;
- (2) Interest from the respective termination dates set out in paragraph 2 hereinabove up to Judgment or sooner payment at the rate of [amount] per cent per annum pursuant to Section 12 of the Civil Law Act (Cap 43) and/or the inherent jurisdiction of the Court;
- (3) If necessary, a reference to the Registrar to assess the amount due to each of the Plaintiffs herein; and
- (4) Costs.

P2.08 Claim for goods and materials supplied to ship⁶

[Drew & Napier LLC]

1. By an agreement evidenced, *inter alia*, in writing dated on or about [date], the Plaintiffs agreed to sell to the Defendants about [number] tonnes of IFO 380 CST marine fuel oil (“the Bunkers”) by supplying the Bunkers to the vessel “AB” on or about [date]. The agreement incorporated the Plaintiffs’ standard terms and conditions, which also appeared on the reverse side of the Plaintiffs’ Invoice. These standard terms were well-known to the Defendants, their servants or agents.
2. Pursuant to the said agreement, on or about [date], the Plaintiffs, their servants or agents duly delivered the Bunkers to the Defendants as evidenced by the Plaintiffs’ bunker delivery receipt which recorded the acknowledgement by the Chief Engineer of the vessel “AB”, the receipt of the aforesaid Bunkers.
3. It was a term of the agreement that payment was to have been made by the Defendants to the Plaintiffs within 30 days from the date of delivery without set-off or deduction. The Plaintiffs’ Invoice stated:

[Terms of the Invoice]

4. Further, Clause [number] of the Plaintiffs’ standard terms and conditions stated:

[Relevant portion of the standard terms and conditions]

5. The Defendants have failed and/or neglected and/or refused to pay the Plaintiffs’ Invoice No. [number] dated [date] amounting to [value] or any part thereof despite the repeated demands from the Plaintiffs through letters dated [date].

Further, by the matters stated above, the Defendants agreed to pay interest at the rate of [amount] per cent on any overdue payment.

AND the Plaintiffs claim:

- (1) [Amount];
- (2) Interest at the contractual rate as set out in paragraph 6; and
- (3) Costs.

⁶ Also see P2.15.

P2.09 Claim for repair⁷

[Allen & Gledhill LLP]

1. The Defendant is or was at all material times the owner of the vessel “HAPPY SUE” [vessel registration number or IMO number] of the port of [place of registration] (the “Vessel”).
2. The Plaintiff is and was at all material times a company incorporated in [place] carrying on business as, amongst other things, shipbuilders and repairers in [place].
3. By an agreement in writing dated [date] entered into between the Plaintiff and the Defendant, it was agreed that the Plaintiff would carry out repairs to the Vessel at [place] for the sum of [amount] in accordance with [identify the contractual document containing the terms and conditions applicable to the contract of repair, including, e.g. any Standard Terms and Conditions for Repair of Ships applicable and/or incorporated] (the “Contract”).

Particulars

The Contract was contained in and/or evidenced by and/or is to be inferred from, amongst other things, the following:

[Set out the circumstances and/or relevant documents which the Plaintiff is relying on to found the Contract]

4. The Contract provided for, amongst other things, the following:
[List salient terms, including in particular, provisions setting out the scope of the repairs to be carried out, price of the repairs, duration of the repairs, applicable law, payment obligations, interest, fees, costs and other expenses payable, indemnities, right to lien and the stipulated events of default]
5. Pursuant to the Contract, the Vessel entered into the Plaintiff’s [place, e.g. shipyard/dry dock] on [date]. Between [date] to [date], the Plaintiff performed the contracted repairs to the Vessel and completed the repairs on [date].
6. Upon completion of the contracted repairs on [date] and pursuant to the Contract, the Plaintiff issued an invoice dated [date] in the sum of [amount].
7. However in breach of the Contract, the Defendant failed to pay the said sums due despite the Plaintiff’s repeated demands for payment.

⁷ Also see P2.16 and P2.18.

8. In the circumstances, there is now due and owing to the Plaintiff the sum of [amount] in respect of the repairs provided to the Vessel, late payment interest at the rate of [rate] on the foregoing overdue sums and costs.
9. Further or alternatively, the Plaintiff avers that it is entitled to payment of a reasonable sum on a quantum meruit basis, or otherwise, for the repairs provided to the Vessel at the request and/or to the order of the Defendant, its servants or agents and which were received and/or accepted by the Defendant, its servants or agents.
10. By reason of the Defendant's failure to pay the sums due and owing to the Plaintiff, the Plaintiff has suffered loss and damage.

Particulars

[Set out the particulars of loss, e.g. the sum due under the invoice issued, contractual interest chargeable upon the sums due and owing, as may be applicable]

AND the Plaintiff claims:

- (1) The sum of [amount], or alternatively damages and/or a reasonable compensation to be assessed;
- (2) Interest on the sum of [amount] at the contractual rate of [rate] from [date] to the date full payment is received, or alternatively under the Civil Law Act and/or under the inherent jurisdiction of the Court at such rate and for such period as this Honourable Court deems fit;
- (3) Costs; and
- (4) Such further or other order or relief as this Honourable Court deems fit.

P2.10 Claim for salvage

[Haridass Ho & Partners]

1. The Plaintiffs are the owners of the motor tug “DEF” and rendered salvage services to the Defendants’ vessel “ABC” in the circumstances set forth hereinafter.
2. The “DEF” is a tug of the Port of [port of registry], of [number] tons gross and [number] horsepower. She is equipped for towing as well as for salvage operations.
3. At the time of the salvage services, the “DEF” was engaged in a voyage from [location] to [location] in the ordinary course of the Plaintiffs’ business, and was manned by a crew of [number], all hands told.
4. The “ABC” of [port of registry] is a motor log carrier of [number] tons gross, about [number] feet in length and [number] feet in beam. Before the salvage services the “ABC” was in the course of a voyage from [location] to [location] laden with a cargo of [number] metric tonnes of logs and manned by a crew of [number], all hands told.
5. The “ABC” became disabled on [date] while off the [location] coast in conditions of bad weather and southerly winds force 10. Her cargo shifted and she developed a list to starboard. Seawater had also entered her engine room. Her radar broke down and her steering was disabled. Her master transmitted a distress signal from a position said to be about [number] miles off [location].
6. The “DEF” which had been listening to the Mayday traffic proceeded towards the reported position of the “ABC”. The “DEF” came up to the “ABC” in a position about [number] miles [e.g. Southeast of [location]] by which time there was a very heavy swell running. The “ABC” was taken in tow to an anchorage off [location].
7. On [date] the second mate and second engineer of the “DEF” carried out an inspection on board the “ABC” and supervised the inspection of her bottom by a diver. On [date] they pumped out the engine room bilges, and the “DEF” towed the “ABC” into [location] harbour and berthed her there in safety.
8. By reason of the said services, the “ABC”, her cargo and freight were saved from a risk of total loss.

Particulars of salvaged values

The salvaged value of the "ABC" was	\$
That of her cargo the logs was	\$
And that of her freight at risk was	\$

Total	\$

9. When the "DEF" made her approach in boisterous weather conditions, the "ABC" was drifting helplessly and uncontrollably. She was listing to starboard after the shift of her cargo of weighty logs and the ingress of seawater to her engine room and the possibility of her capsizing appeared imminent. Further, the then prevailing wind, seas and swell were liable to drive her ashore where she would in certainty sustain bottom damage and/or broach to and/or become an actual total loss or constructive total loss.
10. The services rendered by the Plaintiffs were prompt, skilful, courageous and professional-like. The "DEF" sped up to the scene of casualty some 30 miles in the severe weather conditions which were prevailing, made fast to the "ABC" in heavy seas, pitching and rolling, and safely towed her about 43 miles to the said harbour. There was a real risk of the "DEF" and "ABC" colliding on making fast. The second mate and three seamen handling the towing lines on the deck of the "DEF" were exposed to a risk of bodily harm. The salvage services occupied some [number] hours.
11. Further, pursuant to Section 12 of the Civil Law Act (Cap 43) the Plaintiffs are entitled to and claim to recover interest on the amount found to be due to them at [amount] per cent per annum and for such period as the court thinks fit.

AND the Plaintiffs claim:

- (1) Salvage remuneration as assessed and a reference to the Registrar for assessment thereof;
- (2) Interest thereon pursuant to Section 12 of the Civil Law Act (Cap 43);
- (3) Costs; and
- (4) Such further or other relief as the Honourable Court may deem fit.

P2.11 Claim for towage

[Haridass Ho & Partners]

1. The Plaintiffs are a company incorporated under the laws of Singapore and are in the business of, *inter alia*, towing vessels and are the owners of the motor tug “DEF”.
2. The Defendants, [company name of Defendants] are a company incorporated under the laws of [country in which Defendants were incorporated] and are the owners of the vessel “ABC”.
3. By a towage contract dated [date] the Plaintiffs agreed to supply their motor tug “DEF” to tow the Defendants’ vessel “ABC” and the towage remuneration was agreed therein in the sum of [amount].
4. The said contract also incorporated the Plaintiffs’ Standard Towage Conditions, a copy of which was attached to and forms an integral part of the said contract agreed upon by the Defendants. The Plaintiffs will refer to the said contract and Standard Towage Conditions at the trial for their full terms and effect.
5. By Clause 4(b) of the Standard Towage Conditions, the Defendants “shall be responsible for, pay for and indemnify the (Plaintiffs) against and in respect of any loss or damage and any claims of whatsoever nature and howsoever arising or caused, suffered by or made against the (Plaintiffs) by reason and in the course of the towage”.
6. On or about [date], at the request of the Defendants, their servants or agents and in pursuance of the said contract, the “DEF” with her crew on board towed the “ABC” from [location] to [location].
7. In the course of the towage and at [location] the “ABC” suddenly and without any prior intimation to the “DEF” increased her speed and altered her course to port thereby causing the port bow of the “DEF” to crash into a moored dock gate. The Plaintiffs suffered loss and damage received by the “DEF” and damage done to the [location] Harbour Board as owners of the dock gate.

Particulars of damage and repairs

[Particulars of damage and repairs]

8. The said collision was caused by the negligence of the Defendants, their servants or agents.
9. On resumption of the said towage, the “DEF” towed the “ABC” to [location].

10. The Plaintiffs issued an invoice numbered [number] dated [date] to the Defendants for the sum of [sum], being the agreed towage remuneration. The Defendants have failed, refused and/or neglected to make payment of the said sum despite numerous demands from the Plaintiffs.
11. The Plaintiffs have suffered loss by reason of the Defendants' breach of contract in failing, refusing and/or neglecting to effect payment in settlement of the Plaintiffs' said invoice and in respect of the loss and damage sustained by the Plaintiffs by reason of the said collision which the Defendants also failed to pay.

AND the Plaintiffs claim:

- (1) The sum of [amount] and/or of such amounts as may be determined by the Court for breach of contract and/or damages;
- (2) Payment to the Plaintiffs by way of indemnity under the said contract in respect of the loss damage and expense particularised in paragraph 7 aforesaid;
- (3) A Declaration that the Plaintiffs are entitled to an indemnity from the Defendants in respect of the loss damage and expense particularised in paragraph 7 aforesaid;
- (4) A reference to the Registrar to assess the damages, loss and expense, if necessary;
- (5) Interest at [amount] per cent per annum from [date] up to Judgment or sooner payment pursuant to Section 12 of the Civil Law Act (Cap 43); and
- (6) Costs.

P2.12 Claim on reference to Registrar⁸

[Drew & Napier LLC]

1. The claim of the Plaintiffs in Admiralty action *in rem* No. [action number 1], who are also the Defendants in Admiralty action *in rem* No. [action number 2] (hereinafter referred to as “the Plaintiffs”) is for loss, damage and/or expense suffered by the Plaintiffs arising out of a collision between the Plaintiffs’ vessel “AB” and the vessel “CD” of the Defendants in Admiralty action *in rem* No. [action number 1], who are also the Plaintiffs in Admiralty action *in rem* No. [action number 2] (hereinafter referred to as “the Defendants”) which occurred at or about [place of collision] at or about [time] on [date] .
2. At the material time, the “AB” (a [type] GRT Bulk Carrier), was on ballast on a voyage from Richards Bay, South Africa to Shanghai, People’s Republic of China.
3. As a result of the collision, the “AB” sustained damage to her starboard bow and was towed to Singapore. She subsequently dry-docked at Keppel Shipyard on [date], where she underwent permanent repairs.
4. By an Agreement dated [date], it was agreed between the Plaintiffs and Defendants, *inter alia*, that:
 - (1) The Plaintiffs shall bear 2/3 of the blame and the Defendants shall bear 1/3 of the blame of the collision.
 - (2) The Plaintiffs shall pay the Defendants 2/3 of the Defendants’ damages (to be agreed or failing agreement, to be referred to the Registrar for assessment) plus interest thereon at 6 per cent per annum from [date of writ] to the date of payment.
 - (3) The Defendants shall pay to the Plaintiffs 1/3 of the Plaintiffs’ damages (to be agreed or failing agreement to be referred to the Registrar for assessment) plus interest thereon at 6 per cent per annum from [date of writ] to the date of payment.
 - (4) The Plaintiffs shall bear and pay 2/3 of the Defendants’ costs of determining liability on a standard basis, such costs to be agreed or failing which to be taxed.

⁸ This procedure is necessary for the assessment of damages. The procedure is governed by Ord 70, rr 40–42. For the defence to claim on reference, see P2.17.

(5) The Defendants shall bear and pay 1/3 of the Plaintiffs' costs of determining liability on a standard basis, such costs to be agreed or failing which to be taxed.

5. By reason of the aforesaid collision, the Plaintiffs have suffered loss, damage and expense as follows:

Particulars

Item No.	Description		Claimed (US\$)
1	Repair costs		[200,000]
2	Loss of hire (10 days @ [US\$10,000]/day)		[100,000]
		Total:	[300,000]
	[or as the case may be]		

AND the Plaintiff claims:

- (1) One-third of the sum of [\$300,000], or [\$100,000];
- (2) Interest; and
- (3) Costs.

P2.13 Defence in a mortgage action⁹

[Allen & Gledhill LLP]

1. The Defendant adopts in this Defence the defined terms as used in the Plaintiff's Statement of Claim dated [date] (the "Statement of Claim") solely to identify the subject-matter being defined and makes no admission whatsoever to any matter alleged by the Plaintiff, unless otherwise admitted herein.
2. Paragraph 1 of the Statement of Claim is [admitted/not admitted/denied]. [If denied, set out the reasons, e.g. the Plaintiff does not have a valid and/or enforceable mortgage over the Vessel, in that it was not validly executed and/or not recognised and enforceable under the governing law of the Mortgage and/or not validly registered under the law of the flag or place of registration]
3. Paragraph 2 of the Statement of Claim is admitted.
4. Paragraph 3 of the Statement of Claim is admitted only insofar as it sets out the terms and conditions of the Loan Agreement.
5. Paragraph 4 of the Statement of Claim is [admitted/not admitted/denied]. [If denied, set out the grounds or basis for denial]
6. Paragraph 5 of the Statement of Claim is admitted only insofar as it sets out the terms and conditions of the [document name].
7. The Defendant does not plead to paragraph 6 of the Statement of Claim. If (which is [not admitted/denied]) the Mortgage, the Loan Agreement and [other document(s) which the Plaintiff is relying on for its claim] are valid and enforceable, the Defendant will also refer to the same as may be necessary for their full terms and effect.
8. Paragraph 7 of the Statement of Claim is [admitted/not admitted/denied]. [If denied, set out the grounds or basis for denial, e.g. the contents of foreign law pleaded is erroneous and plead the correct content of foreign law and set out the provision(s) relied upon]
9. Paragraph 8 of the Statement of Claim is [admitted/not admitted/denied]. [If denied, set out the grounds or basis for denial, e.g. the amount drawn down or the dates on which it was alleged to be drawn down are incorrect]
10. Paragraph 9 of the Statement of Claim is denied. The Defendant avers as follows:

⁹ See P2.03 for the references to the Statement of Claim.

- (1) [State reasons e.g. the Plaintiff, by its conduct or otherwise in accepting late payment for the [list the relevant number(s)] instalment(s) has waived and/or should be deemed to have waived its rights under the Mortgage, the Loan Agreement and/or [other document(s) which the Plaintiff is relying on for its claim] for prompt and punctual payment from the Defendant of the sums due and owing under the aforesaid agreements. The Plaintiff is thereby estopped from exercising and/or demanding strict compliance with its rights to prompt and punctual payment from the Defendant.]
 - (2) [Set out other grounds or basis for alleging that the sums claimed by the Plaintiff are not yet due and payable to the Plaintiff, e.g. there was no valid notice of acceleration of the loan amount]
11. Paragraphs 10 to 12 of the Statement of Claim are denied, [admitted / not admitted / denied] [if denied, state grounds for denial]. The Defendant repeats paragraph 10 above [if applicable, state further averments, e.g. the Plaintiff is not entitled to claim any accrued interest (contractual, default or otherwise) for the period from [date] to [date] pursuant to Clause [clause number] of the Loan Agreement because [state reasons e.g. the aforesaid provision amounts to a penalty].
 12. For the reasons set out above, the Defendant denies it is liable to the Plaintiff for the amounts claimed or any amount at all.
 13. Save as specifically admitted or not admitted herein, the Defendant denies each and every allegation contained in the Statement of Claim as though the same were set out herein and specifically traversed.

P2.14 Defence in response to claim for master's wages and disbursements¹⁰

[Allen & Gledhill LLP]

1. The Defendant adopts in this Defence the defined terms as used in the Plaintiff's Statement of Claim dated [date] (the "Statement of Claim") solely to identify the subject-matter being defined and makes no admission whatsoever to any matter alleged by the Plaintiff, unless otherwise admitted herein.
2. Paragraph 1 of the Statement of Claim is [admitted/not admitted/denied]. [If denied, state grounds, e.g. the Plaintiff did not serve as the Master on the Vessel]
3. Paragraph 2 of the Statement of Claim is admitted.
4. Paragraph 3 of the Statement of Claim is admitted insofar as [set out the allegations admitted]. [If denied, state grounds, e.g. there was no valid contract of employment]
5. Paragraph 4 of the Statement of Claim is admitted insofar as it sets out the terms and conditions of the Contract. [If denied, state grounds, e.g. the Contract was not validly executed and/or not recognised and enforceable under the governing law of the Contract and/or is otherwise vitiated and/or deemed null and void]
6. Paragraph 5 of the Statement of Claim is [admitted/not admitted/denied]. [If denied, state grounds for denying that the Plaintiff faithfully and diligently served on board the Vessel, e.g. the Plaintiff's services as Master of the Vessel was already terminated and that accounts were settled in respect of his wages up to such date for all services rendered by the Plaintiff on board the Vessel]
7. Paragraph 6 of the Statement of Claim is [not admitted/denied]. [If denied, state the grounds for denial, e.g. the Plaintiff is not entitled to some or all of the sums claimed as there is no provision for the same under the Contract]
8. Paragraph 7 of the Statement of Claim is [not admitted/denied]. [If denied, state the grounds for denying that the Plaintiff properly incurred disbursements for and on account of the Vessel, e.g. the disbursements were not made for the benefit and/or on behalf of the Defendant and/or were made without any authority (express, implied or otherwise) from the Defendant]

¹⁰ See P2.06 for the references to the Statement of Claim.

9. Paragraphs 8 and 9 of the Statement of Claim are denied. The Plaintiff is not entitled to the sum of [amount] as the costs of repatriation to his home because [set out the grounds or basis for denying that the Plaintiff's claim for costs of repatriation, e.g. the costs are not reasonable and/or the Plaintiff is not so entitled to it under the terms of the Contract].
10. Save as specifically admitted or not admitted herein, the Defendant denies each and every allegation contained in the Statement of Claim as though the same were set out herein and specifically traversed.

P2.15 Defence and counterclaim in response to claim for goods and materials supplied to ship¹¹

[Drew & Napier LLC]

1. Paragraph 1 of the Statement of Claim is not admitted save that the Plaintiffs agreed to sell about [amount] tonnes of IFO 380 CST marine fuel oil ("the Bunkers") subject to the terms and conditions pleaded below. The Defendants deny that all the terms appearing on the reverse side of the Plaintiffs' Invoice were incorporated into the sale agreement between the Plaintiffs and Defendants and further deny that any such terms were well known to the Defendants, their servants or agents.
2. The Defendants agreed to purchase the Bunkers from the Plaintiffs on or about [date] for supply to the vessel "AB" ("the Vessel").
3. The Bunkers supplied were not of satisfactory quality and/or were off-specification.

Particulars

[Allegations]

Counterclaim

4. By reason of the matters stated at paragraph 3 above, the Defendants were put to expense and suffered loss and damage.

Particulars

[For example, diversion costs to debunker the contaminated fuel, etc.]

5. Further or alternatively, the Defendants are entitled to set up the matters set out herein against the Plaintiffs' claim in extinction of their claim and/or set off the same against the Plaintiffs' claim, as provided in clause [number] of the Plaintiffs' standard terms and conditions.

AND the Defendants counterclaim:

- (1) [Amount], alternatively damages;
- (2) Interest; and
- (3) Costs.

¹¹ Also see P2.08.

P2.16 Defence and counterclaim in response to claim for repair¹²

[Allen & Gledhill LLP]

1. The Defendant adopts in this Defence the defined terms as used in the Plaintiff's Statement of Claim dated [date] (the "Statement of Claim") solely to identify the subject-matter being defined and makes no admission whatsoever to any matter alleged by the Plaintiff, unless otherwise admitted herein.
2. Paragraph 1 of the Statement of Claim is admitted.
3. Paragraph 2 of the Statement of Claim is [admitted/not admitted].
4. Paragraph 3 of the Statement of Claim is [admitted/not admitted/denied]. [If denied, state grounds or basis for alleging that there was no Contract, e.g. the agreement was entered into with another party, the Defendant was merely an agent of the real contracting party and/or that the Contract was not validly executed and/or not recognised and enforceable under the governing law of the Contract and/or is otherwise vitiated and/or deemed null and void].
5. Paragraph 4 of the Statement of Claim is admitted only insofar as it sets out the terms and conditions of the Contract.
6. It was, amongst other things, an express term of the Contract that set out the express terms the Defendant is relying on, e.g.
 - (1) The Plaintiff was to carry out the work specified in the Contract expeditiously and in a good and workmanlike manner to the satisfaction of the Defendant;
 - (2) The repairs were to be completed within 3 months of dry-docking, i.e. by [date], at the latest; and
7. Further or alternatively, it was an implied term of the Contract that:
 - (1) The Plaintiff would provide good and skillful workmanship and material and parts of good quality which are to be reasonably fit for their purpose;
 - (2) The service and repairs by the Plaintiff would be carried out in a good and workmanlike manner;
 - (3) The Plaintiff would exercise all reasonable skill and care in effecting the repairs and services to the Vessel;

¹² See P2.09 for the references to the Statement of Claim. See also P2.18.

- (4) The repairs and services to the Vessel would be completed within a reasonable time; and
- (5) [Set out the other implied terms the Defendant is relying on]
8. The first sentence of paragraph 5 of the Statement of Claim is admitted insofar as the Vessel entered into the Plaintiff's [place, e.g. shipyard/dry dock] on [date]. The second sentence of paragraph 5 of the Statement of Claim is denied. The Defendant avers [set out the grounds or basis for denial, e.g. the services and repairs were not done pursuant to the Contract and/or in accordance with the terms of the Contract and/or to the satisfaction of the Defendant].
9. Save that the Plaintiff issued an invoice dated [date] in the sum of [amount], paragraph 6 of the Statement of Claim is [not admitted/denied].
10. Paragraphs 7 to 9 of the Statement of Claim are denied. The Defendant repeats paragraphs 4 and 8 above and further avers that by reason of the matters hereinbefore set out, the Plaintiff has failed to perform the Contract and is not entitled to the sum claimed or to any part thereof. The Plaintiff is accordingly not entitled to claim any late payment interest at the rate of [rate] on the ground that no payment is due or alternatively, because the contractual late payment interest rate amounts to a penalty.
11. Paragraph 10 of the Statement of Claim is [not admitted/denied]. [If denied, state the grounds or basis for denying the Plaintiff's claim for loss and damage, e.g. the alleged loss and damage was not caused by the Defendant's failure to pay the sums due and owing and/or there was no such failure to pay]
12. Save as specifically admitted or not admitted herein, the Defendant denies each and every allegation contained in the Statement of Claim as though the same were set out herein and specifically traversed.

Counterclaim

13. The Defendant repeats paragraphs 1 to 12 of the Defence herein.
14. Negligently and/or in breach of the Contract, the Plaintiff failed to provide good and skillful workmanship and/or materials and parts of good quality and/or reasonably fit for their purpose and/or failed to carry out the work in a good and workmanlike manner and/or failed to exercise all reasonable skill and care in effecting the said repairs and/or failed to complete the repairs and services to the Vessel within a reasonable time.

Particulars

[Set out particulars of the breach of the Contract and/or negligence on the part of the Plaintiff in support of the above allegations]

15. By reason of the aforesaid negligence and/or breach of Contract, the Defendant has suffered loss and damage and has been put to expense.

Particulars

[Set out the breakdown of the loss and damage suffered, e.g. cost of rectification works and loss of hire]

AND the Defendant counterclaims:

- (1) The sum of [amount], or alternatively damages to be assessed;
- (2) Interest;
- (3) Costs; and
- (4) Such further or other order or relief as this Honourable Court deems fit.

P2.17 Defence to claim on reference¹³

[Drew & Napier LLC]

1. Paragraphs 1 to 4 of the Plaintiffs' claim in the Reference are admitted.
2. The Defendants admit [amount] of item 1 of the claim in the Reference as the reasonable costs of repair, and say that the balance of [amount] claimed by the Plaintiffs is excessive.
3. Further or alternatively, the Defendants aver that the remaining sum is for repair of item(s) unconnected to the collision.
4. The Defendants do not admit item 2 of the claim, and put the Plaintiffs to proof that it was incurred as a result of the collision and to its quantum. The Defendants say that at the time of the collision, the Plaintiffs' vessel was en route to Shanghai, People's Republic of China for her annual dry-docking and as such, the vessel would in any event not have been on hire between [date] and [date].
5. In the premises the Plaintiffs are entitled to [amount], together with interest, and no more.

¹³ See P2.12 for the Reference.

P2.18 Reply and defence to counterclaim¹⁴

[Allen & Gledhill LLP]

Reply

1. The Plaintiff adopts the abbreviations and definitions used in the Statement of Claim dated [date] (the “Statement of Claim”), unless otherwise stated.
2. The Plaintiff joins issue with the Defendant on its Defence dated [date] (the “Defence and Counterclaim”) save insofar as the same contains or consists of admissions and save as hereinafter expressly admitted.
3. The Plaintiff reserves its right to amend and/or supplement its pleadings pending the administration of interrogatories, the provision of further and better particulars and/or the disclosure of documents by the Defendant, in accordance with the Plaintiff’s rights and entitlements.
4. Paragraph 4 of the Defence and Counterclaim is denied. The Plaintiff avers [set out the grounds or basis for denying the Defendant’s averment that there was no contract].
5. Paragraphs 6 and 7 of the Defence and Counterclaim are denied. The Plaintiff avers [set out the grounds or basis for denying the Defendant’s assertion as to the express and implied terms of the Contract, e.g. the Plaintiff’s liability is excluded and/or limited by certain express and/or implied terms of the Contract].
6. Paragraphs 8, 10 and 11 of the Defence and Counterclaim are denied. The Plaintiff avers [set out the grounds or basis for denial, e.g. the Defendant accepted and signed on the work completion forms or such other documents which implies acceptance of the services and repairs done by the Plaintiff and/or failed to notify the Plaintiff of the alleged defects and/or failure to complete the services and repairs within the stipulated time under the Contract].

Defence to Counterclaim

7. Paragraphs 13 to 15 of the Defence and Counterclaim are denied. The Plaintiff repeats paragraphs 1 to 6 above and denies that the Defendant is entitled to the relief claimed or any relief at all.

¹⁴ See P2.09 for the references to the Statement of Claim and P2.16 for the references to the Defence and Counterclaim.

8. Save as specifically admitted or not admitted herein, the Defendant denies each and every allegation contained in the Defence and Counterclaim as though the same were set out herein and specifically traversed.

RELATED DOCUMENTS

Although the following documents are not pleadings, they have been included because of their vital role in admiralty proceedings and their connection to the pleadings. They pertain to the arrest of the ship or other property, its release, limitation actions, intervention by other parties, appraisal and sale, discharge of cargo, omnibus orders (concerning measures to protect the arrested vessel, her machinery and equipment), and bail bond (guarantee by surety to pay amount adjudged to be due or which is due by reason of an admission of liability or settlement).

With the elitigation system, the Warrant and the Release are system-generated documents based on a template to be completed. A Request is no longer required to be filed for the Warrant or the Release to be issued. It is still necessary to file the Undertaking and when apply for a warrant, the Affidavit leading arrest.

P2.19 Warrant of arrest¹⁵

[Haridass Ho & Partners]

To the Sheriff,

You are directed to arrest the ship [name of vessel to be arrested] of the port of [name of port] [and the cargo now or lately laden therein, together with the freight due for the transportation thereof] or [and the freight due for the transportation of the cargo now or lately laden therein] and to keep the ship under safe arrest until you shall receive further orders.

The Plaintiff's claim is for [as per endorsement of claim]

The Defendant was the Owner of the [name of offending vessel] at the time the cause of action arose and is the Owner of the vessel(s) in (listed) in this Writ.

15 See Rules of Court (Revised Edition 2014) ("ROC"), Ord 70 r 4(1) and Form 160.

P2.20 Affidavit¹⁶ leading to arrest¹⁷

[Haridass Ho & Partners]

I, [name of deponent] (NRIC No. [number]) care of [business or residential address of deponent], do hereby solemnly make oath/affirm and say as follows:

1. I am the [designation]¹⁸ of the Plaintiffs in Singapore and am duly authorised to make this Affidavit on their behalf.
2. All matters deposed to herein are true to the best of my knowledge and belief and based on information acquired by me in the course of my handling the matters and documents and information made available to me in my capacity as aforesaid.
3. I make this Affidavit in support of the Plaintiffs' application for a Warrant of Arrest against the vessel "ABC". The documents referred to in this affidavit are exhibited herein, collectively marked "ZZ-1". The numbers in parentheses ("A[]") refer to the pages of "ZZ-1" where the documents referred to may be found.

The Parties

4. The Plaintiffs are a company incorporated under the laws of [country in which Plaintiffs were incorporated] and carry on the business of [business of the Plaintiffs].
5. The Defendants, [company name of Defendants] are a company incorporated under the laws of [country in which Defendants were incorporated] and are the owners of the vessel "ABC".

The Claim

6. By contracts dated [date], the Plaintiffs supplied [services and/or items supplied] to the Defendants' vessels the "ABC" and "BBC" for the purposes of these vessels' operations. Attached at pages [page to page] are copies of documents evidencing these contracts and the receipt by the Defendants of the said supplies.¹⁹

16 ROC, Ord 70 r 4(3).

17 It is necessary that the affidavit leading to arrest satisfies the requirement of full and frank disclosure. In *The Rainbow Spring* [2003] 3 SLR 362, [2003] 3 SLR(R) 362, the Court of Appeal found that *The Varna* [1993] 2 Lloyd's Rep 253 does not apply in Singapore and further affirmed that the court had the discretion to set aside an arrest solely on the ground of material non-disclosure notwithstanding that the procedure for arrest set out in the ROC had been followed.

18 ROC, Ord 70 r 4(3) and 4(6)(a).

19 The necessity to support a statement made in the affidavit was stated in *The Rainbow Spring* [2003] 2 SLR 117, [2003] 3 SLR(R) 362 at 126, para 37.

7. The Plaintiffs claim²⁰ a total sum of [amount] being the price [agreed between the Plaintiffs and the Defendants] due to the Plaintiffs for the supply of [goods and/or services as stated above] to the said vessels, interest and costs. This sum comprises the following:
 - (1) [Amount] being monies due (as of [date]) in respect of [goods and/or services as stated above] supplied to the “ABC”;
 - (2) [Amount] being monies due as of [date] in respect of [goods and/or services as stated above] supplied to the “BBC”;
8. In breach of the contracts, the Defendants have failed and/or refused to pay these sums that are now long overdue.
9. The Plaintiffs’ claim for the sum of [amount] (“the ABC Claim”) arises in connection with the ship or vessel “ABC”.
10. The Plaintiffs’ claim for the sum of [amount] (“the BBC claim”) arises in connection with the ship or vessel “BBC”.

Admiralty Jurisdiction

11. This action is brought under Section 4(4)(a) of the High Court (Admiralty Jurisdiction) Act (Cap 123) in respect of claims falling under Section 3(1)(l) [state any other paragraph of Section 3(1) of the High Court (Admiralty Jurisdiction) Act (Cap 123), if any relied upon] of the said Act.
12. The property to be arrested is the ship or vessel “ABC” of Port of [name of port].²¹ [The ship or vessel “ABC” is of [country of nationality] nationality and the notice,²² required by Order 70 Rule 4(4)²³ of the Rules of Court 1997 Edition, has been sent.]
13. I verily believe that the person who would, apart from Section 5 of the High Court (Admiralty Jurisdiction) Act, be liable to the Plaintiffs in an action *in personam*²⁴ is [name of Defendants].
14. [Name of Defendants] were the owners of the “ABC” when the cause of action in connection with the ABC claim arose. The grounds of my belief are that according to an extract from Lloyd’s Sea-Web service obtained from a search carried out today shortly before affirming/swearing this Affidavit, the owners of the “ABC”

²⁰ ROC, Ord 70 r 4(6)(b).

²¹ ROC, Ord 70 r 4(6)(c).

²² For an action for possession of the ship or for wages.

²³ For actions *in rem* against a foreign ship belonging to a port state having a consulate in Singapore.

²⁴ ROC, Ord 70 r 4(7)(a).

since [year] are described as [name of owners of vessel as in search results].

15. I also verily believe [name of Defendants] were the owners [or charterers of or in possession or control]²⁵ of the “BBC” when the cause of action in connection with the BBC claim arose. The grounds of my belief are that the “BBC” is referred to as [state basis for belief that the Defendants were owners or the charterers of the vessel BBC at the time the cause of action arose].²⁶
16. At the time of the issue of the Writ in this action, [name of Defendants] were the beneficial owners of the “ABC” as respects all the shares therein.²⁷ The grounds of my belief are that according to an extract from Lloyd’s Sea-Web service obtained from a search carried out today shortly before affirming/swearing this Affidavit, the owners of the “ABC” as of the date of the search are described as [state name of defendants].
17. The Plaintiffs’ claims have not been satisfied²⁸ and the aid and process of this Court are required to enforce payment thereof by the arrest of the Defendants’ ship or vessel “ABC” of Port of [name of port].

25 ROC, Ord 70 r 4(7)(b).

26 If the defendant were the charterers, not the owners, of the ‘BBC’, insert ‘... and further [name of Defendants] instructed the Plaintiffs to supply [services and/or goods] to this vessel.’

27 ROC, Ord 70 r 4(7)(c). If the Defendants were the charterers by demise, state “[name of defendants] were the charterers of “ABC” under a charter by demise.”

28 ROC, Ord 70 r 4(6)(b).

P2.21 Request for caveat against warrant of arrest²⁹

[Haridass Ho & Partners]

We, [name of firm of solicitors] of [address], solicitors for [name of entity on whose behalf the caveat is filed] of [address], request a caveat against the arrest of [description of property giving name, if a ship] and hereby undertake to enter an appearance in any action that may be begun in the High Court against the said [description of property giving name, if a ship] and, within 3 days after receiving notice that such an action has been begun, to give bail in the action in a sum not exceeding [amount] dollars or to pay that sum into Court. We consent that the writ of summons and any other document in the action may be left for us at [address].

²⁹ See ROC, Ord 70 r 5 and Form 162.

P2.22 Request for withdrawal of caveat³⁰

[Haridass Ho & Partners]

We, [name of solicitors] of [address], solicitors for [name of entity for whom the caveat is filed] of [address], request that the caveat [state nature of caveat] entered on the [date] on behalf of [name] be withdrawn.

³⁰ See ROC, Ord 70 r 14 and Form 167.

P2.23 Undertaking (for arrest)³¹

[Haridass Ho & Partners]

[Particulars of property to be arrested: the ship or vessel “ABC” of the port of [name of port]]

It is requested that the Warrant of Arrest/Release/Commission of Appraisalment and Sale lodged herewith be executed by the arrest/release/sale of the ship or vessel “ABC” of the port [port] lying at [location].

[Note: If freight is to be arrested, insert the words “and of the said vessel’s cargo for the freight mentioned in the warrant” or if cargo and freight are to be arrested, insert the words “and of the said vessel’s cargo and freight mentioned in the warrant”.]

An undertaking is hereby given that the Sheriff shall be indemnified and be provided with sufficient funds as and when required by the Sheriff to meet the charges and expenses that may be incurred in consequence of these instructions.

31 ROC, Ord 70 r 23. See also Supreme Court Practice Directions 2010, Part XVI, para 125 and Form 24 of Appendix A.

P2.24 Release of vessel³²

[Haridass Ho & Partners]

To the Sheriff,

Whereas in this action you were directed to arrest the ship or vessel "ABC" and to keep the same under safe arrest until you should receive further orders. Now you are directed to release the said ship or vessel "ABC" from the arrest effected by virtue of the warrant in this action.

[...]

32 ROC, Ord 70 r 12(1) and Form 164.

SHERIFF'S ENDORSEMENT

On [date], the [name of vessel] was released from arrest pursuant to this Instrument.

P2.25 Request for caveat against release and payment³³

[Haridass Ho & Partners]

We, [name of law firm] of [address], solicitors for [name of Caveator] of [address], request a caveat against the issue of a release with respect to the ship or vessel "ABC" now under arrest and, should the said property be sold by order of the Court, a caveat against payment out of Court of the proceeds of sale.

³³ See ROC, Ord 70 r 13 and Form 166.

P2.26 Application for intervention³⁴

[Haridass Ho & Partners]

Summons (ex parte)

LET ALL PARTIES concerned attend before the Registrar/Judge on the [] day of [] 200[] at [] a.m./p.m. on the hearing of an application by the above-named Proposed interveners pursuant to Order 70 Rule 16(1) for an order that:

1. The Proposed Intervenors have leave to intervene in this action.
2. The Proposed Intervenors be at liberty to enter an appearance within 8 days from the date of this Order.
3. The costs of this application be costs in the cause.

The grounds of this application are stated in the Affidavit of [name of deponent of affidavit] filed herewith.

³⁴ P2.26–P2.28 concern an application by a non-party to intervene in the proceedings.

P2.27 Affidavit in support of intervention

[Haridass Ho & Partners]

I, [name of deponent] ([NRIC/Passport No and origin]), [occupation/designation], care of [address], do make oath/affirm and say as follows:

1. I am a Legal Associate of the firm of [name of firm] who are the solicitors for the above-named Proposed Interveners and am duly authorised to make this Affidavit on their behalf.
2. All the matters deposed to herein are based on documents and instructions which my firm received from the Proposed Interveners and they are true to the best of my information and belief.
3. The Proposed Interveners claim in Adm in Rem [] of 20[], the sum of [amount] for goods and materials which were supplied to the vessel “ABC” for her operation and maintenance in [country] during the months of, [month(s)] and at the request of the Defendants, their servants and/or agents and contractual interest. The Interveners therefore have an interest³⁵ in the “ABC” against which this action is brought and seek leave to intervene in this action.
4. In the premises, I respectfully pray for an order in terms of the application.

³⁵ ROC, Ord 70 r 16(1).

P2.28 Order of court concerning intervention

[Haridass Ho & Partners]

UPON THE APPLICATION of the Proposed Interveners made by way of Summons-in-Chambers Entered No [] coming on for hearing this day and upon reading the affidavit of (name of deponent for Proposed Intervener) filed herein on the [] day of [] and the exhibit referred to therein and upon hearing Counsel for the Proposed Interveners IT IS ORDERED that:

1. Leave is granted to the Proposed Interveners to intervene in this action;
2. The Proposed Interveners be at liberty to enter an appearance within 8 days from the date of this Order;
3. The costs of this application be costs in the cause.

P2.29 Application for omnibus order³⁶

[Haridass Ho & Partners]

Summons (ex parte)

LET ALL PARTIES attend before the Judge/Registrar on [], the [] day of [] 20[] at [] a.m./p.m. on the hearing of an application on behalf of the Plaintiffs for an order that:

1. The Sheriff of Singapore be at liberty to, at his discretion, at any time, take measures to preserve the motor ship or vessel "ABC" of the port of [name of port] her machinery and equipment and the costs thereof do form part of the Sheriff's expenses and, where paid by the Plaintiffs, the said costs be paid to the Plaintiffs' solicitors from the proceeds of sale of the vessel, as such;
2. The Sheriff of Singapore be at liberty to, at his discretion, at any time, move the said motor ship or vessel within the limits of the port where she is lying under arrest, either for her safety or to comply with the requirements of the Maritime and Port Authority of Singapore and the costs thereof do form part of the Sheriff's expenses and, where paid by the Plaintiffs, the said costs be paid to the Plaintiffs' solicitors from the proceeds of sale of the vessel, as such;
3. The Sheriff of Singapore be at liberty to, at his discretion, at any time, take measures to supply the minimum victuals, domestic fuel and water necessary to avoid hardship to the crew of the said motor ship or vessel and the costs thereof do form part of the Sheriff's expenses and, where paid by the Plaintiffs, the said costs be paid to the Plaintiffs' solicitors from the proceeds of sale of the vessel, as such;
4. That the Plaintiffs be at liberty to effect port risks and/or hull insurance(s) in respect of the said vessel and to nominate as a party to the said insurance(s) the Sheriff of Singapore as his rights and interests may appear and the costs thereof do form part of the Sheriff's expenses and, where paid by the Plaintiffs, the said costs be paid to the Plaintiffs' solicitors from the proceeds of sale of the vessel, as such;
5. All costs and disbursements incurred in this application be treated as the Sheriff's expenses and be paid to the Plaintiffs' solicitors from the proceeds of sale of the vessel, as such;
6. Such further or other orders as this Honourable Court may deem fit.

³⁶ P2.29–P2.31 concern an application for an order to protect a vessel (including her machinery and equipment) under arrest.

P2.30 Affidavit in support of omnibus order

[Haridass Ho & Partners]

I, [name of deponent] [NRIC/Passport No], [occupation/designation], care of [address], do solemnly make oath/affirm and say as follows:

1. I am a [designation] in the company/firm of [name of company/firm], solicitors [or other relationship with the Plaintiffs/applicants] for the Plaintiffs [or other party as may be relevant] and I am one of the solicitors having conduct of this matter. I am duly authorised by the Plaintiffs to make this Affidavit on their behalf.
2. Except where otherwise expressly stated, the matters deposed to herein are based on the documents received from the Sheriff/Plaintiffs and my knowledge is also acquired in the course of my handling of such matters. Where the matters are not within my knowledge, I verily believe the same to be true to the best of my information and belief.
3. The documents referred to in this Affidavit are exhibited herein, collectively marked "AA-1".
4. The vessel "ABC" ("the Vessel") was arrested at [time and date of arrest]. The Vessel presently lies at [location of vessel], Singapore.
5. A copy of the Undertaking provided by Messrs [name of solicitors of arresting party] to the Sheriff is exhibited at page 4 of "AA-1".
6. The Vessel's agents have informed the Sheriff that [state reason for which vessel needs to be moved while under arrest]. A copy of the faxes from [state name of party requiring movement of vessel] is exhibited at pages 6 and 7 of "AA-1". Due to the urgency of the matter, the Sheriff, [state name of Sheriff] has requested Messrs [name of solicitors taking out application] to make this application.
7. In view of the above, the Plaintiffs humbly pray for an order in terms of the application.

P2.31 Omnibus order

[Haridass Ho & Partners]

UPON THE APPLICATION of the Plaintiffs made by way of Summons-in-Chambers Entered No [] coming on for hearing this day and upon reading the affidavit of [name of deponent of affidavit filed in support of the application] filed herein on the [] day of [] and the exhibit referred to therein and upon hearing the Counsel for the Plaintiff IT IS ORDERED that:

1. The Sheriff of Singapore be at liberty to, at his discretion, at any time, take measures to preserve the motor ship or vessel “ABC” of the port of (name of port) her machinery and equipment and the costs thereof do form part of the Sheriff’s expenses and, where paid by the Plaintiffs, the said costs be paid to the Plaintiffs’ solicitors from the proceeds of sale of the vessel, as such;
2. The Sheriff of Singapore be at liberty to, at his discretion, at any time, move the said motor ship or vessel within the limits of the port where she is lying under arrest, either for her safety or to comply with the requirements of the Maritime and Port Authority of Singapore and the costs thereof do form part of the Sheriff’s expenses and, where paid by the Plaintiffs, the said costs be paid to the Plaintiffs’ solicitors from the proceeds of sale of the vessel, as such;
3. The Sheriff of Singapore be at liberty to, at his discretion, at any time, take measures to supply the minimum victuals, domestic fuel and water necessary to avoid hardship to the crew of the said motor ship or vessel and the costs thereof do form part of the Sheriff’s expenses and, where paid by the Plaintiffs, the said costs be paid to the Plaintiffs’ solicitors from the proceeds of sale of the vessel, as such;
4. That the Plaintiffs be at liberty to effect port risks and/or hull insurance(s) in respect of the said vessel and to nominate as a party to the said insurance(s) the Sheriff of Singapore as his rights and interests may appear and the costs thereof do form part of the Sheriff’s expenses and, where paid by the Plaintiffs, the said costs be paid to the Plaintiffs’ solicitors from the proceeds of sale of the vessel, as such;
5. All costs and disbursements incurred in this application be treated as the Sheriff’s expenses and be paid to the Plaintiffs’ solicitors from the proceeds of sale of the vessel, as such.

P2.32 Commission for appraisalment and sale³⁷

[Haridass Ho & Partners]

To the Sheriff,

Whereas in this action the Court has ordered the ship or vessel “ABC” to be appraised and sold.

You are hereby authorised and directed to choose one or more experienced persons and to swear him or them to appraise the said ship or vessel “ABC” according to the true value thereof, and such value having been certified in writing by him or them, to cause the said ship or vessel “ABC” to be sold by (private treaty or public auction) for the highest price that can be obtained for it, but not for less than the appraised value unless the Court on your application allows it to be sold for less.

And you are further directed, immediately upon the sale being completed, to pay the proceeds thereof into Court and to ensure that the certificate of appraisalment signed by you and the appraiser or appraisers, and an account of the sale signed by you, are filed in the Court together with this commission.

37 P2.33–P2.34 concern the appraisalment and sale of the vessel and the discharge of cargo so that the sale can proceed.

P2.33 Application for sale of vessel

[Haridass Ho & Partners]

Summons

LET ALL PARTIES concerned attend before the Judge/Registrar on the [] day of [] 20[] at [] a.m./p.m. on the hearing of an application on the part of the above-named Plaintiffs for the following orders:

1. That the vessel “ABC” now under arrest in these proceedings be appraised and sold by the Sheriff *pendente lite* by private treaty or public auction if he receives an offer equal to or for more than the appraised value of the said vessel, such sale to be free and clear from all liens, charges, encumbrances and claims;
2. That the Plaintiffs [or such other party] and/or their nominees be at liberty to bid for purchase of the said vessel;
3. That any fuel, lubricants and other consumables (hereinafter referred to as the “bunkers”) on board the said vessel be appraised and sold separately by the Sheriff, provided always that such sale or part thereof shall form part of the proceeds of sale;

[If representing a bunker claimant and who retains title to the bunkers, the above prayer should be amended so that the sale of the bunkers or part thereof be accounted for separately]

4. That the costs, expenses and charges incurred in and about the appraisal and sale of the said vessel and the said bunkers be paid out of the funds lying in Court representing the proceeds of sale of the said vessel as part of the Sheriff’s costs and expenses, insofar as they are paid by the Plaintiffs, to the Plaintiffs’ solicitors, [state name of law firm];
5. That the Sheriff or his duly appointed agent be authorised to remove such movable equipment or other property of the said vessel as he thinks fit and to store the same in safekeeping in such premises as he shall approve and to take custody of and retain the vessel’s log books, certificate of registry and other certificates and documents of the said vessel and further to remove all perishable goods, if any, from the said vessel and to sell the same or to donate the same to charity as he thinks fit and to account for any proceeds of sale in so doing;
6. That the Sheriff be at liberty to appoint ship agents to act on behalf of the Sheriff in and about the sale of the vessel “ABC” and matters incidental thereto and/or the carrying into effect of the relevant orders to be made herein, and the costs, expenses and charges of

such ship agents costs, and incidental thereto be paid out of the funds lying in Court representing the proceeds of sale of the said vessel as part of the Sheriff's costs and expenses, insofar as they are paid by the Plaintiffs, to the Plaintiffs' solicitors, [state name of law firm];

7. That the Sheriff and/or the Plaintiffs be at liberty to arrange for the discharge of all equipment and cargoes excluding all equipment supplied by the Plaintiffs ("cargoes"), if any, presently laden on board the vessel, at the first instance at their own expense, onto vessels or barges and/or other places of storage to be nominated by the Sheriff and/or the Plaintiffs, and that all payments made and charges and expenses incurred by the Sheriff and/or the Plaintiffs in connection therewith and incidental thereto be paid out of the funds lying in Court representing the proceeds of sale of the said vessel as part of the Sheriff's costs and expenses, insofar as they are paid by the Plaintiffs, to the Plaintiffs' solicitors, [state name of law firm];
8. That any person claiming to be entitled to the equipment or cargoes referred to in paragraph 7 above, be at liberty to take delivery of:
 - (i) the cargoes upon delivering up to the Sheriff the original bills of lading representing the said cargoes; and/or
 - (ii) the equipment upon delivering up to the Sheriff such documents representing their right to the equipment and effecting payment of all costs, expenses and charges incurred in connection with and incidental to the discharge and storage of the said equipment and/or cargoes;
9. That if no person shall come forward to take delivery of the equipment or cargoes within 30 days from the date of completion of discharge, the Sheriff shall be at liberty to have the said equipment or cargoes appraised and sold separately by private treaty or public auction, provided always that such sale or part thereof shall form part of the proceeds of sale of the vessel.
10. That the Sheriff and/or Plaintiffs be at liberty to effect all necessary insurances in respect of the said equipment or cargoes to the satisfaction of the Sheriff and to obtain permission from the Maritime and Port Authority of Singapore and all other relevant authorities before the discharge of the said cargoes from the vessel "ABC" shall commence;
11. That the Sheriff and/or the Plaintiffs be at liberty to make payments and/or advances to the Master, officers and crew of the Vessel, if any, by way of wages or emoluments to the extent that they may

reasonably be found to be due and whether by arrangement or assessment before the Registrar and that all monies so paid shall be treated as and form part of the Sheriff's costs and expenses, and insofar as they are paid by the Plaintiffs, shall be paid out of the proceeds of sale of the vessel to the Plaintiffs' solicitors as such;

12. That the costs of and incidental to any assessment before a Registrar pursuant to the prayer 11 above shall be taxed and paid out of the proceeds of sale of the vessel to the Plaintiffs' solicitors as if they formed part of the Sheriff's costs and expenses in these proceedings;
13. That the Sheriff and/or Plaintiffs be authorised and be at liberty to arrange and pay for the repatriation of the Master, officers and crew of the vessel, if necessary, on the footing that all payments made and expenses incurred in connection therewith and incidental thereto by the Plaintiffs be treated as part of the Sheriff's costs and expenses and paid out of the proceeds of sale of the vessel to the Plaintiffs' solicitors as if they form part of the Sheriff's costs and expenses in these proceedings;
14. The Sheriff be at liberty to engage a skeleton crew to serve on board the vessel for such period and at such rate as the Sheriff may consider advisable for the preservation of the vessel and that the wages and maintenance allowances, and expenses required for their repatriation, if any, of such skeleton crew be treated as Sheriff's costs and expenses in these proceedings;
15. That the Plaintiffs be at liberty to effect port risks and/or hull insurance(s) in respect of the said vessel and to nominate as a party to the said insurance(s) the Sheriff of Singapore as his rights and interests may appear on the footing that the costs of and incidental to such insurance(s) incurred by the Plaintiffs be recoverable by the Plaintiffs as though they were part of the Sheriff's costs and expenses and be paid out from the proceeds of sale of the vessel to the Plaintiffs' solicitors as such;
16. That the proceeds of the sale of the ship or vessel "ABC" including all bunkers presently on board the vessel after deducting the Sheriff's costs and expenses, where it exceeds S\$250,000.00, be invested in an interest bearing account pursuant to Order 90 Rule 12 (4) of the Rules of Court in a Singapore Dollar account with a reputable bank in Singapore to earn the best commercial rate of interest in respect of such deposit pending the determination of priorities of claims and payment out thereof;

17. That from the amounts deducted as his costs and expenses under prayer 16, the Sheriff shall be authorised and be at liberty to pay out to the Plaintiffs' solicitors (name of solicitors) insofar as the said costs and expenses were paid by the Plaintiffs or to the Sheriff himself insofar as the said costs and expenses were paid by the Sheriff;
18. That the order of priority of all claims against the proceeds of sale of the vessel "ABC" and interest earned thereon shall not be determined until after the expiration of 30 days from the date of publication in the Straits Times newspaper and the Singapore Government Gazette a Notice as appears in the Schedule hereto;
19. That within 7 days after the date of payment into court of the proceeds of sale, the Sheriff shall send for publication in the Straits Times newspaper and the Singapore Government Gazette a Notice as appears in the Schedule hereto;
20. That the Sheriff does lodge in the Registry a copy each of the newspaper or publication in which the Notice appears in the Schedule hereto;
21. That the costs of and incidental to this application shall rank after the Sheriff's costs and expenses in priority to all other claims, and be taxed and paid to the Plaintiffs out of the proceeds of sale of the vessel.

P2.34 Application for discharge of cargo

[Haridass Ho & Partners]

Summons

LET ALL PARTIES concerned attend before the Judge/Registrar on the [] day of [] 20[] at [] a.m./p.m. on the hearing of an application on the part of the above-named Plaintiffs for the following orders:

1. That the Interveners be at liberty to discharge, at their own expense, all of the cargo namely about [quantity] metric tonnes of Marine Fuel Oil laden on board the vessel "ABC" by ship-to-ship transfer to vessels or barges for their own eventual disposal of the cargo;
2. That the Interveners herein be at liberty if necessary, to shift the vessel "ABC" from her present anchorage to a suitable location for the discharge of the said cargo;
3. That in lieu of delivery of bills of lading for the cargo to the Sheriff, the Interveners do indemnify the Sheriff against claims if any adjudged by the Court in favour of any other parties found by the Court to be entitled to the said cargo;
4. That port risk insurance and all other necessary insurance for the said discharge of the cargo be effected and permission from the Maritime and Port Authority of Singapore and other relevant authorities be obtained prior to the commencement of the discharge of the said cargo from the vessel "ABC";
5. That the Sheriff be named as the Assured in all of the said policies of insurance with the Sheriff as sole beneficiary in respect of damage to the vessel "ABC" in connection with the discharge of the said cargo;
6. That the Plaintiffs' costs of and incidental to this Motion be paid by the Interveners to the Plaintiffs;
7. Such further or other orders as this Honourable Court deems fit;
8. There be liberty to apply.

P2.35 Endorsement of claim for limitation³⁸

[Haridass Ho & Partners]

The Plaintiffs as owners of the MT “ABC” of the Port of [state name of port] claim to have their liability limited in respect of loss or damage resulting from the collision between the MT “ABC” and the MV “DEF” which occurred off [location] on or about [state date], pursuant to the provisions of the Merchant Shipping Act (Cap 179), and that all proper directions be given for the purposes of exclusion of claimants, and ascertaining and distributing the amount of the Plaintiffs’ liability (such as may arise) between the parties entitled thereto.

38 P2.35–P2.37 concern an action to limit liability (commonly referred to as a limitation action).

P2.36 Application for decree of limitation

[Haridass Ho & Partners]

Summons

LET ALL PARTIES concerned attend before the Judge/Registrar on the [] day of [] 20[] at [] a.m./p.m. on the hearing of an application on the part of the above-named Plaintiffs for the following orders:

- (1) A Declaration that the Plaintiffs are entitled to limit their liability in respect of loss of or damage to property or any consequential loss resulting or arising from and/or in connection with the collision of the MT “ABC” with the MV “DEF” in or about [state date] off [state location], pursuant to Section 136 of the Merchant Shipping Act (Cap 179);
- (2) A Declaration that the tonnage of the MT “ABC” for the purpose of the Limitation Decree herein is [state quantity] tonnes and a decree that the liability of the Plaintiffs are limited to a sum calculated against [state quantity] tonnes at the rate of 1000 gold francs or [state amount] per tonne namely the sum of [state amount] (hereinafter referred to as “the limitation sum”) and no more, together with interest at the rate of [amount] per cent per annum thereon from the date of the writ herein to the date of constitution of the Fund herein;
- (3) An Order that, upon the Plaintiffs paying into Court the limitation sum with interest as aforesaid, all further proceedings in any action arising out of the said collision be stayed, except for the purpose of taxation and payment of costs, and that the above-named Defendants, and all or any other person or persons whatsoever interested in the MT “ABC” or other things on board, or having any right, title or interest whatsoever with reference to, or arising out of, the said collision, be restrained from bringing and/or continuing any action or actions against the Plaintiffs or the MT “ABC” in respect of the same, in any Court other than the High Court of Singapore;
- (4) That security furnished by the Plaintiffs to the Defendants in respect of the claims arising in connection with the said collision be discharged and returned to the Plaintiffs for cancellation upon the Plaintiffs paying into court the amount of the limitation sum to constitute the limitation fund;
- (5) That all proper directions may be given by this Court for ascertaining the persons who may have any just claim for loss or damage arising out of or caused by the said collision;

- (6) That the limitation sum may be rateably distributed among the several persons who may take out their claims thereto and that the proper directions may be given for the exclusion of such Claimants as shall fail in their claims within a certain time to be fixed for such purpose;
- (7) Alternatively, other directions be given for the further conduct of this action;
- (8) Costs be provided for;
- (9) Liberty to apply.

The grounds of this application are set out in the Affidavit of [state name of deponent] filed herein.

P2.37 Affidavit in support of decree of limitation

[Haridass Ho & Partners]

I, [name] care of [address] do make oath/affirm and say as follows:

1. I am the [designation] of XYZ Pte Ltd, the owners of MT “ABC” and the Plaintiffs herein. I am duly authorised to make this affidavit in support of the Plaintiffs’ claim for a decree limiting their liability pursuant to the provisions of section 136 of the Merchant Shipping Act (Cap 179).
2. All matters deposed to herein are based partly on my personal knowledge and partly on documents and information made available to me in my capacity as aforesaid. They are true to the best of my information and belief.
3. As the [designation] of the Plaintiffs, I am responsible for Marine Operations within the organisation and also the safe and efficient operation of MT “ABC”. I have investigated the collision of the MT “ABC” with MV “DEF” (which occurred on or about [state date] off the [state location]) with those who were on board the MT “ABC” and with the Marine Superintendents of the Plaintiffs. I have examined the log books and other records pertaining to the vessel, which were available. Based on my investigations and from the documents I have examined, I depose to the matters hereinafter set forth which I verily believe to be true.
4. The Plaintiffs are the Owners of MT “ABC”. At or about hours [time] on [date] the MT “ABC”, a motor tanker registered at the Port of Singapore of [mass/weight] gross tonnes, about [length] metres in length and about [length] metres in beam powered by a single Makaita 4 cycle diesel ESCHC 640 of 2,200 ps and manned by a crew of [number] hands, all told, departed from her anchored position at 01 14.13’N 104 47.22’E at the Western Petroleum Anchorage B. At all material times, she was navigated by her Second Officer. She was bound for the Eastern Working Anchorage to supply fuel oil to the MV “GHI”. The sea was calm and there was a westerly wind of 1 knot. Weather was hazy. There was a southeasterly current of about 1.2 knots. As the Western Petroleum Anchorage B was congested, the MT “ABC” steered in a northwesterly direction. Shortly after, the MT “ABC” turned to port, passing an anchored vessel “BB 10” off her port beam. The vessel (later ascertained to be the “DEF”) was proceeding at excessive speed in a northwesterly direction along Jong Fairway and bearing on the port bow of the MT “ABC”. MT “ABC” flashed her search light twice on the bridge of MV “DEF”. However, the

MV "DEF" altered her course to starboard without any light or sound signals and her bow struck the starboard side hull of the MT "ABC" leading to her aft, doing substantial damage to the MT "ABC".

5. The said collision was caused partly by the negligence of those on board the MV "DEF" and partly by the negligence those on board the MT "ABC".
6. The MT "ABC" was commanded by an experienced and competent master, manned by sufficient and competent crew, equipped with all navigational aids appropriate for a vessel/tanker of her type furnished with such charts and sailing directions as were requisite for the voyage upon which she was engaged. Her officers were familiar with and had been adequately instructed in the operation of all equipment on board.
7. Furthermore, the MT "ABC" was at all material times class maintained with [state class society vessel was entered with].
8. Any loss arising from the said collision did not result from the personal act or omission of the Plaintiffs committed with intent to cause such loss and such act or omission was not committed recklessly or with knowledge that such loss would probably result. In the premises, the Plaintiffs are entitled to limit their liability under the provisions of Section 136 of the Merchant Shipping Act (Cap 179).
9. There is now produced and shown to me collectively marked "ABC-1" and exhibited hereto a true copy of the International Tonnage Certificate of MT "ABC" her Certificate of Classification, IOPP Certificate, Cargo Ship Safety Equipment Certificate, Cargo Ship Safety Construction Certificate, Statutory Survey Report, Certificate of Singapore Registry and Certificates of Competency of the Master, Chief Officer, Second Officer and Chief Engineer of MT "ABC". The gross tonnage of MT "ABC" is [mass/weight] tonnes. The product of this figure at the rate of [number] SDRs per ton is [number] SDRs. As at [date], the equivalent of 1 SDR fixed by the International Monetary Fund is S\$[amount]. The limitation amount based on this rate is [amount].
10. I exhibit hereto collectively marked "ABC-2" a schedule of claims that have been made against the Plaintiffs. The Plaintiffs make no admissions of these claims, but as presented the claims in respect of the said collision appear to substantially exceed the amount of the limitation fund as indicated in paragraph 9 hereof.

11. The Plaintiffs had agreed to and provided security by way of its Protection and Indemnity Club Letter of Undertaking to the Defendants in respect of the said collision and without prejudice to the Plaintiffs' rights under the provisions of the Merchant Shipping Act (Cap 179). A true copy of the Letter of Undertaking is exhibited and marked hereto "ABC-3".
12. In the premises I humbly pray that an Order in terms of the Plaintiffs' application for a decree for limitation of liability, be granted.

P2.38 Bail bond³⁹

[Haridass Ho & Partners]

Whereas this Admiralty action *in rem* against the abovementioned property is pending in the High Court and the parties to the said action are the abovementioned Plaintiffs and Defendants:

Now, therefore, we [name of surety] of [address] and [name of surety] of [address], hereby jointly and severally submit ourselves to the jurisdiction of the said Court and consent that if they, the abovementioned Defendants [or Plaintiffs, in the case of a counterclaim] do not pay what may be adjudged against them in this action, with costs, or do not pay any sum due to be paid by them in consequence of any admission of liability therein or under any agreement by which this action is settled before judgment and which is filed in the said Court, execution may issue against us, our executors or administrators, movable property, for the amount unpaid or an amount of dollars [amount] whichever is the less.

This bail bond was signed by the said [name of surety] and [name of surety], the sureties, the [] day of [] 20[].

39 P2.38 concerns a bail bond which is a guarantee by sureties that any sum adjudged or admitted to be due, or agree through settlement to be payable, will be paid.

CHAPTER 3

ASSAULT AND BATTERY

PRECEDENTS

- P3.01** Claim for assault
- P3.02** Claim for assault and battery
- P3.03** Claim for assault and battery including aggravated damages
- P3.04** Defence denying plaintiff's account of the facts
- P3.05** Defence alleging legitimate authority of security guard to use force to evict plaintiff
- P3.06** Self-defence

CHAPTER 3
ASSAULT AND BATTERY

PRECEDENTS

P3.01 Claim for assault

[Jeffrey Pinsler S.C.]

1. On or about the [date] at [location], the Defendant wrongfully assaulted the Plaintiff by shaking his fists in the Plaintiff's face and threatening to strike him.
2. As a result of the Defendant's actions, the Plaintiff, fearing an immediate attack upon himself, retreated backwards, stumbled over a chair and fell to the ground.
3. The Plaintiff sustained severe injuries and has suffered loss and damage.

Particulars of Injuries

[Particulars of injuries in full]

Particulars of Special Damage

[Nature and extent of the loss and damage claimed in detail]

AND the Plaintiff claims:

- (1) Damages;
- (2) Interest pursuant to Section 12 of the Civil Law Act (Cap 43);
- (3) Costs; and
- (4) Such further and/or other relief as this Honourable Court deems fit.

P3.02 Claim for assault and battery

[Jeffrey Pinsler S.C.]

1. On or about the [date], at [location], the Defendant wrongfully assaulted and beat the Plaintiff by striking him on the head with a wooden stick.
2. As a result of the Defendant's actions, the Plaintiff sustained severe injuries and has suffered loss and damage.

Particulars of Injuries

[Particulars of injuries in full]

Particulars of Special Damage

[Particulars of loss and damage claimed in detail]

AND the Plaintiff claims:

- (1) Damages;
- (2) Interest pursuant to Section 12 of the Civil Law Act (Cap 43);
- (3) Costs; and
- (4) Such further and/or other relief as this Honourable Court deems fit.

P3.03 Claim for assault and battery including aggravated damages

[Jeffrey Pinsler S.C.]

1. On or about the [date], the Plaintiff was having lunch with his wife and a party of friends at [location].
2. The Defendant interrupted the said party and assaulted the Plaintiff by spitting at the Plaintiff and by pushing the Plaintiff to the ground.
3. As a result of the Defendant's actions, the Plaintiff sustained severe injuries and has suffered loss and damage.

Particulars of Injuries

[Particulars of injuries in full]

Particulars of Special Damage

[Particulars of loss and damage claimed in detail]

4. Further, in acting as aforesaid, the Defendant was actuated by malevolence or spite towards the Plaintiff, and he thereby intended to and did humiliate the Plaintiff in the presence of the Plaintiff's wife and friends and subjected him to ridicule and contempt, as a result of which the injury to the Plaintiff has been greatly aggravated.

AND the Plaintiff claims:

- (1) Damages;
- (2) Interest pursuant to Section 12 of the Civil Law Act (Cap 43);
- (3) Costs; and
- (4) Such further and/or other relief as this Honourable Court deems fit.

P3.04 Defence denying plaintiff's account of the facts

[Jeffrey Pinsler S.C.]

1. Paragraph [number] of the Statement of Claim is denied.
2. Paragraph [number] of the Statement of Claim is denied.
3. [Set out the defendant's account of the facts in one or more numbered paragraphs]
4. In the premises, it is denied that the Defendant assaulted or struck the Plaintiff, whether as alleged or at all.
5. The Defendant does not admit to the damages claimed by the Plaintiff in paragraph [number] of the Statement of Claim.

P3.05 Defence alleging legitimate authority of security guard to use force to evict plaintiff

[Jeffrey Pinsler S.C.]

1. [If the Plaintiff's account of the facts is not disputed, this should be admitted. If not it should be denied (see precedent P3.04)]
2. [If facts are disputed, set out the Defendant's account of the facts in one or more numbered paragraphs]
3. In the premises, the Defendant [the security guard] used no more force than was reasonable and necessary to lawfully evict the plaintiff from the premises.
4. The Defendant was justified in using reasonable and necessary force in the ordinary course of his occupation.
5. In the premises, the Defendant denies that he committed assault and battery as alleged in paragraph [number] of the Statement of Claim or at all.

P3.06 Self-defence

[Jeffrey Pinsler S.C.]

1. [If the Plaintiff's account of the facts is not disputed, this should be admitted. If not it should be denied (see precedent P3.04)]
2. [If facts are disputed, set out the Defendant's account of the facts in one or more numbered paragraphs]
3. In the premises, the Defendant, in striking the Plaintiff's arm, used reasonable and necessary force to protect himself from being immediately struck by the Plaintiff with a hard object.
4. The Defendant denies that he committed assault and battery as alleged in paragraph [number] of the Statement of Claim or at all.

CHAPTER 4

BANKING

BONDS

Precedents

- P4.01** Claim on a common money bond
- P4.02** Claim on a bond with special condition (not to engage in competing business)
- P4.03** Claim under a performance bond
- P4.04** Claim under a performance bond (as a conditional guarantee)
- P4.05** Claim under a performance bond conditioned not to carry on business in competition with the plaintiff
- P4.06** Claim for an injunction to restrain payment on a performance bond
- P4.07** Defence denying execution of the bond
- P4.08** Defence excusing performance of the condition of the bond
- P4.09** Defence of performance of condition of the bond
- P4.10** Defence of payment on the day named in a common money bond
- P4.11** Defence of payment after the day named in a common money bond
- P4.12** Defence that sum claimed is a penalty
- P4.13** Defence of tender and payment into court

CHEQUES

Precedents

- P4.14** Claim by payee of cheque against the drawer
- P4.15** Claim by the payee against the drawer pleading in the alternative the underlying debt
- P4.16** Claim by payee pleading antecedent debt, and circumstances dispensing with presentment
- P4.17** Defence of material alteration
- P4.18** Defence that the cheque is a forgery
- P4.19** Defence that the cheque was delivered conditionally
- P4.20** Defence alleging partial failure of consideration

- P4.21** Defence by drawer or indorser that cheque not presented within reasonable time
- P4.22** Defence alleging that cheque was procured by misrepresentation

GUARANTEES

Precedents

- P4.23** Claim by creditor against guarantor on guarantee
- P4.24** Defence of set-off for debt due from creditor to debtor
- P4.25** Defence that guarantee limited in amount and tender of payment
- P4.26** Defence of denial of existence/validity of guarantee
- P4.27** Defence alleging guarantee procured by misrepresentation
- P4.28** Defence alleging guarantee procured by undue influence
- P4.29** Defence denying default by the principal debtor
- P4.30** Defence alleging variation of principal contract
- P4.31** Defence alleging discharge of guarantor by the giving of time to the debtor
- P4.32** Defence alleging discharge of guarantor by releasing security to the debtor
- P4.33** Defence alleging that creditor negligently handled securities
- P4.34** Defence alleging due revocation of guarantee
- P4.35** Defence of compromise
- P4.36** Claim by guarantor against debtor for moneys paid under guarantee
- P4.37** Defence denying guarantor made payment to creditor
- P4.38** Defence that debtor has paid creditor
- P4.39** Claim by guarantor against co-guarantor
- P4.40** Defence denying contribution
- P4.41** Defence denying that co-guarantor has paid in excess of his proportion

MONEY LENT

Precedents

- P4.42** Claim for money lent - long form
- P4.43** Claim for money lent on facility agreement and secured by a guarantee
- P4.44** Claim by banker for term loan facility and credit card facilities

- P4.45** Claim by banker against partners and one former partner for banking facilities and credit card facilities
- P4.46** Defence denying the loan/alleging money paid as gift
- P4.47** Defence alleging that sum lent was less than amount claimed and that the sum lent was tendered before the action
- P4.48** Defence alleging repayment of loan
- P4.49** Defence alleging action for repayment is premature
- P4.50** Defence alleging novation by substitution of third party as debtor
- P4.51** Defence alleging that money was lent for an illegal purpose
- P4.52** Defence of limitation under the Limitation Act (Cap 163)
- P4.53** Defence by customer for term loan facility and credit card facilities
- P4.54** Defence by former partner for banking and credit card facilities

MORTGAGES AND CHARGES

Precedents

- P4.55** Originating summons under a mortgage action
- P4.56** Affidavit in support of originating summons
- P4.57** Claim for proceeds from sale of mortgaged property
- P4.58** Defence by mortgagor alleging non-execution of mortgage and non est factum
- P4.59** Defence by mortgagor denying debts due
- P4.60** Defence by mortgagor alleging undue influence
- P4.61** Defence that bond has been discharged by agreement or material alteration

CHAPTER 4
BANKING

BONDS
PRECEDENTS

P4.01 Claim on a common money bond

[WongPartnership LLP]

1. On [date], the Defendant executed a bond by which he bound himself to pay to the Plaintiff the sum of S\$5,000.
2. The said bond was subject to a condition that if the Defendant paid to the Plaintiff the sum of S\$5,000 on [date], with interest thereon from [date], at the rate of 15 per cent per annum, the bond should be void.
3. The Defendant did not pay to the Plaintiff all or any part of the said sum of S\$5,000 on or before [date].
4. Accordingly, the Plaintiff is entitled to claim the sum of S\$[amount].

Particulars

	S\$
Principal	5,000.00
Interest from [date],	
To the date hereof in the sum of	_____
	=====

AND the Plaintiff claims:

- (1) The sum of S\$5,000;
- (2) Interest due under the bond in the sum of S\$[amount] and continuing to judgment or sooner payment at the rate of 15 per cent per annum;
- (3) Further or alternatively interest pursuant to Section 12 of the Civil Law Act (Cap 43); and
- (4) Costs.

P4.02 Claim on a bond with special condition (not to engage in competing business)

[WongPartnership LLP]

1. On [date], the Defendant executed a bond in the sum of S\$5,000 (the “Bond”) conditioned void provided that X shall not whilst in the employment of the plaintiff or for a period of [years/months] following the termination of his employment for any cause carry on or be engaged in the business of [business] and within [geographical extent] except on behalf of or with the express written consent of the Plaintiff.
2. On [date], in breach of the aforesaid condition, X took up employment with A Pte Ltd which was engaged in the business of [business] at [address].
3. By reason of the matters set out above, the Plaintiff is entitled to and claims S\$5,000 as liquidated damages pursuant to the Bond.

AND the Plaintiff claims:

- (1) The sum of S\$5,000;
- (2) Interest pursuant to Section 12 of the Civil Law Act (Cap 43); and
- (3) Costs.

P4.03 Claim under a performance bond

[WongPartnership LLP]

1. On [date], the Defendant executed a bond (the “Bond”) in the sum of S\$500,000 conditioned for the due performance of AB Construction Pte Ltd (“AB”) of a written contract made between the Plaintiff and AB dated [date] for the performance of certain building works and their completion by [completion date] (the “Building Contract”).
2. AB did not duly perform the Building Contract or complete the building works by [completion date] or at all.

Particulars

[Particulars of breach]

3. By reason of the matters set out above, the Plaintiff has suffered loss and damage.

Particulars

[Particulars of damage]

AND the Plaintiff claims:

- (1) The sum of S\$500,000;
- (2) Interest pursuant to Section 12 of the Civil Law Act (Cap 43); and
- (3) Costs.

P4.04 Claim under a performance bond (as a conditional guarantee)

[WongPartnership LLP]

1. The Defendant is a bank whose registered office is at [location].
2. By a letter dated [date], (the “Bond”) the Defendant undertook to indemnify the Plaintiff against all claims, costs and damages which the Plaintiff necessarily suffered or incurred as a direct consequence of the failure by AB to fulfil in accordance with its terms any of his obligations under the contract made between the Plaintiff and AB dated [date] (the “Contract”) by paying to the Plaintiff such amount as may be claimed in writing by the Plaintiff in respect of such claims, costs and damages, provided that the total amount payable by the Defendant should not exceed S\$100,000.
3. AB has failed to perform his obligations under the Contract and as a direct consequence, the Plaintiff has incurred damages and costs in excess of S\$100,000.

Particulars

- (1) Despite the Plaintiff’s letter dated [date] requiring A to fulfil his obligations under the Contract, A failed and/or neglected and/or refused to fulfil the said obligations.
- (2) [Particulars of A’s failure to perform his contractual obligations and loss and damage suffered by the Plaintiff]
4. By a letter of demand dated [date], the Plaintiff demanded the sum of S\$100,000 pursuant to the Bond.
5. Notwithstanding that demand, the Defendant has failed and/or refused and/or neglected to pay any sum to the Plaintiff, and accordingly, the Plaintiff is entitled to and claims the said sum of S\$100,000.
6. Further or in the alternative, by reason of the matters set out above, the Plaintiff has suffered loss and damage.

AND the Plaintiff claims:

- (1) The sum of S\$100,000;
- (2) Alternatively, damages to be assessed;
- (3) Interest pursuant to Section 12 of the Civil Law Act (Cap 43); and
- (4) Costs.

P4.05 Claim under a performance bond conditioned not to carry on business in competition with the plaintiff

[WongPartnership LLP]

1. By a bond dated [date] (the “Bond”), the Defendant became bound to the Plaintiff in the sum of S\$[amount] if the condition of the said Bond be broken.
2. It is a condition of the Bond that if the Defendant should during the period of 2 years from the date on which he sold to the Plaintiff the goodwill of his business carried out at [address], engage in the trade or business of selling wine at any shop or other place of business within a distance of 5 km of [address] without the express knowledge and consent of the Plaintiff, the Bond should be void.
3. The Defendant sold the goodwill of his said business to the Plaintiff on [date].
4. On [date], in breach of the condition pleaded at paragraph 2 above, the Defendant commenced business as a wine seller at a shop at [address], which is approximately 2 km from the Plaintiff’s shop at [address].

AND the Plaintiff claims:

- (1) The sum of S\$[amount] due under the Bond;
- (2) Interest pursuant to Section 12 of the Civil Law Act (Cap 43); and
- (3) Costs.

P4.06 Claim for an injunction to restrain payment on a performance bond

[WongPartnership LLP]

1. The Defendant is a bank whose registered office is at [address].
2. By a contract in writing dated [date] the Plaintiff agreed to sell and X agreed to buy quantities of [goods].
3. It was a condition of the said contract of sale that a performance bond in the amount of 30 per cent of the total contract price was opened in favour of X prior to a letter of credit being opened by X for the payment of the agreed price.
4. The Plaintiff duly arranged for the necessary performance bond to be issued by the Defendant. Particulars of the said performance bond are as follows:

Particulars

[Material terms of the performance bond]

5. The Plaintiff will refer to the performance bond for its full purport and effect at the trial of the suit herein.
6. By way of a letter dated [date] the Plaintiff gave a counter-indemnity to the Defendant in respect of the performance bond.
7. There were implied terms of the said counter-indemnity that:
 - (1) the Defendant would not pay any sums under the performance bond pursuant to an invalid demand on it by X;
 - (2) the Defendant would not pay out any sum under the performance bond in the event of fraud or if the demand on the performance bond was unconscionable;
 - (3) in the circumstances referred to in (1) and (2), the Defendant would not debit any account of the Plaintiff with the amount of any payment or payments made by it under the performance bond.
8. By way of a fax dated [date] X made or purported to make a demand on the Defendant for the full amount of the performance bond.
9. The said demand was invalid in that:

Particulars

[Particulars of the manner in which the demand did not conform with the terms of the performance bond]

10. Further or alternatively, the said demand was fraudulent in that X presented a claim which it knew at the time to be an invalid claim, representing to the Defendant that it believed the claim to be valid.

Particulars

[Particulars of the fraud]

11. The Defendant knew and was aware of the said fraud. Further or alternatively the circumstances are such that the only realistic, alternatively reasonable, inference is that the demand was fraudulent.

Particulars of Knowledge

[Particulars of the Defendant's knowledge of the fraud]

12. Further or alternatively, the Plaintiff avers that the demand on the performance bond was unconscionable.

Particulars

[Particulars of unconscionability]

13. The Defendant is therefore not liable to make any payment under the performance bond and the Plaintiff is not liable to the Defendant for any sum or sums that the Defendant might elect to pay pursuant to the said demand. Further, the Defendant is not entitled to debit the Plaintiff's account with any of the said sums.
14. In breach of the implied terms set out in paragraph 7 above, the Defendant is threatening to pay the demand and debit the Plaintiff's account and hold the Plaintiff liable, and will do so unless restrained by this Honourable Court.

AND the Plaintiff claims:

- (1) An injunction to restrain the Defendant from paying any sum or sums pursuant to the demand referred to in paragraph 13 above or any demand purportedly made pursuant to the performance bond;
- (2) A declaration that the Defendant is not entitled to debit the Plaintiff's account with any of the said sums, and that the Plaintiff is not liable to the Defendant for any sum or sums which the Defendant may elect to pay to X pursuant to the purported demand or any demands made or purportedly made pursuant to the performance bond; and

- (3) An order that the Defendant reimburse the Plaintiff the full amount of any sum or sums debited pursuant to the terms of the performance bond together with interest on such sum or sums at such rate and for such period as the Court thinks fit assessed pursuant to Section 12 of the Civil Law Act (Cap 43).

P4.07 Defence denying execution of the bond

[WongPartnership LLP]

The defendant denies that the bond sued on is his bond [*or, denies that he executed the alleged bond whether as alleged or at all*].

P4.08 Defence excusing performance of the condition of the bond

[WongPartnership LLP]

Before the time for performance of the condition of the said bond, the Defendant was excused from performing the same [here state shortly the facts relied upon in excuse of performance].

P4.09 Defence of performance of condition of the bond

[WongPartnership LLP]

1. The bond referred to in the Statement of Claim was, and is, subject to a condition that if [state shortly the condition or the substance thereof], then the said bond should be void.
2. Before the action herein, the Defendant performed the said condition.

Particulars

[Particulars of the date, etc, of the performance]

P4.10 Defence of payment on the day named in a common money bond

[WongPartnership LLP]

The Defendant made payment to the Plaintiff on the day according to the condition of the bond.

P4.11 Defence of payment after the day named in a common money bond

[WongPartnership LLP]

The Defendant made payment to the Plaintiff, after the day named and before the action herein, of the principal and interest mentioned in the bond.

Particulars of Payment

[Particulars of payment]

P4.12 Defence that sum claimed is a penalty

[WongPartnership LLP]

Further or in the alternative, the sum claimed by the Plaintiff is not a genuine pre-estimate of the Plaintiff's loss and is an irrecoverable penalty.

P4.13 Defence of tender and payment into court

[WongPartnership LLP]

1. The Defendant on or about [date], before the issue of the Writ of Summons herein, tendered to the Plaintiff the sum of S\$[amount], being the amount of the principal sum due under the condition of the said bond, together with interest at the [agreed] rate of [amount] per cent per annum, from [date] to [date], save that the Plaintiff refused to accept the same.
2. On [date], the Defendant, through his solicitors, paid the sum of S\$20,000 into Court.

CHEQUES

PRECEDENTS

P4.14 Claim by payee of cheque against the drawer

[Wong Partnership LLP]

1. The Defendant drew and delivered to the Plaintiff a cheque dated [date] drawn upon the XY branch of the ABC Bank Ltd in the sum of S\$1,000 payable to the Plaintiff.
2. Upon due presentation of the cheque for payment on [date] it was dishonoured [and returned marked “refer to drawer”/“payment countermanded”, etc.].
3. Due notice of dishonour was given to the Defendant by the Plaintiff’s letter dated [date]. *or*

Notice of dishonour was dispensed with because [ABC Bank Ltd was under no obligation to honour the cheque or payment of the cheque was countermanded by the Defendant].

4. The cheque remains unpaid.

AND the Plaintiff claims:

- (1) Payment of the sum of S\$1,000;
- (2) Interest pursuant to Section 57(a) of the Bills of Exchange Act (Cap 23) or alternatively pursuant to Section 12 of the Civil Law Act (Cap 43); and
- (3) Costs.

P4.15 Claim by the payee against the drawer pleading in the alternative the underlying debt

[WongPartnership LLP]

1. By a contract made orally between the Plaintiff and the Defendant on or about [date], the Defendant agreed to buy and the Plaintiff agreed to sell a motor car registration number [number] for a price of S\$100,000.
2. The Plaintiff delivered that motor car to the Defendant.
3. In payment of the price, the Defendant drew and delivered to the Claimant a cheque dated [date] drawn upon the XY branch of the ABC Bank Ltd for the sum of S\$100,000.
4. Upon due presentation of the cheque for payment, it was dishonoured [and returned marked (refer to drawer/payment countermanded, etc)].
5. Due notice of dishonour was given to the Defendant by the Plaintiff's letter dated [date]. *or*

Notice of dishonour was dispensed with because [ABC Bank Ltd was under no obligation to honour the cheque or payment of the cheque was countermanded by the Defendant].

6. The cheque remains unpaid and the Defendant has not paid the price for the motor car.

AND the Plaintiff claims:

- (1) Pursuant to paragraph 6, payment of the sum of S\$100,000;
- (2) Interest pursuant to Section 57(a) of the Bills of Exchange Act (Cap 23) or alternatively pursuant to Section 12 of the Civil Law Act (Cap 43); and
- (3) Costs.

P4.16 Claim by payee pleading antecedent debt, and circumstances dispensing with presentment

[WongPartnership LLP]

1. On or about 4 March 2004, the Plaintiff advanced the sum of S\$2,000 to the Defendant by way of loan which was agreed orally to be repayable upon demand.
2. On 4 March 2005, the Plaintiff having demanded repayment of the loan, the Defendant drew and delivered to the Plaintiff a cheque in the sum of S\$2,000 drawn upon his bankers ABC Bank Ltd.
3. On 5 March 2005, the Defendant instructed his bankers ABC Bank Ltd not to honour the cheque and advised the Plaintiff orally that he had done so. In the circumstances presentment for payment was dispensed with and/or waived.
4. The cheque remains unpaid, and the Defendant has failed to repay the sum lent to him by the Plaintiff.

AND the Plaintiff claims:

- (1) pursuant to paragraph 4, payment of the sum of S\$2,000;
- (2) Interest pursuant to Section 57(a) of the Bills of Exchange Act (Cap 23) or alternatively pursuant to Section 12 of the Civil Law Act (Cap 43); and
- (3) Costs.

P4.17 Defence of material alteration

[WongPartnership LLP]

1. The Defendant admits that he drew the cheque referred to in the Statement of Claim.
2. The Defendant is unable to admit or deny [etc ...].
3. After the Defendant drew the cheque, it was altered in a material respect in that the sum payable was increased from S\$100,000 to S\$160,000.
4. Further, the alteration was apparent.
5. The Defendant therefore denies he is liable to the Plaintiff as alleged or at all.

P4.18 Defence that the cheque is a forgery

[WongPartnership LLP]

1. The Defendant denies paragraphs [number] to [number] of the Statement of Claim.
2. The signature purporting to be that of the Defendant upon the cheque is a forgery. The Defendant did not sign the said cheque as alleged or at all.
3. The Defendant therefore denies he is liable to the Plaintiff as alleged or at all.

P4.19 Defence that the cheque was delivered conditionally

[WongPartnership LLP]

1. It is admitted that the Defendant signed the cheque relied on by the Plaintiff.
2. It is admitted that the cheque has not been paid because the Defendant countermanded payment of it.
3. The Defendant will aver that he drew the cheque and delivered it to the Plaintiff in the following circumstances:
 - (1) On 30 April 2004, the Defendant asked the Plaintiff whether he could supply a refrigerator and deliver it to the Defendant's house within a week.
 - (2) The Plaintiff agreed that he would attempt to obtain such a refrigerator and to deliver it within that time. He advised that the cost of delivery would be S\$100 (the amount of the cheque) and asked the Defendant to provide a cheque for that amount to him, in order to pay for delivery if it could be arranged. The Defendant drew the cheque relied on and handed it to the Plaintiff for that purpose.
 - (3) On 2 May 2004, the Plaintiff telephoned the Defendant and advised that he was unable to supply the refrigerator sought by the Defendant. The Plaintiff and the Defendant therefore orally agreed that the Defendant would source elsewhere for a refrigerator.
4. The delivery of the cheque was therefore conditional upon the Plaintiff agreeing to provide and deliver to the Defendant the said refrigerator, which condition was not fulfilled by the Plaintiff.
5. Further or in the alternative, there was no consideration for the Defendant's cheque.
6. The Defendant therefore denies he is liable to the Plaintiff as alleged or at all.

P4.20 Defence alleging partial failure of consideration

[WongPartnership LLP]

1. It is admitted that the Defendant drew and delivered to the Plaintiff the cheque for S\$2,000 sued upon by the Plaintiff.
2. It is admitted that the Defendant countermanded payment of the cheque.
3. The Defendant drew the cheque in consideration of the payment of the price agreed between the parties for the delivery by the Plaintiff to the Defendant of four television sets at a price of S\$500 each.
4. The Plaintiff failed to deliver all four sets, and has delivered only one which the Defendant accepted. In the premises the consideration for the cheque has failed save to the extent of S\$500.
5. In those circumstances it is admitted that the Defendant is liable upon the cheque to the extent of S\$500, but denied that he is liable for the sum claimed or any other sum as alleged or at all.

P4.21 Defence by drawer or indorser that cheque not presented within reasonable time

[WongPartnership LLP]

1. The Defendant admits that he did on [date] [draw *or* indorse] the cheque referred to in paragraph 1 of the Statement of Claim.
2. The Defendant does not admit or denies [etc ...].
3. Section 45 of the Bills of Exchange Act requires the Plaintiff to present the cheque within a reasonable time.
4. The Plaintiff did not present the cheque for payment until after 3 years from the date the Defendant [drew *or* indorsed] the cheque.
5. The lapse of 3 years is not a reasonable time for the presentment of the cheque.
6. In the circumstances, the Defendant denies that he is liable to the Plaintiff [as drawer *or* indorsee] of the cheque, or at all.

P4.22 Defence alleging that cheque was procured by misrepresentation

[WongPartnership LLP]

1. It is admitted that the Defendant drew and delivered to the Plaintiff the cheque sued upon, and that the Defendant countermanded payment of the cheque.
2. The Defendant drew the cheque in payment for a brass antique vase.
3. The Plaintiff, the payee of the cheque, represented to the Defendant that he had shipped the brass antique vase to the Defendant on board the MV Treasure.
4. The Defendant was induced by that representation to draw the cheque in favour of the Plaintiff and hand it to him as payment of the price of the brass antique vase.
5. The representation was made fraudulently in that the Plaintiff knew it to be false.
6. After handing the cheque to the Plaintiff, the Defendant made enquires as to the estimated date of arrival of the MV Treasure. The Defendant was told that there was no ship by such a name.
7. On or about [date], the Defendant informed the Plaintiff of the fact that the MV Treasure was a non-existent ship and repeatedly requested the return of the cheque. At all material times thereafter, the Plaintiff ignored the Defendant's requests for the return of the cheque. The brass antique vase was never delivered to the Defendant.
8. Given the above circumstances, the Defendant instructed his bankers not to make payment on the cheque.
9. In view of the above, the Defendant is entitled to, and did, rescind the cheque, and it is therefore denied that he is liable on it as alleged or otherwise.

GUARANTEES

PRECEDENTS

P4.23 Claim by creditor against guarantor on guarantee

[WongPartnership LLP]

1. The Plaintiffs are bankers carrying on business at their branch at [address] and elsewhere.
2. At all material times XY Ltd was a customer of the Plaintiffs and maintained an account [or, accounts] at the said branch.
3. By a guarantee in writing dated [date] and in consideration of [the Plaintiffs giving credit, banking facilities or other accommodation to XY Ltd or state such other consideration as is provided by the Plaintiffs], the Defendant guaranteed the payment of all sums of money at any time due on any account whatsoever from or by XY Ltd to the Plaintiffs.
4. The salient terms of the Guarantee are as follows:
 - (1) [Terms of Guarantee, including when liability arise, claims for interest, costs, conclusive certificate clauses, etc]
5. The Plaintiffs will rely on the Guarantee for its full terms and effect at the trial of the Suit herein.
6. On [date] the amount owing from XY Ltd to the Plaintiffs on its account [or, accounts] was S\$[amount].
7. Despite numerous demands by the Plaintiffs for the repayment of the said sum of S\$[amount] from XY Ltd, XY Ltd has failed, refused or otherwise neglected to repay the said sum or any part thereof.

Particulars

[Particulars of demands]

8. Despite numerous demands by the Plaintiffs for payment from the Defendant of the sum of S\$[amount] being the amount due from XY Ltd to the Plaintiffs on that date inclusive of interest and bank charges, the Defendant has failed, refused or otherwise neglected to repay the said sum demanded or any part thereof.

Particulars

[Particulars of demands]

9. As at the issue of this Writ, a sum of S\$[amount] remains due and owing from XY Ltd, and from the Defendant to the Plaintiffs.

AND the Plaintiffs claim:

- (1) The sum of S\$[amount];
- (2) Interest on the sum of S\$[amount] [at the contractual rate] until the date of full payment; and
- (3) Such further or other relief as this Court thinks fit.

P4.24 Defence of set-off for debt due from creditor to debtor

[WongPartnership LLP]

1. The Defendant admits the Guarantee but denies that he is liable for the sum claimed.
2. On or about [date], the Debtor sold goods to the Plaintiff for S\$[amount]. To date, the Plaintiff has not paid the Debtor \$[amount] and the sum of S\$[amount] is due and owing from the Plaintiff to the Debtor.
3. The Debtor is entitled to set off the sum of S\$[amount] against the debt of S\$[amount] due from the Debtor to the Plaintiff in diminution or extinguishment of the Plaintiff's claim.
4. As to the balance sum of S\$[amount] due from the Debtor to the Plaintiff, before the beginning of this action, the Defendant has by cheque dated [date] paid the same to the Plaintiff.

P4.25 Defence that guarantee limited in amount and tender of payment

[WongPartnership LLP]

1. The Defendant admits the Guarantee.
2. Clause [number] of the Guarantee stated that the Defendant's liability was at all times no more than S\$[amount].
3. The Defendant is therefore liable, if at all, only to the sum of \$[amount].
4. Before the beginning of this action, namely on or about [date], the Defendant sent to the Plaintiff a cheque for the sum of S\$[amount] but the Plaintiff by letter dated [date] refused to accept the sum, alleging that the sum of S\$[amount] was due but objecting to payment by cheque.
5. The Defendant has since paid the sum of S\$[amount] into Court.

P4.26 Defence of denial of existence/validity of guarantee

[WongPartnership LLP]

1. The Defendants deny that they entered into the Guarantee alleged in paragraph [number] of the Statement of Claim or any guarantee in law.
2. Further and/or in the alternative, there is no memorandum or sufficient memorandum of the guarantee in law.
3. Further and/or in the alternative, if (which is denied) the Defendants made the alleged Guarantee, there was no consideration to support the alleged Guarantee. In the circumstances, the said Guarantee was not and is not binding on the Defendants.

Particulars of Lack of Consideration

[Particulars as to lack of/ failure of consideration]

4. Further and/or in the alternative, the Guarantee was signed by AB who was not lawfully authorised to sign the Guarantee on the Defendants' behalf. In the circumstances, no action can be brought on the Guarantee.

P4.27 Defence alleging guarantee procured by misrepresentation

[WongPartnership LLP]

1. Further and/or in the alternative, the Defendants were induced to give the Guarantee alleged in the Statement of Claim by the misrepresentation of the Plaintiffs.

Particulars of Misrepresentation

- (1) In order to induce the Defendants to give the alleged Guarantee, the Plaintiffs on the [date] orally represented to the Defendant that [misrepresentations].
2. The said representation was false in material respects.

Particulars of Falsity

[Particulars as to why the representations were false]

3. The Defendants were induced to execute the Guarantee by the misrepresentation of the Plaintiffs, as set out above and/or relied on the said misrepresentation to execute the Guarantee.
4. In the circumstances, the Defendants are entitled to and does claim the rescission of the Guarantee.

AND the Defendant claims:

- (1) A Declaration that the Guarantee ought to be rescinded/set aside as having been procured by misrepresentations of the Plaintiff; and
- (2) An Order that the Plaintiff do deliver up the Guarantee to be cancelled forthwith.

P4.28 Defence alleging guarantee procured by undue influence

[WongPartnership LLP]

1. Further and/or in the alternative, the 1st Defendant entered into the Guarantee by reason of the undue influence exercised upon the 1st Defendant by the 2nd Defendant in exploitation of the relationship between the 1st and 2nd Defendants set out below.
2. The 1st Defendant was wholly ignorant of the events that gave rise to the Guarantee. The relationship between the 1st and 2nd Defendants was one of trust and confidence and there was an obvious risk of undue influence by the 1st Defendant over the 2nd Defendant that was known or ought to be known by the Plaintiffs.

Particulars of Relationship

- (1) The Plaintiffs knew that the 1st Defendant was, at all material times, the [wife/husband/child] of the 2nd Defendant and that the 2nd Defendant had management and control of the Defendants' finances throughout the Defendants' [marriage/partnership].
- (2) At all times, the 1st Defendant relied on the 2nd Defendant as to all financial matters and did not question or inquire into the information given by the 1st Defendant in relation to all financial matters. The 1st Defendant placed complete trust, faith and confidence in the 2nd Defendant.
- (3) Prior to the matters giving rise to this Suit, the 1st Defendant had no occasion to question or inquire into the information given by the 1st Defendant in relation to financial matters. The 1st Defendant also had no occasion to doubt that the complete trust, faith and confidence was misplaced.
3. The 1st Defendant was induced to execute the Guarantee by the undue influence of the 2nd Defendant, as set out above.
4. The Plaintiffs knew and had notice actual or constructive of the above matters and failed to take any or sufficient steps to put the 1st Defendant on notice of the provisions and true intent of the Guarantee or of the possible consequences to signing it or of the facts giving rise to the transaction and failed to take any steps to protect against such exploitation by the 2nd Defendant of the relationship between the 1st and 2nd Defendants.

Particulars of Plaintiffs' Knowledge

- (1) The Plaintiffs knew that the transaction was manifestly disadvantageous to the 1st Defendant and that it was instead to the advantage of the 2nd Defendant.
 - (2) The Plaintiffs' knowledge of the relationship between the 1st and 2nd Defendants put the Plaintiffs on sufficient notice that the 1st Defendant might be exploited by the 2nd Defendant such that the Plaintiffs were put on inquiry.
 - (3) The Plaintiffs failed to make reasonable or any inquiry and failed to take reasonable or any steps to satisfy themselves that the 1st Defendant signed the Guarantee voluntarily with full or requisite knowledge.
 - (4) The Plaintiffs also failed to take any or reasonable steps to explain all material facts to the 1st Defendant or to ensure or procure that the 1st Defendant received independent legal advice prior to the 1st Defendant signing the Guarantee.
5. In the circumstances, the 1st Defendant is entitled to and does claim the rescission of the Guarantee.

AND the Defendants claim:

- (1) A declaration that the Guarantee ought to be rescinded/set aside as between the 1st Defendant and Plaintiffs having been procured by undue influence of the 2nd Defendant.

P4.29 Defence denying default by the principal debtor

[WongPartnership LLP]

1. The 1st Defendant was induced to execute the Guarantee by the undue influence of the 2nd Defendant, as set out above.
2. Further or in the alternative, it was an express term and condition of the said Guarantee that the Plaintiffs would serve the Defendants with a notice in writing specifying any default of the part of XY as a condition precedent to the Defendants' liability under the Guarantee.
3. To date, the Defendants have not served such a notice. In the circumstances, the Defendants are not liable to the Plaintiffs under the said Guarantee.

P4.30 Defence alleging variation of principal contract

[WongPartnership LLP]

1. By a Guarantee in writing dated [date] and in consideration of the Plaintiffs entering into a contract with XY Ltd, the Defendant guaranteed the payment of S\$[amount] that is to be paid by XY Ltd to the Plaintiffs.
2. On or about [date], without the knowledge or consent of the Defendants, the Plaintiffs agreed with XY Ltd that the contract between the Plaintiffs and XY Ltd would be varied as follows:
 - (1) [how varied]
 - (2) [how varied]
3. In the circumstances, the Defendants are discharged from all liability to the Plaintiffs under the alleged guarantee.

P4.31 Defence alleging discharge of guarantor by the giving of time to the debtor

[WongPartnership LLP]

1. The Plaintiffs discharged the Defendants from all liability under the alleged Guarantee by granting an indulgence to the debtor, one XY Ltd, without the knowledge or consent of the Defendants.

Particulars

[Particulars of indulgence granted]

P4.32 Defence alleging discharge of guarantor by releasing security to the debtor

[WongPartnership LLP]

1. By a Guarantee in writing dated [date] and in consideration of the Plaintiffs entering into a contract with XY Ltd, the Defendants guaranteed the payment of S\$[amount] that is to be paid by XY Ltd to the Plaintiffs.
2. At the same time, XY Ltd also gave [the security] to the Plaintiffs to secure the debt which was the subject of the Defendants' guarantee.
3. On or about [date], without the knowledge or consent of the Defendants, the Plaintiffs released to XY Ltd [the security] that was to secure the debt which was the subject of the Defendants' guarantee.
4. In the circumstances, the Defendants are discharged from all liability to the Plaintiffs under the alleged guarantee.

P4.33 Defence alleging that creditor negligently handled securities

[WongPartnership LLP]

1. By a Guarantee in writing dated [date] and in consideration of the Plaintiffs entering into a contract with XY Ltd, the Defendants guaranteed the payment of S\$[amount] by XY Ltd to the Plaintiffs.
2. At the same time, XY Ltd also gave [the security] to the Plaintiffs to secure the debt which was the subject of the Defendants' guarantee.
3. On or about [date], the Plaintiffs purported to exercise its power of sale and sold or otherwise disposed of [the security] to AB Ltd for the price of S\$[amount]. At the date of this sale, [the security] was in fact worth at least S\$[amount].
4. In selling [the security] for the price of S\$[amount], S\$[amount] below the actual worth of [the security], the Plaintiffs have acted negligently.

Particulars

[Particulars of negligence]

5. In the circumstances, the Defendants are discharged from all liability to the Plaintiffs under the alleged Guarantee.

P4.34 Defence alleging due revocation of guarantee

[WongPartnership LLP]

1. The Guarantee sued upon by the Plaintiffs is revocable by notice before the Plaintiffs made any of the advances to XY Ltd which were to be guaranteed by the Defendants.
2. On [date], the Defendants complied with the formalities set out in [clause] of the guarantee as follows:
[clause]
3. In the circumstances, the Defendants validly revoked the alleged Guarantee by notice to the Plaintiffs. The Defendants are therefore discharged from all liability to the Plaintiffs under the alleged Guarantee.

P4.35 Defence of compromise

[WongPartnership LLP]

1. The Defendant admits [admissions].
2. By an Agreement in writing dated [dated] between the Defendant and the Plaintiff, the Plaintiff agreed to accept S\$[amount] in full discharge of all liability under the said Guarantee. The Defendant will refer to the Agreement for its full purport and effect at the trial of the Suit herein.
3. Pursuant to the said Agreement, the Defendant paid the Plaintiff S\$[amount] and the Plaintiff accepted S\$[amount].

P4.36 Claim by guarantor against debtor for moneys paid under guarantee

[WongPartnership LLP]

1. By a Guarantee in writing dated [date] and in consideration of XY Ltd giving credit, banking facilities or other accommodation to the Defendants, the Plaintiffs guaranteed the payment of all sums of money at any time due on any account whatsoever from or by the Defendants to XY Ltd.
2. The Plaintiffs executed the said Guarantee at the request of the Defendants on [date].
3. On [date], the Plaintiffs received a demand from XY Ltd for payment of the sum of S\$[amount] being the amount due from the Defendants to XY Ltd on that date inclusive of interest and bank charges because XY Ltd had failed, refused or otherwise neglected to repay the said sum demanded or any part thereof.
4. On [date] the Plaintiffs paid to XY Ltd the sum of S\$[amount] for the Defendants under the terms of the Guarantee.
5. Despite numerous demands by the Plaintiffs for payment from the Defendants of the said sum of S\$[amount], the Defendants have failed, refused or otherwise neglected to repay the said sum demanded or any part thereof.

Particulars

[Particulars of demands]

AND the Plaintiffs claims:

- (1) The sum of S\$[amount];
- (2) Interest on the sum of S\$[amount] at 6 per cent from the date of writ until the date of judgment pursuant to Section 12(1) of the Civil Law Act (Cap 43); and
- (3) Such further or other relief as this Court thinks fit.

P4.37 Defence denying guarantor made payment to creditor

[WongPartnership LLP]

1. The Defendants deny that the Plaintiffs gave the alleged or any Guarantee for the Defendants.
2. The Defendants never requested the Plaintiffs to give the alleged or any Guarantee. If, which is denied, the Plaintiffs gave the alleged Guarantee, the Plaintiffs did not do so at the express or implied request of the Defendants.
3. Further, XY Ltd never gave credit, banking facilities or other accommodation to the Defendants.
4. The Defendants deny that the Plaintiffs ever became liable to pay or that they have in fact paid the alleged or any sum to XY Ltd in respect of any of the amounts alleged.

P4.38 Defence that debtor has paid creditor

[WongPartnership LLP]

On or about [date] the Defendants paid to the said XY Ltd the sum of S\$[amount] and XY Ltd accepted the sum of S\$[amount] in full discharge of all liability in respect of which it is alleged that the Plaintiffs gave the Guarantee.

P4.39 Claim by guarantor against co-guarantor

[WongPartnership LLP]

1. By a Guarantee in writing dated [date] and in consideration of XY Ltd giving credit, banking facilities or other accommodation to AB Ltd, the Plaintiffs and Defendants jointly and severally guaranteed the payment of all sums of money at any time due on any account whatsoever from or by AB Ltd to the XY Ltd.
2. On [date], the Plaintiffs received a demand from XY Ltd for payment of the sum of S\$[amount] being the amount due from AB Ltd to XY Ltd on that date inclusive of interest and bank charges because AB Ltd had failed, refused or otherwise neglected to repay the said sum demanded or any part thereof.
3. On [date], the Plaintiffs paid the said sum of S\$[amount] to XY Ltd pursuant to the Guarantee.
4. Despite numerous demands by the Plaintiffs for payment from the Defendants a half share of the sum of S\$[amount] paid by the Plaintiffs to XY Ltd as money paid by the Plaintiffs at the request of the Defendants, the Defendants have failed, refused or otherwise neglected to repay the said sum demanded or any part thereof.

Particulars

[Particulars of demands]

AND the Plaintiffs claim:

- (1) The sum of S\$[amount];
- (2) Interest on the sum of S\$[amount] at 6 per cent from the date of writ until the date of judgment pursuant to Section 12(1) Civil Law Act (Cap 43); and
- (3) Such further or other relief as this Court thinks fit.

P4.40 Defence denying contribution

[WongPartnership LLP]

1. The Defendant denies that he entered into the Guarantee or any agreement at all with the Plaintiff to guarantee, jointly or severally, all sums of money at any time due on any account whatsoever from or by the Debtor to the Bank.
2. The Defendant does not admit that the Plaintiff paid any sum to the Bank under the terms of the Guarantee or at all. If, which is not admitted, the Plaintiff has paid any sum to the Bank, the same was not paid in discharge of liability of the alleged Guarantee.

P4.41 Defence denying that co-guarantor has paid in excess of his proportion

[WongPartnership LLP]

1. The Defendant admits that he entered into the Guarantee.
2. By the terms of the said Guarantee, the Plaintiff's proportion of the joint liability is the sum of S\$[amount].
3. The Defendant denies that the Plaintiff has paid to the Bank under the said Guarantee, the sum alleged or any sum in excess of the sum of S\$[amount].
4. In the circumstances, the Plaintiff is not entitled to the alleged or any contribution from the Defendant.

MONEY LENT

PRECEDENTS

P4.42 Claim for money lent - long form

[WongPartnership LLP]

1. On or about [date], the Plaintiff agreed to lend to the Defendant the sum of S\$30,000 which the Defendant agreed to repay by [date].

Particulars

The said agreement was made orally between the Plaintiff and the Defendant on [date], [or is contained in or is evidenced by a memorandum signed by the defendant, or a letter from the defendant, dated [date], or as the case may be].

2. [It was an express term of the said agreement that the Defendant would pay interest on the amount of the said loan at the rate of [amount] per cent per annum [as and from the said [date]].]
3. Pursuant to the said agreement, on [date], the Plaintiff paid to the Defendant by way of loan the said sum of S\$30,000.

Particulars

The said payment was made by cheque dated [date], drawn by the Plaintiff to the order of the Defendant, which was duly met on presentation [or as to S\$[amount] by cheque dated, etc, and as to S\$[amount] by cash which the Plaintiff handed to the Defendant on the said date, or as the case may be].

4. The Defendant has repaid the Plaintiff the total sum of S\$2,000 on account of the said loan.

Particulars

20__.		S\$
__ day of ____.	By ABC Bank cheque no. ____	200
__ day of ____.	By ABC Bank cheque no. ____	500
__ day of ____.	By cash	300
__ day of ____.	By XYZ Bank cheque no. ____	1,000

5. The Defendant has not paid the balance of the said loan amounting to S\$28,000 or any interest thereon, amounting to the total sum of

S\$[amount] as of the date of the Writ herein and the same remains due and owing by him to the Plaintiff.

AND the Plaintiff claims:

- (1) Payment of the said sum of S\$28,000;
- (2) Interest on the sum of S\$30,000 from [date] to [date] at the rate of [amount] per annum amounting to S\$[amount];
- (3) Interest on the sum of S\$28,000 from [date] to the date of the Writ herein at the rate of [amount] per annum amounting to S\$[amount];
- (4) Interest accruing on the said sum of S\$28,000 from the date of the Writ herein to judgment or sooner payment;
- (5) Alternatively to (2)–(4), interest assessed pursuant to Section 12 of the Civil Law Act (Cap 43);
- (6) Costs; and
- (7) Such further or other relief as this Honourable Court deems fit.

P4.43 Claim for money lent on facility agreement and secured by a guarantee

[WongPartnership LLP]

1. The Plaintiff is a company incorporated in Singapore and having its registered office at [address] whose activities include, *inter alia*, carrying out the business of a moneylender.
2. The 1st Defendant is a company incorporated in Singapore whose activities include *inter alia*, the manufacturing of non-dairy creamer, soft drinks and mineral water.
3. The 2nd Defendant is and was at all material times the guarantor of the 1st Defendant's liability to the Plaintiff.

Claim on the Facility Agreement

4. By a Facility Agreement in writing dated [date] between the Plaintiff and the Defendant, ("the Facility Agreement"), the Plaintiff granted to the Defendant a term loan facility of S\$[amount].
5. The material terms of the Facility Agreement are as follows:
[Material clauses of Facility Agreement including interest, late payment interest, costs]
6. The Plaintiff shall refer to the Facility Agreement for its full terms and effect at the trial of the Suit herein.

Claim on the Guarantee

7. On or about [date], the 2nd Defendant executed a guarantee ("the Guarantee") in favour of the Plaintiff in respect of the Facility Agreement.
8. The material terms of the Guarantee include the following:
[Material terms of the Guarantee including demand, interest, costs, conclusive certificate clause, etc]
9. The Plaintiff shall refer to the Guarantee for its full terms and effect.
10. Pursuant to the Facility Agreement, a sum of S\$[amount] was loaned to the 1st Defendant.
11. As at [date], the 1st Defendant was in arrears of their instalment payments to the Plaintiff under the Facility Agreement, amounting to the sum of S\$[amount] (including principal, interest and late interest).

Particulars

Breakdown of outstanding amounts	Amounts owing
Principal	S\$
Interest	S\$
Late Interest	S\$
TOTAL	S\$

12. On [date], the Plaintiff's solicitors made written demands to the 1st and 2nd Defendants for the sum of S\$[amount] in exercise of the Plaintiff's rights pursuant to Clause [number] of the Facility Agreement and Clause [number] of the Guarantee.

13. To date the 1st and 2nd Defendants have failed, refused and/or neglected to make payment of the said sum or at all.

AND the Plaintiff claims against all the Defendants and each of them:

- (1) The sum of S\$[amount];
- (2) Interest and late payment pursuant to Clause [number] of the Facility Agreement;
- (3) Costs on an indemnity basis pursuant to Clause [number] of the Facility Agreement; and
- (4) Such further or other relief as the Court deems fit.

P4.44 Claim by banker for term loan facility and credit card facilities

[Withers KhattarWong LLP]

1. The Plaintiffs are bankers carrying on business at their registered office address at [address], as well as other places in Singapore.
2. The Defendant is and was at all material times the customer of the Plaintiffs.
3. By the Plaintiffs' Letter of Offer¹ dated [date] and accepted by the Defendant by the Defendant's confirmation in writing on the duplicate copy thereof, the Plaintiffs offered and the Defendant accepted banking facilities for the Defendant's use subject to the terms and conditions stated in the aforesaid Letter of Offer and subject also to the Standard Terms and Conditions² Governing Banking Facilities (the "Standard Terms") annexed to the Plaintiffs' Letter of Offer dated [date].
4. The following are, *inter alia*, the express terms and/or conditions set out in the Plaintiffs' Letter of Offer dated [date] and the Standard Terms, which are relevant to these proceedings:

The Plaintiffs' Letter of Offer dated [date]

- 4.1 Under paragraph 1 thereof, a sum of [S\$65,000] would be for a Term Loan with a loan tenure of [...] years. Under paragraph 3.3 thereof, interest for the said Term Loan shall be at the rate of [...] % per annum over the Plaintiffs' prevailing prime lending rate with monthly rest basis.
- 4.2 Under paragraph 2 thereof, the Term Loan and all moneys owing by the Defendant from time to time shall be secured by a Continuing Guarantee for S\$[65,000] signed by [...].
- 4.3 Under paragraph 4 thereof, the Plaintiffs may vary from time to time at their absolute discretion, the rates of interest payable,

1 The letter of offer of loan facilities by a bank to a customer is the usual manner in which bank loans are offered to a customer. Although there may be other banking documents, it is often useful to refer to the letter of offer as it represents the genesis of the banking relationship and more importantly, contains the terms and conditions governing the grant of banking facilities, i.e. the amount of the loan granted, the rate(s) of interest and the events of default.

2 Most, if not all, banks in Singapore will have certain standard terms and conditions that will apply to their loans. Many banks set this out in a document called Standard Terms and Conditions. Only the relevant terms and conditions should be referred to – see example set out in para 4.5.

on any of the facilities therein and also on any amounts not paid on due dates or overdrawn in excess of the approved limit.

- 4.4 Under paragraph 6 thereof, all costs and expenses, legal or otherwise, connected with the processing, implementation and recovery of the Term Loan (*inter alia*) would be borne by the Defendant.

The Standard Terms

[Insert the relevant terms, for example:

- 4.5 Under Clause 2 thereof, all interest charged (including additional interest) would be calculated based on a 365 day year and the actual number of days elapsed with such periodic rests as the Plaintiffs might specify, and interest was to be payable both before and after judgment and interest rates might be varied by the Plaintiffs from time to time in their absolute discretion, and the minimum interest charge for an account in overdraft is \$3.00 per month, or any other amount set at the sole discretion of the Plaintiffs.]

The Plaintiffs shall at the trial and at any proceedings refer to the Plaintiffs' Letter of Offer dated [date] and the Standard Terms (all in their entirety, if necessary) and other documents (if required) for their full terms and effect.

5. In addition, the Defendant as a Cardmember is and was also indebted to the Plaintiffs with respect to credit card facilities granted, advanced and/or made available by the Plaintiffs to the Defendant under Credit Card Account No. [number] ("CC Account") for the Defendant's use in connection with a Credit Card issued by the Plaintiffs upon the terms and conditions set out in the Plaintiffs' Cardmember Agreement³ ("CC Agreement").
6. The following are, *inter alia*, the express terms and/or conditions set out in the CC Agreement which are relevant to these proceedings:

[Insert relevant terms, for example:

- 6.1 Under Clause 19.7 thereof, the Defendant must indemnify and keep the Plaintiffs fully indemnified against (*inter alia*) costs and expenses of any nature (including legal costs on

3 A Cardmember Agreement contains various terms and conditions governing the use of the credit card facilities by the cardholder. Only the relevant terms and conditions should be pleaded – see example set out in para 6.1.

an indemnity basis) suffered, incurred or sustained by the Plaintiffs, directly or indirectly, by reason of or in connection with the CC Agreement, including without limitation (*inter alia*) breach of any provision of the CC Agreement on the part of the Defendant and/or the enforcement or protection of the Plaintiffs' rights and remedies against the Defendant under the CC Agreement.

The Plaintiffs shall further at the trial and at any proceedings refer to the CC Agreement (in its entirety, if necessary) and other documents (if required) for their full terms and effect.]

7. By the Plaintiffs' Solicitors' letters dated [date] sent to the Defendant by registered and ordinary post, the Plaintiffs demanded from the Defendant payment of the outstanding sum of S\$[amount] in respect of the Term Loan granted as at [date] plus further interest⁴ accruing thereon and the sum of S\$[amount] in respect of the credit card facilities granted as at [date] due and owing by the Defendant to the Plaintiffs, such payment to be made within 14 days from the date thereof.⁵ The Defendant has wrongfully failed, neglected and/or refused to pay the Plaintiffs the said sum demanded or any part thereof.
8. The Defendant was and remains indebted and liable to repay the Plaintiffs the following outstanding sums plus further interest and additional interest accruing thereon:
 - (1) the sum of S\$[amount] due and owing in respect of the Term Loan under Account No [number] as at [15 September 2004], plus further interest accruing at the rate of at the rate of [amount] per cent per annum over the Plaintiffs' prevailing prime lending rate with monthly rest together with late payment interest/fee chargeable and compounded monthly on all overdue instalment(s) of principal and interest at the rate of [amount] per cent per annum in addition to the aforesaid rate, both from [16 September 2004] up to the date of full payment; and

4 It is essential to plead specifically any claim for interest. If the claim for interest is not pleaded, the court will not award any interest. The claim for interest should be pleaded in the body of the pleading and not merely in the prayer and where possible, it is important to specify the rate and the date from which interest is claimed.

5 It is important to plead that an event of default has occurred, for example the failure to make payment, by referring to the issuance of letter(s) of demand.

- (2) the sum of S\$[amount] due and owing in respect of the Credit Card Facilities under Account No [number] as at [25 August 2004], plus further interest accruing at the rate of [amount] per cent per month (subject to a minimum charge as may be determined without notice) and a late payment charge of an amount equivalent to [amount] per cent per month of the Minimum Payment or the sum of S\$[amount] per month, whichever is greater, both from [26 August 2004] until the date of full payment.

The Plaintiffs therefore claim against the Defendant:

- (1) The sum of S\$[amount] due and owing in respect of the Term Loan under Account No [number] as at [15 September 2004], plus further interest accruing at the rate of at the rate of [amount] per cent per annum over the Plaintiffs' prevailing prime lending rate with monthly rest together with late payment interest/fee chargeable and compounded monthly on all overdue instalment(s) of principal and interest at the rate of [amount] per cent per annum in addition to the aforesaid rate, both from [16 September 2004] up to the date of full payment;
- (2) The sum of S\$[amount] due and owing in respect of the Credit Card Facilities under Account No [number] as at [25 August 2004], plus further interest accruing at the rate of [amount] per cent per month (subject to a minimum charge as may be determined without notice) and a late payment charge of an amount equivalent to [amount] per cent per month of the Minimum Payment or the sum of S\$[amount] per month, whichever is greater, both from [26 August 2004] until the date of full payment;
- (3) Costs on a full indemnity basis;⁶ and
- (4) Such further and/or other relief.

6 Most banks in Singapore do provide for legal costs to be on an indemnity basis in their standard terms and conditions. In the event that judgment in default of appearance or defence is entered against the defendant, the ROC provides for costs on an indemnity basis to be calculated on the scale costs and disbursements set out in ROC, Part II and Part IIA of App 2 of Ord 59 instead of having the costs taxed by the Registrar.

P4.45 Claim by banker against partners and one former partner for banking facilities and credit card facilities

[Withers KhattarWong LLP]

1. The Plaintiffs are bankers carrying on business at their registered office address at [address], amongst other places in Singapore.
2. At all material times, the 1st, 2nd and 3rd Defendants carried on business together in partnership⁷ under the style or firm of [ABC & Sons] (“the Firm”). Both the 1st and 2nd Defendants and the Firm are and were at all material times the customers of the Plaintiffs.
3. Unknown to the Plaintiffs, the 3rd Defendant had withdrawn from the partnership of the Firm with effect from [date].
4. During the existence of the 3rd Defendant as a partner in the Firm and thereafter, the Plaintiffs have granted, advanced and/or made available banking facilities to the Firm at the request of the Firm and/or all and/or each of the 1st, 2nd and 3rd Defendants as partners thereof.

Claim Against the 1st, 2nd and 3rd Defendants as Partners of the Firm

5. By the Plaintiffs’ Letter of Offer⁸ dated [1 February 1992] (“Feb 92 Letter”) and accepted by the Firm by its confirmation in writing on [date] on the duplicate, the Plaintiffs offered and the Firm accepted banking facilities subject to the terms and conditions stated in the Feb 92 Letter and subject also to the Standard Terms and Conditions Governing Banking Facilities⁹ (“the 1st Standard Terms”) annexed to the Feb 92 Letter.

7 In a partnership, which is defined as two or more people carrying on business under their own name or a firm’s name, the liability of the partners for debts are joint. For the purposes of enforcing a default judgment against a partnership, it would be better to sue the partners in their own names rather than in the firm’s name as it would be easier to enforce a judgment against the individual than against a firm. See *Singapore Civil Procedure 2015* (Sweet & Maxwell Asia), paras 77/0/2, 77/1/10 under Ord 77 – Partners. Also see *Singapore Court Practice 2014* (LexisNexis) preliminary note to Ord 77 and the annotation to Ord 77 r 1.

8 The letter of offer of loan facilities by a bank to a customer is the usual manner in which bank loans are offered to a customer. Although there may be other banking documents, it is often useful to refer to the letter of offer as it represents the genesis of the banking relationship and more importantly, contains the terms and conditions governing the grant of banking facilities, i.e. the amount of the loan granted, the rate(s) of interest and the events of default.

9 Most, if not all, banks in Singapore will have certain standard terms and conditions that will apply to their loans. Many banks set it out in a document called Standard Terms and Conditions. Only the relevant terms and conditions should be referred to – see example set out in para 6.2.

6. The following are, *inter alia*, the express terms and/or conditions set out in the Feb 92 Letter and the 1st Standard Terms which are relevant to these proceedings:

The Feb 92 Letter

[Insert relevant terms, for example:

- 6.1 Under paragraph 1 thereof, the line of credit of S\$[...] for Overdraft in the Firm's Current Account No. [...] would be repayable on demand with interest at [...] % over the Plaintiffs' prime rate prevailing from time to time with monthly rests, and the line of credit of S\$[...] for Overdraft in the Firm's Current Account No. [...] would be repayable on demand with interest at [...] per cent per annum over the Plaintiffs' prime lending rate prevailing from time to time with monthly rests.]

The 1st Standard Terms

[Insert relevant terms, for example:

- 6.2 Under Clause 2 thereof, all interest charged (including additional interest) would be calculated based on a 360-day year with monthly rests or with such other periodic rests as the Plaintiffs might specify, and was to be payable both before and after judgment, and the interest rate(s) (including additional interest) might be varied by the Plaintiffs from time to time in their absolute discretion.]

The Plaintiffs shall at the trial and at any proceedings refer to the Feb 92 Letter and the 1st Standard Terms (both in their entirety, if necessary) and other documents (if required) for their full terms and effect.

7. By the Plaintiffs' letter dated [date] sent to the Firm, the Plaintiffs informed the Firm that following the uplifting of fixed deposits on [date], the Overdraft in the Firm's Current Account No.'s [number] and [number] had since been cancelled, and required the Firm to make arrangement to adhere to the repayment schedule respecting the then outstanding monies owing to the Plaintiffs (excluding accrued interest) of S\$[amount].
8. By the Plaintiffs' Solicitors' letter dated [date] sent to the Firm by registered post and by ordinary mail, the Plaintiffs demanded from the Firm payment of the outstanding sum of S\$[amount] due and owing by the Firm to the Plaintiffs in respect of the Facilities

as at [date] plus further interest¹⁰ accruing thereon, such payment to be made within [number of] days from the date(s) thereof.

9. As at [20 September 2001], all and each of the Defendants (whether in their capacity as the current or former partner(s) of the Firm or otherwise) and the Firm were and remain indebted and liable to repay the Plaintiffs the sum of S\$[amount] due and owing in respect of the Overdraft Facility under the Firm's Current Account No. [number] plus further interest accruing at [amount] per cent over the Plaintiffs' prime lending rate prevailing from time to time with monthly rests from [21 September 2001] up to the date of full payment.

Claim against the 1st and 2nd Defendants as Borrowers

10. By the Plaintiffs' Letter of Offer dated [1 June 1987] ("Jun 87 Letter") and accepted by the 1st and 2nd Defendants by their confirmation in writing on [date] on the duplicate copy thereof, and another Plaintiffs' Letter of Offer dated [1 January 1989] ("Jan 89 Letter") and accepted by the 1st and 2nd Defendants by their confirmation in writing on the duplicate copy thereof, the Plaintiffs granted and both the 1st and 2nd Defendants accepted banking facilities and as revised, amended and/or supplemented from time to time and under the terms and conditions set out in the Jun 87 and Jan 89 Letter and also to the Standard Terms and Conditions Governing Banking Facilities ("the 2nd Standard Terms") annexed to the Jan 89 Letter.
11. The following are, *inter alia*, the express terms and/or conditions set out in the Jun 87 Letter, the Jan 89 Letter and the 2nd Standard Terms, which are relevant to these proceedings:

The Jun 87 Letter

[Insert relevant terms, for example:

- 11.1 Under paragraph 1 thereof, the Overdraft within the line of credit of S\$[...] in the 1st and 2nd Defendants' Current Account No. [...] would be repayable on demand at an interest rate of [...] per cent over the Plaintiffs' prime rate with monthly rests.]

10 It is essential to plead specifically any claim for interest. If the claim for interest is not pleaded, the court will not award any interest. The claim for interest should be pleaded in the body of the pleading and not merely in the prayer and where possible, it is important to specify the rate and the date from which interest is claimed.

The Jan 89 Letter

[Insert relevant terms, for example:

- 11.2 Under Clause 4 thereof, the Plaintiffs might vary from time to time, at their absolute discretion, the rates of interest payable on any of the facilities in the Jan 89 Letter and also on any amounts not paid on due dates or overdrawn in excess of the approved limit.]

The 2nd Standard Terms

[11.3 The Plaintiffs hereby repeat the terms and conditions set out in Paragraphs [6.2] to [paragraph number] above.]

12. By the Plaintiffs' letter dated [date] sent to the 1st and 2nd Defendants, the Plaintiffs informed both the 1st and 2nd Defendants that they might then use the overdraft of S\$[amount], and accordingly, the total overdraft available for the 1st and 2nd Defendants' use was then S\$[amount], with all the other terms and conditions as per the Jan 89 Letter to remain unchanged.
13. The Plaintiffs shall also at the trial and at any proceedings refer to the Jun 87 Letter, the Jan 89 Letter and the 2nd Standard Terms (all in their entirety, if necessary) and other documents (if required) for their full terms and effect.
14. Despite repeated requests and demands, both the 1st and 2nd Defendants have wrongfully failed, neglected and/or refused to repay all the outstanding amounts due and owing to the Plaintiffs in respect of the Overdraft Facility granted under the Current Account No. [number].
15. As at [20 September 2001], both and each of the 1st and 2nd Defendants were and remain indebted and liable to repay the Plaintiffs the sum of S\$[amount] due and owing in respect of the Overdraft Facility under Current Account No. [number] plus further interest accruing at [amount] per cent over the Plaintiffs' prime lending rate prevailing from time to time with monthly rests on the overdraft outstanding up to S\$[20,000.00] and at [amount] per cent over the Plaintiffs' prime lending rate prevailing from time to time with monthly rests on the overdraft outstanding in excess of S\$[20,000.00], both from [21 September 2001] up to the date of full payment.

Claim Against the 1st Defendant as Cardmember

16. In addition, the 1st Defendant as a Cardmember is and was also indebted to the Plaintiffs with respect to credit card facilities

granted, advanced and/or made available by the Plaintiffs to the 1st Defendant under Credit Card Account No. [amount] ("CC Account") for the 1st Defendant's use in connection with a Credit Card issued by the Plaintiffs upon the terms and conditions set out in the Plaintiffs' Cardmember Agreement¹¹ ("CC Agreement").

17. The following are, *inter alia*, the express terms and/or conditions set out in the CC Agreement, which are relevant to these proceedings:

[Insert relevant terms, for example:

17.1 Under Clause 7.3 thereof, all interests and charges payable under the CC Agreement were to be payable as well after as before judgment.]

The Plaintiffs shall further at the trial and at any proceedings refer to the CC Agreement (in its entirety, if necessary) and other documents (if required) for their full terms and effect.

18. By the Plaintiffs' Solicitors' letter dated [date] sent to the 1st Defendants by registered post and by ordinary mail, the Plaintiffs demanded from the 1st Defendant payment of the sum of S\$[amount] due and owing by the 1st Defendant to the Plaintiffs in respect of the credit card facilities as at [date] plus further interest accruing thereon, such payment to be made within [number of days] days from the date thereof.¹² The 1st Defendant has wrongfully failed, neglected and/or refused to pay the Plaintiffs the said sum demanded or any part thereof.
19. As at [20 September 2001], the 1st Defendant was and remains indebted and liable to repay the Plaintiffs the sum of S\$[amount] due and owing in respect of the credit card facilities under Credit Card Account No. [number], plus further interest accruing daily on the outstanding Total Indebtedness at [amount] per cent per month (subject to a minimum charge as the Plaintiffs may determine without notice) and a late payment charge of an amount equivalent to [amount] per cent per month of the Minimum Payment or the sum of S\$[amount] per month (whichever is the greater), both from [21 September 2001] up to the date of full payment.

The Plaintiffs therefore claim:

11 A Cardmember Agreement contains various terms and conditions governing the use of the credit card facilities by the cardholder. Only the relevant terms and conditions should be pleaded – see example set out in para 17.1.

12 It is important to plead that an event of default has occurred, for example the failure of making payment, by referring to the issuance of letter(s) of demand.

- (1) Against the 1st, 2nd and 3rd Defendants and each of them:
- (a) The sum of S\$[amount] (owing as at [20 September 2001]) due and owing under the Firm's Current Account No. [number] plus further interest accruing at [amount] per cent over the Plaintiffs' prime lending rate prevailing from time to time with monthly rests from [21 September 2001] up to the date of full payment;
 - (b) All costs and expenses, legal or otherwise, as provided for under Clause 3 of the 1st Standard Terms to be taxed on a full indemnity basis¹³ unless otherwise agreed; and
 - (c) Such further and/or other relief.
- (2) Against the 1st and 2nd Defendants and each of them:
- (a) The sum of S\$[amount] (owing as at [20 September 2001]) due and owing under 1st and/or the 2nd Defendants' Current Account No. [number] plus further interest accruing at [amount] per cent over the Plaintiffs' prime lending rate prevailing from time to time with monthly rests on the overdraft outstanding up to \$[20,000.00] and at [amount] per cent over the Plaintiffs' prime lending rate prevailing from time to time with monthly rests on the overdraft outstanding in excess of S\$[22,000.00], both from [21 September 2001] up to the date of full payment;
 - (b) All costs and expenses, legal or otherwise, as provided for under Clause 6 of the Jun 87 Letter and Clause 3 of the 2nd Standard Terms to be taxed on a full indemnity basis unless otherwise agreed; and
 - (c) Such further and/or other relief.
- (3) And against the 1st Defendant:
- (a) The sum of S\$[amount] (owing as at [20 September 2001]) under Credit Card Account No. [number], plus further interest accruing daily on the outstanding Total Indebtedness at [amount] per cent per month (subject to a minimum charge as the Plaintiffs may determine without notice) and a late payment charge of an amount equivalent to [amount] per cent per month of the Minimum Payment or the sum of S\$[amount]

13 Most banks in Singapore do provide for legal costs to be on an indemnity basis in their standard terms and conditions. In the event that judgment in default of appearance or defence is entered against the defendant, the ROC provides for costs on an indemnity basis to be calculated on the scale costs and disbursements as set out in ROC, Part II and Part IIA of App 2 of Ord 59 instead of having the costs taxed by the Registrar.

per month (whichever is the greater), both from [21 September 2001] up to the date of full payment;

- (b) All costs and expenses, legal or otherwise, incurred or to be incurred by the Plaintiffs as provided for under Clause 19.7 of the CC Agreement to be taxed on a full indemnity basis unless otherwise agreed; and
- (c) Such further and other relief.

P4.46 Defence denying the loan/alleging money paid as gift

[WongPartnership LLP]

1. The Defendant specifically denies that the Plaintiff lent him the sum of S\$[amount] or any part thereof as alleged in the Statement of Claim or at all.
2. If (which is denied), the Defendant received any monies from the Plaintiff on the date alleged at paragraph [number] of the Statement of Claim, the said sum was a gift from the Plaintiff to the Defendant.

Particulars

[Particulars in support of the monies being a gift]

3. By reason of the foregoing, the Defendant denies that he is indebted to the Plaintiff as alleged in the Statement of Claim or at all.

P4.47 Defence alleging that sum lent was less than amount claimed and that the sum lent was tendered before the action

[WongPartnership LLP]

1. The Defendant denies that the Plaintiff lent to him on the date, time and place alleged, or on any other date, the sum of S\$30,000 as alleged in paragraph [number] of the Statement of Claim or at all.
2. The Defendant admits and avers that the Plaintiff lent to him the sum of S\$20,000 and no more.
3. On or about [date], before the issue of the Writ of Summons herein, the Defendant tendered and produced to the Plaintiff the sum of S\$20,000 in cash, save that the Plaintiff refused to accept the same.
4. On [date], the Defendant, through his solicitors, paid the sum of S\$20,000 into Court.
5. In the circumstances, the Defendant denies that he is liable to the Plaintiff for the sum claimed in the Statement of Claim.

P4.48 Defence alleging repayment of loan

[WongPartnership LLP]

1. The Defendant admits the loan referred to in paragraph [number] of the Statement of Claim [*or* The Defendant admits that the Plaintiff lent to him the sum of S\$[amount] as alleged in the Statement of Claim].
2. The Defendant has repaid to the Plaintiff the said sum [together with interest thereon] and there is no sum due or payable by him to the Plaintiff.

Particulars

The said repayment was made as follows:

[Full particulars of the dates and amounts of each sum repaid, specifying whether it was made by cheque or by cash, and if by cash where the payment was made]

P4.49 Defence alleging action for repayment is premature

[WongPartnership LLP]

1. It was an express term of the agreement of loan between the Plaintiff and the Defendant that the said loan should be repayable after the expiry of one month from the date of a demand in writing therefor [or as the case may be].
2. The said term is contained in [or is evidenced by] clause [number] of the Agreement dated [date], signed by the parties [or as the case may be].
3. No demand in writing for the repayment of the said loan was given by the Plaintiff to the Defendant before the issue of the Writ of Summons herein [or as the case may be, showing that the date or condition for repayment has not arrived or been fulfilled].
4. In the circumstances, the said loan was not due or payable at the date of the Writ herein and the claim herein is premature and not maintainable against the Defendant.

P4.50 Defence alleging novation by substitution of third party as debtor

[WongPartnership LLP]

1. Paragraphs 1 and 2 of the Statement of Claim are admitted insofar as they allege that the Plaintiff lent the sum of S\$[amount] to the Defendant pursuant to a loan agreement made in writing on [date].
2. Pursuant to clause [number] of an agreement in writing dated [date] made between the Plaintiff and the Defendant and one AB (“the Novation Agreement”), the said AB agreed to pay to the Plaintiff the sum of S\$[amount] then owed by the said AB to the Defendant, and the Plaintiff agreed to release the Defendant from all liability under the loan agreement pleaded in paragraph 2 of the Statement of Claim, and to accept the said AB as debtor in his stead. The Defendant will refer to the loan agreement and the Novation Agreement for their full purport and effect at the trial of the Suit herein.
3. By reason of the foregoing, the Defendant avers that he has been discharged from all liability to the Plaintiff in respect of his claim herein.
4. The Defendant accordingly denies that he is indebted to the Plaintiff as alleged in the Statement of Claim or at all.

P4.51 Defence alleging that money was lent for an illegal purpose

[WongPartnership LLP]

1. The Defendant denies that the Plaintiff lent to the Defendant the sum of S\$[amount] or any part thereof as pleaded at paragraph [number] of the Statement of Claim herein or at all.
2. If (which is denied) the Plaintiff lent to the Defendant the said sum of S\$[amount], such sum was lent for the purpose of illegal gaming, namely [game], as the Plaintiff at all material times well knew.

Particulars

[Particulars of knowledge of the illegal purpose of the loan]

3. In the circumstances, the Defendant denies that he owes the Plaintiff the said sum or any sum at all.

P4.52 Defence of limitation under the Limitation Act (Cap 163)

[Wong Partnership LLP]

1. The Plaintiff's cause of action did not accrue within 6 years before the commencement of this action.

Particulars

[Particulars supporting defence of limitation,
e.g. when demand for debt was made]

2. The Defendant will accordingly rely on Section 6(1)(a) of the Limitation Act (Cap 163) at the trial of the Suit herein.

P4.53 Defence by customer for term loan facility and credit card facilities

[Withers KhattarWong LLP]

1. The Defendant admits that at all material times, the Defendant was the customer of the Plaintiffs.
2. The Defendant admits that the Defendant did on [date], confirmed in writing, accept banking facilities for the Defendant's use subject to the Standard Terms and Conditions as stated in the Letters of Offer and in the Standard Terms and Conditions Governing Banking Facilities which were annexed to the Letters of Offer.
3. The Defendant further admits that credit card facilities under Credit Card Account No. [number] were granted, advanced and/or made available to the Defendant by the Plaintiffs.
4. The Defendant denies that the Defendant had defaulted in the Defendant's payment obligations under the banking facilities and credit card facilities. The Defendant hereby puts the Plaintiffs to strict proof thereof.
5. The Defendant avers that the Defendant had repaid the sums due under the banking facilities and credit card facilities. By a letter dated [date], the Defendant notified the Plaintiffs that the Defendant had made payment under the banking facilities and credit card facilities. To date, however, the Plaintiffs have failed, refused and/or neglected to acknowledge and/or respond to the Defendant.
6. In the premise, the Plaintiffs have to date wrongfully, refused and/or failed to release to the Defendant from or otherwise give the Defendant a discharge of the Defendant's debts.
7. Save as hereinbefore expressly admitted, the Defendant denies each and every allegation contained in the Plaintiffs' Statement of Claim as if the same were herein set forth seriatim and specifically traversed.

P4.54 Defence by former partner for banking and credit card facilities

[Withers KhattarWong LLP]

1. The 3rd Defendant admits that the 3rd Defendant did carry on a business together in partnership with the 1st and 2nd Defendants under the style or firm of [ABC & Sons] (“the Firm”). The 3rd Defendant and the Firm admit that at the material time they were customers of the Plaintiffs.
2. The 3rd Defendant says, however, that the 3rd Defendant did by a letter of [date] give notice of his withdrawal from the partnership of the Firm.
3. The 3rd Defendant say therefore that as of [date] the 3rd Defendant was no longer liable for the debts of the Firm.
4. The 3rd Defendant further avers that the 3rd Defendant has no knowledge of the outstanding amounts due and owing to the Plaintiffs as the transactions in the Firm’s Current Accounts were conducted after the 3rd Defendant’s withdrawal from the partnership and the 3rd Defendant avers that the 3rd Defendant is therefore not liable to the Plaintiffs.
5. Save as hereinbefore expressly admitted, the 3rd Defendant denies each and every allegation contained in the Plaintiffs’ Statement of Claim as if the same were herein set forth *seriatim* and specifically traversed.

MORTGAGES AND CHARGES

PRECEDENTS

P4.55 Originating summons under a mortgage action

[WongPartnership LLP]

LET the Defendant within eight (8) days after service of this Summons on him, cause an appearance to be entered to this Summons, which is issued on the application of the Plaintiffs, ABC Bank Limited, who are a company incorporated in Singapore and having its registered office at [address].

By this Summons, the Plaintiffs claim against the Defendant as follows:

1. Payment of the sum of S\$1,000,000, being the amount outstanding as at 31 March 2005, due to the Plaintiffs for banking facilities granted to the Defendant and secured by a Mortgage dated [date] between the Defendant of the one part and the Plaintiffs of the other part;
2. Interest on the said sum at such rates as the Plaintiffs are entitled to under the terms of the Mortgage and the banking facilities granted to the Defendant from 31 March 2005 until payment;
3. Delivery by the Defendant to the Plaintiffs of vacant possession of the Property being [the whole of Lot U12345P of Mukim 25 known as 8 Happy Avenue, Singapore 111111];
4. Such further or other relief as the Court deems fit; and
5. Costs on an indemnity basis.¹⁴

If the Defendant does not enter an appearance, such judgment may be given or order made against or in relation to it as the Court may think just and expedient.

¹⁴ If provided for under the terms of the mortgage.

P4.56 Affidavit in support of originating summons

[WongPartnership LLP]

Affidavit

I, [name] (Nric No [number]) care of [address], do make oath/affirm and say as follows:

1. I am the [designation] of the Plaintiffs and am duly authorised to make this affidavit on their behalf. Except where otherwise appears, I make this Affidavit from facts within my knowledge as an [designation] of the Plaintiffs and from information obtained by investigation of the affairs, books, documents and papers of the Plaintiffs.

Facility Letter

2. By their letter dated [date] ("the Facility Letter"), the Plaintiffs offered to the Defendant banking facilities, including a Housing Loan of S\$1,000,000 ("Housing Loan"), which facility was accepted by the Defendant subject to the Plaintiffs' Standard Terms and Conditions for Housing Loan Schemes and on the terms and conditions set out in the Facility Letter.
3. The terms and conditions as set out in the Facility Letter include the following:

[Terms relating to interest rate, default interest rates, security, monthly instalment sums, payment of legal costs, and any other relevant clauses.]

A copy each of the Facility Letter with the Standard Terms and Conditions for Housing Loan Schemes is now produced and shown to me marked "TBP-1".

4. The relevant clauses of the Standard Terms and Conditions are set out below:

[Clauses relating to interest rates, events of default, payment of legal costs]

The Mortgage

5. By the Mortgage dated [date] made between the Plaintiffs and the Defendant, and registered as Instrument No. [number], the property at [No. 8 Happy Avenue Singapore 111111] ("the Property") was mortgaged to the Plaintiffs by the Defendant as security for all advances credit or banking facilities or other accommodation which the Plaintiffs made or agreed to make to the Defendant either alone or jointly with any other person. A

copy of the Mortgage is now produced and shown to me marked "TBP-2".

6. By clause [number] of the Mortgage, the Defendant covenanted to perform, observe and be bound by the terms and conditions set out in the Facility Letter and in the Memorandum of Mortgage filed in the Registry of Titles numbered [MM/100].
7. The Mortgage contains the following covenants and conditions which are material to these proceedings:

[Clauses stating that the sums of money are payable on demand, that defendant is liable for principal, interests, costs and expenses, provisions relating to default interest, and any other relevant clauses]

8. The Memorandum of Mortgage numbered MM/100 provides, *inter alia*, as follows:

[Clauses on how and where the demand should be made, how interest is calculated (e.g. capitalised interest), instances when the plaintiffs' power of sale can be exercised, the conclusive certificate clauses, and any other relevant clauses.]

A copy of the Memorandum of Mortgage is now produced and shown to me marked "TBP-3".

Demands for Payment

9. On [date], the Plaintiffs through their solicitors, Lawyers LLC, by way of a letter sent by registered post to the Defendant, demanded payment of the sum of S\$[amount] being the arrears due and owing under the Housing Loan Facility. The Defendant failed to make full payment of the amount due. A copy of the letter is now produced and shown to me marked "TBP-4".
10. On [date], the Plaintiffs through their solicitors, Lawyers LLC, then sent another letter by registered post to the Defendant, demanding payment of the sum of S\$[amount] being the amount then outstanding due to the Plaintiffs under the Housing Loan Facility. The Defendant failed to make full payment of the amount due. A copy of the letter is now produced and shown to me marked "TBP-5".
11. On [date], the Plaintiffs through their solicitors by way of a letter sent by registered post to the Defendant gave the Defendant one month's notice to deliver vacant possession of the Property to the Plaintiffs. No response was received from the Defendant. A copy

of the said letter is now produced and shown to me marked "TBP-6".

12. The Plaintiffs have also on [date] through their solicitors sent a letter to the occupiers of the Property giving notice of the Plaintiffs' intention to enter into the possession of the Property. Neither the Plaintiffs nor their solicitors have received any reply to this letter. To the best of the Plaintiffs' knowledge, the Defendant and his family occupy the Property. A copy of the said letter to the occupiers is now produced and shown to me marked "TBP-7".
13. The following sets out the amounts owing by the Defendant to the Plaintiffs as at 30 March 2005:

Housing Loan Account No. [number]

(1)	Principal Outstanding	S\$
(2)	Overdue interest	S\$
(3)	Late charges	S\$

Total S\$ _____
=====

A copy of the Plaintiffs' Statement of Account as at [date] and certified by an officer of the Plaintiffs, is now produced and shown to me marked "TBP-8".

14. As at the date of this originating summons, the number of instalments in arrears is [6] and the amount in arrears is S\$[amount]. The amount remaining due under the mortgage is S\$[amount].
15. The Plaintiffs have not, as at the date hereof, received nor, to my knowledge, information and belief has any other person by the Plaintiffs' order or to the Plaintiffs' use, received any payment of the sum due under the Housing Loan and/or Mortgage.
16. An updated statement of account setting out the amount outstanding as at the date of the hearing of these proceedings will be provided at the hearing.
17. The Plaintiffs accordingly pray for an order in terms of the application herein.

P4.57 Claim for proceeds from sale of mortgaged property

[Lee & Lee]

1. The Plaintiff is a bank incorporated in Singapore and having its registered office at [place].
2. By way of a Letter of Offer dated [date] ('the Letter of Offer'), the Plaintiff offered to grant the 1st Defendant a Line of Credit consisting of, *inter alia*, overdraft facilities, subject to certain terms and conditions. The 1st Defendant accepted the Letter of Offer on [date].
3. The Letter of Offer is also subject to the Plaintiff's Standard Terms and Conditions. Under the Standard Terms and Conditions, the 1st Defendant agreed, *inter alia*:
 - (1) to pay on demand, on a full indemnity basis, all costs and expenses, legal or otherwise, connected with the provision protection and realisation of securities, and the processing, implementation and recover of moneys owing under the facilities, together with interest from the date such costs and expenses are incurred to the date of full payment at such rate as the Plaintiff may prescribe; and
 - (2) to pay the Plaintiff additional interest at the rate of [rate]% per annum above the Plaintiff's prevailing prime rate.
4. On or about [date], the 1st Defendant executed a Mortgage ('the Mortgage') over the whole of the property known as [property] ('the Mortgaged Properties') in favour of the Plaintiff in consideration of the Plaintiff having made or agreed to make advances loans credit and other facilities and accommodation to the 1st Defendant.
5. Under [term] of the Mortgage, the 1st Defendant agreed to pay to the Plaintiff on demand all sums of money which at the date of such demand shall be owing or remain unpaid to the Plaintiff by the 1st Defendant including all usual and customary commission discount and banker's charges and also stamp duty legal costs and charges and expenses incurred by the Plaintiff in relation to the realisation or enforcement of the Mortgage, such legal costs and charges and expenses to be paid on a full indemnity basis together with interest to date of full payment.
6. On or about [date], the 2nd, 3rd and 4th Defendants executed a Continuing Guarantee ('the Guarantee') in favour of the Plaintiff in consideration of the Plaintiff agreeing at the 2nd, 3rd and 4th Defendants' request *inter alia* to grant or continue to grant advances

or loans or otherwise give credit or other banking facilities or accommodation or grant any time or indulgence to or on account of 1st Defendant.

7. Under the terms of the Guarantee, the 2nd, 3rd and 4th Defendants jointly and severally guaranteed and/or agreed, *inter alia*:
 - (1) that they would on demand in writing made on them pay to the Plaintiff or discharge on a full indemnity basis all monies and liabilities whatsoever which shall for the time being be due owing or incurred by the 1st Defendant to the Plaintiff including interest and other banking charges and all legal and other costs and expenses incurred and/or accruing due to the Plaintiff from the 1st Defendant as well after as before the date of demand or judgment up to date of payment ('the Guaranteed Obligations');
 - (2) that the 2nd, 3rd and 4th Defendants would pay the Plaintiff all legal and other costs and expenses (on a full indemnity basis) arising out of or in connection with the recovery or attempted recovery by the Plaintiff from the 1st Defendant of the moneys due to the Plaintiff as well as the recovery or attempted recovery by the Plaintiff from the 2nd, 3rd and 4th Defendants under the Guarantee or howsoever in enforcing the terms of the Guarantee;
 - (3) that the Plaintiff may at any time (without being bound to do so) resort for their own benefit to any means of payment at any time and in any order as they think fit without thereby diminishing the 2nd, 3rd and 4th Defendants' liabilities and the Plaintiff may exercise their rights under the Guarantee either for payment of the ultimate balance after resorting to other means of payment or for the balance unpaid at any time notwithstanding that other means of payment have not been resorted to and in the latter case without entitling the 2nd, 3rd and 4th Defendants to any benefit of such other means of payment so long as the Guaranteed Obligations or their other liabilities remain unpaid and the Plaintiff may also require payment by the 2nd, 3rd and 4th Defendants of any moneys unpaid to the Plaintiff without first enforcing such payment by the 1st Defendant;
 - (4) that as between the Plaintiff and the 2nd, 3rd and 4th Defendants the 2nd, 3rd and 4th Defendants shall be sole and principal debtors of all the Guaranteed Obligations; and

- (5) that any certificate by the Plaintiff's officer or any person duly authorised on the Plaintiff's behalf as to the money and liabilities for the time being due owing or incurred to the Plaintiff by or from the 1st Defendant or the 2nd, 3rd and 4th Defendants shall (save for manifest error) be conclusive evidence in any legal proceedings against 2nd, 3rd and 4th Defendants.
8. Following the sale of the Mortgaged Properties, there was due and owing from the 1st Defendant to the Plaintiff as at [date], the sum of [amount] together with interest thereon at the rate of [rate]% per annum over the Plaintiff's prevailing prime rate (which is currently [rate]% per annum) until full payment.
9. By a letter dated [date] from the Plaintiff's solicitors to the 2nd, 3rd and 4th Defendants, the Plaintiff demanded from the 2nd, 3rd and 4th Defendants payment of the said sum of [amount] and the said interest.
10. To date, the Defendants have failed, refused and/or neglected to repay the said sum of [amount] or the said interest or any part thereof.

And the Plaintiffs claim against the Defendants:

- (1) The said sum of S\$[amount];
- (2) Interest on the said sum of S\$[amount] at the rate of [rate]% per annum over the Plaintiff's prevailing prime rate [date] to date of full payment;
- (3) Costs on a indemnity basis; and
- (4) Such further or other relief as this Honourable Court may deem fit.

P4.58 Defence by mortgagor alleging non-execution of mortgage and non est factum

[WongPartnership LLP]

1. The Defendant admits that he signed the mortgage dated [date] and appended to the Affidavit in support of the Originating Summons (“the Mortgage”).
2. However, the Defendant denies that the mortgage was executed as alleged by the Plaintiff (“the Bank”) or at all.
3. The Defendant avers as follows:
 - (1) On about [date] the Defendant had several discussions with Mr. C of the Bank about the question of providing the Bank with additional security for the overdraft liabilities of the Defendant’s business, X Limited, to the Bank.
 - (2) However, the Defendant was reluctant to provide a mortgage over his matrimonial home at [address] for the overdraft liabilities of X Limited. The Bank had already taken as security a legal charge over two other properties belonging to the Defendant.
 - (3) The overdraft facilities of X Limited were due to be reviewed by the Bank, and Mr. C of the Bank indicated to the Defendant at a meeting which was held on or about [date] to discuss the renewal of facilities, that the overdraft facilities would only be renewed if further security in the form of the Mortgage was given by the Defendant.
 - (4) The Defendant wished to take advice from his lawyer before giving the additional security, but, as a sign of good faith and at the request of Mr. C, the Defendant agreed to sign the Mortgage in blank.
 - (5) It was expressly agreed between the Defendant and Mr. C that the Defendant would meet his lawyer and then telephone Mr. C within a few days to authorise him to complete the mortgage documentation and to execute it on the Defendant’s instructions. The Mortgage was to be held by the Bank and not used by them until those instructions were given.
 - (6) Mr. C agreed to this and the Defendant accordingly signed the Mortgage deed in blank.
 - (7) Contrary to the agreement set out above, Mr. C completed the Mortgage deed and executed the Mortgage on [date] without

the authority or instructions of the Defendant and before the Defendant had had an opportunity to consult his lawyer.

- (8) Further, the Bank subsequently refused to renew the overdraft facilities for X Limited.
4. For the reasons set out in the preceding paragraph, the Mortgage deed was to be held by the Bank in escrow pending the fulfilment of the conditions agreed between Mr. C and the Defendant, namely that (1) the Bank reviews X Limited's overdraft facilities and (2) that the Bank completes the Mortgage documents only in accordance with the Defendant's authority and telephone instructions. Neither of these conditions was fulfilled.
 5. Accordingly the Mortgage was never in fact executed by the Defendant.
 6. Further or in the alternative, the Defendant relies on the doctrine of non est factum in the circumstances set out above in that the details in the Mortgage deed were not completed with the authority or consent of the Defendant.
 7. The Defendant therefore denies that the Bank is entitled to rely on the Mortgage.¹⁵

15 A counterclaim for a declaration that the mortgage is void and for delivery up of the mortgage and its cancellation may be inserted here; see the precedent below: Defence by mortgagor alleging undue influence (*O'Brien* defence as decided in the case of *Barclays Bank plc v O'Brien* [1994] 1 AC 180, [1993] QB 109).

P4.59 Defence by mortgagor denying debts due

[WongPartnership LLP]

1. The Defendant admits that he signed the mortgage dated [date] and appended to the Affidavit in support of the Originating Summons (“the Mortgage”).
2. However, the Defendant denies that the sums alleged by the Plaintiff (“the Bank”) to be due under the Mortgage are due as alleged in the Particulars of Claim or at all. The Defendant avers that he has repaid the sums due under the Mortgage.
3. The Mortgage was executed to secure the overdraft liabilities of X Limited to the Bank on [account number].
4. On [date], the Defendant sold one of his properties, namely the property at [address]. The net sale proceeds amounted to S\$[amount].
5. On or about [date] the Defendant transferred the net sale proceeds of S\$[amount] into the overdraft account of X Limited, [account number], in order to repay the overdraft liabilities thereby extinguishing the debt due and owing in respect of [account number].
6. The Defendant asked Mr. C, his branch manager at the Bank, to release the security in relation to the property at [address] and Mr. C on behalf of the Bank, agreed that the Mortgage would be cancelled as the overdraft liability had been paid in full.
7. However, the Bank has subsequently wrongfully refused to discharge the Mortgage.
8. For the reasons set out above, the Defendant denies that there are any debts due under the Mortgage.¹⁶

¹⁶ The pleader may wish to repeat the defence in a counterclaim, with a claim in the prayer for delivery up and cancellation of the mortgage deed. See in this respect the precedent below: Defence by mortgagor alleging undue influence (*O’Brien* defence).

P4.60 Defence by mortgagor alleging undue influence

[WongPartnership LLP]

1. The 2nd Defendant is the wife of the 1st Defendant, Mr. A, the sole director of and shareholder in a company, B Limited (“the Company”). The 1st Defendant was a customer of the [name of branch] branch of C Bank Limited, as was the Company.
2. It is admitted that on or about [date], the 2nd Defendant signed a document purporting to be an all monies legal mortgage, whereby the 2nd Defendant and the 1st Defendant jointly mortgaged the matrimonial home to the Plaintiff, C Bank (“the Mortgage”).
3. The purported execution of the Mortgage was procured by the undue influence of the 1st Defendant over the 2nd Defendant.

Particulars of Undue Influence

- (1) On or about [date], the 1st Defendant returned to the matrimonial home bearing the unexecuted Mortgage.
 - (2) The 1st Defendant told the 2nd Defendant that if she did not sign the Mortgage, the Plaintiff, the Company’s largest creditor, would call in its debt.
 - (3) The 1st Defendant also told the 2nd Defendant that he had personally guaranteed the debts of the Company and would be rendered bankrupt if that guarantee were called upon, and that the likely consequence would be that the matrimonial home would be repossessed.
 - (4) The 1st Defendant said that if any of those things occurred, he would leave the 2nd Defendant and return to his native China taking with him their three young children.
 - (5) As a result, the 2nd Defendant signed the Mortgage (her signature, and that of the 1st Defendant, being witnessed by a friend of the 1st Defendant, a Mr Z). At no time was she given the opportunity to take independent legal advice nor was the nature or effect of the transaction explained to her.
4. The Plaintiff had constructive notice of the undue influence exercised by the 1st Defendant over the 2nd Defendant.

Particulars of Constructive Notice

- (1) The relationship between the 2nd Defendant and the 1st Defendant and/or between the 2nd Defendant and the Company was not commercial in nature. Further, the 2nd Defendant was the wife of the sole director and shareholder

of the Company for whom the benefit of the mortgage was granted.

- (2) The Plaintiff failed to take any, or any adequate, steps to bring home to the 2nd Defendant the risk she was running by mortgaging her share of the matrimonial home to secure the debts of the Company, and/or the nature and effect of the transaction.
- (3) As a consequence of the facts and matters set out above, the Plaintiff had constructive notice of the exercise of undue influence by the 1st Defendant over the 2nd Defendant.
5. The Plaintiff had failed to discharge the constructive notice. In particular, but without prejudice to the generality of the above, the Plaintiff failed to satisfy itself that the 2nd Defendant had received independent legal advice before executing the Mortgage.
6. By a letter dated [date], the 2nd Defendant rescinded the Mortgage; alternatively does so by service of this Defence.
7. The 2nd Defendant repeats paragraphs 1–6 above by way of counterclaim.

AND the second Defendant counterclaims:

- (1) A declaration that the Mortgage has been rescinded/set aside as having been procured by the undue influence of the 1st Defendant, and that the Plaintiff had constructive notice of the undue influence.
- (2) An order that the Plaintiff do deliver up the Mortgage to be cancelled forthwith.

P4.61 Defence that bond has been discharged by agreement or material alteration

[WongPartnership LLP]

1. It is admitted that the Defendant executed the bond alleged at paragraphs [numbers] of the Statement of Claim (“the Bond”).
2. The cause of action alleged at paragraphs [numbers] of the Statement of Claim was released by deed made between the Plaintiff and the Defendant dated [date]. The material terms of the deed are as follows: [Material terms of the deed].
3. The Defendant will refer to the deed for its full purport and effect at the trial of the Suit herein.
4. Further or in the alternative, after the Bond was executed and whilst it was in the possession of the Plaintiff, it was materially altered without the consent or knowledge of the Defendant.

Particulars

[Particulars]

5. Accordingly, the Defendant avers that the Bond is no longer binding on him.

CHAPTER 5

CARRIAGE BY AIR

PRECEDENTS

- P5.01** Claim by passenger for personal injuries caused as a result of an accident during carriage by air
- P5.02** Claim by personal representative for death of aircraft passenger
- P5.03** Claim by passenger for lost or damaged baggage during carriage by air
- P5.04** Claim by cargo owner for damages for loss of, or damage to, cargo
- P5.05** Claim by cargo owner for damage to cargo caused by delay
- P5.06** Claim for payment for hire of aircraft and crew
- P5.07** Claim for payment of charges for carriage of goods by air
- P5.08** Defence to claim for personal injuries during carriage by air
- P5.09** Defence of all 'necessary measures' to claim for damages for injury to passenger pursuant to the Warsaw Convention/Amended Convention/Montreal Protocol 4 Convention
- P5.10** Defence to claim for loss and/or damage to cargo
- P5.11** Defence pleading limit of liability for damage to cargo
- P5.12** Defence that claim is time barred
- P5.13** Defence by carrier's servant/agent pleading entitlement to rely on the limitation of liability under the Amended Convention/Montreal Convention
- P5.14** Defence alleging contributory negligence

CHAPTER 5

CARRIAGE BY AIR

PRECEDENTS

P5.01 Claim by passenger for personal injuries caused as a result of an accident during carriage by air

[Rodyk & Davidson LLP]

1. The Plaintiff was born on [date]. The Defendants are and were at all material times carrying on business as an international carrier by air.
2. By a contract between the Plaintiff and the Defendants, the Defendants agreed to carry the Plaintiff by air from Singapore to London Heathrow ("the Contract"). The Contract was contained in or evidenced by a ticket with reference number [number].
3. The said carriage of the Plaintiff was "international carriage" within the meaning of Article 1 of the Montreal Convention ("the Convention"), as set out in Schedule 1 to the Carriage by Air (Montreal Convention, 1999) Act (Cap 32B) and which is given force of law pursuant to Section 3 thereof. [Amend accordingly for a claim under the Warsaw Convention]
4. At about [time] on [date], when the aircraft was in flight, it met with clear air turbulence which caused massive upheaval in the passenger cabin. In particular, the Plaintiff was thrown upwards, hitting his head on the ceiling of the cabin.
5. As a result of the matters aforesaid, the Plaintiff suffered personal injury, loss and damage.

Particulars of Injury

The Plaintiff at the time of the accident was [number] years old. As a result of the accident on [date] he suffered from the following physical injuries:

[Particulars of the injuries, including pain and suffering and prognosis]

A medical report of [name and specialty] dated [date] which has been disclosed to the Defendants by way of a letter dated [date] is annexed hereto as "Schedule A".

6. In the premises, the Plaintiff has suffered loss and damage which is particularised as follows:

[Particulars of loss and damage]

7. By reason of Article 17 of the Convention the Defendants are liable to the Plaintiff for the Plaintiff's said loss and damage.

AND the Plaintiff claims:

- (1) Damages to be assessed;
- (2) Interest thereon pursuant to Section 12 of the Civil Law Act (Cap 43);
- (3) Costs; and
- (4) Such further or other relief as the Court may deem fit.

P5.02 Claim by personal representative for death of aircraft passenger

[Rodyk & Davidson LLP]

1. The Plaintiff is the widow and administratrix of the estate of AB deceased and brings this claim for the benefit of the estate of the said AB deceased under the provisions of the Civil Law Act (Cap 43). Letters of Administration were granted to the Plaintiff on [date] and the grant was extracted on [date].
2. The Defendants are and were at all material times carrying on business as an international carrier by air.
3. By a contract between the deceased and the Defendants, the Defendants agreed to carry the deceased by air from Singapore to London Heathrow. The contract was contained in or evidenced by a ticket with reference number [number].
4. The said carriage of the Defendants was “international carriage” within the meaning of Article 1 of the Montreal Convention, as set out in Schedule 1 to the Carriage by Air (Montreal Convention, 1999) Act (Cap 32A) and which is given force of law by Section 3 thereof. [Amend accordingly for a claim under the applicable Warsaw Convention]
5. At about [time] on [date] the aircraft crashed. The deceased died as a result of the crash.
6. By reason of the matters aforesaid, the Plaintiff and the dependants of the Plaintiff have suffered damage in that they have been deprived of the pecuniary and other benefits which they would have received had the deceased continued to live, the particulars of which are pleaded as follows:

Particulars

- (1) Loss of financial support: [Details of the deceased’s age, and earnings. State level of financial support deceased provided to Plaintiff and dependants]
- (2) Special Damage: [Any funeral expenses, medical expenses, other special damages]
7. By reason of Article 17 of the Convention the Defendants are liable to the Plaintiff for the Plaintiff’s said loss and damage.
8. Further, the limits of liability specified in Article 21(2) of the Convention do not apply to limit the liability of the Defendants since the death resulted from the negligence or other wrongful

act or omission of the carrier or its servants or agents. [Or if the Amended Warsaw Convention is applicable: the acts of one or more servants or agents of the Defendants, each acting within the scope of his employment done with intent to cause damage and/or recklessly, with knowledge that damage would probably result] [or with wilful misconduct or such default on his part if the Unamended Warsaw Convention applies] within the meaning of Article 25 of the Convention.

Particulars

[To particularise instances of alleged negligence or wrongful act or omission of the carrier or its servants or agents or of third parties]

AND the Plaintiff claims:

- (1) Damages under Section 20 of the Civil Law Act (Cap 43);
- (2) Damages for pain, suffering and loss of amenities;
- (3) Damages for bereavement under Section 21 of the Civil Law Act (Cap 43);
- (4) Special damages as aforesaid;
- (5) Interest thereon pursuant to Section 12 of the Civil Law Act (Cap 43);
- (6) Costs; and
- (7) Such further or other relief as the Court may deem fit.

P5.03 Claim by passenger for lost or damaged baggage during carriage by air

[Rodyk & Davidson LLP]

- 1 The Defendants are and were at all material times carrying on business as an international carrier by air.
- 2 By a contract between the Plaintiff and the Defendants, the Defendants agreed to carry the Plaintiff by air from Singapore to London Heathrow. The contract was contained in or evidenced by a ticket with reference number [number].
3. The said carriage of the Plaintiff was “international carriage” within the meaning of Article 1 of the Montreal Convention (“the Convention”), as set out in Schedule 1 to the Carriage by Air (Montreal Convention, 1999) Act (Cap 32B) which has force of law according to Section 3 thereof. [Amend accordingly for a claim under the Amended Warsaw Convention or the Unamended Warsaw Convention].
4. On [date] at the Singapore airport, the Plaintiff checked in as registered baggage for his flight with the Defendants, two suitcases. The Defendants accepted the suitcases and took charge of them.
5. On arrival at London Heathrow, the Plaintiff observed that one of his suitcases had failed to arrive, and subsequently disappeared, whilst the other had been torn and that several items were also missing from it.
6. By a letter dated [date], the Plaintiff gave the Defendants notice of the loss of one of his suitcases and the damage to, and loss of some of the contents of, the other.
7. By reason of Article 17 of the Convention the Defendants are liable to the Plaintiff for the Plaintiff’s said loss and damage to his baggage.
8. The Plaintiff will rely on Article 22 of the Convention to contend that with regard to the loss of his suitcase the Defendants are not entitled to rely on the limits of liability imposed by the Convention since the loss resulted from one or more servants or agents of the Defendants, each acting within the scope of his employment done with intent to cause damage and/or recklessly, with knowledge that damage would probably result [or with wilful misconduct or such default on his part if the Unamended Warsaw Convention applies] within the meaning of Article 22 of the Convention. In particular, the Plaintiff will contend that:

- (1) The fact that the suitcase could not be located subsequently leads to the inference that it was stolen;
- (2) The loss of his suitcase whilst in the charge of the Defendants leads to the inference that the suitcase was stolen by a servant or agent of the Defendants who was entrusted with the care of the suitcase.

Particulars

[Full particulars of the facts and matters in support of there being a theft; or conduct which amounts to an act or omission done with the intent to cause damage, or recklessly and with knowledge that damage would probably result]

AND the Plaintiff claims:

- (1) Damages;
- (2) Interest thereon pursuant to Section 12 of the Civil Law Act (Cap 43);
- (3) Costs; and
- (4) Such further or other relief as the Court may deem fit.

P5.04 Claim by cargo owner for damages for loss of, or damage to, cargo

[Rodyk & Davidson LLP]

1. The 1st Defendants are and were at all material times carrying on business as an international carrier by air. The 2nd Defendants are and were at all material times providing ground handling services at Yangon International Airport.
2. By a contract of carriage by air (“the Agreement”) made between the Plaintiff and the 1st Defendants contained in and/or evidenced by the Defendants’ Air Waybill No [number] dated [date] in which the Plaintiff was named as consignor and AB was named as consignee, the 1st Defendants agreed to carry a consignment comprising 3 boxes of silver jewellery for reward (“the Consignment”) by air from Yangon to Singapore.
3. The Consignment comprised items of silver jewellery which are listed more fully below:

[Items of consignment]

4. The said carriage by air was international carriage within the meaning of the Warsaw Convention as amended by the Hague Protocol in 1995 and given force of law by Section 3 of the Carriage by Air Act (Cap 32A) (“the Convention”). [Amend accordingly for a claim under the Unamended Warsaw Convention]
5. At all material times the Plaintiff was the owner of the Consignment.
6. On or about [date] the Consignment was delivered to the Defendants at Yangon International airport, thereby into the charge of the 1st Defendants as carrier within the meaning of Article 18 of the Convention.
7. During the carriage by air the Consignment was lost within the meaning of Article 18 of the Convention.
8. Pursuant to Article 18 of the Convention the 1st Defendants are liable for the damage caused as a result of the loss of the Consignment.
9. The 2nd Defendants were under a duty to the Plaintiff as bailees for reward and in breach of their duty of bailment failed to take reasonable care to deliver the Consignment in the same order and condition to the consignee.
10. The Plaintiff further, on the doctrine of *res ipsa loquitur*, avers that the loss of the Consignment is sufficient evidence of negligence and/or breach of duty on the part of the 2nd Defendants.

11. In the premises, the 2nd Defendants are liable for the loss and damage caused by their breach of duty.
12. Further, the limits of liability specified in Article 22(2) of the Convention do not apply to limit the liability of both the 1st and 2nd Defendants since the loss of the Consignment resulted from one or more servants or agents of the 1st Defendants and/or 2nd Defendants, each acting within the scope of his employment done with intent to cause damage and/or recklessly, with knowledge that damage would probably result [or with wilful misconduct or such default on his part if the Unamended Warsaw Convention applies] within the meaning of Article 25 of the Convention. Particulars of the said loss and damages are as follows:

Particulars

[Particulars of conduct done with intent to cause damage]

13. By reason of the loss of the Consignment the Plaintiff suffered loss and damage in the amount of the market value as set out below:

Particulars

[Particulars of loss and damage]

AND the Plaintiff claims:

- (1) Damages;
- (2) Interest thereon pursuant to Section 12 of the Civil Law Act (Cap 43);
- (3) Costs; and
- (4) Such further or other relief as the Court may deem fit.

P5.05 Claim by cargo owner for damage to cargo caused by delay

[Rodyk & Davidson LLP]

1. By a contract of carriage by air ("the Agreement") made between the Plaintiff and the Defendants contained in and/or evidenced by the Defendants' Air Waybill No [number] dated [date] in which the Plaintiff was named as consignor and AB was named as consignee, the Defendants agree to carry a consignment comprising 3 cartons of strawberries listed below ("the Consignment") by air from New Zealand to Singapore for reward. The air waybill was marked with an endorsement that the Consignment would be delivered on [date].
2. The Consignment comprised fresh strawberries which are listed below more fully:

[Further particulars of consignment]
3. The said carriage by air was international carriage within the meaning of the Montreal Convention and given force of law by Section 3 of the Carriage by Air (Montreal Convention, 1999) Act (Cap 32B) ("the Convention"). [Amend accordingly for a claim under the Amended Warsaw Convention or the Unamended Warsaw Convention]
4. At all material times the Plaintiff was the owner of the consignment.
5. On or about [date], the Consignment was delivered to the Defendants at New Zealand airport. The Consignment was due to arrive in Singapore the following day, on [date]. In fact the Consignment did not arrive in Singapore until one week after the expected date of arrival.
6. As a result of the delayed arrival the Consignment suffered damage in that some of the strawberries had rotted and were no longer marketable and were unfit for consumption. Accordingly the Consignment had suffered damage as a result of the delay in the carriage by air.
7. By reason of Article 19 of the Convention the Defendants are liable for the damage caused as a result of the delay.
8. By reason of the loss of the Consignment the Plaintiff suffered loss and damage in the amount of the market value as set out above in paragraph 2 above.

AND the Plaintiff claims:

- (1) Damages;
- (2) Interest thereon pursuant to Section 12 of the Civil Law Act (Cap 43);
- (3) Costs; and
- (4) Such further or other relief as the Court may deem fit.

P5.06 Claim for payment for hire of aircraft and crew

[Rodyk & Davidson LLP]

1. By an Agreement in writing dated [date] between the Plaintiffs and the Defendants, the Plaintiffs agreed to lease to the Defendants, a Boeing 737 aircraft ("the Aircraft") with crew for a period of 60 days. The said Agreement provided, *inter alia*, as follows:

[Material terms of Agreement]

The Plaintiffs will refer to and rely on the said Agreement at the trial or other hearing of this matter for its full terms and effect.

2. Pursuant to clause [number] of the said Agreement, the Plaintiffs provided to the Defendants, the Aircraft with crew for its use. The Defendants operated the Aircraft for [number] days from [date] to [date].
3. By clause 17 of the said Agreement, the Defendants were liable to pay within 5 days of [date] to the Plaintiffs the sum of [amount] for its use of the Aircraft.
4. Wrongly, and in breach of the said clause 17, the Defendants have failed to pay to the Plaintiffs the said sum of [amount] or any sum thereof.
5. Further, by reason of clause 20 of the said Agreement, the Defendants are liable to pay to the Plaintiffs, interest at the rate of [contractual rate; and interest payable at contractual rate].
6. Further or alternatively, the Plaintiffs claim interest pursuant to Section 12 of the Civil Law Act (Cap 43) at the rate of 5.33 per cent on the sum of [amount] from [date] until the date of judgment or at such rate and for such period as the Court considers just which as at the date hereof amounts to [amount] and which continues at the daily rate of [amount].

AND the Plaintiffs claim:

- (1) The sum of [amount], or alternatively damages;
- (2) Interest thereon pursuant to the said agreement amounting to [amount] and continuing at a daily rate of [amount];
- (3) Further or alternatively, interest thereon pursuant to Section 12 of the Civil Law Act (Cap 43);
- (4) Costs; and
- (5) Such further or other relief as the Court may deem fit.

P5.07 Claim for payment of charges for carriage of goods by air

[Rodyk & Davidson LLP]

1. By an agreement in writing dated [date] between the Plaintiffs and the Defendants (“the Agreement”), the Plaintiffs agreed for reward to carry a consignment of memory chips from Tokyo to Singapore (“the Consignment”). The Agreement provided, *inter alia*, as follows:

[Material terms of Agreement]

The Plaintiffs will refer to and rely on the Agreement at the trial or other hearing of this matter for its full terms and effect.

2. By clause 10 of the Agreement, the Defendants agreed to pay to the Plaintiffs the sum of US\$[amount] per kilogramme carried by air. The Consignment weighed 30 kilogrammes. Accordingly, the Defendants were due to pay to the Plaintiffs, the sum of [amount] as payment for carriage of the said goods by air.
3. Clause 15 of the Agreement provided that the Defendants were to pay to the Plaintiffs the said sum prior to the arrival of the Consignment in Singapore.
4. Pursuant to the Agreement, the Plaintiffs carried the Consignment by air from Tokyo to Singapore on or about [date on which carriage commenced].
5. In breach of the terms of the Agreement, the Defendants have failed to pay to the Plaintiffs the said sum of [amount] or any sum thereof.

AND the Plaintiffs claim:

- (1) Payment of the sum of [amount], or alternatively damages;
- (2) Interest pursuant to Section 12 of the Civil Law Act (Cap 43);
- (3) Costs; and
- (4) Such further or other relief as the Court may deem fit.

P5.08 Defence to claim for personal injuries during carriage by air

[Allen & Gledhill LLP and Rodyk & Davidson LLP]

1. Paragraphs [numbers] of the Statement of Claim are admitted.¹
2. The Defendants deny that the Plaintiff has sustained the injuries, loss or damage as alleged in paragraph [number] of the Statement of Claim and put the Plaintiff to strict proof of the injuries, loss or damage alleged and causation thereof.
3. Save that the aircraft experienced some turbulence approximately 20 minutes into the flight, paragraph [number] of the Statement of Claim is denied. In particular it is denied that the aircraft plummeted sharply as alleged or at all or that the Plaintiff was thrown onto the floor.
4. Further or alternatively, if, which is denied, the Plaintiff suffered any injuries as alleged or any injury at all, such injury was caused wholly or contributed to by the negligence of the Plaintiff.

Particulars

[Particulars relied on, to indicate Plaintiff's negligence in full, e.g.]

- (1) Warnings of the turbulence had been given from the moment the aircraft took off and all passengers were repeatedly reminded to return to their seats and to fasten their seatbelts.
- (2) Despite these clear and repeated warnings, the Plaintiff insisted on walking along the aisles and refused to return to his seat.
5. In the premises and by virtue of Article 20 of the Montreal Convention, the Defendants are entitled to be exonerated in whole or in part from their liability (if any, which is denied) to the Plaintiff.
6. Further or alternatively, if, which is denied, the Plaintiff suffered any injury, loss or damage as alleged or at all, the Defendants are entitled to limit their liability to 113,100 Special Drawing Rights (SDR) by virtue of Article 21(1) of the Montreal Convention.
7. Save as hereinbefore specifically admitted or not admitted, the Defendants deny each and every allegation contained in the Statement of Claim as if the same were herein set out and separately traversed.

¹ Details about carriage.

P5.09 Defence of all ‘necessary measures’ to claim for damages for injury to passenger pursuant to the Warsaw Convention/Amended Convention/Montreal Protocol 4 Convention

[Rodyk & Davidson LLP]

1. Save that the Defendants admit that they carried the Plaintiff from Singapore to [destination country], and that the carriage was “international carriage” within the meaning of Article 1 of the [Unamended Convention/Amended Convention/Montreal Protocol 4 Convention], paragraph(s) [number(s)] of the Statement of Claim is/are denied.
2. Save that the Defendants admit that an accident occurred within the meaning of Article 17 of the [Unamended Convention/Amended Convention/Montreal Protocol 4 Convention], the Defendants contends that [relevant details concerning the incident which is the subject of the claim].
3. The Defendants aver that they are entitled to rely on Article 20 of the Warsaw (Hague) (Montreal) Convention in that the Defendants and their servants and agents have taken all necessary measures to avoid any damage to the Plaintiff or that it was impossible for them to take such measures.

Particulars

[Relevant details]

4. By reason of Article 20 of the [Unamended Convention/Amended Convention/Montreal Protocol 4 Convention], it is denied that the Defendants are liable to the Plaintiff for the alleged damage.
5. The Defendants deny paragraphs [relevant paragraphs] and put the Plaintiff to strict proof of the injuries, loss or damage alleged and causation thereof.

P5.10 Defence to claim for loss and/or damage to cargo

[Allen & Gledhill LLP and Rodyk & Davidson LLP]

1. [Details of carriage and events]
2. Save that the Defendants received the Cargo for shipment on [date], paragraph [number] of the Statement of Claim is not admitted. In particular the Defendants make no admission as to the condition of the Cargo or as to the contents therein when it was received.
3. Save that the carriage of the Cargo was subject to the provisions of the Montreal Convention, which the Defendants will refer to, paragraph [number] of the Statement of Claim is admitted.
4. The Plaintiffs did not at the time when the Cargo was handed over to the Defendants, make a special declaration of interest in delivery at destination and have not paid a supplementary sum in furtherance thereto.
5. Paragraph [number] of the Statement of Claim is denied. The Defendants aver that the loss of, or damage to, the Cargo resulted from one or more of the following factors, namely that there was inherent defect, quality or vice of the Cargo, and the defective packing of the Cargo was performed by a person other than the Defendants or their servant or agents.

Particulars

[Full details of the facts, matters and circumstances relied on]

6. In the premises and by virtue of Article 18(2) of the Montreal Convention, it is denied that the Defendants are liable for the alleged or any loss or damage suffered by the Plaintiffs.
7. Alternatively, if, which is denied, the Plaintiffs suffered any loss and damage as alleged, the Defendants are entitled to limit their liability to [set out limit as stated in the applicable Convention] by virtue of Article 22(3) of the Montreal Convention. The declared weight of the Cargo was [number] kilogrammes. Accordingly, the Defendants' liability is limited to \$[amount].
8. Save as hereinbefore specifically admitted or not admitted, the Defendants deny each and every allegation contained in the Statement of Claim as if the same were herein set out and separately traversed.

P5.11 Defence pleading limit of liability for damage to cargo

[Rodyk & Davidson LLP]

1. [Details about carriage and events]
2. The Plaintiff did not at the time when the package was handed over to the Defendants, make a special declaration of interest in delivery at destination and has not paid a supplementary sum in furtherance thereto.
3. By reason of [Article 22(2) of the Unamended Convention/Article 22(a) of the Amended Convention], the Defendants are entitled to limit their liability to S\$49.58 per kilogramme of the package. The declared weight of the Plaintiff's cargo was [number] kilogrammes. Accordingly, the Defendants' liability is limited to [amount].
4. [Alternatively] By reason of Article 22(3) of the Montreal Convention, the Defendants are entitled to limit their liability to 19 Special Drawing Rights per kilogramme of the package. The declared weight of the Plaintiff's cargo was [number] kilogrammes. Accordingly, the Defendants' liability is limited to [amount] SDRs.

P5.12 Defence that claim is time barred

[Rodyk & Davidson LLP]

1. [Details of carriage]
2. The date of arrival at destination/date at which the aircraft ought to have arrived/dates on which the carriage stopped, in accordance with Article 29(1) of the [Unamended/Amended/Montreal Protocol 4 Convention] [or Article 35 of the Montreal Convention] was [date]. This action was commenced on [date] which was more than two years after the date of arrival at destination.
3. By reason of Article 29(1) of the [Convention][or Article 35 of the Montreal Convention], the Plaintiff's claim was extinguished on [date]. The Plaintiff is thus unable to commence or maintain this action.

P5.13 Defence by carrier’s servant/agent pleading entitlement to rely on the limitation of liability under the Amended Convention/ Montreal Convention

[Rodyk & Davidson LLP]

1. [Details about carriage and events]
2. Further and in any event the Defendant avers that, by virtue of Article 25A of the Amended Convention [or Article 30 of the Montreal Convention], as the servant or agent of the carrier, it is entitled to rely on the limitation of liability under Article 22(2) of the Convention and limit its liability to [amount].

Particulars

[Details supporting servant/agent relationship with carrier]

P5.14 Defence alleging contributory negligence

[Rodyk & Davidson LLP]

1. [Details about carriage and events]
2. The Defendants plead that the damage which the Plaintiff has allegedly sustained was caused wholly or contributed to by the negligence of the Plaintiff.

Particulars

[Relevant details of contributory negligence]

3. By reason of Article 21 of the [Unamended Convention/Amended Convention/Montreal Protocol 4 Convention/or Article 20 of the Montreal Convention] the Defendants are entitled to be exonerated wholly or in part from their liability to the Plaintiff.

CHAPTER 6

CARRIAGE BY LAND

PRECEDENTS

- P6.01** Claim against carrier for damage to goods carried by road
- P6.02** Claim against carrier for damage to goods caused by delay in carriage by road
- P6.03** Claim for charges for carriage by rail
- P6.04** Claim by carrier for freight/carriage charges and expenses incurred in carriage by road
- P6.05** Claim by carrier against consignor for delivering dangerous goods carried by road
- P6.06** Claim against carrier for loss of goods carried by road
- P6.07** Claim against carrier for short delivery/misdelivery of goods carried by road
- P6.08** Claim against carrier by unpaid seller for failure to stop goods in transit/to comply with directions for carriage by road
- P6.09** Claim against carrier by passenger for personal injuries during domestic carriage by road
- P6.10** Claim by passenger for personal injuries during international carriage by road
- P6.11** Claim against carrier by passenger for damage to luggage during carriage by road
- P6.12** Claim against carrier for delay in carrying a passenger by road
- P6.13** Claim against XY Railway Administration for loss of goods carried at their risk
- P6.14** Claim against XY Railway Administration for delay to goods carried at owner's risk
- P6.15** Claim against XY Railway Administration for damage to goods
- P6.16** Defence to claim for damage to goods carried by road
- P6.17** Defence to claim for damage to goods caused by delay in carriage by road
- P6.18** Defence and counterclaim concerning claim for charges for carriage by rail
- P6.19** Reply to claim for damage to goods caused by delay in delivery of goods carried by road
- P6.20** Reply and defence to counterclaim concerning claim for charges for carriage by rail

- P6.21** Defence denying goods were carried for the plaintiff by road or rail
- P6.22** Defence by carrier denying receipt of goods on terms alleged for carriage by road or rail
- P6.23** Defence by carrier denying damage to goods during carriage by road or rail
- P6.24** Defence by carrier alleging damage or loss occasioned without fault on his part during carriage by road or rail
- P6.25** Defence by carrier alleging damage or loss occasioned through defective packing
- P6.26** Defence by carrier alleging delivery within reasonable time
- P6.27** Defence by carrier denying contract to deliver for particular market
- P6.28** Defence denying defendants acted otherwise than as a freight forwarding agent
- P6.29** Defence and limitation of liability by a Railway Administration alleging loss/destruction/deterioration of the goods was brought about by the plaintiff's false account with respect to the plaintiff's description of the goods – s 45 of the Railways Act (Cap 263)
- P6.30** Defence alleging that the defendants were not the carrier in respect of a claim against them for loss or damage to goods during carriage by road or rail
- P6.31** Defence to claim for loss or damage to goods by rail — s 36 of the Railways Act (Cap 263)
- P6.32** Defence denying negligence (allegedly resulting in personal injury) on the part of the defendants during carriage by road or rail
- P6.33** Defence by carrier alleging loss of luggage occasioned by conduct of passenger
- P6.34** Limitation of liability by a Railway Administration alleging items lost in luggage were 'Articles of Special Value' within the meaning of s 40 read with the Schedule to the Railways Act (Cap 263)
- P6.35** Limitation of liability by a train operator of the mass rapid transit rail network in relation to damage to items carried by a passenger

CHAPTER 6

CARRIAGE BY LAND

PRECEDENTS

P6.01 Claim against carrier for damage to goods carried by road

[Allen & Gledhill LLP]

1. The Defendants are and were at all material times engaged in the business of road hauliers.
2. By an agreement in writing dated [date], contained in and/or evidenced by a booking note in the Plaintiffs' standard form duly completed and signed by the Defendants, the Defendants agreed with the Plaintiffs to safely and securely carry a consignment of [goods] ('the Goods') by road from the Plaintiffs' warehouse at [location] to the Plaintiffs' warehouse at [location] and to deliver the Goods there in the same good order and condition.
3. On or about [date] the Defendants received the Goods at the Plaintiffs' warehouse at [location] in good order and condition for carriage and delivery at the Plaintiffs' warehouse at [location] in the same good order and condition.
4. In the premises, the Defendants were under a duty as bailee and/or carrier for reward of the Goods and/or it was the Defendants' duty to take reasonable care of the Goods and to deliver them safely and within a reasonable time at their destination in the same good order and condition in which they were in when the Defendants took delivery of them.
5. Further and/or in the alternative, it was a term of the contract and/or such term to be implied by law that the Defendants would use reasonable care and skill in and about the loading, handling, stowage, carriage, custody, keeping, caring for, unloading, discharge and delivery of the Goods.
6. In breach of contract and/or duty and/or due to the negligence of the Defendants, the Defendants failed to deliver the Goods safely and/or in the same good order and condition when received but delivered the Goods damaged in that parts were broken and/or crushed and/or in a damaged and deteriorated condition [giving further particulars of damage if available].

Particulars of breach of contract and/or duty and/or negligence

[Specify particulars]

7. Alternatively, the Plaintiffs will rely upon the fact that the Goods were delivered damaged as evidence of the Defendants' negligence.
8. By reason of the foregoing, the Plaintiffs have suffered loss and damage.

Particulars

[Nature and extent of the loss and damage claimed]

And the Plaintiffs claim:

- (1) S\$_____ or alternatively damages;
- (2) Interest; and
- (3) Costs.

P6.02 Claim against carrier for damage to goods caused by delay in carriage by road

[Allen & Gledhill LLP]

1. By a contract in writing entered into on or about [date] between the Plaintiffs and the Defendants, the Defendants agreed with the Plaintiffs to carry [number] metric tonnes of fresh cut roses ('the Goods') from [location] to [location] and to deliver the Goods there within a reasonable time [identify the relevant provision] [or it was an implied term of the contract, to give the contract reasonable business efficacy and/or implied by law that the Defendants would deliver the Goods within a reasonable time].
2. The Plaintiffs delivered the Goods to the Defendants in good order and condition at [location] at 6.00 a.m. on [date].
3. In the premises, the Defendants were under a duty as bailees and/or carriers for reward of the Goods and/or it was their duty to take reasonable care of the Goods and to deliver them safely and in the same good order and condition as when received within a reasonable time at their destination.
4. In breach of contract and/or duty and/or due to the negligence of the Defendants, the Defendants failed to deliver the Goods at [location] until 5.00 p.m. on [date] (more than 24 hours later) whereas the reasonable time for the carriage from [location] to [location] was between 2 and 3 hours only. A reasonable time for the delivery of the goods expired on [time and date].
5. By reason of the foregoing, the Goods had deteriorated in quality and could no longer be sold as fresh cut roses and the entire consignment had to be destroyed.
6. In the premises, the Plaintiffs have suffered loss and damage.

Particulars

[Nature and extent of the loss and damage claimed, e.g.]

Value of [number] metric tonnes of fresh cut roses S\$_____

Disposal costs S\$_____

And the Plaintiffs claim:

- (1) S\$_____ ; or
- (2) Alternatively damages;
- (3) Interest; and
- (4) Costs.

P6.03 Claim for charges for carriage by rail

[Allen & Gledhill LLP]

1. By an agreement in writing evidenced by a quotation from the Plaintiffs to the Defendants dated [date] which acceptance was communicated by the Defendants to the Plaintiffs in writing on [date] ('the Agreement') and/or at the request of the Defendants, the Plaintiffs agreed to carry the Defendants' [description of the goods] ('the Goods') for the Defendants by rail from Singapore to Kuala Lumpur at the rate of S\$_____ per kg.
2. Pursuant to the Agreement and/or request, the Plaintiffs duly carried for the Defendants the Goods from Singapore to Kuala Lumpur and delivered the same safely to the Defendants.
3. In the premises the sum of S\$_____ is now due and owing from the Defendants to the Plaintiffs for the said carriage.

Particulars

[Details of the nature of charges and expenses incurred]

4. Notwithstanding demands for the same, the Defendants have failed to pay the said sum due or any part thereof.

And the Plaintiffs claim:

- (1) S\$_____; or alternatively damages;
- (2) Interest; and
- (3) Costs.

P6.04 Claim by carrier for freight/carriage charges and expenses incurred in carriage by road

[Rodyk & Davidson LLP]

1. By an agreement in writing dated ____20____ or evidenced by a consignment note signed by the Defendants, the Plaintiffs agreed with the Defendants to carry 150 cases of gin ("the goods") from Yio Chu Kang to Marine Parade at a total cost of \$5,000.
2. It was a term of the agreement implied therein by operation of law and/or to give reasonable business efficacy thereto that the Defendants would take delivery of the goods and pay to the Plaintiffs the cost of the carriage within a reasonable time after the arrival of the goods at Marine Parade.
3. The Plaintiffs carried the goods to Marine Parade where they arrived on ____, 20____. By a letter dated ____20____, the Plaintiffs gave the Defendants notice of their arrival.
4. In the premises, freight in the sum of \$5,000 became due from the Defendants. In breach of contract, the Defendants have failed to pay the same to the Plaintiffs.
5. Further, and in breach of the contract the Defendants failed to take delivery of the goods from the Plaintiffs within a reasonable time after their arrival at Marine Parade. As bailees of the goods for the Defendants, the Plaintiffs have reasonably and properly incurred expenses in storing and preserving the goods which the Plaintiffs are entitled to recover from the Defendants.

Particulars

[State the full particulars of the expenses incurred and claimed]

And the Plaintiffs claim:

- (1) S\$_____ or damages for breach of contract;
- (2) S\$_____ as expenses incurred for the Defendants;
- (3) Interest pursuant to SECTION 12 of the Civil Law Act (Cap 43);
and
- (4) Costs.

P6.05 Claim by carrier against consignor for delivering dangerous goods carried by road

[Rodyk & Davidson LLP]

1. By an agreement in writing dated _____ 20____ and contained in and/or evidenced by a consignment note signed by the Defendants, the Plaintiff agreed with the Defendants to carry 200 cases, stated by the Defendants to be pharmaceutical products ("the goods"), from Yio Chu Kang to Marine Parade.
2. It was an express term of the contract, contained in the Plaintiff's standard terms of business printed on the reverse of the consignment note, that if any goods consigned to the Plaintiffs by the Defendants for carriage contained any substance or item of a dangerous nature, the Defendants would give notice of that fact to the Plaintiff.
3. Further or alternatively, the Defendants owe a duty of care to the Plaintiff to consign to the Plaintiff for carriage only goods which were reasonably safe for carriage by road and which were not of a dangerous nature.
4. 150 of the 200 cases consigned by the Defendants contained a dangerous and flammable substance, namely paraffin, but, in breach of contract and/or duty, the Defendants gave no notice of the fact to the Plaintiff.
5. During the carriage, the cases containing paraffin overheated and the paraffin exploded, setting fire to the Plaintiff's lorry and to goods belonging to others being carried therein. The lorry and goods were totally destroyed.
6. In the premises, the Plaintiff has suffered loss and damage in respect of the loss of the lorry and has incurred expense in paying, as he was liable to do, the value of the other goods destroyed to the owners of those goods.

Particulars

[State full particulars of the value of the lorry and of all amounts paid to other goods owners]

And the Plaintiffs claim:

- (1) S\$_____ or damages for breach of contract and/or duty;
- (2) Interest pursuant to Section 12 of the Civil Law Act (Cap 43); and
- (3) Costs.

P6.06 Claim against carrier for loss of goods carried by road

[Rodyk & Davidson LLP]

1. By an oral agreement made on or about _____ 20____ between AB of the Plaintiffs and CD of the Defendants, the Defendants agreed with the Plaintiffs to carry a consignment of 400 cases of vintage claret ("the goods") from the Plaintiffs' works at Marine Parade to the Plaintiffs' warehouse at Yio Chu Kang and to deliver the goods there within a reasonable time.
2. The Defendants took delivery of the goods at the Plaintiffs' works at Marine Parade on _____ at 20_____.
3. In the premises, the Defendants were under a duty as bailees and/or carriers for reward of the goods to take reasonable care of the goods and to deliver them safely and within a reasonable time at their destination.
4. In breach of contract and/or of duty, the Defendants failed to deliver the goods or any part of them at the Plaintiffs' warehouse in Yio Chu Kang either within a reasonable time or at all.
5. By reason of the forgoing, the Plaintiffs have suffered loss and damage.

Particulars

[State the nature and extent of the loss and damage claimed]

And the Plaintiffs claim:

- (1) S\$_____ or damages for breach of contract and/or duty;
- (2) Interest pursuant to Section 12 of the Civil Law Act (Cap 43); and
- (3) Costs.

P6.07 Claim against carrier for short delivery/misdelivery of goods carried by road

[Rodyk & Davidson LLP]

1. By an agreement in writing dated ____20____ contained in and/or evidenced by a letter from the Plaintiffs to the Defendants dated 20____ and a letter from the Defendants to the Plaintiffs dated ____ 20____, the Defendants agreed with the Plaintiffs to carry 150 cases of beer (“the goods”) from Yio Chu Kang to Marine Parade and to deliver the goods there in accordance with the Plaintiffs’ instructions within a reasonable time.
2. The Plaintiffs delivered the goods to the Defendants at the Defendants’ premises at _____, Yio Chu Kang on or about _____, 20_____. By an oral instruction given by their employee AB to the Defendants’ employee CD upon the delivery of the goods to the Defendants, the Plaintiffs ordered the Defendants to deliver the goods to X & Co. of Marine Parade.
3. In the premises, the Defendants were under a duty as bailees and/or carriers for reward of the goods to take reasonable care of the goods and to deliver them safely and within a reasonable time to X & Co. in Marine Parade.
4. In breach of contract and/or of duty on or about ____ 20____, the Defendants delivered to X & Co. in Marine Parade only 50 of the 150 Cases of goods consigned to them by the Plaintiffs.
5. Further, the Plaintiffs rely upon the fact that the goods were short delivered as evidence of the Defendants’ breach of contract and/or duty.
6. Further or alternatively, at a date which the Plaintiffs will be unable to specify until after discovery herein, in breach of contract and/or negligently the Defendants delivered the remainder of the cases of goods to some other person or persons at present unknown to the Plaintiffs, contrary to the Plaintiffs’ order.

Particulars

[State the same]

7. The Plaintiffs will contend that the Defendants have wrongfully interfered with the 100 cases of the goods consigned to them by the Plaintiffs and/or have converted them to their use, depriving the Plaintiffs of them.
8. By reason of the foregoing, the Plaintiffs have suffered loss and damage.

Particulars

[State the nature and extent of the loss and damage claimed]

And the Plaintiffs claim:

- (1) S\$_____ or damages for breach of contract and/or duty and/or for wrongful interference;
- (2) Interest pursuant to Section 12 of the Civil Law Act (Cap 43); and
- (3) Costs.

P6.08 Claim against carrier by unpaid seller for failure to stop goods in transit/to comply with directions for carriage by road

[Rodyk & Davidson LLP]

1. By an agreement in writing dated _____ 20_____ and contained in and/or evidenced by a consignment note issued by the Defendants and signed by the Plaintiffs, the Defendants agreed with the Plaintiffs to carry 20 tonnes of grain from Pasir Panjang to Jurong for delivery to X & Co.
2. It was a term of the agreement, implied therein to give reasonable business efficacy thereto, that the Defendants would comply with all reasonable instructions and directions as to the carriage of the goods which the Plaintiffs might give to the Defendants during the course of the carriage of the goods.
3. At all material times, the Plaintiffs were the unpaid sellers of the goods and X & Co. were the buyers of the same.
4. The Defendants took delivery of the goods at Pasir Panjang on or about _____ 20_____. On or about _____ 20_____ and during the transit of the goods, X & Co. became insolvent.
5. By a telex dated _____ 20_____ and by a facsimile transmission of the same date, the Plaintiffs directed the Defendants not to deliver up the goods to X & Co., but to deliver them in Jurong to the Plaintiff's agent AB instead.
6. In breach of contract, the Defendants wrongfully disregarded the directions given by the Plaintiffs to deliver to AB and delivered the goods to X & Co.
7. The Defendants thereby wrongfully interfered with the goods consigned to them by the Plaintiffs and/or converted them to their use, depriving the Plaintiffs of them.
8. By reason of the foregoing, the Plaintiffs have suffered loss and damage.

Particulars

[State the nature and extent of the loss and damage claimed]

And the Plaintiffs claim:

- (1) S\$_____ or damages for breach of contract and/or duty and/or for wrongful interference;
- (2) Interest pursuant to Section 12 of the Civil Law Act (Cap 43); and
- (3) Costs.

P6.09 Claim against carrier by passenger for personal injuries during domestic carriage by road

[Rodyk & Davidson LLP]

1. The Defendants operate omnibus services in Singapore and are common carriers, alternatively carriers of passengers for reward.
2. On or about _____20_____ the Plaintiff was a passenger for reward in the Defendants' omnibus No. _____, operating the Defendant's service No. 11 ("the omnibus").
3. The omnibus was being driven from Geylang Lorong 1 to Mountbatten Road by the Defendants' servant or agent AB.
4. During the course of the journey, the omnibus mounted the pavement at Stadium Walk and collided with a bridge, causing substantial damage to the upper deck of the omnibus.
5. The accident occurred solely by reason of the negligence of the Defendants, their servants or agents.
6. The Plaintiff relies upon the fact that the accident occurred as evidence of negligence.
7. By reason of the foregoing, the Plaintiff has suffered injury, loss and damage and have been put to expense.

Particulars

[State the nature and extent of the injuries]

And the Plaintiff claims:

- (1) Damages;
- (2) Interest pursuant to Section 12 of the Civil Law Act (Cap 43); and
- (3) Costs.

P6.10 Claim by passenger for personal injuries during international carriage by road

[Rodyk & Davidson LLP]

1. The Defendants operate, *inter alia*, Singapore-Malaysia coach services and are common carriers alternatively carriers of passengers for reward.
2. On or about _____ 20_____, the Plaintiff was a passenger for reward in the Defendants' coach no. _____ ("the coach").
3. The coach was being driven from Singapore to Kuala Lumpur by the Defendants' servant or agent AB.
4. During the course of the journey, on the main road between Johor Bahru and Kuala Lumpur near Malacca, the coach left the road and overturned.
5. The accident occurred solely by reason of the negligence of the Defendants, their servants or agents.

Particulars

[State the same]

6. The Plaintiff relies on the fact that the accident occurred as evidence of negligence.
7. The Defendants' negligence as set out above constitutes a tort under both Malaysian and Singapore law.
8. By reason of the foregoing, the Plaintiff has suffered injury, loss and damage and has been put to expense.

Particulars

[State the nature and extent of the injuries]

And the Plaintiff claims:

- (1) S\$_____ or damages;
- (2) Interest pursuant to Section 12 of the Civil Law Act (Cap 43)(3);
and
- (3) Costs.

P6.11 Claim against carrier by passenger for damage to luggage during carriage by road

[Rodyk & Davidson LLP]

1. On or about _____ 20_____, the Plaintiff hired a taxi owned and operated by the Defendant taxi company then plying for hire along Yio Chu Kang Road to carry the Plaintiff and his luggage for reward to Changi Airport, Singapore.
2. In the premises, the Defendant was a common carrier of the luggage and/or owed a duty of care to the Plaintiff to take reasonable care of the luggage and to deliver it safely at its destination.
3. In breach of the Defendant's duty as a common carrier, the luggage was damaged upon arrival at Changi Airport.
4. Further or alternatively, the luggage was damaged solely by the Defendant's negligence.

Particulars

[State the same in full]

5. By reason of the foregoing, the Plaintiff has suffered damage and has been put to expense.

Particulars

[State the nature and extent of the damage and expense claimed]

And the Plaintiff claims:

- (1) S\$_____ or damages;
- (2) Interest pursuant to Section 12 of the Civil Law Act (Cap 43); and
- (3) Costs.

P6.12 Claim against carrier for delay in carrying a passenger by road

[Rodyk & Davidson LLP]

1. The Defendants operate, *inter alia*, a coach service between Tanjong Pagar and Woodlands and they are common carriers or alternatively are carriers of passengers for reward.
2. By an agreement in writing made on or about _____, 20_____, and contained in and/or evidenced by a ticket purchased by the Plaintiff from the Defendants, the Defendants agreed with the Plaintiff to carry him from Tanjong Pagar to Woodlands on _____ 20_____ by their 6.00 p.m. service which the Defendants advertised as arriving at Woodlands at no later than 7.00 p.m.
3. Before and at the time of the purchase of the ticket, the Plaintiff made known to the Defendants through their servant AB at the Defendants' booking office at he wished to arrive in Woodlands in time to catch the 8.00p.m. coach leaving for Butterworth and, in turn, to catch the 10.00 a.m. train for Bangkok from Butterworth the next morning to attend a wedding there on that afternoon.
4. In breach of contract and/or of their duty as carriers, the Defendants' 6.00 p.m. coach service on _____ 20_____ did not leave Tanjong Pagar until 7.15 p.m. and did not arrive in Woodlands until 8.30 pm.
5. By reason of the foregoing, the Plaintiff missed his 8.00 p.m. coach and his train for Bangkok and was unable to attend the wedding there and, further, was obliged to stay overnight in Singapore in hotel accommodation.
6. In the premises, the Plaintiff has suffered loss and damage and has been out to expense.

Particulars

[State the nature and extent of loss, damage and expense claimed]

7. Further, the Plaintiff claims damages for the inconvenience, disappointment and the vexation caused by his being unable to attend the wedding.

And the Plaintiff claims:

- (1) S\$_____ or damages;
- (2) Under paragraph 7, damages;
- (3) Interest pursuant to Section 12 of the Civil Law Act (Cap 43); and
- (4) Costs.

P6.13 Claim against XY Railway Administration for loss of goods carried at their risk

[Rodyk & Davidson LLP]

1. By an agreement in writing made on, contained in and/or evidenced by a consignment note dated _____ 20 _____ signed by the Plaintiffs' station manager and the Defendants' manager at AB Station, the Defendants agreed with the Plaintiffs to carry 2,000 bags of builders' sand ("the goods") to CD Station and there deliver them to the Plaintiffs.
2. By the terms of the consignment note the goods were to be carried by the Defendants at their risk. [Insert details of consignment note pertaining to the Defendant's assumption of risk, making reference to the Railway Administration's standard conditions of carriage where appropriate]
3. The Plaintiffs delivered the goods to the Defendants at AB Station on _____ 20 _____.
4. On or about _____ 20 _____ and wrongfully in breach of contract, the Defendants delivered to the Plaintiffs at CD Station only 1,717 bags of sand with 288 bags missing.
5. In the premises, the Plaintiffs have been deprived of 288 bags of sand and have suffered loss and damage for which the Defendants are liable to the Plaintiffs.

Particulars

[State the nature and extent of the loss and damage]

And the Plaintiffs claim:

- (1) S\$_____ or damages;
- (2) Interest pursuant to Section 12 of the Civil Law Act (Cap 43); and
- (3) Costs.

P6.14 Claim against XY Railway Administration for delay to goods carried at owner's risk

[Rodyk & Davidson LLP]

1. By an agreement in writing contained in and/or evidenced by a consignment note dated _____ 20_____ signed by a representative of the Plaintiffs and the Defendants' parcel clerk at XY Station, Singapore, the Defendants agreed to carry a parcel containing orchids and seedlings ("the parcel") from AB Station to CD Station on the 1.36 p.m. train for delivery to the Plaintiffs' representative at CD at or before 4.00 p.m. on May 1, 20_____.
2. By the terms of the consignment note, the parcel was to be carried by the Defendants at owners' risk. [Insert details of consignment note pertaining to the Defendant's assumption of risk, making reference to the Railway Administration's standard conditions of carriage where appropriate]
3. Wrongfully and in breach of contract, the parcel was not carried by the Defendants on the 1.36 p.m. train to CD on May 1, 20_____ and was not delivered by the Defendants at CD Station until May 13, 20_____.
4. The delay in the delivery and the failure to send the parcel on the 1.36 p.m. train to CD on May 1, 20_____ to the Plaintiffs was caused by the wilful misconduct of the Defendants, their servants or agents.

Particulars

[State the same in full, e.g.]

- (i) The parcel was labelled in the Plaintiffs' representative's presence at AB Station with a sticker stating "CD by" upon which the parcels clerk wrote "1336 on May 1, 20_____."
 - (ii) On delivery to the Plaintiffs at CD on May 13, 20_____, this label had been deliberately covered up with a label marked "CD via EF" upon which a servant or agent of the Defendants unknown to the Plaintiffs, had written "non-urgent delivery; send on weekend train May 5, 20_____".
5. By reason of the delay, the orchids and seedlings in the parcel became overheated and dried and the Plaintiffs have thereby suffered loss or damage.

Particulars

[State the nature and extent of the loss and damage]

And the Plaintiffs claim:

- (1) S\$_____ or damages;
- (2) Interest pursuant to Section 12 of the Civil Law Act (Cap 43); and
- (3) Costs.

P6.15 Claim against XY Railway Administration for damage to goods

[Rodyk & Davidson LLP]

1. The Plaintiffs were at all material times the owners of a consignment of 300 boxes of ball bearings (“the goods”).
2. By a contract in writing dated _____ 20____ and contained in and/or evidenced by a consignment note issued by the Defendants, the Defendants agreed with the Plaintiffs to carry the goods from the Defendants’ Singapore freight yards to Bangkok, Thailand for delivery to the Plaintiffs’ order there.
3. The Defendants took delivery of the goods in good order and condition at their Singapore freight yards on or about _____ 20_____.
4. On or about _____ 20____, during the course of the transit and while the goods were being carried by the Defendants, the goods were exposed to heavy rain in marshalling yards at Johor Bahru and sustained severe damage by rust and corrosion.

Particulars

[Set out the nature and extent of the damage sustained]

5. By reason of the foregoing, the Plaintiffs have suffered loss and damage for which the first and/or second and/or third Plaintiffs are liable.

Particulars

[Set out the nature and extent of the loss and damage]

And the Plaintiffs claim:

- (1) S\$_____ or damages;
- (2) Interest pursuant to Section 12 of the Civil Law Act; and
- (3) Costs.

P6.16 Defence to claim for damage to goods carried by road

[Allen & Gledhill LLP]

1. Paragraphs 1 and 2 of the Statement of Claim are admitted.
2. Save that it is not admitted that the Goods were delivered to the Defendants in good order and condition as alleged, paragraph 3 of the Statement of Claim is admitted.
3. Save that the contract of carriage was made subject to the Plaintiffs' Standard Terms and Conditions which were expressly referred to and incorporated in the Booking Note [identify the relevant provision], paragraph 4 of the Statement of Claim is admitted.
4. Save that it was expressly provided for in the said Standard Terms and Conditions [identify the relevant provision], or alternatively such term is implied by law, that the Plaintiffs would properly pack the Goods prior to the carriage and that such packing would be sufficient to withstand the ordinary handling of the Goods in the normal course of transit, paragraph 5 of the Statement of Claim is admitted.
5. Further and/or in the alternative, it was an express term in the Standard Terms and Conditions [identify the relevant provision] that the Defendants should not be liable for loss or damage caused by insufficiency of packing of the Goods.
6. Paragraph 6 of the Statement of Claim is denied. In particular, it is denied that that the Goods or any part thereof were damaged (if at all) whilst being carried upon the journey as alleged or at all.
7. If, which is denied, the Goods were damaged as alleged, the Defendants will aver that such damage or loss was occasioned by the insufficient packing of the Goods such that they were unable to withstand the ordinary risks of the carriage and/or was not due to the negligence or default on the part of the Defendants.

Particulars

[Full particulars of the facts and matters relied upon to support the allegations made]

8. Paragraph 7 of the Statement of Claim is not admitted and the Plaintiffs are put to strict proof thereof.
9. By reason of the matters aforesaid, paragraph 8 of the Statement of Claim is denied.
10. Save as hereinbefore specifically admitted or not admitted, the Defendants deny each and every allegation contained in the Statement of Claim as if the same were set out and separately traversed.

P6.17 Defence to claim for damage to goods caused by delay in carriage by road

[Allen & Gledhill LLP]

1. Save that the contract was made subject to and/or expressly incorporated the Defendants' Standard Terms and Conditions [identify the relevant provision] which the Defendants will refer to for their full terms and effect, paragraph 1 of the Statement of Claim is admitted.
2. It was an express term of the contract [identify the relevant provision] that the Defendants would not be liable for any loss or damage arising from or caused by the inherent vice of the Goods.
3. Further or alternatively and without prejudice to the foregoing, it was a further term of the contract [identify the relevant provision] that the Defendants' liability would not in any event or under any circumstances whatsoever exceed S\$50 per 1000kg.
4. Paragraphs 2 and 3 of the Statement of Claim are admitted.
5. Save that it is admitted that the Defendants delivered the Goods at [location] at 5.00 p.m. on [date], paragraph 4 of the Statement of Claim is denied. The Defendants will aver that their delivery of the Goods at 5.00 p.m. on [date] was and/or was within a reasonable time in all the circumstances of the carriage after their collection of the Goods for the carriage on [date] in accordance with the contract. The Defendants will further aver that they took all reasonable care of the Goods and the Goods were at all times carried in a refrigerated chamber with the correct temperatures adequate for the carriage of the Goods maintained throughout.
6. Further or alternatively by reason of the provisions of the contract as set out in paragraph 2 above, the Defendants are not liable for any loss as the loss arose out of the inherent vice of the Goods.

Particulars

[Details relied upon]

7. Further or alternatively, if which is denied, the Defendants should be liable for any loss or damage, such loss or damage should not exceed the sum of S\$[amount], based on the limitation provisions set out in paragraph 3 above.
8. Paragraph 5 of the Statement of Claim is not admitted and the Plaintiffs are put to strict proof thereof.
9. Save as hereinbefore specifically admitted or not admitted, the Defendants deny each and every allegation contained in the Statement of Claim as if the same were set out and separately traversed.

P6.18 Defence and counterclaim concerning claim for charges for carriage by rail

[Allen & Gledhill LLP]

1. Paragraph 1 of the Statement of Claim is admitted.
2. Paragraph 2 of the Statement of Claim is denied. Contrary to that averred by the Plaintiffs, the Defendants deny that the Plaintiffs carried the Goods safely to Kuala Lumpur and that they were delivered safely to the Defendants there.
3. In breach of the agreement, the Plaintiffs left the Goods lying unattended at the Kuala Lumpur Railway Station as a result of which the Goods were damaged and/or lost.
4. In the premises, the Defendants have suffered loss and damage and have been put to expense. Alternatively, if, which is denied, the Defendants are liable to the Plaintiffs, the Defendants will set-off against such liability such sums as they may be awarded by way of counterclaim herein.

Counterclaim

[Set out the facts giving rise to the counterclaim]

5. The Defendants repeat their Defence.

Particulars

[Details of the loss and damage]

And the Defendants counterclaim:

- (1) Damages;
- (2) Interest thereon; and
- (3) Costs.

P6.19 Reply to claim for damage to goods caused by delay in delivery of goods carried by road

[Allen & Gledhill LLP]

1. Save so far as the same consists of admissions, and save as is hereinafter expressly admitted, the Plaintiffs join issue with the Defendants on their Defence.
2. The Plaintiffs deny that the Defendants are entitled to rely on any of the provisions in the standard terms and conditions as these were never incorporated into the contract or at any time brought to the attention of the Plaintiffs.

P6.20 Reply and defence to counterclaim concerning claim for charges for carriage by rail

[Allen & Gledhill LLP]

Reply

1. Save so far as the same consists of admissions, and save as is hereinafter expressly admitted, the Plaintiffs join issue with the Defendants on their Defence.

Defence to Counterclaim

2. The Plaintiffs repeat paragraph 1 hereof and deny that the Defendants are entitled to the relief claimed or any relief at all.
3. The Goods were delivered to ABC who held themselves out to be the representatives of the Plaintiffs and a clean delivery order was signed and acknowledged by ABC on behalf of the Plaintiffs. In the circumstances, paragraphs 2, 3, 4 and 5 of the Defence and Counterclaim are denied.
4. Save as hereinbefore specifically admitted or not admitted, the Plaintiffs deny each and every allegation contained in the Counterclaim as if the same were herein set out and separately traversed.

P6.21 Defence denying goods were carried for the plaintiff by road or rail

[Rodyk & Davidson LLP]

The Defendants deny that the said goods were carried for the Plaintiff or at his request [or under any circumstances such as would render the Defendants liable to pay the freight claimed or any part thereof].

P6.22 Defence by carrier denying receipt of goods on terms alleged for carriage by road or rail

[Rodyk & Davidson LLP]

The Defendants deny that they received the goods for the purpose or on the terms alleged. The Defendants received them for the purpose of _____ and on the terms that _____ [here state the purpose and terms according to the facts relied upon].

P6.23 Defence by carrier denying damage to goods during carriage by road or rail

[Rodyk & Davidson LLP]

The Defendants deny that the said goods or any part thereof were destroyed or damaged or that they were destroyed or damaged (if at all) whilst being carried upon the journey as alleged or at all.

P6.24 Defence by carrier alleging damage or loss occasioned without fault on his part during carriage by road or rail

[Rodyk & Davidson LLP]

If, which is denied, the goods were damaged or lost, the Defendants will contend that such damage or loss was occasioned by the inherent vice of the goods [or the bad condition of the goods when received, or by deterioration of the goods or as may be], without any negligence, misconduct or default on the part of the Defendants, their agents or their employees.

Particulars

[State with full particulars the facts and matters relied upon to support the allegations made]

P6.25 Defence by carrier alleging damage or loss occasioned through defective packing

[Rodyk & Davidson LLP]

The Plaintiff delivered the goods to the Defendants for carriage, packed insufficiently and negligently and the damage complained of arose solely from such packing.

Particulars

[State out the facts and matters relied upon]

P6.26 Defence by carrier alleging delivery within reasonable time

[Rodyk & Davidson LLP]

1. The Defendants admit that they received the goods from the Plaintiff for the purpose and on the terms set out in the Statement of Claim.
2. It is denied that the Defendants failed to carry the goods from _____ to _____, and to deliver them to the Plaintiff within a reasonable time. The Defendants delivered them to the Plaintiff on _____ 20_____, which was a reasonable time in all the circumstances of the carriage, after their collection of the goods for the carriage on _____ 20_____.

P6.27 Defence by carrier denying contract to deliver for particular market

[Rodyk & Davidson LLP]

The Defendants deny that they agreed to deliver the goods in time for the alleged market as alleged in the Statement of Claim or at all.

P6.28 Defence denying defendants acted otherwise than as a freight forwarding agent

[Rodyk & Davidson LLP]

1. It is denied that the Defendants were party to any contract for the carriage of the Plaintiff's goods as alleged in the Statement of Claim or at all.
2. Without prejudice to the generality of the foregoing denial, the Defendants will contend that the Plaintiff engaged the Defendants solely to arrange and procure a contract for the carriage of the Plaintiff's goods as the Plaintiff's agents. The Defendants thus deny any duty as carriers and/or as bailees for reward.
3. Pursuant to that engagement, the Defendants arranged as the Plaintiff's agents for AB & Co (Hauliers) Limited ("AB") to carry the Plaintiff's goods on the journey referred to in the statement of claim. In the premises, there was a contract for the carriage of goods between the Plaintiff and AB only. [The Defendants will rely, *inter alia*, upon the fact that the Plaintiff has paid freight to AB pursuant to AB's request or as may be].

P6.29 Defence and limitation of liability by a Railway Administration alleging loss/destruction/deterioration of the goods was brought about by the plaintiff's false account with respect to the plaintiff's description of the goods – s 45 of the Railways Act (Cap 263)

[Rodyk & Davidson LLP]

1. This contract of carriage is subject to the Railways Act (Cap 263) ("the Act"). Section 45 of the Act states as follows:

Exoneration from responsibility in case of goods falsely described.

45. — (1) Notwithstanding anything in this Part, a railway administration shall not be responsible for the loss, destruction or deterioration of any goods with respect to the description of which a materially false account has been given to the railway administration by the owner or person having charge thereof if the loss, destruction or deterioration is in any way brought about by the false account.

(2) The railway administration shall not be responsible in any case for an amount exceeding the value of the goods if such value were calculated in accordance with the description contained in the false account.

2. The alleged failure of the Defendants for the loss [or destruction or deterioration of the goods, as applicable] was not due to any default on the part of the Defendants, but was due to the materially false account which the Plaintiff had given with respect to the description of the goods. Under Section 45 of the Act, the Defendants hence are not liable for the alleged loss [or destruction or deterioration] of the said goods, and if liable, the Defendants' liability shall not exceed the value of the goods if such value were calculated in accordance with the description contained in the false account.

[Give particulars of the false account given and how it brought the loss, damage or destruction of the goods about]

3. Further or in the alternative, Clause _____ of the contract of carriage provides for the limitation of liability as follows: [Set out the limitation of liability clause]
4. The Defendants contend that the aforementioned limitation of liability clause in the contract of carriage satisfies the requirement of reasonableness within the meaning of the Unfair Contract Terms Act (Cap 396). Hence, the Defendant's liability (if any, which is denied), is limited to the sum of S\$_____ by virtue of Clause _____ of the said contract of carriage.

P6.30 Defence alleging that the defendants were not the carrier in respect of a claim against them for loss or damage to goods during carriage by road or rail

[Rodyk & Davidson LLP]

The Defendants were not the carrier of the goods at the time of any alleged damage to the same between [location A] and [location B].
[Set out who was the carrier if known]

P6.31 Defence to claim for loss or damage to goods by rail — s 36 of the Railways Act (Cap 263)

[Rodyk & Davidson LLP]

[Paragraph 3 is applied when the goods are lost. Paragraph 4 is applied when the goods are damaged]

1. This contract of carriage is subject to the provisions in the Railways Act (Cap 263) (“the Act”). Section 36 of the Act states as follows:

Liability for loss or injury in respect of goods

36. – The railway administration shall in no case be liable for loss or injury to any articles or goods to be carried by the railway unless the loss or injury has been caused by negligence or misconduct on the part of its agents or employees, and unless the article or goods in respect of which compensation is claimed have been booked and paid for in conformity with this Act or the rules made thereunder.
2. The Defendants deny that [they were negligent in respect of the non-delivery of the goods or that the goods were lost]/[the goods were damaged] by reason of the alleged negligence. The Defendants also deny all allegations of misconduct on their own part, or on the part of their agents or employees.
3. The Defendants state that the goods were lost without any negligence, misconduct, default or want of care on their part or on the part of their agents or employees. The loss arose from circumstances beyond the carrier’s control and which he was unable to prevent.

Particulars

- (i) The goods train in which the goods were being carried was parked overnight at _____ in a high security train park subject to constant supervision by armed guards.
- (ii) Persons unknown, each acting in concert with one another and with common intention, assaulted the train driver, overpowered the guards and blew up the security perimeter fence of the train park before hijacking the train [or as may be].
- (iii) By reason of the aforesaid events beyond the control of the Defendants, the Defendants were unable to perform the terms of their agreement to deliver the goods. The supervening event described above rendered the Defendants’ performance of the contract impossible and frustrated the performance of the contract of carriage. In the circumstances, the Defendants

aver that they are entitled to be discharged from contractual performance.

4. The Defendants state that the goods were damaged without any negligence, misconduct, default or want of care on their part or on the part of their agents or employees. The damage occasioned to the goods which fell from the train at _____ arose out of the wrongful act or neglect of the Plaintiffs.

Particulars

- (i) The Plaintiffs carried out all lashing and securing of the goods to the train.
 - (ii) The Plaintiffs stated that the lashing and securing would withstand speeds of up to 80km/h without difficulty.
 - (iii) The goods fell from the train when the lashings parted as the train was going around a bend at a speed of 30km/hour.
5. In the premises, the Defendants are not liable for the loss [or damage] claimed, by virtue of Section 36 of the Railways Act.

P6.32 Defence denying negligence (allegedly resulting in personal injury) on the part of the defendants during carriage by road or rail

[Rodyk & Davidson LLP]

It is denied that the accident in which the Plaintiff sustained injury (as to which no admissions are made) was caused by the Defendants' negligence as alleged or at all. [Set out the Defendants' case, e.g. the omnibus was forced up on the pavement by a lorry which ran into the offside of the omnibus at speed and without warning, or as may be]

P6.33 Defence by carrier alleging loss of luggage occasioned by conduct of passenger

[Rodyk & Davidson LLP]

The alleged failure of the Defendants to carry the luggage, and the loss thereof, was not due to any default on the part of the Defendants, but was caused by the conduct of the Plaintiff in taking it out of the custody of the Defendants at _____, during the journey, and there leaving it on the road side [or as the case may be].

P6.34 Limitation of liability by a Railway Administration alleging items lost in luggage were ‘Articles of Special Value’ within the meaning of s 40 read with the Schedule to the Railways Act (Cap 263)

[Rodyk & Davidson LLP]

1. The luggage mentioned in the Statement of Claim consisted of a violoncello and two suitcases containing jewellery.
2. The contract of carriage is subject to the Railways Act (Cap 263) (“the Act”). Section 40(1) of the Act states as follows:

When any articles mentioned in the Schedule are contained in any parcel or package delivered to a railway administration for carriage by railway, whether as passengers’ luggage or not, and the value of such articles in the parcel or package exceeds \$100, the railway administration shall not be responsible beyond that sum for the loss, destruction or deterioration of the parcel or package unless the person sending or delivering the parcel or package to the railway administration caused its value and contents to be declared or declared them at the time of the delivery of the parcel or package for carriage by railway, and if so required by the railway administration paid or engaged to pay a percentage on the value so declared by way of compensation for increased risk.

3. If, which is denied, the Defendants are liable for the loss of the items claimed, the Defendants contend that they are entitled to rely on Section 40(1) of the said Act.

Particulars

- (i) The violoncello is a “musical instrument” under item (r) of the Schedule to the Act, whilst jewellery is listed in item (d) of the Schedule.
4. As the items are “articles of special value” within the meaning of Section 40(1), and as their true value was not declared by the Plaintiff to the Defendants at the time of delivery of the luggage for carriage by railway, nor were the Defendants paid a percentage of their true value by way of compensation for the increased risk when it was required, the Defendants are entitled and do limit their liability to the sum of \$100 for loss [or destruction or deterioration].
5. Further or in the alternative, Clause _____ of the contract of carriage provides for the limitation of liability as follows: [Set out the applicable limitation of liability clause].

6. The Defendants contend that the aforementioned limitation of liability clause in the contract of carriage satisfies the requirement of reasonableness within the meaning of the Unfair Contract Terms Act (Cap 396). Hence, the Defendants' liability (if any, which is denied), is limited to the sum of S\$_____ by virtue of Clause _____ of the said contract of carriage.

P6.35 Limitation of liability by a train operator of the mass rapid transit rail network in relation to damage to items carried by a passenger

[Rodyk & Davidson LLP]

1. It is averred that the Plaintiff's travel on the Rapid Transit Rail network operated by the Defendants is governed by the Defendants' "Conditions of Use" by virtue of Rule 32(1) of the Rapid Transit System Regulations.
2. If in breach of the contract of carriage and/or of any alleged duty of care in negligence or otherwise, which is denied, and if such breach caused any loss, which is further denied, the Defendants are entitled and do limit their liability under the Conditions stated in the "Conditions of Use", which forms part of the aforementioned contract of carriage.

[State and apply the applicable limitation of liability provision(s) in the "Conditions of Use" document]

CHAPTER 7

CARRIAGE BY SEA

PRECEDENTS

- P7.01** Claims under a bill of lading for damage to cargo
- P7.02** Claims under a bill of lading for failure to deliver, or short delivery, under a bill of lading
- P7.03** Claims under a bill of lading for misdelivery
- P7.04** Claim under a bill of lading for freight against the lawful holder of the bill of lading
- P7.05** Claim by shipowner for demurrage under bill of lading
- P7.06** Claim by shipowner against shipper for shipping dangerous cargo
- P7.07** Claims under a charterparty for damage to cargo under a voyage charter
- P7.08** Claims under a charterparty for damages for delay under a voyage charter
- P7.09** Claims under a charterparty for freight under a voyage charter
- P7.10** Claims under a charterparty for deadfreight
- P7.11** Claims under a charterparty for hire under a time charter
- P7.12** Claims under a charterparty for demurrage
- P7.13** Claims under a charterparty for indemnity for releasing cargo without presentation of bill of lading
- P7.14** Claim by shipowner for an indemnity under a time charter
- P7.15** Claim by charterer under voyage charterparty for despatch
- P7.16** Defences to claims under a bill of lading for damage to cargo
- P7.17** Defence to claims for freight against the lawful holder of the bill of lading
- P7.18** Defences to claims for damage to cargo under a voyage charter
- P7.19** Defences to claims under a charterparty for freight under a voyage charter
- P7.20** Defences to claims under a charterparty for hire under a time charter
- P7.21** Defences to claims under a charterparty for demurrage
- P7.22** Defence (alleging no title to sue) to claim for damage to cargo: bill of lading

- P7.23** Defence (alleging no title to sue) to claim for damage to cargo: charterparty
- P7.24** Defence (alleging unseaworthiness) to claim for damage to cargo: Hague-Visby Rules
- P7.25** Defence (alleging excepted clauses) to claim for damage to cargo: Hague-Visby Rules
- P7.26** Defence and counterclaim denying liability for freight and claiming for damage to goods
- P7.27** Defence by charterer alleging cesser of liability for freight or demurrage
- P7.28** Defence to claim for demurrage: (charterparty) relying on exception clause
- P7.29** Defence by charterer alleging cancellation of charterparty
- P7.30** Defence to claim for an indemnity under a time charter
- P7.31** Defence by charterer to claim of failure to load cargo alleging ship was not ready to load

CHAPTER 7

CARRIAGE BY SEA

PRECEDENTS

P7.01 Claims under a bill of lading¹ for damage to cargo²

[Drew & Napier LLC]

1. By 3 bills of lading numbered [numbers] dated [date] (“the Bills of Lading”), the Defendants by their servants or agents acknowledged shipment on board their ship or vessel “AB” (“the Vessel”) at Al Jubail, Saudi Arabia of a total of [number] tonnes of [cargo] as described in the Bills of Lading in apparent good order and condition (“the Cargo”) for carriage to and delivery at Singapore in good order and condition.
2. The Plaintiffs were at all material times the owners of the Cargo and/or the persons entitled to the possession of the cargo and/or the consignees and/or indorsees and/or the lawful holders and/or the persons in possession of the Bills of Lading.
3. In the premises, the Defendants were under a duty to the Plaintiffs as carriers for reward and/or as bailees of the cargo and/or under the contracts of carriage contained in and/or evidenced by the Bills of Lading (“the Contracts”) to take reasonable care of the Cargo and to deliver the Cargo in the same good order and condition as it was when shipped.
4. Further or alternatively, Clause [number] of the Bills of Lading provide as follows:

[Paramount clause]

5. Accordingly, the Contracts were subject to and/or incorporated the Hague-Visby Rules, which provide, *inter alia*, as follows:

[Relevant provision of the Hague-Visby Rules, Article III]

6. In breach of their duty and/or the Contracts, the Defendants failed to deliver the Cargo at Singapore in the same good order

1 Claims under a bill of lading typically include claims for damage to cargo. The primary legislation in relation to such claims in Singapore is the BLA and COGSA. For details relating to such claims, reference may generally be made to Treitel and Reynolds, *Carver on Bills of Lading* (3rd Ed) (Sweet & Maxwell, 2011).

2 See P7.16.

and condition as it was in on shipment, and instead delivered [number] tonnes damaged by seawater [or as may be].

7. Further or alternatively, the damage was caused by the Defendants' breach of Contracts and/or their duty and/or their duty under Article III, Rule 1 of the Hague-Visby Rules in failing to exercise due diligence, before and/or at the commencement of the voyage, to make the ship seaworthy and/or to make the holds and all other parts of the Vessel in which the Cargo was carried fit and/or safe for its reception and/or carriage and/or preservation.

Particulars

- (1) The Plaintiffs will rely on the fact that the Cargo was discharged damaged by seawater as sufficient evidence of the Defendants' breach of Contracts and/or their duty and/or of the Hague-Visby Rules;
 - (2) Further or alternatively, the hatch covers of the Vessel's cargo holds were not watertight. As a result, seawater was able to enter the Vessel's cargo tanks during the voyage and damaged the Cargo carried therein;
 - (3) Further or alternatively, the port side aft ventilator opening in the Vessel's no. 5 cargo hold was distorted and could not be secured properly or at all. As a result, whenever the Vessel shipped seas on deck during the voyage, seawater was able to enter cargo hold no. 5 and damage the Cargo stowed therein.
8. Further or alternatively, the aforesaid damage to the Cargo was caused by the negligence of the Defendants, their servants or agents, and/or by the Defendants' failure to properly and/or carefully load and/or handle and/or stow and/or carry and/or keep and/or care for and/or discharge the Cargo in breach of Contracts and/or the Defendants' duty and/or Article III, Rule 2 of the Hague-Visby Rules.

Particulars

- (1) The Plaintiffs repeat the matters in paragraph 7(1) to (3) hereof.
9. By reason of the foregoing, the Plaintiffs have suffered loss and damage and been put to expense.

Particulars

[Particulars of amount of loss and damage incurred, typically the difference between the sound market value and the value of the salvage sale, plus costs and expenses incurred for the valuation and salvage sale, etc]

AND the Plaintiffs claim:

- (1) [Amount], alternatively damages;
- (2) Interest; and
- (3) Costs.

P7.02 Claims under a bill of lading for failure to deliver, or short delivery, under a bill of lading

[Drew & Napier LLC]

1. By a contract of carriage contained in or evidenced by a bill of lading numbered [number] issued at Hong Kong dated [date] ("the Contract"), the Defendants by their servants or agents acknowledged shipment on board their ship or vessel "AB" ("the Vessel") a total of [number] tonnes of [cargo] in good order and condition for carriage and delivery at Singapore ("the Cargo").
2. The Plaintiffs were at all material times the owners of the Cargo and/or the persons entitled to the possession of the cargo and/or the consignees and/or indorsees and/or the lawful holders and/or the persons in possession of the Bills of Lading.
3. In the premises, the Defendants were under a duty to the Plaintiffs as carriers for reward and/or as bailees of the Cargo and/or under the contracts of carriage contained in and/or evidenced by the Bill of Lading to take reasonable care of the Cargo and to deliver the Cargo in the same good order and condition as it was when shipped.
4. In breach of contract and/or duty the Defendants did not carry and/or failed to deliver the Cargo at Singapore in the same good order and condition as shipped but delivered only [extent of Cargo short delivered].
5. In the premises, the Plaintiffs have suffered loss and damage and incurred expenses.

Particulars

[Particulars of nature and extent of loss and damage, such as the value of the cargo short-delivered]

AND the Plaintiffs claim:

- (1) Damages;
- (2) Interest; and
- (3) Costs.

P7.03 Claims under a bill of lading for misdelivery

[Drew & Napier LLC]

1. The Defendants were at all material times the owners of the ship or vessel "AB" ("the Vessel").
2. By a contract of carriage contained in or evidence by a bill of lading numbered [number] issued at London dated [date] ("the Contract"), the Defendants by their servants or agents acknowledged shipment on board their ship or Vessel a total of [number] tonnes of [cargo] ("the Cargo") in good order and condition for carriage to and delivery at Singapore.
3. It was an express and/or implied term of the Contract that the Defendants would only deliver the Cargo described in the bill of lading against the surrender or presentation of an original of the Bill of Lading.
4. The Plaintiffs were at all material times the owners of the Cargo and/or the persons entitled to the possession of the Cargo and/or the consignees and/or indorsees and/or the lawful holders and/or the persons in possession of the Bills of Lading.
5. The Cargo was shipped on board the Vessel "AB" pursuant to a contract of sale between the Plaintiffs as sellers and Cargobuyer Pte Ltd as buyers. The Plaintiffs sold the Cargo for a total sum of [amount].
6. The Cargo was released by the Defendants their servants or agents to the agents of Cargobuyer Pte Ltd without presentation of the Bill of Lading in exchange for its release.
7. In the premises, the Defendants' release of the Cargo was in breach of contract and/or their duty as carriers and/or as bailees to the Plaintiffs to deliver the Cargo only as against the production or presentation of an original Bill of Lading.
8. Further or alternatively, by the matters aforesaid the Defendants had converted the said Cargo and thereby wholly deprived the Plaintiffs of it.
9. Cargobuyer Pte Ltd has refused and/or failed to pay for the Cargo.
10. By reason of the aforesaid, the Plaintiffs have suffered loss and damage and incurred expenses.

Particulars

[Particulars of loss and damage and expense]

AND the Plaintiffs claim:

- (1) [Amount], alternatively damages;
- (2) Interest;
- (3) Costs; and
- (4) Such further or other relief as the Honourable Court deems fit.

P7.04 Claim under a bill of lading for freight against the lawful holder of the bill of lading³

[Drew & Napier LLC]

1. By a bill of lading numbered [number] issued at Jakarta, Indonesia dated [date] ("the Bill of Lading"), the Plaintiffs agreed to carry [number] tonnes of [cargo] ("the Cargo") which was loaded on board their ship or vessel "AB" ("the Vessel") at Jakarta for carriage to Singapore.
2. The following, *inter alia*, were express terms of the Bill of Lading:
[Relevant terms of bill of lading]
3. The Vessel arrived at Singapore on [date].
4. The Defendants were the lawful holders named in the Bill of Lading (as indorsed) who demanded and took delivery of the cargo at Singapore. At the time of delivery, the Defendants undertook to pay the freight of [amount] by [date].
5. In breach of contract and/or the undertaking the Defendants failed and/or refused to pay the freight or any part thereof and the sum of [amount] remains due and owing to the Plaintiffs.

AND the Plaintiffs claim:

- (1) [Amount], alternatively damages;
- (2) Interest; and
- (3) Costs.

³ See P7.17.

P7.05 Claim by shipowner for demurrage under bill of lading

[Rodyk & Davidson LLP]

1. By a contract contained in or evidenced by a bill of lading dated [date], (“the Bill of Lading”) the Plaintiffs agreed to carry 240,000 bags of refined sugar (“the Goods”) in its vessel “AB” (“The Vessel”) from Buenos Aires to London.
2. At all material times the Defendant was the indorsee of the Bill of Lading.
3. Further or alternatively the Plaintiffs were entitled to exercise a lien over the Goods for freight of \$150,000 due under the terms of the Bill of Lading. On or about [date] the Defendant paid the outstanding freight, presented the Bill of Lading and took delivery of the Goods thereunder.
4. In the premises a contract between the parties on the terms of the Bill of Lading is to be implied.
5. The Bill of Lading expressly incorporated the terms and provisions of a Charterparty dated [date].
6. The said Charterparty provided, *inter alia*, that:

“6 ... the Goods are to be discharged with reasonable dispatch, otherwise the charterers and the receivers of the Goods would be liable to pay demurrage of \$5000 per day or pro rata.”

The Plaintiffs will refer to the Bill of Lading and the Charterparty at the trial or other hearing of this matter for their full terms and effect.

7. On [date], the Vessel arrived at [location] and berthed at [location]. Discharge into lighters began on [date] and continued until [date]. On [date], as a result of a strike by lightermen, it became impossible to discharge into lighters until [date].
8. In the premises it was the duty of the Defendant under the Bill of Lading, or the Defendant expressly or impliedly contracted, to take delivery of the Goods on the quay.
9. In breach of the duty and/or contract the Defendant failed or refused to take delivery on quay so that the Vessel was detained until [date].

Particulars

[Details of the delay]

10. By reason of the matters aforesaid the Plaintiffs are entitled to \$[amount] by way of demurrage and/or damages for detention but the Defendant has failed or refused to pay the sums or any part thereof.

Particulars

[Particulars of loss]

From [date] to [date] at \$[amount] per day.

11. [Interest]

AND the Plaintiffs claim:

- (1) [Amount], or alternatively damages;
- (2) Interest thereon pursuant to Section 12 of the Civil law Act (Cap 43).

P7.06 Claim by shipowner against shipper for shipping dangerous cargo

[Drew & Napier LLC]

1. The Plaintiffs were, at all material times, the owners of the ship or vessel "AB" ("the Vessel").
2. On or about [date] the Defendants shipped with the Plaintiffs, at Singapore, a cargo of [number] metric tonnes of fireworks [in containers or as the case may be] ("the Cargo") on board the Vessel for carriage to and delivery at Hamburg.
3. The Defendants declared to the Plaintiffs that the Cargo consisted of the following:

[Details of D's declaration in the manifest, packing list, etc]
4. The Plaintiffs did not know nor ought they to have known that the Cargo was dangerous or could be dangerous.
5. In the premises, the Defendants expressly [or impliedly as the case may be] warranted that the Cargo was fit and safe for carriage in the ordinary way.
6. Further or alternatively, the Defendants warranted that they would not or did not ship or tender for shipment goods which they knew or ought to have known were dangerous or could have been dangerous without giving express notice of the same to the Plaintiffs.
7. Further or alternatively, the Defendants were under a duty to inform the Plaintiffs that the Cargo was or could have been dangerous. The Defendants did not, at any time, inform the Plaintiffs of any such danger or possible danger.
8. In reliance on the aforesaid, the Plaintiffs agreed to carry the Cargo and issued a bill of lading no [number] dated [date] in respect of the same. The contract of carriage contained in or evidenced by the bill of lading was subject to the express [or implied as the case may be] terms as set out in paragraphs 5 to 7 above.
9. In breach of contract and/or warranty and/or duty, the Cargo that was loaded was dangerous and was not fit and safe for carriage in the ordinary way, in that the Cargo was potentially explosive by exposure to heat or otherwise.
10. Further or alternatively, in breach of contract and/or warranty and/or duty, the Defendant shipped the Cargo with actual or imputed or constructive knowledge of its dangerous nature, without giving notice of the same to the Plaintiffs. The Plaintiffs will rely upon the

fact that the Defendants are in business as exporters of fireworks as sufficient evidence that they knew or ought to have known of the properties of the Cargo.

11. During the course of the voyage, there was an explosion on board the vessel "AB" caused by the cargo which was stowed on deck and in the circumstances when the weather en route was hot and dry [or such other reasons for the explosion], thereby causing a fire on board the Vessel.
12. By reason of the aforesaid matters, the Plaintiffs have suffered loss and damage and been put to expense.

Particulars

[Particulars of loss, damage and expense claimed, such as repairs to the ship, consequential losses suffered as a result of the repairs, cost of investigations, claims made against the Vessel by owners of other cargo on board]

AND the Plaintiffs claim:

- (1) [Amount], or alternatively damages;
- (2) [A declaration that the Plaintiffs be fully indemnified by the Defendants for any damages suffered and/or any and all such claims that may be made against the Plaintiffs by third parties in any respect as a result of the explosion];
- (3) [An indemnity for item (2) prayed for above];
- (4) Interest;
- (5) Costs; and
- (6) Such other relief as the Honourable Court deems fit.

P7.07 Claims under a charterparty⁴ for damage to cargo under a voyage charter⁵

[Drew & Napier LLC]

1. The parties entered into a charterparty evidenced by a fixture recap dated [date] (“the Charterparty”), pursuant to which the Plaintiffs chartered the Defendants’ tanker “AB” (“the Vessel”) for a voyage from Malta to Singapore. The Charterparty was on an amended [type] form.
2. The following were, *inter alia*, express terms of the Charterparty:

[Relevant terms of Charterparty]

3. By a bill of lading dated [date] at Malta (“the Bill of Lading”) and signed by the Master of the “AB” the Defendants acknowledged the shipment on board the Vessel of [number] tonnes of [cargo] in apparent good order and condition (“the Cargo”). The Cargo was loaded via ship-to-ship transfer from the vessel “CD” to “AB” off Malta.
4. The Plaintiffs were at all material times the owners of the Cargo and/or the persons entitled to the possession of the cargo and/or the consignees and/or indorsees and/or the lawful holders and/or the persons in possession of the Bills of Lading.
5. In the premises, the Defendants owed the Plaintiffs a duty of care and/or in bailment and/or pursuant to the terms of the Charterparty to take reasonable care of the Cargo and deliver the same in the same good order and condition as shipped.
6. In breach of the Charterparty and/or bailment and/or duty, the Cargo was contaminated by water [or as the case may be] whilst on board the vessel.

4 Charterparties are primarily a matter of contract law, and there are various widely used forms for different kinds of charterparties. Given the widespread use of accepted standard form charterparties (subject to parties’ own amendments to these forms), there is also a considerable body of case law interpreting the clauses of these charterparties. Claims under a charterparty would include claims by the owners for, for example freight, hire, demurrage, dispatch as well as for an indemnity from the charterers for claims made against them by cargo claimants (for example by agreeing to release cargo without requiring production of an original bill of lading in exchange). It would also include claims by the charterers against the owners for damage to cargo, delays, failure to load, etc. For the details relating to such claims reference may be made to various texts, for example Cooke, Kimball et al, *Voyage Charters* (4th Ed) (Routledge, 2014); Coghlin, Baker, Kenny and Kimball, *Time Charters* (7th Ed) (Routledge, 2014); Schofield, Laytime and *Demurrage* (5th Ed) (LLP, 2005); Treitel and Reynolds, *Carver on Bills of Lading* (3rd Ed) (Sweet & Maxwell, 2011).

5 See P7.18.

Particulars

- (1) On or about [date], the Plaintiffs' surveyors drew samples from the tanks of "CD" prior to the ship-to-ship transfer. The test result for the water content of the Cargo was [0.1%] volume.
- (2) On [date], the Plaintiffs' surveyors drew samples from the tanks of the Vessel shortly after the arrival of "AB" at Singapore. The test result for water content of the Cargo had risen to [2%] volume.
- (3) The Plaintiffs rely on the fact of water damage and/or contamination by water as sufficient evidence of breach of the Charterparty and/or bailment and/or duty. Further, the Plaintiff will rely on the doctrine of *res ipsa loquitur*.
7. By reason of the aforesaid, the Plaintiffs have suffered loss and/or damage and/or incurred consequential expense.

Particulars

[Particulars of loss and/or damage and/or expense]

AND the Plaintiffs claim:

- (1) [Amount], alternatively damages to be assessed;
- (2) Interest;
- (3) Costs; and
- (4) Such further or other relief as the Honourable Court deems fit.

P7.08 Claims under a charterparty for damages for delay under a voyage charter

[Drew & Napier LLC]

1. The parties entered into a charterparty evidenced by a fixture recap dated [date] ("the Charterparty"), pursuant to which the Plaintiffs chartered the Defendants' vessel "B" ("the Vessel"). The Charterparty was on an amended [type] form.
2. It was a term of the Charterparty that the Vessel would proceed from Hong Kong to Singapore after loading with all reasonable dispatch. Clause [number] of the Charterparty stated as follows:

[Relevant terms of charterparty]

3. The Plaintiffs were at all material times the owners of the Cargo that was shipped by or on behalf of the Plaintiffs.
4. Pursuant to the Charterparty, the Vessel proceeded to Hong Kong and duly loaded [number] tonnes of [cargo] ("the Cargo"). The vessel departed Hong Kong on [date].
5. In breach of the Charterparty the vessel failed to proceed to Singapore with all reasonable dispatch.

Particulars

- (1) Had the Vessel proceeded with all reasonable dispatch, the Vessel would have arrived at Singapore about [date], in any case no later than [length of time];
 - (2) In the event, the Vessel did not arrive at Singapore until [date];
 - (3) In the premises there was a delay of [number] weeks, such delay being unreasonable.
6. By reason of the Defendants' breach of the Charterparty, the Plaintiffs have suffered loss and damage and been put to expense.

Particulars

[Particulars of amount of loss and damage incurred]

AND the Plaintiffs claim:

- (1) Damages;
- (2) Interest; and
- (3) Costs.

P7.09 Claims under a charterparty for freight under a voyage charter⁶

[Drew & Napier LLC]

1. The parties entered into a charterparty evidenced, *inter alia*, by a fixture recap dated [date] ("the Charterparty"), pursuant to which the Plaintiffs chartered to the Defendants their ship or vessel "A" ("the Vessel") to proceed to Hong Kong and there load a full and complete cargo of [number] tonnes ([amount] per cent more or less in the Plaintiffs' option) of [cargo] ("the Cargo") for carriage to and delivery at Singapore and/or Port Klang, West Malaysia at the Defendants' option.
2. The following, *inter alia*, were express terms of the Charterparty:
[Relevant terms of Charterparty, including the term on the freight rate and when freight is earned]
3. Pursuant to the Charterparty, the Vessel duly loaded [number] tonnes of Cargo at Hong Kong and proceeded to the Defendants' nominated discharge port Singapore where she arrived on [date] and delivered the said Cargo to the Defendants.
4. In the premises, the full freight due amounted to [amount] and became payable by the Defendants on [date]. In breach of the Charterparty, the Defendants have failed and/or refused and/or neglected to pay the sum of [amount] or any part thereof, and the same remains due and owing to the Plaintiffs.

AND the Plaintiffs claim:

- (1) [Amount], alternatively damages;
- (2) Interest; and
- (3) Costs.

⁶ See P7.19.

P7.10 Claims under a charterparty for deadfreight

[Drew & Napier LLC]

1. The parties entered into a charterparty evidenced, *inter alia*, by a fixture recap dated [date] (“the Charterparty”), pursuant to which the Plaintiffs chartered to the Defendants their ship or vessel “AB” (“the Vessel”) to proceed to Hong Kong and there load a full and complete cargo of no less than [number] tonnes of [cargo] (“the Cargo”) for carriage to and delivery at Singapore.
2. The following, *inter alia*, were express terms of the Charterparty:
[Relevant terms of Charterparty including those on the minimum quantity to be loaded, the freight rate and the deadfreight clause]
3. Pursuant to the Charterparty, the Vessel proceeded to Hong Kong to receive the Cargo.
4. In breach of the Charterparty the Defendants failed to load a full and complete cargo of [number] tonnes, but only loaded [number] tonnes.
5. In the premises, deadfreight is due and owing to the Plaintiffs from the Defendants pursuant to the said Charterparty in the sum of [amount], which the Defendants have failed and/or refused and/or neglected to pay.

Particulars

[Particulars of deadfreight claimed]

AND the Plaintiffs claim:

- (1) [Amount], alternatively damages;
- (2) Interest; and
- (3) Costs.

P7.11 Claims under a charterparty for hire under a time charter⁷

[Drew & Napier LLC]

1. By a time charterparty on the [type] form on or about [date] ("the Charterparty") the Plaintiffs chartered their vessel "AB" ("the Vessel") to the Defendants at a rate of US\$[amount]/month for a minimum period of [number] months and a maximum period of [number] years.
2. The following were, *inter alia*, express terms of the Charterparty:
[Relevant terms of charterparty including those on the hire, responsibility for paying for bunkers and port expenses, and any additional sums that may be payable which are being claimed here]
3. Pursuant to the Charterparty, the Vessel was delivered to the Defendants at [time] on [date] at Haldia, India and was redelivered to the Plaintiffs at Singapore at [time] on [date]. The Vessel was on hire for a period of [number] days.
4. In breach of the said Charterparty, the Defendants have failed, neglected and/or refused to effect payment for the sum particularised below. By reason thereof, the Plaintiffs have suffered loss and damage.

Particulars

[Particulars of hire, bunkers, amount payable by the Defendants in lieu of hold cleaning upon redelivery, port expenses or as may be]

AND the Plaintiffs claim:

- (1) [Amount], alternatively damages;
- (2) Interest; and
- (3) Costs.

⁷ See P7.20.

P7.12 Claims under a charterparty for demurrage⁸

[Drew & Napier LLC]

1. By a charterparty evidenced, *inter alia*, by a fixture recap dated [date] (“the Charterparty”), the Plaintiffs chartered to the Defendants their ship or vessel “AB” (“the Vessel”) to proceed to Hong Kong and load a cargo of [number] tonnes of [cargo] (“the Cargo”) for carriage to and delivery at Singapore.
2. The following were, *inter alia*, express terms of the Charterparty:
[Relevant terms of Charterparty, including the term for laytime and demurrage]
3. The Vessel duly loaded the Cargo at Hong Kong and proceeded to Singapore for delivery.
4. The Vessel arrived at Singapore on [date] and tendered her Notice of Readiness at [time] hours on the same day. In the premises, laytime for discharge of the Cargo commenced at [time] hours on [date].
5. Laytime expired at [time] hours on [date], but in breach of the terms set out at paragraph 2 above discharge was not completed until [time] hours on [date], and accordingly demurrage had been incurred for [number] days [number] hours as particularised below.

Particulars

[Particulars of time spent on demurrage and the amount of demurrage claimed]

6. By reason of the matters aforesaid, there is now due and owing from the Defendants demurrage in the sum of [amount] as particularised in a letter sent by the Plaintiffs’ agents to the Defendants on or about [date]. To date, the Defendants have failed and/or refused and/or neglected to pay the sum of [amount] or any part thereof.

AND the Plaintiffs claim:

- (1) [Amount], alternatively damages;
- (2) Interest; and
- (3) Costs.

⁸ See P7.21.

P7.13 Claims under a charterparty for indemnity for releasing cargo without presentation of bill of lading

[Drew & Napier LLC]

1. On or about [date], the Plaintiffs as owners of the vessel “AB” (“the Vessel”) entered into a charterparty evidenced, *inter alia*, by a fixture recap dated [date] with the Defendants (“the Voyage Charterparty”). By this charter the Vessel was to perform a voyage from Singapore to Shanghai.
2. Under the Voyage Charterparty, the Defendants promised through a document described as a Letter of Indemnity (“LOI”) dated [date] an indemnity to cover the Plaintiffs for all contingencies and/or prejudice that may result in the event that the Defendants requested for delivery or release of goods carried by the “AB” pursuant to the Voyage Charterparty without the production of original bills of lading. The salient terms of the LOI were as follows:

[Terms of the LOI]

3. On [date], following the loading of [number] tonnes of fuel oil (as evidenced by bill of lading no. [number]) at Singapore (“the Cargo”), the Plaintiffs received a request from the Defendants for the Plaintiffs to give instructions for the vessel “AB” to deliver the Cargo to Oilpurchaser Ltd (“Oilpurchaser”) at the port of Shanghai, People’s Republic of China, without production of the original bill of lading on account of the bill not having arrived at the discharge port. The Plaintiffs duly complied with the request.
4. On or about [date], some 2 months after the Cargo had been released to Oilpurchaser Ltd the Vessel was arrested by XYZ Bank at the port of Shanghai who were in possession of the original of the bill of lading.
5. By Clause [number] of the LOI as stated above, the Defendants were required to prevent the arrest of the Vessel should arrest be threatened. In breach of the terms of the LOI, the Defendants failed to prevent the arrest of the Vessel and the Vessel was arrested at Shanghai, People’s Republic of China on [date].
6. Further or alternatively, by Clause [number] of the LOI, the Defendants were required to provide such funds as are required to secure the immediate release of the Vessel. In breach of the terms of the LOI, the Defendants failed and/or neglected and/or refused to do so.

7. By a letter dated [date], the Defendants expressly refused to provide funds to secure the release of the Vessel. Further and/or alternatively, by [date], after a lapse of [number] days, the Defendants in breach of their LOI obligations, had still not arranged for the release and/or secured the release of the Vessel.
8. Further or alternatively, by Clause [number] of the LOI, the Defendants were required expressly and/or impliedly to retrieve the original bill of lading for cancellation. In breach of the terms of the LOI, the Defendants despite being required to do so by the Plaintiffs refused and/or were unable to locate and/or produce the bill of lading.

AND the Plaintiffs claim:

- (1) An injunction to compel the Defendants to provide funds by way of security for payment into the Shanghai Courts in an amount of [amount] or its equivalent in [type] currency in order that the Vessel may be released from arrest;
- (2) [Amount] for losses and expenses suffered by reason of the arrest;
- (3) A declaration that the Defendants indemnify and hold harmless the Plaintiffs in respect of any liability, loss or damage which may be sustained by the Plaintiffs by reason of the delivery of Cargo without presentation of the original bill of lading in accordance with the Defendants' request;
- (4) An order for an account for the whereabouts of the bill of lading and delivery-up by the Defendants to the Plaintiffs of the aforesaid original bill of lading;
- (5) All necessary and consequential orders, accounts and inquiries;
- (6) Interest;
- (7) Costs (including costs incurred by the Plaintiffs in Singapore and Shanghai) on an indemnity basis; and
- (8) Such further or other relief as the Honourable Court may deem fit.

P7.14 Claim by shipowner for an indemnity under a time charter⁹

[Rodyk & Davidson LLP]

1. By a charterparty on the [type] form dated [date], (“the Charterparty”) the Plaintiffs chartered their vessel “AB” (“the Vessel”) to the Defendants for a period of 4 months from the time of delivery at Bangkok, not before [date].
2. The Charterparty provided, *inter alia*, as follows:
 - [“4. Whilst on hire the charterers to ... arrange and pay for loading, trimming and stowage ... of cargoes.
 8. ... The owners not to be responsible for shortage, mixture, marks nor for number of pieces of packages, nor for damage to cargo caused by bad stowage or otherwise ...
 13. The owners only to be responsible ... for loss to goods on board if such loss ... has been caused by want of due diligence on the part of the owners or their manager or their servants ... The charterers to be responsible for loss or damage caused to the vessel or to the owners ... by improper or careless loading, stowage, or discharging of goods or any other improper or negligent act on their part of that or their servants.
 15. Master to sign bills of lading as presented.”]

The Plaintiffs will refer to the Charterparty at the trial or other hearing of this matter for its full terms and effect.

3. In the premises it was an express term of the Charterparty and/or a term implied by law to give business efficacy thereto, that the Defendants would indemnify the Plaintiffs against all liabilities incurred by the Plaintiffs under bills of lading issued in respect of cargo carried pursuant to the Charterparty and/or against all payments made in respect of such liabilities, if and to the extent that the Plaintiffs would not have been liable in the circumstances under the terms of the Charterparty.
4. Further or alternatively, it was an express term of the Charterparty and/or alternatively, a term implied by operation of law and/or to give business efficacy thereto, that the Defendants and their servants would not sign or issue the bill of lading on behalf of the master or the Plaintiffs, containing terms which were less

9 See P7.30.

favourable as regards liability for loss of and damage to the goods carried thereunder than the terms under the Charterparty.

5. The Vessel was duly delivered to the Defendants under the Charterparty at Bangkok on [date]. During the period of the Charterparty, the Vessel loaded, among other cargoes, consignments of tea leaves at [location] for carriage to Bangkok. The Defendants or their agents signed and issued a bill of lading on behalf of the master.
6. Following discharge of the Vessel at Bangkok, claims were made against the Plaintiffs by the lawful holder of the said bill of lading, alleging that the goods shipped thereunder were in damaged condition.

Particulars

[Details of bill of lading, nature and extent of damage and amount claimed]

7. The Plaintiffs were unable to dispute liability for the claims under the said bill of lading. On about [date], they reasonably paid the sum of [amount] in full and final settlement of the claims together with interest in the sum of [amount] calculated at [amount] per cent per annum for the period from the date of discharge until the date of payment. Further, the Plaintiffs incurred legal costs in the sum of [amount].
8. The damage consisted of wetting of the tea leaves by seawater and/or fresh water deterioration brought about as a result of leaking pipes below which the Cargo was stowed.

Particulars

[Details of the leaking pipes]

9. In the premises, the Plaintiffs are not liable under the Charterparty for the damage in respect of which claims were made under the said bill of lading as aforesaid.
10. In breach of the Charterparty the Defendants have failed and refused to indemnify the Plaintiffs against their liability under the said bill of lading and the resulting payments together with legal costs.
11. Further or alternatively, the above liabilities were caused by the improper and careless stowage of the cargo by the Defendants, their servants or agents in breach of the charterparty and the Plaintiffs are entitled to damages in like amount, namely [amount].

12. Further or alternatively, the said bill of lading was signed and issued by the Defendants in breach of the term of the Charterparty set out in paragraph [number] above in that the said bill of lading did not exclude the Plaintiffs' liability in the terms set out in the Charterparty and the sum of [amount] is claimed as damages for that breach.

13. [Interest]

AND the Plaintiffs claim:

- (1) A declaration that the Plaintiffs are entitled to be indemnified by the Defendants pursuant to the terms of the Charterparty on the [type] form dated [date] between the Plaintiffs and the Defendants, in respect of the Plaintiffs' liability to the lawful holder of the said bill of lading together with legal costs;
- (2) An indemnity in the sum of [amount], or alternatively damages; and
- (3) Interest thereon pursuant to Section 12 of the Civil law Act (Cap 43).

P7.15 Claim by charterer under voyage charterparty for despatch

[Rodyk & Davidson LLP]

1. By a charterparty on the [type] form dated [date], (“the Charterparty”), the Plaintiffs chartered from the Defendants, the motor vessel “AB” (“the Vessel”) to load a full and complete cargo of [number] metric tonnes of [cargo] (“the Cargo”) at Malaysia, for carriage to and delivery at Rotterdam.
2. The Charterparty contained, *inter alia*, the following express provisions:

[“12. Vessel to load at the rate of 1000 metric tonnes per day.

16. Loading time to commence on tendering notice of readiness.

22. Demurrage at rate of US\$20,000 per day or pro rata. Despatch to be paid at half demurrage rate for all time saved.”]

The Plaintiffs will refer to the Charterparty at the trial or other hearing of this matter for its full terms and effect.

3. Pursuant to the Charterparty, the Vessel proceeded to Malaysia where notice of readiness was tendered on [date] at [time]. In the premises, time started to run at [time] on [date].
4. The Vessel completed loading the Cargo at Malaysia at [time] on [date], thereby saving two days.
5. In the premises, the Plaintiffs are entitled to despatch in the sum of US\$[amount] but the Defendants have failed to pay the same or any part thereof.
6. [Interest]

AND the Plaintiffs claim:

- (1) [Amount], or alternatively damages;
- (2) Interest thereon pursuant to Section 12 of the Civil law Act (Cap 43).

P7.16 Defences to claims under a bill of lading for damage to cargo¹⁰

[Drew & Napier LLC]

1. Save that 3 bills of lading numbered [numbers] (“the Bills of Lading”) were issued in respect of [number] tonnes of [cargo] (“the Cargo”) for carriage on the vessel “AB” (“the Vessel”) from Al Jubail, Saudi Arabia to Singapore, paragraph 1 of the Statement of Claim is denied.
2. Paragraph 2 of the Statement of Claim is not admitted, and the Plaintiffs are put to strict proof of their title to sue.
3. The Bills of Lading, which were “claused” bills, provide, *inter alia*, as follows:

[Relevant terms of bill of lading as to condition of cargo]

4. By reason of the aforesaid, the Defendants deny that the Cargo was delivered to the Vessel in a good order and condition at Al Jubail, Saudi Arabia for shipment to Singapore and the Plaintiffs are put to strict proof thereof.
5. Paragraphs 3 and 4 of the Statement of Claim are not admitted.
6. As to Paragraph 5 of the Statement of Claim, the Defendants aver that if the Hague-Visby Rules apply, they would refer to Article III, Rules 3 and 4 which provide, *inter alia*, as follows:

[Article III, Rules 3 and 4 on the clausings of bills of lading]

7. Paragraph 6 of the Statement of Claim is not admitted. The Defendants aver that the burden of proof rests on the Plaintiffs to prove that the Cargo was delivered to the Vessel in good order and condition in Al Jubail, Saudi Arabia.
8. Paragraph 7 of the Statement of Claim is denied. Further or alternatively, the Defendants are entitled to rely on Article IV Rule [number] of the Rules, which provide, *inter alia*, as follows:

[Relevant defence provided in Hague Visby Rules, e.g. insufficiency of packing, inherent vice, perils of the sea, etc]

Particulars

[Particulars to support defence]

9. Paragraph 8 of the Statement of Claim is denied. As set out above the alleged loss and damage to the Cargo was not caused by any

¹⁰ See P7.01.

breach on the Defendants' part and/or is excepted or excluded under the provisions of the Bills of Lading and/or the Hague-Visby Rules.

10. In the premises, the Defendants are not liable for the alleged damage whether as alleged or at all.
11. Save as hereinbefore expressly admitted, each and every allegation contained in the Statement of Claim is denied as if the same were set out herein and traversed seriatim.

P7.17 Defence to claims for freight against the lawful holder of the bill of lading¹¹

[Drew & Napier LLC]

1. Paragraphs 1 and 2 of the Statement of Claim are admitted.
2. Paragraph 3 of the Statement of Claim is admitted.
3. Paragraphs 4 and 5 of the Statement of Claim are denied. The Defendants say they took delivery of the cargo as agents for Cargobuyer Pte Ltd only. The Defendants further deny that any undertaking was given by the Defendants to the Plaintiffs, whether as alleged or at all.
4. In the premises, the Defendants deny that they are liable to the Plaintiffs, whether as alleged or at all.
5. Save as hereinbefore expressly admitted, each and every allegation contained in the Statement of Claim is denied as if the same were set out herein and traversed seriatim.

¹¹ See P7.04.

P7.18 Defences to claims for damage to cargo under a voyage charter¹²

[Drew & Napier LLC]

1. Paragraphs 1 and 2 of the Statement of Claim are admitted.
2. By a bill of lading dated [date], the Defendants acknowledged the shipment on board the Vessel of [number] tonnes of [cargo] ("the Cargo"). The said bill of lading was made to the order of [name]. The Defendants were at all times unaware of the quality of the Cargo received on board their vessel. Save as aforesaid, paragraph 3 of the Statement of Claim is admitted.
3. Paragraph 4 of the Statement of Claim is not admitted and the Plaintiffs are put to strict proof of their title to sue.
4. The Defendants make no admission as to paragraph 5 of the Statement of Claim and the Plaintiffs are put to strict proof thereof.
5. As to paragraph 6 of the Statement of Claim, it is not admitted that the water content of the Cargo prior to loading off Malta was [0.1%] volume and that the water content of the Cargo after arrival at Singapore had arisen to [2%] volume. The Defendants say that they delivered the Cargo at Singapore in the same order and condition as the Cargo was when received off Malta. In the circumstances the alleged breaches of duty or contract are denied.
6. The Defendants say that the crew of the Vessel were not requested to witness the sampling process carried out on board "CD" prior to the ship-to-ship transfer, and the Defendants are not aware of the manner in which these samples were drawn.
7. Further or alternatively, if there was ingress of water into the cargo tanks, which is denied, the Defendants will contend, if necessary, that the alleged damage was caused by perils of the sea, as follows:

Particulars

[Particulars of perils of the sea]

8. By reason of the aforesaid matters, paragraph 7 of the Statement of Claim is denied and the Plaintiffs are put to strict proof thereof.
9. Save as hereinbefore expressly admitted, each and every allegation contained in the Statement of Claim is denied as if the same were set out herein and traversed seriatim.

¹² See P7.07.

P7.19 Defences to claims under a charterparty for freight under a voyage charter¹³

[Drew & Napier LLC]

1. Paragraphs 1, 2 and 3 of the Statement of Claim are admitted. The following, *inter alia*, were express terms of the Charterparty:

[Relevant terms of charterparty]

2. Wrongfully and/or in fundamental and/or repudiatory breach of Charterparty, the Vessel deviated from the usual and customary route between Hong Kong and Singapore thereby causing considerable delay. In the premises, it is denied that the Plaintiffs are entitled to the freight claimed or any freight.
3. Further or alternatively, if the Plaintiffs are entitled to the freight claimed or any freight, which is denied, the Defendants will set off in extinction or diminution thereof the amount hereinafter counterclaimed.
4. Save as hereinbefore expressly admitted, each and every allegation contained in the Statement of Claim is denied as if the same were set out herein and traversed seriatim.

Counterclaim

5. The Defendants repeat paragraphs 1 to 3 of the Defence herein and aver that they have suffered loss and damage by reason of the delay in delivery of the Cargo.

Particulars

[Particulars of loss, damage and expense]

AND the Defendants counterclaim:

- (1) Damages;
- (2) Interest; and
- (3) Costs.

¹³ See P7.09.

P7.20 Defences to claims under a charterparty for hire under a time charter¹⁴

[Drew & Napier LLC]

1. Paragraphs 1 and 2 of the Statement of Claim are admitted. The following, *inter alia*, were express terms of the Charterparty:
[Relevant terms of Charterparty including off-hire clause and clauses allowing for deductions from hire]
2. In breach of the Charterparty, the Plaintiffs delivered the Vessel to the Defendants with unclean holds. The Defendants had to expend time and incur expenses to clean the holds, and are entitled to set off the sum of US\$[amount], being the cost of hold cleaning, from the hire claimed by the Plaintiffs. Further, the Defendants say that no hire is payable during the period of such hold cleaning.
3. On or about [date] [details of engine breakdown, or as may be] it was necessary for the Vessel to be off-hired in order that repairs may be effected. Repairs were carried out at [name of shipyard] between [date/time] and [date/time].
4. Further breakdowns occurred on or about [dates/times] [details of crane breakdown, or as may be]. Such repairs as were necessary to rectify the breakdowns were only finally completed on or about [date/time].
5. In the premises, there was loss of time of [number] days and the Vessel was off hire during the aforesaid period. As a result thereof, the amount of [amount] for hire is not payable by the Defendants.

Particulars

[Particulars of periods of off-hire claimed as set out above]

6. Save that it is admitted that the Defendants have paid hire in the sum of [amount], paragraph 4 of the Statement of Claim is denied.
7. In the premises, the Defendants have paid the Plaintiffs all the sums due under the Charterparty and the Defendants deny that they are liable to the Plaintiffs whether as alleged or at all.
8. Save as hereinbefore expressly admitted, each and every allegation contained in the Statement of Claim is denied as if the same were set out herein and traversed seriatim.

¹⁴ See P7.11.

P7.21 Defences to claims under a charterparty for demurrage¹⁵

[Drew & Napier LLC]

1. Paragraphs 1 and 2 of the Statement of Claim are admitted. The following, *inter alia*, were express terms of the Charterparty:

[Relevant terms of charterparty]

2. Paragraph 3 of the Statement of Claim is admitted.
3. There was a delay in berthing at Singapore due to a breakdown in the plant or machinery at the port, and by reason of Clause [number] of the Charterparty any demurrage payable (which is denied) would only count at half-rate, if at all.
4. Further, the Vessel did not discharge the cargo at the rate of [amount] as provided for at Clause [number] of the Charterparty. Had the Vessel discharged the Cargo at the agreed rate of [amount], she would have completed discharge operations within [number] hours, well within the laytime provided for in the Charterparty. Accordingly, paragraph 5 of the Statement of Claim is denied.
5. By reason of the aforesaid matters, paragraph 6 of the Statement of Claim is also denied.
6. Save as hereinbefore expressly admitted, each and every allegation contained in the Statement of Claim is denied as if the same were set out herein and traversed seriatim.

¹⁵ See P7.12.

P7.22 Defence (alleging no title to sue) to claim for damage to cargo: bill of lading

[Rodyk & Davidson LLP]

1. It is denied that the Plaintiffs were the owners of or were otherwise interested in the Cargo at any material time.
2. Without prejudice to the generality of the foregoing denial, it is expressly denied that:
 - (i) The Plaintiffs were the indorsees of the Bill of Lading. The Bill of Lading was indorsed once only to [name].
 - (ii) If, which is not admitted, the Plaintiffs presented the Bill of Lading at [location] and took delivery of the cargo thereunder, it is denied that they thereby became parties to the Bill of Lading contract or any contract with the Defendants or that they are thereby entitled to sue upon the same. Further, or alternatively, it is denied that there was any consideration for the alleged agreement.
3. [Seriatim Clause]

P7.23 Defence (alleging no title to sue) to claim for damage to cargo: charterparty

[Rodyk & Davidson LLP]

1. It is denied that the Plaintiffs were the owners of or were otherwise interested in the cargo at any material time. In the premises, the Plaintiff's claim fails *in limine*.

P7.24 Defence (alleging unseaworthiness) to claim for damage to cargo: Hague-Visby Rules

[Rodyk & Davidson LLP]

1. It is denied that the Vessel was unseaworthy as alleged or at all. The Defendants at the beginning of the voyage exercised due diligence to make the Vessel seaworthy [and the holds and all other parts of the ship safe for the reception, carriage and preservation of the goods or to properly man, equip and supply the ship].

Particulars

[Particulars in answer to every allegation made by the Plaintiffs to show that the vessel was unseaworthy]

2. [Seriatim Clause]

P7.25 Defence (alleging excepted clauses) to claim for damage to cargo: Hague-Visby Rules

[Rodyk & Davidson LLP]

1. [Admit that the bill of lading or charterparty expressly incorporated and was subject to, the Hague-Visby Rules].
2. The Hague-Visby Rules further provide by Article IV, rules 1 and 2, as follows:
 - “1. Neither the carrier nor the ship shall be liable for loss or damage arising or resulting from unseaworthiness unless caused by want of due diligence on the part of the carrier to make the ship seaworthy ...
 2. Neither the carrier nor the ship shall be responsible for loss or damage arising or resulting from:
 - (a) Act, neglect, or default of the master, mariner, pilot, or the servants of the carrier in the navigation or in the management of the ship ...
 - (c) Perils, dangers and accidents of the sea or other navigable waters ...
 - (i) Act or omission of the shipper or owner of the goods, his agent or representative ...
 - (n) Insufficiency of packing ...”
3. The alleged damage to the goods arose or resulted from an act, neglect or default of a servant or servants of the carrier in the management of the ship.

Particulars

[Details of the mismanagement relied upon]

4. Further or alternatively, the alleged damage to the goods arose or resulted from insufficiency of packing.

Particulars

[Facts relied upon]

5. Further or alternatively, the alleged damage to the goods arose or resulted from an act and/or omission of the shipper and/or owner of the goods.

Particulars

[Details of the act and omission]

6. In the premises, by reason of the provisions of Article IV of the Hague-Visby Rules relied upon, the Defendants are not liable for the damage alleged or at all.
7. [Seriatim Clause]

P7.26 Defence and counterclaim denying liability for freight and claiming for damage to goods

[Rodyk & Davidson LLP]

1. On the arrival of the Vessel at Malaysia, the goods referred to in the Statement of Claim were tendered to the Defendant in so damaged a condition that they were not merchantable and the Defendant therefore refused to accept delivery of them and abandoned them to the shipowner.
2. [Seriatim Clause]

Counterclaim

3. The Defendant has suffered damage by the Plaintiffs' breach of the contract contained in the Bill of Lading [or charterparty] and/or breach of duty as hereinafter appears.

Particulars

[Particulars of the breach]

P7.27 Defence by charterer alleging cesser of liability for freight or demurrage

[Rodyk & Davidson LLP]

1. The liability of the Defendant had ceased by reason of clause [number] in the Charterparty, which provides:

[Text of clause]
2. By virtue of clause [number] of the Charterparty the Plaintiff as shipowner was entitled to exercise a lien on the cargo at the discharge port of Bandar Abbas for any outstanding demurrage due. Such a lien was also provided for in the Bill of Lading dated [date] and issued under the Charterparty.
3. The said lien was or would have been effective at the port. However the Plaintiff failed or refused to exercise such a lien on the cargo.
4. In the premises the Defendant is not liable to the Plaintiff for the alleged or any demurrage.
5. [Seriatim Clause]

P7.28 Defence to claim for demurrage: (charterparty) relying on exception clause

[Rodyk & Davidson LLP]

1. The Charterparty to which the Defendants will refer for its full terms, meaning and effect, further provided, *inter alia*:

[Exception clause]
2. It is admitted that the Vessel did not complete discharge of the cargo until [date] at [time].
3. On or about [date], the French port authorities ordered all vessels out of berth until [time] on [date]. It was not possible for the Vessel to enter berth until about [time] on [date].
4. The Vessel berthed only on [date] at [time].
5. In the premises, the delay to the vessel in discharge was caused by the Vessel's inability to proceed to or lie at any berth on [date] at [time] by the order of the French authorities.
6. Further or alternatively, such loss and damage was caused as aforesaid by [exception clause] and pursuant to the general exceptions clause of the Charterparty [clause], the Defendants are not liable for such loss and damage.
7. Further, the Defendants rely on the custom of the port that discharge was a joint operation. It was the duty of the Plaintiffs to put the cargo on to the quay and of the Defendants to remove it. At no time did the Plaintiffs succeed in discharging the cargo on to the quay at the rate of [number] bags per weather working day. In the premises, any delay in discharge was due to the fault of the Plaintiffs and the Defendants are not liable as alleged or at all.
8. [Seriatim Clause]

P7.29 Defence by charterer alleging cancellation of charterparty

[Rodyk & Davidson LLP]

1. The charterparty was cancelled pursuant to clause [number], set out below:

[Text of clause]

2. The ship did not arrive at the port of loading on or before [date], the cancelling date.

Particulars

[Particulars of when and how the cancellation was effected]

3. [Seriatim Clause]

P7.30 Defence to claim for an indemnity under a time charter¹⁶

[Rodyk & Davidson LLP]

1. [Deny, *inter alia*, and where appropriate, any alleged inability of the Plaintiffs to dispute liability for the claim under the bills of lading and/or any alleged reasonableness of the Plaintiffs' payment and any allegation that the Defendants have failed to duly indemnify the Plaintiffs under the bills of lading]
2. Further and alternatively, the Bills of Lading had effect and/or were expressly made subject to the provisions of the Carriage of Goods by Sea Act (Cap 33). Article IV, rule 2 of the Schedule to the Goods by Sea Act (Cap 33) provides:
 - "2. Neither the carrier nor the ship shall be responsible for loss or damage arising or resulting from —
 - (i) Act or omission of the shipper or owner of the goods, his agent or representative.
 - (m) Wastage in bulk or weight or any other loss or damage arising from inherent defect, quality or vice of the goods.
 - (n) Insufficiency of packing.
 - (q) Any other cause arising without the actual fault or privity of the carrier, or without the fault or neglect of the agents or servants of the carrier, but the burden of proof shall be on the person claiming the benefit of this exception to show that neither the actual fault or privity of the carrier nor the fault or neglect of the agents or servants of the carrier contributed to the loss or damage."
3. Further and alternatively, the alleged damage to the goods arose or resulted from the fact that when the goods were received by the Plaintiffs, they were inadequately packed and/or boxed to withstand the normal incidents of carriage by sea for the voyage.
4. [Seriatim clause]

¹⁶ See P7.14.

P7.31 Defence by charterer to claim of failure to load cargo alleging ship was not ready to load

[Rodyk & Davidson LLP]

1. The vessel was not ready to load at the time [and location] stipulated under the charterparty.
2. [Seriatim Clause]

CHAPTER 8

COMPANIES AND SECURITIES

COMPANIES

Precedents

- P8.01** Claim by director against company for unpaid remuneration
- P8.02** Claim by company against director for breach of fiduciary duty
- P8.03** Claim under s 216 of the Companies Act (Cap 50) on the ground that members are unfairly prejudiced
- P8.04** Defence by director of a company relying on s 391 of the Companies Act in respect of a claim by the company for breach of fiduciary duty

Incidental Documents

- P8.05** Originating summons for a statutory derivative action pursuant to s 216A of the Companies Act (Cap 50)
- P8.06** Affidavit in support of statutory derivative action pursuant to s 216A of the Companies Act (Cap 50)
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SECURITIES

Precedents

- P8.09** Claim by company against shareholder for unpaid calls
- P8.10** Claim for price of shares sold and transferred
- P8.11** Claim by purchaser for specific performance of contract to sell shares
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- P8.14** Claim by broker for money paid and commission and brokerage
- P8.15** Claim against stockbroker for differences or an account
- P8.16** Claim against stockbroker for wrongfully closing account

- P8.17** Claim for rescission against stockbroker
- P8.18** Defence against allegation of agreement for referral commission on the ground of illegality
- P8.19** Defence and counterclaim alleging breaches of duty by stockbroker
- P8.20** Defence and counterclaim alleging breach of contract to sell when a profit became available
- P8.21** Defence by stockbroker denying that closure of account was wrongful

DIRECTOR'S DUTIES AND MINORITY OPPRESSION

Precedents

- P8.22** Statement of claim against director for breach of fiduciary duties
- P8.23** Claim against director breach of common law/statutory duty of skill and care
- P8.24** Claim against director (1st Defendant) to account for breach of fiduciary duty/breach of trust; claim against stranger (2nd Defendant) for knowing receipt
- P8.25** Claim against director (1st defendant) to account for breach of fiduciary duty/breach of trust; claim against stranger (2nd defendant) for dishonest assistance/known assistance
- P8.26** Defence and counterclaim to claim for breach of fiduciary duty
- P8.27** Defence to claim for breach of statutory/common law duties of skill and care
- P8.28** Defence of 1st defendant to claim for breach of fiduciary duty and knowing receipt
- P8.29** Defence of 2nd Defendant to claim for knowing receipt
- P8.30** Defence of 1st defendant to claim for breach of fiduciary duty and dishonest assistance
- P8.31** Defence of 2nd defendant to claim for breach of fiduciary duty and dishonest assistance
- P8.32** Reply and defence to counter claim for breach of fiduciary duty

MINORITY SHAREHOLDERS: OPPRESSION REMEDY

Precedents

- P8.33** Statement of claim for relief against oppression
- P8.34** Defence against claim for oppression

- P8.35** Claim for relief under s 216 of the Companies Act – breach of terms on which it had been agreed that the affairs of the company should be conducted, including exclusion from participation in management
- P8.36** Claim for relief under s 216 of the Companies Act – exclusion from participation in management and excessive remuneration paid to directors
- P8.37** Claim for relief under s 216 of the Companies Act – using company funds for personal profit, denial of right to inspect accounts and removal from directorship in a company subsidiary
- P8.38** Defence to claim for relief under s 216 of the Companies Act for exclusion from participation in management and excessive remuneration paid to directors

CHAPTER 8

COMPANIES AND SECURITIES

COMPANIES

PRECEDENTS

P8.01 Claim by director against company for unpaid remuneration

[WongPartnership LLP]

1. The Defendants are a private exempt company engaged in the business of selling electronic components.
2. At the material time, the Plaintiff was a director of the Defendants.
3. At all material times the Articles of Association of the Defendants provided, at Article [no.], that the directors of the Defendants should be entitled to such remuneration as the Defendants might by ordinary resolution determine and, unless the resolution provided otherwise, the remuneration should be deemed to accrue from day to day.
4. By an ordinary resolution of the Defendants made on [date] the remuneration of the Plaintiff as director of the Defendants was fixed at [S\$] per annum with effect from [date] payable monthly in advance.
5. Wrongfully and despite demands made by letter dated [date] the Defendant failed, refused and/or neglected to pay to the Plaintiff any part of the remuneration pleaded at paragraph 4 above for [period of time].
6. The unpaid remuneration amounted to [S\$].

And the Plaintiff claims:

- (1) The sum of [S\$] referred to at paragraph 6 above;
- (2) Interest pursuant to s 12 of the Civil Law Act (Cap 43) at such rate and for such period as to the Court shall seem just;

(3) Costs; and

(4) Such further or other relief as this Honourable Court deems fit.

P8.02 Claim by company against director for breach of fiduciary duty

[WongPartnership LLP]

1. The Plaintiffs are in the business of trading in electronic components.
2. At all material times, the Defendant was a director of the Plaintiffs.
3. As a director of the Plaintiffs the Defendant owed to the Plaintiffs *inter alia* the following duties:
 - (1) A duty to act in good faith in the interests of the Plaintiffs;
 - (2) A duty to act for the proper purposes of the Plaintiffs in relation to its affairs.
4. As a director of the Plaintiffs, the defendant was a trustee of the assets of the Plaintiffs and/or owed the obligations of a trustee in respect of the assets of the Plaintiffs.
5. On or about [date] the Defendant caused or procured the Plaintiffs to sell [goods] belonging to the Plaintiffs to [X Company] at a price of [S\$X].

Particulars

6. In causing or procuring the sale of the [goods] the Defendant acted:
 - (1) In bad faith and against the interests of the Plaintiffs; and/or
 - (2) For improper purposes in relation to the affairs of the Plaintiffs; and/or
 - (3) In breach of trust and/or in breach of his obligations as trustee in respect of the assets of the Plaintiffs.

Particulars

- (1) The Defendant was the sole and beneficial owner of [X Company];
 - (2) The open market value of the vessel at the time of the sale to [X Company] was, to the knowledge of the Defendant [S\$X +Y];
 - (3) The sale of the [goods] was intended by the Defendant to profit himself directly, and/or indirectly through [X Company], and not the Plaintiffs.
7. By reason of the matters pleaded above the Plaintiffs have suffered loss and damage.

Particulars

And the Plaintiffs claim:

- (1) An account of the profits made by the Defendant on or by reason of the sale and payment of all sums found due on taking the account alternatively damages to be assessed;
- (2) Interest pursuant to s 12 of the Civil Law Act (Cap 43) at such rate and for such period as to the Court shall seem just;
- (3) Costs; and
- (4) Such further or other relief as this Honourable Court deems fit.

P8.03 Claim under s 216 of the Companies Act (Cap 50) on the ground that members are unfairly prejudiced

[WongPartnership LLP]

1. [ABC Pte Ltd] ('the Company'), was incorporated on [date] under the Companies Act (Cap 50) and is engaged in the business of selling electronic components.
2. The Plaintiff and the Defendants are each directors of the Company.
3. The registered office of the Company is at [address].
4. At the date of the presentation of this Writ, [no.] shares are in issue fully paid.
5. The principal objects for which the Company was established are as follows: [set out the main objects as appearing in the memorandum of association] and other objects stated in the memorandum of association of the Company.
6. The Company was formed in order to obtain a concession for the exploitation of the Property referred to in its Memorandum of Association; which belongs to another company [XYZ Pte Ltd] incorporated under the Companies Act (Cap 50) (the 'Owner').
7. By an agreement ('the Agreement') dated [date] and made between the Owner and the Company, the Owner granted to the Company an exclusive licence to exploit the Property within the [geographic locality] for a period of [time] at a royalty of 10% on sales of [no.] of units of the Property, so long as the royalty should amount to not less than [S\$] per calendar year.
8. The Company was founded on the basis of mutual trust and confidence between the Plaintiff and the Defendants, it being agreed that the Plaintiff and the Defendants would each be a director of the Company and that the Plaintiff would hold 30% of the issued shares of the Company and that the Defendants (D1 and D2) would hold 70% of the issued shares of the Company.
9. In accordance with such agreement and understanding the [no.] issued shares of the Company are held in such proportion between the Plaintiff ([no.] shares) and the Defendants (with D1 owning [no.] shares and D2 owning [no.] shares). The Defendants own or control the whole of the issued share capital of the Owner.
10. The original Directors of the Company were the Defendants D1 and the Plaintiff.
11. At an Extraordinary General Meeting of the Company held on [date] the Plaintiff was removed from his directorship of the

Company upon a poll by 70 votes to 30, and by the same majority, the Defendant D2 was appointed a Director in the Plaintiff's place.

12. The Defendants D1 and D2 as such Directors of the Company have, since the said [date] refused to enter into any further contracts to sell the Property, and have caused the Company to take advantage of escape clauses in many of its existing contracts. As a result of such action by the Defendants the business of the Company has been substantially reduced.
13. When the Agreement was entered into, it was not anticipated by anybody that the Company would be able to expand the sales of the Property (which were then almost nominal) to the extent to which, through the hard work and business acumen of the Plaintiff, the sales have in fact been expanded.
14. The royalty payments by the Company to the Owner under the Agreement in the three years of its operation have been [S\$], [S\$] and [S\$] respectively, and the profits of the Company during the same periods have been [S\$], [S\$] and [S\$] respectively.
15. In the premises, the actions of the Defendants D1 and D2 as Directors of the Company have not been prompted by any business considerations or any solicitude for the welfare of the Company, but are designed to enable the Owner to put an end to the Agreement and obtain for itself a large part of the profits now being made by the Company.
16. In these circumstances the Plaintiff submits that the affairs of the Company are being conducted in a manner which is unfairly prejudicial to the interests of Plaintiff and it is just and equitable that the Company should be wound up.

And the Plaintiff prays as follows:

- (1) That the Defendants D1 and D2 may be ordered to sell their shares in the Company to the Plaintiff at a fair value as determined by the Court;
- (2) Alternatively to (1), that the Company be wound up by the Court pursuant to s 254 of the Companies Act (Cap 50);
- (3) Such further or other relief as this Honourable Court deems fit.

P8.04 Defence by director of a company relying on s 391 of the Companies Act in respect of a claim by the company for breach of fiduciary duty

[WongPartnership LLP]

1. The Defendant was at all material times a Director of the Company.
...
2. If, which is denied, the Defendant is or may be liable in respect of the breach of duty alleged, the defendant ought fairly to be excused wholly, alternatively in part, for the breach of duty having regard to the fact that at all times the Defendant acted honestly and reasonably in respect of the matters alleged; and the following circumstances of the case:

Particulars

...

3. Save as herein specifically admitted or not admitted, the Defendants deny each and every allegation contained in the Statement of Claim as though the same were set out herein and traversed seriatim.

INCIDENTAL DOCUMENTS

P8.05 Originating summons for a statutory derivative action pursuant to s 216A of the Companies Act (Cap 50)

[WongPartnership LLP]

ORIGINATING SUMMONS

Let all parties concerned attend before the Judge in Chambers on [date / time] on the hearing of an application by the Plaintiffs for the following orders: -

1. that pursuant to section 216A of the Companies Act, the Plaintiffs be granted leave to bring an action in the name and on behalf of ABC Pte Ltd ('the Defendants') against DEF (NRIC No. _____) and GHI (NRIC No. _____) (both directors of the Defendants) for breaches of directors' duties to the Defendants, itemized in Appendix 1 to this Originating Summons;
2. that the Plaintiffs be authorized to control the conduct of the action and any execution proceedings thereafter;
3. that the Defendants do pay the Plaintiffs' costs of the said action on an indemnity basis;
4. that the costs of this application be taxed and paid by the Defendants to the Plaintiffs;
5. that such further or other orders be made as this Honourable Court deems fit.

Dated [date]

P8.06 Affidavit in support of statutory derivative action pursuant to s 216A of the Companies Act (Cap 50)

[WongPartnership LLP]

1. I am a shareholder and director of the Defendant, [ABC Pte Ltd] ('the Company'). I am duly authorized to make this Affidavit on behalf of the 2nd Plaintiff.
2. Insofar as the matters deposed to herein are within my personal knowledge and/or are based on documents in my custody, power and possession and/or that of my solicitors, they are true. Insofar as the matters deposed to herein are not within my personal knowledge and/or are not based on documents in my custody, power and possession and/or that of my solicitors, they are true to the best of my information and belief.
3. I make this affidavit in support of the Plaintiffs' application pursuant to section 216A of the Companies Act, to be granted leave to bring an action in the name, and on behalf of, the Company against one DEF and GHI for various breaches of their directors' duties to the Company.
4. The Company was incorporated on [date] under the Companies Act (Cap 50) with its registered office address at [address] and its principal business being the provision of Information Technology services.
5. Both the Plaintiffs and DEF and GHI are shareholders and directors of the Company.
6. The shareholding of the Company is as follows:

1st Plaintiff:	30%
2nd Plaintiff:	20%
DEF:	25%
GHI:	25%
7. In or about [date], the 1st Plaintiff stumbled upon a series of payment records evidencing payments by the Company to third parties including VWY Pte Ltd ('VWY') and XYZ Pte Ltd ('XYZ').
8. At all material times, the Company did not have any prior business dealings and/or contracts with VWY and XYZ. Both the Plaintiffs were also unaware of the nature of the payments to the said VWY and XYZ and the circumstances under which they were made. There also appears to be no legitimate commercial purpose for such payments given that there is no contractual relationship

between the Company and VWY or XYZ. Neither were any valuable goods or services supplied by either VWY or XYZ to the Company.

9. Based on information obtained from computer retrieval searches carried out by the Plaintiffs, both DEF and GHI are shareholders of VWY as well as XYZ. The payments to VWY and XYZ were not disclosed by DEF or GHI at all material times to the board of the Company.
10. In the circumstances, the Plaintiffs have strong reason to believe that DEF and GHI were abusing their powers and breaching their duties as directors of the Company by making payments from the Company to companies in which they had a commercial interest.
11. The Plaintiffs raised several queries in respect of the same at a directors' meeting duly convened by the Plaintiffs on [date]. However, DEF and GHI failed to furnish any explanation whatsoever for the purported payments to VWY and XYZ.
12. After the said directors' meeting, the Plaintiffs also instructed their solicitors to write to DEF and GHI on the queries relating to the payments to VWY and XYZ but such correspondence went unanswered.
13. Accordingly, pursuant to section 216(A)(3)(a) of the Companies Act (Cap 50), on [date] both the Plaintiffs issued a 'Notice of Intention to Apply for Leave of Court under Section 216A of the Companies Act' ('the Notice') to bring an action on behalf of the Defendants against DEF and GHI for the following breaches of directors' duties:

[Specify particulars of the precise duties breached by DEF and GHI]
14. More than 14 days have elapsed since the issuance of the Notice but no resolution has been passed to date for the Company to commence an action against DEF and GHI for the abovementioned breaches of directors' duties and/or the wrongful conduct of DEF and GHI. Nor has there been any Notice issued to convene a directors meeting to discuss the same or pass a resolution to that effect.
15. The Plaintiffs in the present action are acting in good faith to seek to protect the interests of the Company and redress the serious harm caused to the Company by DEF and GHI whose actions have caused harm and loss to the Company as set out in the Notice. It is clear from the breaches of DEF and GHI that the amount of

money diverted from the Company is substantial and the breaches manifold and grave. It would therefore be in the best interests of the Company that an action be brought against DEF and GHI to recover these monies.

16. In the circumstances, I respectfully ask for an Order-In-Terms of the Plaintiffs' application herein.

P8.07 Summons for winding up on ground that it is just and equitable that the company be wound up due to deadlock in management

[WongPartnership LLP]

ORIGINATING SUMMONS

Let all parties concerned attend before the Judge on [date / time] on the hearing of an application by the Plaintiff that:

- (1) A winding order be made against the Defendants; [and
- (2) [Name] be appointed as liquidator of the Defendants]

Dated [date].

P8.08 Affidavit in support of winding up application on ground that it is just and equitable that the company be wound up due to deadlock in management

[WongPartnership LLP]

I, [name], of [address] do make oath (or affirm) and say as follows:

1. [ABC Pte Ltd] ('the Company'), was incorporated on [date] under the Companies Acts (Cap 50) and is engaged in the business of selling electronic components.
2. The registered office of the Company is at [address].
3. The capital of the Company is \$100 divided into 100 shares, all of which were issued shortly after the incorporation of the Company and have since then stood credited as fully paid in the books of the Company, as to 50 in the name of the Plaintiff, and as to the remaining 50 in the name of [X].
4. The objects for which the Company was established were to purchase the business of interior decorators and painters then carried on by the Plaintiff and [X] in partnership and the other objects set forth in the memorandum of association.
5. Shortly after the incorporation of the Company it purchased the said business and started trading.
6. The intention of the Plaintiff and [X] was to include such provisions in the constitution of the Company as would give them an equal share in the management of the business, and the articles of association have therefore at all material times provided and still provide that at general meetings each shareholder should on a show of hands have one vote and on a poll one vote for each share held by him, and that the chairman should not have a casting vote at either general meetings of the Company or meetings of the Board of Directors.
7. The Plaintiff and [X] are the sole Directors of the Company.
8. Until recently the Company has been extremely successful and in a winding-up there would be a substantial surplus for the shareholders.
9. In or around [date] differences arose between the Plaintiff and [X] as to the mode of conducting the business of the Company.

[Particulars]

10. Since the circumstances referred to above, [X] has taken less and less interest in the business of the Company. The Plaintiff formed

the view that [X] intends as long as possible to avoid doing any active work in connection with the Company's business, which is accordingly left to the Plaintiff, although [X] continues to enjoy the profits made by the Company.

11. At a board meeting held on [date] the Plaintiff raised this issue with [X] who immediately left the board meeting and in spite of repeated requests has refused to attend any proposed, subsequent board meetings.
12. It has therefore become impossible to conduct the business of the Company, for under the articles of association of the Company the Plaintiff has no power to act alone on behalf of the Board of Directors.
13. In the circumstances it is just and equitable that the Company should be wound up.

And the Plaintiff prays as follows:

- (1) That the Company be wound up by the Court pursuant to s 254 of the Companies Act (Cap 50);
- (2) Such further or other relief as this Honourable Court deems fit.

SECURITIES

PRECEDENTS

P8.09 Claim by company against shareholder for unpaid calls

[WongPartnership LLP]

1. The Plaintiffs are a company incorporated under the provisions of the Companies Act (Cap 50) as a [private] company limited by shares.
2. At all material times the Articles of Association of the Plaintiffs [authorised the directors of the Plaintiffs to make calls on all shares in the Plaintiffs not fully paid-up and provided for payment of interest at [number] per cent on all overdue and unpaid calls].
3. On or about [date] the Defendant was allotted, on his application, [no.] of [ordinary] shares of [S\$] each in the Plaintiffs and the Defendant paid [S\$] to the Plaintiffs in respect of each share so allotted.
4. On or about [date] the directors of the Plaintiffs duly resolved to make and made a call on all shareholders in the Plaintiffs for [S\$] per share payable on [date].
5. Notwithstanding notification to the Defendant by the Plaintiffs of the call pleaded at paragraph 4 above by a letter dated [date] the Defendant has failed to pay all or any part of the sum due on the call by the date required or at all.
6. The Plaintiffs further claim interest (to be assessed) on the sums claimed:
 - (1) [Pursuant to the Articles of Association of the Plaintiffs at [%] per cent from [the date of the call pleaded at paragraph 4 above]; alternatively
 - (2) [Pursuant to section 12 of the Civil Law Act (Cap 43) at such rate and for such period as to the Court shall seem just].

And the Plaintiffs claim:

- (1) The sum of [S\$];
- (2) Interest (to be assessed) on the sum claimed:
 - (a) [Pursuant to the Articles of Association of the Plaintiffs at [%] per cent from [the date of the call pleaded at paragraph 4 above]]; alternatively

- (b) [Pursuant to section 12 of the Civil Law Act (Cap 43) at such rate and for such period as to the Court shall seem just];
- (3) Costs; and
- (4) Such further or other relief as this Honourable Court deems fit.

P8.10 Claim for price of shares sold and transferred

[WongPartnership LLP]

1. By an agreement made in writing dated [date], the Defendant agreed to purchase 500 ordinary shares of S\$1 each in [ABC Pte Ltd] from the Plaintiff at the price of S\$1,000.00 ('Agreement').
2. Pursuant to Clause [x] of the Agreement, the price was to be paid [upon transfer of the shares].
3. On or around [date], pursuant to the Agreement, the Plaintiff sold and transferred the said shares to the Defendant.
4. In breach of the Agreement, the Defendant failed to pay the said price or any part thereof.

And the Plaintiffs claim:

- (1) The sum of S\$1,000.00 or alternatively damages to be assessed for breach of contract;
- (2) Interest pursuant to section 12 of the Civil Law Act (Cap 43) at such rate and for such period as to the Court shall seem just;
- (3) Costs; and
- (4) Such further or other relief as this Honourable Court deems fit.

P8.11 Claim by purchaser for specific performance of contract to sell shares

[WongPartnership LLP]

1. By an agreement made in writing dated [date], the Defendant agreed to sell to the Plaintiff who agreed to purchase 5,000 ordinary shares of S\$1 each in [ABC Pte Ltd] at the price of S\$100,000.00 ("Agreement").
2. [ABC Pte Ltd] is an unlisted company which shares are not freely saleable in the open market.
3. It was a term of the Agreement that completion of the sale was to take place on [date] and that the defendant would deliver to the Plaintiff on the date for completion a duly executed transfer of the shares and the certificate relating thereto or deposit the certificate relating to the shares with the secretary of [ABC Pte Ltd].
4. On [date], the Plaintiff duly paid the said sum of S\$100,000.00 in execution of the agreement but in breach of contract, the Defendant wrongfully refused to complete the sale and wrongfully refused to transfer the shares to the Plaintiff.

Particulars

[state the particulars of the Defendant's wrongful refusal to transfer the shares]

5. By reason of the foregoing the Plaintiff has suffered loss and damage.

And the Plaintiffs claim:

- (1) Specific performance of the Agreement referred to at paragraph 1 above;
- (2) Damages in addition to or in lieu of specific performance;
- (3) Alternatively, damages for breach of contract;
- (4) Interest pursuant to section 12 of the Civil Law Act (Cap 43) at such rate and for such period as to the Court shall seem just;
- (5) Costs;
- (6) Such further or other relief as this Honourable Court deems fit.

P8.12 Claim by seller for non-acceptance of shares agreed to be sold

[WongPartnership LLP]

1. By an agreement made in writing dated [date], the Defendant agreed to purchase 500 ordinary shares of S\$1 each in [ABC Pte Ltd] from the Plaintiff at the price of S\$1,000.00 (“Agreement”).
2. It was a term of the Agreement that completion of the sale was to take place on [date].
3. On [date], the Defendant wrongfully refused to complete the contract and accept the said shares despite the Plaintiff’s request for the Defendant to do so.

Particulars

[State the particulars of the Defendant’s wrongful refusal to complete the sale]

4. By reason of the Defendant’s breach of contract the Plaintiff has suffered loss and damage.

Particulars

- (1) The Plaintiff’s loss is calculated as the difference between the market price of the said shares on the contractual completion date and the contractually agreed price of S\$1,000.00.

And the Plaintiffs claim:

- (1) Damages to be assessed for breach of contract;
- (2) Interest pursuant to section 12 of the Civil Law Act (Cap 43) at such rate and for such period as to the Court shall seem just;
- (3) Costs; and
- (4) Such further or other relief as this Honourable Court deems fit.

P8.13 Claim by the purchaser of shares in a company for breach of warranty by vendor

[WongPartnership LLP]

1. By an agreement made in writing (the 'Agreement') dated [date] between the Plaintiff and the Defendant, the Plaintiff agreed to purchase [no.] of shares ('Shares') in the [Company] from the Defendant for a sum of [S\$].
2. The Plaintiff will refer at the hearing of this action to the Agreement for its full terms, meaning and effect.
3. At all material times the Defendant was the beneficial owner of the Shares.
4. The plaintiff completed the purchase of the Shares from the defendant pursuant to the Agreement on or about [date].
5. By clause [no.] of the Agreement the Defendant warranted to the Plaintiff in the following terms:
[terms of warranty]
6. In breach of the warranty pleaded at paragraph 5, [facts relating to breach of warranty].
7. By reason of the breach of warranty pleaded at paragraph 6 above the plaintiff has suffered loss and damage.

Particulars

[State the nature and extent of the loss and damage claimed]

And the Plaintiff claims:

- (1) Damages to be assessed for breach of warranty;
- (2) Interest pursuant to section 12 of the Civil Law Act (Cap 43) at such rate and for such period as to the Court shall seem just;
- (3) Costs; and
- (4) Such further or other relief as this Honourable Court deems fit.

P8.14 Claim by broker for money paid and commission and brokerage

[WongPartnership LLP]

1. The Plaintiff is a member of the Singapore Exchange Securities Trading Ltd and of The Society of Remisiers.
2. The Defendants are a company incorporated under the Companies Act (Cap 50) for, *inter alia*, the purposes of making investments.
3. By an agreement dated [date], the Defendants engaged the Plaintiff to provide investment management and dealing services ('Services Agreement').
4. Clause [no.] of the Services Agreement provided that the Defendants were to pay interest at a rate of 5 per cent higher than the base rate for the time being of [ABC Bank] on all sums overdue for payment to the Plaintiff.
5. Due to various dealings in investments made by the Plaintiff on behalf of the Defendants, as of [date], the Defendants were indebted to the Plaintiff in the sum of [S\$].

Particulars

...

6. Wrongfully and despite demands made by letter dated [date] the Defendants failed, refused and/or neglected to pay to the Plaintiff the sums (or any part thereof) pleaded above.
7. As of the date of the filing of this Writ, interest on the sums due to the Plaintiff amount to [S\$]. Interest continues to accrue thereon at the rate of [S\$] per day.

Particulars

...

And the Plaintiff claims:

- (1) The sum of [S\$] referred to at paragraph 5 above;
- (2) Interest thereon amounting to [S\$] (pleaded at paragraph 7 above) and continuing at the rate of [S\$] per day until judgment or sooner payment and/or alternatively interest pursuant to section 12 of the Civil Law Act (Cap 43) at such rate and for such period as to the Court shall seem just;
- (3) Costs; and
- (4) Such further or other relief as this Honourable Court deems fit.

P8.15 Claim against stockbroker for differences or an account

[WongPartnership LLP]

1. The Plaintiffs are a company incorporated under the Companies Act (Cap 50) for, *inter alia*, the purposes of making investments.
2. The Defendant is a member of the Singapore Exchange Securities Trading Ltd and of The Society of Remisiers.
3. By an agreement dated [date], the Plaintiffs engaged the Defendant to provide investment management and dealing services ('Services Agreement').
4. Clause [no.] of the Services Agreement provided for the payment at a rate of 5 per cent higher than the base rate for the time being of [ABC Bank] on all sums overdue for payment by either party to each other.
5. Pursuant to the Services Agreement, the Defendant conducted investment business for the Plaintiffs since [date].
6. In or around [date], the Plaintiffs discovered that the Defendant had failed to account to the Plaintiffs for moneys received by him for the account of the Plaintiffs in respect of the purchase and sale of stock and shares.
7. Alternatively the Plaintiffs claim against the Defendant's money had and received by the Defendant amounting to the sum of [S\$] to and for the use of the Plaintiffs in respect of the purchase and sale of the said stock and shares.

Particulars

...

And the Plaintiffs claim:

- (1) An account of all sums received by the Defendant or under his control for the account of the Plaintiffs pursuant to the Services Agreement or otherwise;
- (2) Payment of all sums found due on taking the said account including the sum of [S\$] referred to at paragraph 7 above;
- (3) Interest pursuant to clause [no.] as pleaded at paragraph 4 above and continuing at the rate of [S\$] per day until judgment or sooner payment and/or alternatively interest pursuant to section 12 of the Civil Law Act (Cap 43) at such rate and for such period as to the Court shall seem just;
- (4) Costs; and
- (5) Such further or other relief as this Honourable Court deems fit.

P8.16 Claim against stockbroker for wrongfully closing account

[WongPartnership LLP]

1. The Plaintiffs are a company incorporated under the Companies Act (Cap 50) for, *inter alia*, the purposes of making investments.
2. The Defendant is a member of the Singapore Exchange Securities Trading Ltd and of The Society of Remisiers.
3. By an agreement dated [date], the Plaintiffs employed the Defendant as a stockbroker to purchase on the Plaintiffs' behalf certain shares (the 'Agreement').

Particulars

...

4. On [date], pursuant to the Agreement, the Defendant purchased the said shares at [S\$] per share.
5. On [date], in consideration that the Plaintiffs would deposit with the Defendant certain securities namely [identify] which the Plaintiffs did deposit with the Defendant accordingly, the Defendant agreed with the Plaintiffs that the Defendant would carry over the said shares to the next account day on [date].

Particulars

...

6. In breach of the Agreement, the Defendant did not carry over the said shares to [date] and on [date] the Defendant wrongfully and in breach of contract without the Plaintiffs' instructions or authority closed the Plaintiffs' account and sold the said shares.
7. By reason of the foregoing, the plaintiff has suffered loss and damage amounting to [S\$]:

Particulars

[Price of the said shares on [date]]

[Price at which the Defendants could and should have carried over the said shares]

And the Plaintiffs claim:

- (1) The sum of [S\$] as referred to at paragraph 7 above, alternatively damages to be assessed for breach of contract;
- (2) Interest pursuant to section 12 of the Civil Law Act (Cap 43) at such rate and for such period as to the Court shall seem just;
- (3) Costs; and
- (4) Such further or other relief as this Honourable Court deems fit.

P8.17 Claim for rescission against stockbroker

[WongPartnership LLP]

1. The Plaintiffs are a company incorporated under the Companies Act (Cap 50) for, *inter alia*, the purposes of making investments.
2. The Defendant is a member of the Singapore Exchange Securities Trading Ltd and of the Singapore Exchange ('SGX') and carries on business as a stockbroker.
3. By an agreement dated [date], the Plaintiffs employed the Defendant as a stockbroker to purchase on the Plaintiffs' behalf certain shares (the 'Agreement') as set out below.

Particulars

...

4. By several contract notes the Defendant represented to the Plaintiffs that it had bought on the SGX from third parties the shares referred to in the contract notes ('Contract Notes').

Particulars

...

5. In reliance on the said representation the Plaintiffs paid to the Defendant the sum of [S\$] being the total price of the shares, stamp duty, and commission of the Defendant as provided for in the Contract Notes. The shares were duly registered in the name of the Plaintiffs on [date].
6. It was a term of the Agreement that the Defendant would comply with the rules of the SGX and in particular that the Defendant would not act in relation to the Plaintiffs as principal or sell the said shares to the Plaintiffs as principal in any manner set out in the rules.
7. The representations contained in the Contract Notes were false and the Defendant has committed breaches of contract in that the shares referred to in the Contract Notes were in reality sold by the Defendant to the Plaintiffs as principal.
8. In the premises the Plaintiffs are entitled to avoid and rescind the transactions referred to in the Contract Notes and the purchase by him of the said shares.
9. The Plaintiffs gave notice to the Defendant of their intention to rescind the transaction on discovery of the falsity of the said representations on [date].

And the Plaintiffs claim:

- (1) Rescission of the said transactions;
- (2) Repayment of the sum of [S\$] upon the Plaintiffs' transfer of the shares to the Defendant;
- (3) Alternatively, damages to be assessed for misrepresentation;
- (4) Interest pursuant to section 12 of the Civil Law Act (Cap 43) at such rate and for such period as to the Court shall seem just;
- (5) Costs; and
- (6) Such further or other relief as this Honourable Court deems fit.

P8.18 Defence against allegation of agreement for referral commission on the ground of illegality

[WongPartnership LLP]

1. If (which is denied) the Court finds that the alleged agreement for referral commission as described by the Plaintiff at paragraphs [] to [] of the Statement of Claim existed, the Defendants aver that the alleged agreement is illegal and unenforceable against the Defendants.
2. The Plaintiff in recommending and referring [name] to purchase shares in [ABC Limited] from the Defendants for commission, had carried out business in a regulated activity and/or has held himself out as so doing pursuant to the Securities and Futures Act (Cap 289) ('SFA').
3. The Defendants aver that the Plaintiff does not hold a representative's licence pursuant to section 83 of the SFA in respect of the aforesaid regulated activity.
4. In view of that, the alleged agreement (which is in any event denied) was and is illegal and unenforceable as against the Defendants.
5. Save as herein specifically admitted or not admitted, the Defendants deny each and every allegation contained in the Statement of Claim as though the same were set out herein and traversed seriatim.

P8.19 Defence and counterclaim alleging breaches of duty by stockbroker

[WongPartnership LLP]

Defence

1. By an agreement dated [date], the Plaintiff was employed by the Defendant to act for him as a stockbroker (the 'Agreement').
2. On [date], the Defendant instructed the Plaintiff to purchase on [date] (on the Defendant's behalf) certain shares as mentioned at paragraphs [no.] to [no.] of the Statement of Claim at a price not exceeding [S\$].
3. On or around [date], the Plaintiff sent to the Defendant a contract note purporting to show that he had bought the said shares accordingly at [S\$].
4. Subsequently, the Defendant on [date] requested the Plaintiff to carry over the said shares to the next account date. The Plaintiff agreed to do so if the Defendant paid the Plaintiff the difference which would be payable in respect of the first purchase.
5. Accordingly, on [date], the Defendant duly paid the said difference amounting to [S\$]. However, the Plaintiff did not carry over the said shares but wrongfully closed the Defendant's account.
6. Further or alternatively if (which is denied) the Plaintiff was entitled to close the Defendant's account as alleged or at all, the manner in which the Plaintiff closed the account was a breach of contract or alternatively a breach of the Plaintiff's duty of care to the Defendant.

Particulars

...

7. The Plaintiff sold the Defendant's shares by aggregating them with the shares of other persons without disclosing to the Defendant any intention to do so and without the consent of the Defendant.
8. Further or in the alternative, the Defendant denies that the Plaintiff purchased the said shares for the Defendant or at all or that he did not buy them on the Singapore Stock Exchange.
9. The Defendant further claims to set off against the claim of the Plaintiff so much of the counterclaim herein as will satisfy the Plaintiff's claim herein.

10. Save as herein specifically admitted or not admitted, the Defendant denies each and every allegation contained in the Statement of Claim as though the same were set out herein and traversed seriatim.

Counterclaim

11. The Defendant repeats paragraphs 1 to 10 above by way of counterclaim.
12. By reason of the Plaintiff's actions, the Defendant has suffered loss and damage.

Particulars

...

And the Defendant claims:

- (1) Lost profits which he would otherwise have made amounting to [S\$] alternatively damages to be assessed;
- (2) Lost profits as a result of the aggregation of the sale of the Defendant's shares resulting in a lower realisation of the value of the shares referred to at paragraph 7 alternatively damages to be assessed;
- (3) Interest pursuant to section 12 of the Civil Law Act (Cap 43) at such rate and for such period as to the Court shall seem just;
- (4) Costs; and
- (5) Such further or other relief as this Honourable Court deems fit.

P8.20 Defence and counterclaim alleging breach of contract to sell when a profit became available

[WongPartnership LLP]

1. Paragraphs [no.] to [no.] of the Statement of Claim are denied. The Defendant avers as follows.
2. By an agreement dated [date], the Plaintiff was employed by the Defendant to act for him as a stockbroker (the 'Agreement').
3. On [date], the Defendant orally instructed the Plaintiff to purchase shares in [ABC Pte Ltd] and to sell the same as soon as a profit of [S\$] became available thereon.
4. The Plaintiff purchased the said shares at [S\$] per share. On [date], the shares rose to a price of [S\$] per share the sale of which would have resulted in a profit of [S\$].
5. In breach of contract, alternatively in breach of his duty of care to the Defendant, the Plaintiff failed to sell the said shares at that time when such profit was available.
6. If as alleged in the Statement of Claim the Plaintiff sold the said shares at a loss, the said sale was wrongful being contrary to the terms of the Plaintiff's employment and wholly unauthorised by the Defendant.
7. Further in the alternative, said sale was made negligently and in breach of a duty on the Plaintiff to take care to obtain the price of [S\$] which the Plaintiff could have obtained for the said shares by the exercise of due diligence.

Counterclaim

8. The Defendant repeats paragraphs [no.] to [no.] by way of counterclaim.
9. The Plaintiff could and ought to have obtained a profit amounting to [S\$] which by reason of the Plaintiff's breach of contract or breach of duty, or both, the Defendant has lost.

And the Defendant claims:

- (1) The sum of [S\$] alternatively damages to be assessed for loss of profits;
- (2) Interest pursuant to section 12 of the Civil Law Act (Cap 43) at such rate and for such period as to the Court shall seem just;
- (3) Costs; and
- (4) Such further or other relief as this Honourable Court deems fit.

P8.21 Defence by stockbroker denying that closure of account was wrongful

[WongPartnership LLP]

1. By an agreement dated [date], the Defendant was employed by the Plaintiff to act for him as a stockbroker (the 'Agreement'). Save that the Defendant did close the Plaintiff's account on [date], paragraph [no.] of the Statement of Claim which alleged that such closure was wrongful is denied.
2. It was a term of the Agreement that the Defendant was entitled to close the Plaintiff's account if, after due notice of the amount due from him, the Plaintiff failed to pay to the Defendant the balance due to him at the end of the account in respect of differences upon the Plaintiff's shares.
3. At the end of the account ending on [date], there was a balance of [S\$] due to the Defendant in respect of such differences amounting to [S\$].
4. By a letter dated [date], the Defendant gave the Plaintiff notice of the amount of the differences due to him. The Plaintiff failed to pay the same at the end of the account or at all.
5. Save as herein specifically admitted or not admitted, the Defendant denies each and every allegation contained in the Statement of Claim as though the same were set out herein and traversed seriatim.

DIRECTOR'S DUTIES AND MINORITY OPPRESSION

PRECEDENTS

P8.22 Statement of claim against director for breach of fiduciary duties

[Allen & Gledhill LLP]

1. The Plaintiff is a company incorporated in Singapore. Its primary business is the manufacture of home furniture.
2. By the Plaintiff's letter of offer of employment dated [date], which was accepted in writing on [date] by the Defendant ('the Employment Contract'), the Defendant was made an executive director of the Plaintiff for the period [...]. Pursuant to the Employment Contract, the Defendant was formally appointed as a director of the Board of Directors of the Plaintiff on [date].
3. In the Employment Contract, there was a term implied into such contracts or for business efficacy that the Defendant owes a duty of loyalty and fidelity to the Plaintiff, which duty obliges the Defendant to act in good faith and in the best interests of the Plaintiff.
4. Further, in his capacity as a director of the Plaintiff, the Defendant owed the Plaintiff fiduciary duties, including *inter alia* the following duties:
 - (1) to act bona fide and in good faith in the interest of the Plaintiff in the discharge of all duties, powers, responsibilities, obligations and functions assigned to or vested in or attached to him as a director of the Plaintiff; and/or
 - (2) to act for the proper purpose of the Plaintiff in relation to its affairs; and/or
 - (3) to ensure that the affairs of the Plaintiff are properly administered and that its assets and property are not dissipated or exploited to the prejudice of the Plaintiff; and/or
 - (4) to serve the Plaintiff faithfully and dutifully and not to advance or promote the Defendant's own or other external interests to the prejudice of or contrary to or in conflict with the corporate interests of the Plaintiff; and/or

- (5) to ensure that each contract/transaction/agreement is entered into at arm's length in fulfilment of the corporate objective of the Plaintiff to maximise profits and to advance and promote the business of the Plaintiff; and/or
 - (6) not to place or allow himself to be placed in a situation or position whereby any of the Defendant's duties and obligations to the Plaintiff conflict or may conflict with his own personal interests and/or;
 - (7) to promptly account and to pay to the Plaintiff all monies or property received by the Defendant on behalf of or for the credit or the account of the Plaintiff; and/or
 - (8) to manage and deal with the property of the Plaintiff in a trustee-like manner; and/or
 - (9) to disclose to the Plaintiff any of the Defendant's breaches of duty owed to the Plaintiff.¹
5. Further, in addition to and not in derogation of the Defendant's fiduciary duties to the Plaintiff, the Defendant owed obligations under the Companies Act, Cap 50 and under common law and equity, including the duty to exercise reasonable care, to act honestly and use reasonable diligence in the discharge of the duties of their office as directors.
 6. On [date], the Defendant caused the Plaintiff to sell a timber cutting machine ('the Timber Machine') owned by the Plaintiff to a Mr Fong Seng ('Mr Fong') at a lump sum price of S\$50,000 ('the Sale').
 7. Mr Fong is the brother-in-law of the Defendant. Mr Fong removed the Timber Machine from the Plaintiff's premises on [date] after the Sale.
 8. In causing the sale of the Timber Machine to Mr Fong, the Defendant acted in breach of his duties as set out in paragraphs 3, 4 and 5 above and/or in breach of trust.

Particulars

- (1) The Defendant has never disclosed to the directors or members of the Plaintiff the Sale or Mr Fong's relationship to the Defendant.

1 See the English Court of Appeal's decision in *Item Software (UK) Ltd v Fassihi & Ors* [2004] IRLR 928.

- (2) The Timber Machine is the most valuable piece of machinery owned by the Plaintiff and is an indispensable part of the Plaintiff's daily operations.
 - (3) The open market value of the Timber Machine at the time of the Sale was, to the knowledge of the Defendant, S\$5,000,000.
 - (4) The sale of the Machinery was intended by the Defendant to profit Mr Fong directly, and profit the Defendant indirectly through Mr Fong.
 - (5) The Timber Machine, being a substantial asset of the Plaintiff, was sold without the approval of the shareholders of the Plaintiff.²
9. By reason of the matters pleaded above, the Plaintiff has suffered loss and damage.

Particulars

- (1) The open market value of the Timber Machine at the time of the sale to Mr Fong, less the sum of S\$50,000 Mr Fong paid to the Plaintiff in accordance with the Sale ('the Timber Machine Value')
 - (2) Loss of profits to be assessed. ('Loss of Profits')
10. The Defendant is liable to account to the Plaintiff for the Timber Machine Value and the Loss of Profits on the ground of his breach of fiduciary duty and/or breach of trust as set out above.
11. Further or alternatively, the Defendant is liable to account to the Plaintiff for the profits made by the Defendant on or by reason of the sale of the Timber Machine to Mr Fong.
12. And the Plaintiff claims:
- (1) A declaration that the Defendant has breached his duties to the Plaintiff when causing or effecting the Sale of the Timber Machine at a lump sum price of S\$50,000 to Mr Fong;
 - (2) A declaration that the Defendant is liable to account to the Plaintiff for the Timber Machine Value and the Loss of Profits or such other sum as the Court thinks fit on the ground of his breach of fiduciary duty and/or breach of trust;³

² See in this respect s 160 of the Companies Act.

³ In this precedent, no proprietary claim is made following the imposition of a constructive trust. See the precedent on knowing receipt for such a pleading.

- (3) An order that the Defendant pay to the Plaintiff the Timber Machine Value and the Loss of Profits or such other sum as the Court thinks fit;
- (4) An account of the profits made by the Defendant on or by reason of the sale of the Timber Machine to Mr Fong;
- (5) Loss and damages to be assessed;
- (6) Equitable compensation;
- (7) Interest under Section 12 of the Civil Law Act (Cap 43);
- (8) Costs; and
- (9) Such further or other relief as this Honourable Court deem fit.

P8.23 Claim against director breach of common law/statutory duty of skill and care

[Allen & Gledhill LLP]

1. The Plaintiff is a company incorporated in Singapore which carries on business as a chicken farm operator.
2. The Defendant was a director of the Plaintiff for the period [....].
3. The Defendant owed obligations under the Companies Act, Cap 50 and under common law, including the duty to exercise reasonable care, to act honestly and use reasonable diligence in the discharge of the duties of their office as directors.
4. On [date], the Defendant caused the Plaintiff to make payment of an upfront lump sum payment S\$50,000 to Healthy Chicken Feed Pte Ltd ('Healthy Chicken') in consideration for the supply of 10,000kg of chicken feed to the Plaintiff by Healthy Chicken.
5. To date, Healthy Chicken has supplied only 20kg of mouldy chicken feed to the Plaintiff, all of which is completely unsuitable for the Plaintiff's use. Healthy Chicken was wound up on [date], and the liquidator has disclaimed the contract between Healthy Chicken and the Plaintiff for the supply of chicken feed.
6. In causing the Plaintiff to make payment of S\$50,000 to Healthy Chicken, the Defendant has acted in breach of his duties set out in paragraph 3 above.

Particulars

- (1) The Defendant failed to take any reasonable steps to check the quality of Healthy Chicken's products before causing the Plaintiff to make payment to Healthy Chicken.
- (2) The Defendant failed to take any reasonable steps to check Healthy Chicken's creditworthiness and production capability before causing the Plaintiff to make payment to Healthy Chicken.
7. As a result of the matters set out above the Plaintiff has suffered loss and damage.

Particulars of Loss

- (1) the sum of S\$50,000 the Defendant caused the Plaintiff to pay to Healthy Chicken.
- (2) loss of profits suffered by the Plaintiff to be assessed.

8. And the Plaintiff Claims:

- (1) A declaration that the Defendant has breached his duties to the Plaintiff;
- (2) Loss and damages to be assessed;
- (3) Interest under Section 12 of the Civil Law Act (Cap 43);
- (4) Costs; and
- (5) Such further or other relief as this Honourable Court deem fit.

P8.24 Claim against director (1st Defendant) to account for breach of fiduciary duty/breach of trust; claim against stranger (2nd Defendant) for knowing receipt

[Allen & Gledhill LLP]

1. The Plaintiff is a company incorporated in Singapore, which carries on business as a supermarket.
2. By the Plaintiff's letter of offer of employment dated [date], which was accepted in writing on [date] by the 1st Defendant ('the Employment Contract'), the 1st Defendant was formally appointed as a director of the Plaintiff for the period [...]. Pursuant to the Employment Contract, the Defendant was formally appointed as a director of the Board of Directors of the Plaintiff on [date].
3. The 2nd Defendant is the nephew of the 1st Defendant and carries on business as a car salesman.
4. In the Employment Contract, there was a term implied into such contracts or for business efficacy that the Defendant owes a duty of loyalty and fidelity to the Plaintiff, which duty obliges the Defendant to act in good faith and in the best interests of the Plaintiff.
5. Further, in his capacity as a director of the Plaintiff, the 1st Defendant owed the Plaintiff fiduciary duties, including, *inter alia*, the following duties:
 - (1) to act bona fide and in good faith in the interest of the Plaintiff in the discharge of all duties, powers, responsibilities, obligations and functions assigned to or vested in or attached to him as a director of the Plaintiff; and/or
 - (2) to act for the proper purpose of the Plaintiff in relation to its affairs; and/or
 - (3) to ensure that the affairs of the Plaintiff are properly administered and that its assets and property are not dissipated or exploited to the prejudice of the Plaintiff; and/or
 - (4) to serve the Plaintiff faithfully and dutifully and not to advance or promote the 1st Defendant's own or other external interests to the prejudice of or contrary to or in conflict with the corporate interests of the Plaintiff; and/or
 - (5) to ensure that each contract/transaction/agreement is entered into at arm's length in fulfilment of the corporate objective of the Plaintiff to maximise profits and to advance and promote the business of the Plaintiff; and/or

- (6) not to place or allow himself to be placed in a situation or position whereby any of the 1st Defendant's duties and obligations to the Plaintiff conflict or may conflict with his own personal interests; and/or
 - (7) to promptly account and to pay to the Plaintiff all monies or property received by the 1st Defendant on behalf of or for the credit or the account of the Plaintiff; and/or
 - (8) to manage and deal with the property of the Plaintiff in a trustee-like manner; and/or
 - (9) to disclose to the Plaintiff any of the 1st Defendant's breaches of duty owed to the Plaintiff.
6. Further, in addition to and not in derogation of the Defendant's fiduciary duties to the Plaintiff, the 1st Defendant owed obligations under the Companies Act, Cap 50 and under common law and equity, including the duty to exercise reasonable care, to act honestly and use reasonable diligence in the discharge of the duties of their office as directors.
7. On [date], the 1st Defendant withdrew a sum of S\$200,000 from the Plaintiff's bank account and paid the same sum to the 2nd Defendant in consideration for a luxury motorcar ('the Car').
8. In paying the sum of S\$200,000 to the 2nd Defendant ('the Payment'), the 1st Defendant has acted in breach of his duties as set out above and/or in breach of trust.

Particulars

- (1) The 1st Defendant did not disclose to the Board of Directors or Members of the Plaintiff the Payment to the 2nd Defendant.
 - (2) The Payment was made by the 1st Defendant to the 2nd Defendant, who is a personal relative of the 1st Defendant.
 - (3) Since receiving the Car, the 1st Defendant has retained the Car for his own personal use and has not accounted to the Plaintiff for the use and/or value of the Car. The Payment was thus of no benefit, whether actual, apparent or otherwise, to the Plaintiff.
 - (4) The 1st Defendant has not accounted to the Plaintiff for the Payment which the 1st Defendant used to purchase the motorcar from the 2nd Defendant.
9. The 2nd Defendant was dishonest in relation in relation to the 1st Defendant's breach of fiduciary duties and/or breach of trust as set out above.

Particulars

- (1) The 2nd Defendant knew that the Payment was made out of funds belonging to the Plaintiff.
- (2) The 2nd Defendant knew that the 1st Defendant intended to retain the Car for his own personal use and did not intend to account to the Plaintiff for the Car and/or the Payment.
10. Further or alternatively, the circumstances set out in paragraph 8 indicated to the 2nd Defendant that the 1st Defendant made the Payment in breach of fiduciary duty and/or in breach of trust such that it was unconscionable for the 2nd Defendant to retain the benefit of the payment.
11. As a result of the matters set out above the Plaintiff has suffered loss and damage, namely the sum of S\$200,000.
12. The 1st Defendant is liable to account to the Plaintiff for the sum of S\$200,000 on the ground of his breach of fiduciary duty and/or breach of trust as set out above.
13. The 2nd Defendant is liable to account to the Plaintiff for the sum of S\$200,000 as a constructive trustee on the ground of knowing receipt.
14. Further or alternatively, the Plaintiff is entitled to trace the sum of S\$200,000 into and claims a beneficial interest in,⁴ alternatively an equitable lien over,⁵ the Car, which the 1st Defendant holds on trust for the Plaintiff.
15. Further or alternatively, the Plaintiff is entitled to trace the sum of S\$200,000 into any traceable product and claims a beneficial interest in, alternatively an equitable lien over, that traceable product, which the 2nd Defendant holds on trust for the Plaintiff.

4 The words 'trace' and 'claims' distinguishes between tracing as an evidential process used to identify substitutes, and actually claiming title to the substitutes: *Foskett v McKeown* [2001] 1 AC 102. See also Burrows, *The Law of Restitution* (2nd Ed) (Butterworths, 2002) at 79 and Birks, *Unjust Enrichment* (1st Ed) (Oxford University Press, 2003) at 179-180. See also *Caltong (Australia) Pty Ltd (fka Tong Tien See Holding (Australia) Pty Ltd) & Anor v Tong Tien See Construction Pte Ltd (in liq)* [2002] 3 SLR 241.

5 The plaintiff is entitled to choose between the two remedies of equitable lien and beneficial interest: *Foskett v McKeown* [2001] 1 AC 102. This would be a tactical decision depending on the value of the product. If the value of the traceable product has dropped below the original sum of money claimed for (S\$200,000 in this case), an equitable lien would be advantageous since the equitable lien would be security for the sum claimed for and the plaintiff can sue the defendant for the balance. If the value of the traceable product has risen above the original sum of money claimed for (S\$200,000 in this case), claiming a beneficial interest is advantageous since the plaintiff would enjoy the increase in value. See Birks, *Unjust Enrichment* (1st Ed) (Oxford University Press, 2003), at 180-181.

16. AND the Plaintiff claims:

(1) Against the 1st Defendant:

- (a) A declaration that the 1st Defendant has breached his duties to the Plaintiff by reason of the matters pleaded above in Paragraphs 7 and 8;
- (b) A declaration that the 1st Defendant is liable to account to the Plaintiff for the sum of S\$200,000 or such other sum as the Court thinks fit on the ground of his breach of fiduciary duty and/or breach of trust.
- (c) An order that the 1st Defendant pay to the Plaintiff S\$200,000 or such other sum as the Court thinks fit.
- (d) Further or alternatively, a declaration that the Plaintiff is entitled to trace the sum of S\$200,000 into and has a beneficial interest in, alternatively an equitable lien over, the Car, and that the 1st Defendant holds the Car on trust for and be required to make over the Car to the Plaintiff; and an order that the 1st Defendant deliver up the Car to the Plaintiff.

(2) Against the 2nd Defendant:

- (a) A declaration that the 2nd Defendant has breached his duties to the Plaintiff by reason of the matters pleaded above in Paragraphs 9 and 10;
 - (b) A declaration that the 2nd Defendant is liable to account to the Plaintiff for the sum of S\$200,000 or such other sum as the Court thinks fit on the ground of knowing receipt.
 - (c) An order that the 2nd Defendant pay to the Plaintiff S\$200,000 or such other sum as the Court thinks fit.
 - (d) Further or alternatively, a declaration that the Plaintiff is entitled to trace the sum of S\$200,000 into and has a beneficial interest in, alternatively an equitable lien over, the traceable product representing the S\$200,000, and that the 2nd Defendant holds the Car on trust for and makes over such traceable product to the Plaintiff; and an order that the 2nd Defendant deliver up such traceable product to the Plaintiff.
- (3) Interest under Section 12 of the Civil Law Act (Cap 43), whether or not compounded;
- (4) Costs; and
- (5) Such further or other relief as this Honourable Court deems fit.

P8.25 Claim against director (1st defendant) to account for breach of fiduciary duty/breach of trust; claim against stranger (2nd defendant) for dishonest assistance/known assistance

[Allen & Gledhill LLP]

1. The Plaintiff is a company incorporated in Singapore, which carries on business as a retailer of personal computers.
2. By the Plaintiff's letter of offer of employment dated [date] which was accepted in writing on [date] by the 1st Defendant ('the Employment Contract'). The 1st Defendant was a director of the Plaintiff for the period [...]. Pursuant to the Employment Contract, the Defendant was formally appointed as a director of the Board of the Directors of the Plaintiff on [date].
3. The 2nd Defendant is a business associate of the 1st Defendant. The 1st Defendant and the 2nd Defendant are the directors and shareholders of Neutron Systems ('Neutron'), a computer software company.
4. In the employment contract between the Plaintiff and the Defendant there was a term implied into such contracts or for business efficacy that the Defendant owes a duty of loyalty and fidelity to the Plaintiff, which duty obliges the 1st Defendant to act in good faith and in the best interests of the Plaintiff.
5. Further, in his capacity as a director of the Plaintiff, the 1st Defendant owed the Plaintiff fiduciary duties, including, *inter alia*, the following duties:
 - (1) to act bona fide and in good faith in the interest of the Plaintiff in the discharge of all duties, powers, responsibilities, obligations and functions assigned to or vested in or attached to him as a director of the Plaintiff; and/or
 - (2) to act for the proper purpose of the Plaintiff in relation to its affairs; and/or
 - (3) to ensure that the affairs of the Plaintiff are properly administered and that its assets and property are not dissipated or exploited to the prejudice of the Plaintiff; and/or
 - (4) to serve the Plaintiff faithfully and dutifully and not to advance or promote the Defendant's own or other external interests to the prejudice of or contrary to or in conflict with the corporate interests of the Plaintiff; and/or
 - (5) to ensure that each contract/transaction/agreement is entered into at arm's length in fulfilment of the corporate objective of

the Plaintiff to maximise profits and to advance and promote the business of the Plaintiff; and/or

- (6) not to place or allow himself to be placed in a situation or position whereby any of the 1st Defendant's duties and obligations to the Plaintiff conflict or may conflict with his own personal interests; and/or
 - (7) to promptly account and to pay to the Plaintiff all monies or property received by the 1st Defendant on behalf of or for the credit or the account of the Plaintiff; and/or
 - (8) to manage and deal with the property of the Plaintiff in a trustee like manner; and/or
 - (9) to disclose to the Plaintiff any of the 1st Defendant's breaches of duty owed to the Plaintiff.
6. Further, in addition to and not in derogation of the 1st Defendant's fiduciary duties to the Plaintiff, the 1st Defendant owed obligations under the Companies Act, Cap 50 and under common law and equity, including the duty to exercise reasonable care, to act honestly and use reasonable diligence in the discharge of the duties of their office as directors.
 7. On [date], the 1st Defendant transferred a sum of S\$1,000,000 out of the Plaintiff's bank account to various creditors of Neutron ('the Transfer'), in order to discharge certain debts owing by Neutron to Neutron's creditors. Neutron has gone into insolvent winding up on [date], and no dividends have been paid by Neutron.
 8. In making the Transfer, the 1st Defendant has acted in breach of his duties as set out in paragraph 4 above and/or in breach of trust. The best particulars that the Plaintiff can give until in discovery and interrogatories are as follows:

Particulars

- (1) The 1st Defendant did not disclose the Transfer to the Board of Directors or Members of the Plaintiff.
- (2) The 1st Defendant's purpose in making the Transfer was to discharge debts owing by Neutron Systems, a company in which the 1st Defendant was director and shareholder.
- (3) In making the Transfer, the 1st Defendant falsified the accounts of the Plaintiff for the period [dates] in order to avoid the Transfer being detected by the directors and members of the Plaintiff.

- (4) The 1st Defendant has not accounted to the Plaintiff for the Transfer.
9. Further or in the alternative, the 1st Defendant has engaged in a dishonest and fraudulent design by acting in breach of his duties and/or in breach of trust as set out in paragraph 8 above. The best particulars that the Plaintiff can give until in discovery and interrogatories are as follows:

Particulars

- (1) The Plaintiff repeats the particulars in paragraph 8.
10. The 2nd Defendant acted dishonestly⁶ in assisting the 1st Defendant in relation to each of the 1st Defendant's breaches of fiduciary duty and/or breaches of trust as set out above. The 2nd Defendant's conduct was not honest by the ordinary standards of reasonable and honest people and he himself realised that by those standards his conduct was dishonest. The best particulars that the Plaintiff can give until in discovery and interrogatories are as follows:

Particulars

- (1) As the 2nd Defendant well knew, the discharge of Neutron's debts provides no legitimate commercial or other benefit for the Plaintiff.
- (2) Nevertheless, the 2nd Defendant proposed to the 1st Defendant on [date] that the debts owing by Neutron be discharged using money withdrawn from the Plaintiff's bank account. The 1st Defendant agreed to the 2nd Defendant's proposal and acted on it on [date].
- (3) The 2nd Defendant had also further advised the 1st Defendant on [date] on the steps to take to avoid the fact of the Transfer being detected by the directors or members of the Plaintiff. These steps involved the 1st Defendant falsifying the accounts

6 Although dishonesty is often said to be required of the accessory before he can be made liable for assisting breach of trust following *Royal Brunei Airlines v Tan* [1995] 2 AC 378, an argument can still be made that where the trustees had engaged in a 'dishonest and fraudulent design', knowledge on the part of the accessory is sufficient to ground liability: *Barnes v Addy* (1874) LR 9 Ch App 255. *Barnes v Addy* has been applied by the Singapore Court of Appeal in *Kartika Ratna Thahir v Pertamina* [1994] 3 SLR 257. See further Hwang and Chan, 'Trends in Core Areas of Singapore Law-Equity', *Review of Judicial and Legal Reforms in Singapore between 1990 and 1995*, (Singapore Academy of Law, 1996).

of the Plaintiff for the period [dates]. The 1st Defendant acted on the 2nd Defendant's advice on [dates].

11. Further or in the alternative, if which is denied, the 2nd Defendant was not dishonestly assisting the 1st Defendant in relation to each of the 1st Defendant's breaches of fiduciary duty and/or breaches of trust, the 2nd Defendant nevertheless had actual knowledge of, alternatively willfully shut his eyes to the obvious fact of, alternatively willfully and recklessly failed to make such inquiries as an honest and reasonable man would make of, the dishonest and fraudulent design of the 1st Defendant in acting in breach of fiduciary duty or breach of trust as set out in paragraphs 8 and 9 above.⁷ The best particulars that the Plaintiff can give until discovery and interrogatories are as follows:

Particulars

- (1) The Plaintiff repeats the particulars in paragraph 10.
12. As a result of the matters set out above the Plaintiff has suffered loss and damage, namely the sum of S\$1,000,000.
13. The 1st Defendant is liable to account to the Plaintiff for the sum of S\$1,000,000 on the ground of his breach of fiduciary duty and/or breach of trust as set out above.
14. The 2nd Defendant is liable to account to the Plaintiff for the sum of S\$1,000,000 as a constructive trustee on the ground of his dishonest assistance in each of the 1st Defendant's breaches of fiduciary duty and/or breaches of trust as set out above.
15. AND the Plaintiff claims:
 - (1) Against the 1st Defendant:
 - (a) A declaration that the 1st Defendant has breached his duties to the Plaintiff.
 - (b) A declaration that the 1st Defendant is liable to account to the Plaintiff for the sum of S\$1,000,000 or such other sum as the Court thinks fit as a constructive trustee on the ground of his breach of fiduciary duty and/or breach of trust.
 - (c) An order that the 1st Defendant pay to the Plaintiff S\$1,000,000 or such other sum as the Court thinks fit.
 - (2) Against the 2nd Defendant:

⁷ See *Baden, Delvaux & Lecuit v Societe Generale* [1983] BCLC 325.

- (a) A declaration that the 2nd Defendant is liable to account to the Plaintiff for the sum of S\$1,000,000 or such other sum as the Court thinks fit as a constructive trustee on the ground of his dishonest assistance in each of the 1st Defendant's breaches of fiduciary duty and/or breaches of trust.
- (b) An order that the 2nd Defendant pay to the Plaintiff S\$1,000,000 or such other sum as the Court thinks fit.
- (3) Interest under Section 12 of the Civil Law Act (Cap 43);
- (4) Costs; and
- (5) Such further or other relief as this Honourable Court deems fit.

P8.26 Defence and counterclaim to claim for breach of fiduciary duty

[Allen & Gledhill LLP]

1. Save that it is denied that there is any duty to disclose to the Plaintiff any of the Defendant's breaches of duty owed to the Plaintiff as alleged in paragraph 4(1) of the Statement of Claim, Paragraphs 1 to 7 of the Statement of Claim are admitted.
2. Paragraph 8 of the Statement of Claim is denied. The Defendant avers that:
 - (1) The other directors of the Plaintiff had already been previously introduced to Mr Fong by the Defendant and already know of Mr Fong's relationship with the Defendant.⁸
 - (2) The Timber Machine was an obsolete piece of machinery that was not often used in the Plaintiff's daily operations.
 - (3) The Defendant was not sure of the precise open market value of the Timber Machine at the time of the Sale, but estimated that the value of the Timber Machine did not exceed S\$50,000 based on informal discussions that took place on [dates] with other furniture manufacturers located in the Plaintiff's area.
 - (4) The Defendant had procured the Sale in the best interests of the Plaintiff by helping the Plaintiff dispose of a rarely used and obsolete piece of machinery for S\$50,000. In this respect the Defendant had no intention to profit Mr Fong or himself in any direct or indirect manner.
3. Paragraph 9 of the Statement of Claim is not admitted.
4. Paragraphs 10 and 11 of the Statement of Claim are denied and paragraph 2 above is repeated.
5. Paragraph 12 of the Statement of Claim is denied.

⁸ Disclosure of a director's interest need not always be formal and may not be necessary where the interest is already known to the rest of the directors: *Walter Woon on Company Law* (3rd Ed) (Sweet & Maxwell Asia, 2009) at [8.50], citing *Lee Panavision Ltd v Lee Lighting Ltd* [1992] BCLC 22 and *Woolworths Ltd v Kelly* (1991) 4 ACSR 431.

6. Further or alternatively, the Defendant is entitled to set off⁹ against the Plaintiff's claim such sums as he is awarded upon his counterclaim as hereinafter appears.
7. If the Defendant is not entitled to the set-off as set out above, he will seek to counterclaim for the sums as hereinafter appears in diminution or extinction of the Plaintiff's claim.¹⁰
8. Save as hereinbefore expressly admitted or not admitted, the Defendant denies each and every allegation in the Statement of Claim as if the same had been expressly set out herein and traversed seriatim.

Counterclaim

9. Paragraphs 1 to 8 of the Defence are repeated.
10. The Defendant avers that the Plaintiff has not paid the Defendant any wages for the work done for the period of [2 weeks of a particular month],¹¹ amounting to [\$X].
11. The Defendant further avers that the work performed by the Defendant in procuring the Sale has benefited the Plaintiff in the manner set out in paragraph 2 above.
12. Further or in the alternative, the Plaintiff is contractually obliged under the contract of employment between the Plaintiff and the Defendant to pay the Defendant for work done in procuring the Sale.

9 Legal set-off may not be available since both cross claims may not be liquidated, but equitable set-off may be available if both cross claims are mature, mutual and so closely connected that it would be manifestly unjust to allow one to be enforced without regard to the other: *OCWS Logistics Pte Ltd v Soon Meng Construction Pte Ltd* [1999] 2 SLR 376. There remains, however, some doubt as to whether legal set-off forms part of Singapore law. The juridical basis for legal set-off in Singapore was the English Statutes of Set-off of 1728-1734, which were historically imported into Singapore by the Second Charter of Justice (the instrument that originally imported English law into Singapore law). However, the Application of English Law Act (Cap 7A) (AELA) did not provide for the continued application of these statutes as part of Singapore law, and under the AELA, unless made part of Singapore law by the AELA, 'no English enactment shall be part of the law of Singapore.' However, a similar result to legal set-off can be achieved in judicial proceedings with the power of the courts to allow set-off under the Supreme Court of Judicature Act (Cap 322) (SCJA). Section 18 of the SCJA read with paragraph 11 of the First Schedule of the SCJA confer on the Singapore High Court the power to 'allow a defence of set-off.' See Andrew Chan, Singapore Chapter, *Set-off Law and Practice* (Oxford University Press, 2006) at 362-363.

10 In this connection, when the right to a legal or equitable set-off is in doubt, the court has the discretion to stay execution on a judgment pending trial of a counterclaim: *Axel Johnson Petroleum v MG Mineral Group* [1992] 2 All ER 163.

11 The wages in this precedent are assumed to be monthly wages, i.e. payable at the end of each month.

13. Further or in the alternative, the Defendant is entitled to reasonable remuneration for work done in connection with the Sale, taking into account all the aspects of the Sale and the benefit accrued to the Plaintiff in connection with the sale.¹²
14. Further, the said sums referred to in paragraphs 10 and 11 are due and owing.
15. AND the Defendant claims:
 - (1) [\$X], being the unpaid wages for the period [2 weeks of a particular month], by reason of s 3 of the Apportionment Act (Cap 8)¹³ to [];
 - (2) Sums due to the Defendant under the contract of employment between the Plaintiff and the Defendant for work done in connection with the Sale;
 - (3) Alternatively, sums due to the Defendant as reasonable remuneration for work done in connection with the Sale;
 - (4) Interest; and
 - (5) Costs.

¹² See, e.g. the claim for reasonable remuneration in *Boardman v Phipps* [1967] 2 AC 46.

¹³ Section 3 of the Apportionment Act provides that: 'All rents, annuities, dividends and other periodical payments in the nature of income (whether reserved or made payable under an instrument in writing or otherwise) shall, like interest on money lent, be considered as accruing from day to day, and shall be apportionable in respect of time accordingly'. 'Annuities' includes salaries and pensions: s 2, Apportionment Act. See also *Item Software (UK) Ltd v Fassihi & Ors* [2004] IRLR 928.

P8.27 Defence to claim for breach of statutory/common law duties of skill and care

[Allen & Gledhill LLP]

1. Paragraphs 1 to 5 of the Statement of Claim are admitted.
2. Paragraph 6 of the Statement of Claim is denied. The Defendant avers that:
 - (1) The Defendant had taken measures to check the quality of the products of Healthy Chicken Pte Ltd ('Healthy Chicken') before causing the Plaintiff to make payment of S\$50,000 to Healthy Chicken. At the premises of Healthy Chicken on [date], the 2nd Defendant inspected and was satisfied by the quality of the chicken feed produced by Healthy Chicken.
 - (2) The Defendant had taken measures to check the creditworthiness and production capability of Healthy Chicken Pte Ltd ('Healthy Chicken') before causing the Plaintiff to make payment of S\$50,000 to Healthy Chicken. On [dates], the Defendant personally inspected and was satisfied by the accounting books and production lines of Healthy Chicken.
3. Paragraph 7 of the Statement of Claim is not admitted.
4. Paragraph 8 of the Statement of Claim is denied.
5. Save as hereinbefore expressly admitted or not admitted, the Defendant denies each and every allegation in the Statement of Claim as if the same had been expressly set out herein and traversed seriatim.

P8.28 Defence of 1st defendant to claim for breach of fiduciary duty and knowing receipt

[Allen & Gledhill LLP]

1. Paragraphs 1 to 7 of the Statement of Claim are admitted.
2. Save that the 2nd Defendant is a distant personal relative by marriage of the 1st Defendant and that the 1st Defendant did make payment of S\$200,000 to the 2nd Defendant ('the Payment') in return for a luxury motorcar ('the Car'), paragraph 8 of the Statement of Claim is denied. The 1st Defendant avers that:
 - (1) The 1st Defendant did discuss the Payment to the 2nd Defendant at an informal house-warming party held on [date] at [place] where the other Directors of the Plaintiff were present.
 - (2) The other directors of the Plaintiff did not raise any objection to the Payment or to the 1st Defendant of having sole enjoyment of the Car. The 1st Defendant therefore did not at any time need to account to the Plaintiff for the Payment or the Car.
3. Paragraphs 9, 10 and 11 of the Statement of Claim are not admitted.
4. Paragraph 12 of the Statement of Claim is denied and paragraph 2 above is repeated.
5. Paragraph 13 of the Statement of Claim is not admitted.
6. Paragraph 14 of the Statement of Claim is denied and Paragraph 2 above is repeated.
7. Paragraph 15 of the Statement of Claim is not admitted.
8. As to paragraph 16:
 - (1) It is denied that the Plaintiff is entitled to the relief claimed or any other relief against the 1st Defendant.
 - (2) The 1st Defendant is unable to admit that the Plaintiff is entitled to the relief claimed or any other relief against the 2nd Defendant.
9. Further or in the alternative, if, which is denied, the 1st Defendant is or may be liable in respect of the breaches of duty alleged, the 1st Defendant, having acted honestly and reasonably, seeks an Order from this Honourable Court under s 391 of the Companies Act to be excused for any negligence default or breach of duty which the Court may otherwise find the 1st Defendant liable for.

10. Save as hereinbefore expressly admitted or not admitted, the 1st Defendant denies each and every allegation in the Statement of Claim as if the same had been expressly set out herein and traversed seriatim.

P8.29 Defence of 2nd Defendant to claim for knowing receipt

[Allen & Gledhill LLP]

1. Paragraphs 1 to 3 of the Statement of Claim are admitted.
2. Paragraphs 4, 5 and 6 of the Statement of Claim are not admitted.
3. As to paragraph 7 of the Statement of Claim:
 - (1) It is admitted that on [date], a sum of S\$200,000 was paid to the 2nd Defendant ('the Payment') in consideration for a luxury motorcar ('the Car').
 - (2) The 2nd Defendant is unable to admit that the sum of S\$200,000 paid to the 2nd Defendant on [date] was transferred out of the Plaintiff's bank account.
4. Save that the 1st Defendant paid the 2nd Defendant a sum of S\$200,000 on [date] in consideration for the Car, the 2nd Defendant is unable to admit to any or all of the allegations contained in Paragraph 8.
5. Paragraph 9 of the Statement of Claim is denied. The 2nd Defendant avers that at all material times:
 - (1) the 2nd Defendant had no knowledge of the funds from which the 1st Defendant made the Payment to the 2nd Defendant.
 - (2) the 2nd Defendant had no knowledge of the 1st Defendant's intentions in connection with the Car.
6. Paragraph 10 of the Statement of Claim is denied and paragraph 4 above is repeated.
7. The 2nd Defendant is unable to admit to paragraph 11 of the Statement of Claim.
8. The 2nd Defendant is unable to admit to paragraph 12 of the Statement of Claim and paragraph 2 above is repeated.
9. Paragraph 13 of the Statement of Claim is denied and paragraph 4 above is repeated.
10. The 2nd Defendant is unable to admit to paragraph 14 of the Statement of Claim.
11. Paragraph 15 of the Statement of Claim is denied and paragraph 4 above is repeated.
12. As to paragraph 16:

- (1) it is denied that the Plaintiff is entitled to the relief claimed or any other relief against the 2nd Defendant.
 - (2) The 2nd Defendant is unable to admit that the Plaintiff is entitled to the relief claimed or any other relief against the 1st Defendant.
13. Save as hereinbefore expressly admitted or not admitted, the 2nd Defendant denies each and every allegation in the Statement of Claim as if the same had been expressly set out herein and traversed seriatim.

P8.30 Defence of 1st defendant to claim for breach of fiduciary duty and dishonest assistance

[Allen & Gledhill LLP]

1. Paragraphs 1 to 7 of the Statement of Claim are admitted.
2. Save that the 1st Defendant made payment of S\$100,000 to various creditors of Neutron Systems ('the Payment'), paragraph 8 of the Statement of Claim is denied. The 1st Defendant avers that:
 - (1) The 1st Defendant did discuss the Payment to the 2nd Defendant at an informal house-warming party held on [date] at [place] where the other Directors of the Plaintiff were present.
 - (2) The other directors of the Plaintiff did not raise any objection to the Payment. The 1st Defendant therefore did not at any time need to account to the Plaintiff for the Payment.
3. Paragraph 9 of the Statement of Claim is denied and paragraph 2 above is repeated.
4. Paragraphs 10 to 12 of the Statement of Claim are not admitted.
5. Paragraph 13 of the Statement of Claim is denied and paragraph 2 above is repeated.
6. Paragraph 14 of the Statement of Claim is not admitted.
7. As to paragraph 15 of the Statement of Claim:
 - (1) It is denied that the Plaintiff is entitled to the relief claimed or any other relief against the 1st Defendant.
 - (2) The 1st Defendant is unable to admit that the Plaintiff is entitled to the relief claimed or any other relief against the 2nd Defendant.
8. Save as hereinbefore expressly admitted or not admitted, the 1st Defendant denies each and every allegation in the Statement of Claim as if the same had been expressly set out herein and traversed seriatim.

P8.31 Defence of 2nd defendant to claim for breach of fiduciary duty and dishonest assistance

[Allen & Gledhill LLP]

1. Paragraphs 1 to 3 of the Statement of Claim are admitted.
2. Paragraphs 4 to 7 of the Statement of Claim are not admitted.
3. The 2nd Defendant is unable to admit any or all of the allegations contained in Paragraph 8.
4. As to paragraph 9 is not admitted:
5. Paragraph 10 of the Statement of Claim is denied. The 2nd Defendant avers that he has not played any role in any connection with, nor had any knowledge of, the First Defendant's alleged breaches of duty and or breaches of trust, if such alleged breaches of duty and/or breaches of trust by the 1st Defendant existed at all.
6. Paragraph 11 of the Statement of Claim is denied and paragraph 10 above is repeated.
7. Paragraph 12 of the Statement of Claim is not admitted.
8. Paragraph 13 of the Statement of Claim is not admitted.
9. Paragraph 14 of the Statement of Claim is denied and paragraph 10 above is repeated.
10. As to paragraph 15 of the Statement of Claim:
 - (1) It is denied that the Plaintiff is entitled to the relief claimed or any other relief against the 2nd Defendant.
 - (2) The 2nd Defendant is unable to admit that the Plaintiff is entitled to the relief claimed or any other relief against the 1st Defendant.
11. Save as hereinbefore expressly admitted or not admitted, the 2nd Defendant denies each and every allegation in the Statement of Claim as if the same had been expressly set out herein and traversed seriatim.

P8.32 Reply and defence to counter claim for breach of fiduciary duty

[Allen & Gledhill LLP]

Reply

1. The Plaintiff joins issue with the Defendant on the Defence save insofar as the same consists of admissions.

Defence to Counterclaim

2. Paragraph 12 of the Defence and Counterclaim is denied. The Plaintiff avers that in procuring the sale of the Timber Cutting Machine to Mr Fong ('the Sale') the Defendant has committed a repudiatory breach of the employment contract between the Defendant and the Plaintiff and the Defendant is thus not entitled to payment for any work done in procuring the Sale.
3. Further or in the alternative, the Plaintiff avers that the work done by the Defendant in relation to the Sale was unsatisfactory and that the Defendant's counterclaim should accordingly be diminished¹⁴ or set-off.
4. Paragraph 13 of the Defence and Counterclaim is denied. The Plaintiff avers that the articles of association of the Plaintiff and the Defendant's employment contract with the Plaintiff already make specific provision for remuneration to the Plaintiff as director, and the Plaintiff thus cannot be entitled to any claim for remuneration outside of the Plaintiff's articles of association and employment contract.¹⁵
5. Save as hereinbefore expressly admitted or not admitted, the Plaintiff denies each and every allegation in the Defence and Counterclaim as if the same had been expressly set out herein and traversed seriatim.

14 This is the defence of abatement, under which the plaintiff claims the counterclaim of the defendant should be reduced to the real value of the services rendered by the defendant. See further *English and International Set-off* (Wood) at 114-116.

15 *Guinness v Saunders* [1990] 1 All ER 652. See also *Hanbury and Martin: Modern Equity* (17th ed) (Sweet & Maxwell, 2005) at p 611.

MINORITY SHAREHOLDERS: OPPRESSION REMEDY

PRECEDENTS

P8.33 Statement of claim for relief against oppression

[TSMP Law Corporation]

A. THE PARTIES

1. The 3rd Defendant (the “Company”) is a private limited company incorporated in Singapore on [date].
2. The Plaintiffs collectively hold 25 shares in the Company. Owing to a series of oppressive acts carried out by the Defendants against the Plaintiffs (as set out below), the Plaintiffs’ shareholding in the Company as represented by their 25 shares has decreased from 25.00% as at [date] to 5.00% as at the date of this Statement of Claim.
3. The 1st Defendant has at all material times been and remains the sole director of the Company. As at the date of this Statement of Claim, the 1st Defendant holds 475 shares (being 95.00% of the shares) in the Company.
4. From the date of incorporation of the Company to [date], the 2nd Defendant held 75 shares (being 75% of the shares) in the Company. As at the date of this Statement of Claim, the 2nd Defendant has ceased to be a shareholder of the Company.
5. At all material times, the 1st Defendant held 99.00% of the shareholding in the 2nd Defendant.
6. The Company’s present shareholding structure as of the date of this Statement of Claim is as follows:

Shareholder	No. of shares presently held in the Company	Percentage of present issued share capital	No. of shares held in Company at time of Plaintiffs' initial investment	Percentage of issued share capital at time of Plaintiffs' initial investment
1st Plaintiff	10	2.00%	10	10.00%
2nd Plaintiff	10	2.00%	10	10.00%
3rd Plaintiff	5	1.00%	5	5.00%
1st Defendant	475	95.00%	-	-
2nd Defendant	0	0%	75	75.00%
Total	500	100.00%	100	100.00%

7. The Plaintiffs are entitled to and now seek relief under section 216 of the Companies Act (Cap. 50) (the "Act") against the Defendants in respect of oppressive conduct and/or actions under section 216 of the Act (as set out below) on the part of the Defendants.

B. BACKGROUND

8. In or around [date], at the 1st Defendant's invitation, the Plaintiffs invested a total sum of S\$250 in the Company, in consideration for being issued a total of 25 shares in the Company. The Plaintiffs thereby became registered shareholders in the Company, collectively owning 25.00% of the total shareholding in the Company.
9. There had, at all material times, been an express and/or implied mutual understanding and trust between the Plaintiffs and the Defendants that the Plaintiffs' shareholding in the Company would remain the same or substantially similar to their initially subscribed shareholding percentage of about 25.00%.

C. OPPRESSION OF THE PLAINTIFFS

10. However, since [date], the 1st Defendant has been conducting the affairs of the Company and has exercised his powers as the sole director and *de facto* majority shareholder (through the 2nd Defendant) of the Company in a manner prejudicial, unfair and oppressive to the Plaintiffs, and in disregard of the Plaintiffs' interests as minority shareholders of the Company.

11. The Defendants have collectively engineered a series of events intended solely to cause substantial dilution of the Plaintiffs' shareholding in the Company and to injure their interests.

(i) *Resolutions aimed at diluting the Plaintiffs' shareholding*

The Share Transfer

12. On [date], the 2nd Defendant notified the Company that it had transferred its 75 ordinary shares in the Company to the 1st Defendant (who had not previously been a shareholder of the Company) (the "Share Transfer").
13. As a result of the Share Transfer, the 2nd Defendant ceased to be a shareholder of the Company. No consideration or reasons for the Share Transfer was disclosed by the Defendants and/or the Company.
14. The Plaintiffs objected to the Share Transfer on [date] as no reasons for the Share Transfer had been provided.

(ii) *Deliberate exclusion of the Plaintiffs at the Annual General Meeting (the "AGM")*

15. On or about [date], the Plaintiffs were notified that the Company's AGM would take place on [date].
16. As the Plaintiffs were unable to attend on that date, on [date], the Plaintiffs requested a postponement of the AGM, expressly stating to the 1st Defendant and/or the Company that the Plaintiffs should be present at the AGM since without them there would be an insufficient quorum.
17. An agreement was therefore reached between the Company, the 1st Defendant and the Plaintiffs on [date] that the AGM would take place on [date], and that copies of the Company's audited accounts would be extended to the Plaintiffs for their review before the AGM, in accordance with the Plaintiffs' rights as shareholders under the Act.
18. However, copies of the audited accounts were not provided by the Defendants and/or the Company to the Plaintiffs prior to the AGM, without any legitimate basis for this refusal.
19. Further, the Defendants have excluded the Plaintiffs from attending the AGM, in manner prejudicial, unfair and/or oppressive to the Plaintiffs, and in disregard of the Plaintiffs' interests as minority shareholders of the Company.

Particulars

- 19.1 On or about [date], the 1st Defendant procured the Company's issuance of 400 ordinary shares to the 2nd Defendant, in order that the 2nd Defendant would become a registered shareholder of the Company, with the result that there would then be the necessary quorum for the AGM without the need for the Plaintiffs to attend.
- 19.2 This was done in secret and kept from the Plaintiffs, despite the agreement of [date].
- 19.3 On about [date], the Plaintiffs discovered that the AGM had in fact been conducted and resolutions passed entirely without their knowledge.
- 19.4 On or about [date], the Defendants procured the transfer of all of the 2nd Defendant's shares in the Company to the 1st Defendant, resulting in the 1st Defendant holding 475 shares in the Company, with the 2nd Defendant again ceasing to be a shareholder of the Company.
- 19.5 The Plaintiffs have no knowledge of the terms of such transfer, including whether due consideration was paid in respect of such transfer to the 1st Defendant.
20. The Defendants' actions have caused the Plaintiffs' aggregate shareholding in the Company to be severely reduced from the initial agreed percentage of 25.00% to 5.00% (as per the table at paragraph 6 above).
21. The Plaintiffs have suffered prejudice as a result of the Defendants' disregard for their legitimate expectations and/or interests as minority shareholders in the Company. The Plaintiffs have been subject to oppression within the meaning of section 216 of the Act.

D. SUMMARY OF GROUNDS OF RELIEF

22. The Plaintiffs aver that the Defendants have caused the affairs of the Company to be conducted in a manner that is prejudicial to the Plaintiffs and constitutes oppression and/or is in disregard of and/or prejudicial to the Plaintiffs' interests as shareholders of the Company within the meaning of section 216 of the Act, in that the Defendants have:
 - 22.1 Conducted the Company's affairs in a manner that severely diluted the Plaintiffs' shares without any bona fide or legitimate purpose, thereby unfairly prejudicing the Plaintiffs' interests in the Company as minority shareholders;

22.2 Breached the mutual understanding that the Plaintiffs' shareholding would be the same and/or substantially similar to their shareholding at the time of subscription;

22.3 Infringed upon the Plaintiffs' legitimate expectations to have their minority interests considered and shareholding preserved in the conduct of the Company's affairs; and/or

22.4 Withheld information from the Plaintiffs in breach of the Plaintiffs' statutory rights as shareholders of the Company.

AND THE PLAINTIFFS CLAIM:

- (1) An order that the Defendants purchase all the Plaintiffs' shares in the Company, without discount and at a price to be determined by the Court or an independent valuer who shall be appointed by the Court or by mutual agreement between the parties;
- (2) An order that any valuation, prayed for in paragraph (1) above, shall determine the value which the shares would have had but for the Defendants' oppressive breaches, conduct, acts and/or omissions as set out in this Statement of Claim;
- (3) In the alternative to paragraphs (1) and (2) above, that the Company be wound up by the Court pursuant to section 216(2)(f) of the Act;
- (4) Damages to be assessed and/or equitable compensation be paid to the Plaintiffs;
- (5) Costs; and
- (6) Such further or other relief as this Honourable Court deems fit.

P8.34 Defence against claim for oppression

[TSMP Law Corporation]

A. THE PARTIES

1. Paragraph 1 of the Statement of Claim is admitted.
2. Save that it is denied that the Defendants carried out any oppressive acts against the Plaintiffs, paragraph 2 of the Statement of Claim is admitted.
3. Paragraphs 3 to 6 of the Statement of Claim are admitted.
4. Paragraph 7 of the Statement of Claim is denied. The Defendants deny that there has been any oppressive conduct and/or actions taken against any of the Plaintiffs at any time.

B. BACKGROUND

5. Save that it is denied that the Defendant had invited the Plaintiffs to invest in the Company, paragraph 8 of the Statement of Claim is admitted.
6. The 1st and 2nd Plaintiffs had been introduced to the 1st Defendant by Mr X. The 1st Defendant had been informed by Mr X that the 1st and 2nd Plaintiffs were merely passive investors who wished to invest in the Company purely for financial gain. The 1st and 2nd Plaintiffs informed the 1st Defendant that they did not intend to, and had no interest in, being involved in the Company's operations. It was on this basis that the 1st and 2nd Plaintiffs invested in the Company by way of a Subscription Agreement dated [date] (the "Subscription Agreement").
7. Paragraph 9 of the Statement of Claim is denied. The Subscription Agreement contained clause [Y] (the "Anti-Dilution Clause"), which was worded as follows:
[Text of Anti-Dilution Clause]
8. The Defendants aver that the Anti-Dilution Clause contradicts any understanding that the Plaintiffs' shareholding in the Company would remain similar to their initially subscribed percentage of 25.00%. Furthermore, as passive investors, the Plaintiffs were or should have been aware that their shareholding percentage in the Company was subject to fluctuation.

C. THE PLAINTIFFS' ALLEGATIONS

9. Paragraphs 10 and 11 of the Statement of Claim are denied.
10. Paragraph 12 of the Statement of Claim is admitted.

11. Save that it is admitted that the 2nd Defendant was no longer a shareholder of the Company once the share transfer on [date] was effected, paragraphs 13 and 14 are denied. At all material times, the Plaintiffs were aware of the consideration for the share transfer. Furthermore, the Defendants were under no obligation to disclose the reasons for the share transfer to the Company or the Plaintiffs.
12. Paragraph 15 of the Statement of Claim is admitted.
13. Save that it is admitted that the Plaintiffs had requested a postponement of the annual general meeting ("AGM") of the Company on [date], paragraphs 16 and 17 of the Statement of Claim are denied.
14. The Defendants accommodated the Plaintiffs' requests for alternative dates for the AGM, and the parties agreed to hold the AGM on [date].
15. Paragraph 18 of the Statement of Claim is denied. The Plaintiffs were at all times free to review the Company's audited accounts prior to the AGM. However, the Plaintiffs made no efforts to do so.
16. Paragraph 19 of the Statement of Claim is denied. The Plaintiffs failed to attend the AGM on [date]. The Defendants further deny that they had acted in any manner to exclude the Plaintiffs from attending the AGM, and the Plaintiffs are put to strict proof of their allegations.
17. Save that the Plaintiffs' aggregate shareholding in the Company has decreased from 25.00% from the time of their investment to 5.00% currently, Paragraph 20 of the Statement of Claim is denied.
18. Paragraph 21 of the Statement of Claim is denied.

D. GROUNDS OF RELIEF

19. Paragraph 22 of the Statement of Claim is denied.
20. In the premises, it is denied that the Plaintiffs are entitled to any of the reliefs set out in the Statement of Claim or any other relief at all.
21. Save as to hereinbefore expressly admitted, the Defendant denies each and every allegation contained in the Statement of Claim as if the same were set forth herein and specifically traversed.

P8.35 Claim for relief under s 216 of the Companies Act – breach of terms on which it had been agreed that the affairs of the company should be conducted, including exclusion from participation in management

[Allen & Gledhill LLP]

1. Crispy Chicken Chop Pte Ltd, hereinafter called ‘the Company’, is a company incorporated in Singapore on [date]. The registered office of the Company is at 456 Lonely Villa Lane, #20-00, Clucky Building, Singapore 988998.
2. The Company’s share capital is S\$400,000 comprising of 400,000 ordinary shares. As at the date of issue of the writ of summons, such shares in the Company are held as follows:

The 2nd Defendant (‘Mr Ang’)	100,000 shares
The 3rd Defendant (‘Mrs Ang’)	100,000 shares
The 4th Defendant (‘Mr Beng’)	100,000 shares
The Plaintiff	100,000 shares
3. The principal objects for which the Company was established are as follows: [] and other objects stated in the Memorandum of Association of the Company.
4. The Plaintiff had known Mr Ang socially for many years, and on [date] Mr Ang and his wife invited the Plaintiff to meet a business friend of theirs, Mr Beng, who had interested them in the idea of opening a chicken rice and chicken chop restaurant in Clarke Quay. They were attracted by the idea but were having difficulties in raising the necessary capital to launch the venture, estimated at S\$400,000. They asked the Plaintiff if he would like to come in with the three of them as equal partners, with each of them contributing S\$100,000.
5. The Plaintiff said he was interested and he, Mr Ang, Mrs Ang and Mr Beng had a series of further meetings as a result of which they agreed that they would form a limited company in which they would each have the same number of ordinary shares, that each would be a director and that they would each loan the company S\$100,000. An agreement was then drawn up and signed by the Plaintiff, Mr Ang, Mrs Ang and Mr Beng.
6. In due course the Company was formed and shares were issued to the Plaintiff, Mr Ang, Mrs Ang and Mr Beng (100,000 ordinary shares to each) and the Plaintiff paid S\$100,000 into the Company bank account as a start-up loan at a fixed annual interest rate of 3%.

At the first meeting of the board of directors on [date], however, the Plaintiff learned that none of the other two directors had made loans to the Company. Their response at the time was that they had been too busy running the Company; but they agreed that they would each provide loans of S\$100,000 by the time of the next board meeting.

7. At the second meeting of the board of directors on [date] the three defendant directors said that they had now provided S\$100,000 each, but when pressed by the Plaintiff on this they admitted that the money had in fact been provided to the Company by a XYZ Bank which had made a direct loan of S\$300,000 to the Company at an annual interest rate of 8%. They had each signed guarantees that the loan would be repaid and XYZ Bank had been provided with additional security in the form of a floating charge over the Company's assets. The Plaintiff protested that these arrangements had been made without consulting him and that he was disadvantaged by them in that the XYZ Bank's loan was secured and would take priority over the Plaintiff's loan if the Company failed and also that the interest rate was higher than his. The Plaintiff further pointed out that he had parted with a substantial sum of money whereas the others had kept their money and taken on secondary liability instead. Mr Ang, Mrs Ang and Mr Beng did not accept the Plaintiff's criticisms and on the contrary argued that the Plaintiff had given no time to the running of the Company whereas they had been actively engaged in its day-to-day business for which they received no remuneration.
8. The next development was that the Plaintiff received a notice of an extraordinary general meeting of the Company to be held on [date] to consider a resolution that the Plaintiff should no longer be a director of the Company. The Plaintiff was unable to attend the meeting as he was overseas on the date of the extraordinary general meeting. Mr Ang, Mrs Ang and Mr Beng knew at the time the notice of the extraordinary general meeting was issued that the Plaintiff was overseas. On [date], the Plaintiff received a copy of the minutes of the extraordinary general meeting and learnt not only that he had been removed as a director of the Company but also that, under the heading of 'Any Other Business', Mr Ang, Mrs Ang and Mr Beng (attending the extraordinary general meeting) had approved the grant to themselves of service contracts under which the Company would remunerate each of them at the rate of S\$120,000 a year.

9. When the Plaintiff discovered what had happened, he, by a letter dated [date], wrote to Mr Ang, Mrs Ang and Mr Beng, asking for the immediate return of his loan and interest and for his shares in the Company to be purchased by the Defendants Mr Ang, Mrs Ang and Mr Beng at a fair valuation. By a letter dated [date], Mr Ang, Mrs Ang and Mr Beng replied that they would not be making an offer to purchase the Plaintiff's, but that they would return the Plaintiff's loan and interest in 12 months' time. The Plaintiff avers that by their actions, Mr Ang, Mrs Ang and Mr Beng have broken the terms of their original agreement with the Plaintiff and that, so far from putting matters right, they are determined to run the business in a way which benefits themselves to the detriment of the Plaintiff.
10. By reason of the matters aforesaid, the Plaintiff is thus being unfairly prejudiced by the acts and omissions of Mr Ang, Mrs Ang and Mr Beng and by the manner in which they are conducting the affairs of the Company.
11. In summary, the grounds on which the Plaintiff makes his claim are as follows:
 - (1) That the Company was created on the basis of a quasi-partnership formed between the Plaintiff, and each of Mr Ang, Mrs Ang and Mr Beng.
 - (2) That the basis of the quasi-partnership was that the interests of each of the quasi-partners in the company would be equal and that the business of the Company would be managed by them together as partners on an equal footing.
 - (3) That each of Mr Ang, Mrs Ang and Mr Beng have managed the affairs of the Company and excluded the Plaintiff from future management in the Company in a manner which is oppressive and/or in complete disregard of the interests of the Plaintiff as a director and shareholder of the Company.
 - (4) That acts of the Company have been done which unfairly discriminates against or is otherwise prejudicial to the Plaintiff as a member of the Company.
 - (5) That it is equitable, in view of the disregard of the terms of the quasi-partnership, that the Plaintiff should be granted relief.
12. AND the Plaintiff therefore prays as follows:
 - (1) That the Defendants Crispy Chicken Chop Pte Ltd, Mr Ang, Mrs Ang and Mr Beng be ordered to purchase the Plaintiff's

shares in Crispy Chicken Chop Pte Ltd without a discount and at a price to be determined by a valuer who shall be appointed by mutual agreement between the parties or by the Court [and that there be an appropriate reduction in the share capital of Crispy Chicken Chop Pte Ltd];

- (2) That Crispy Chicken Chop Pte Ltd be ordered to repay the Plaintiff's loan of S\$100,000 and interest at the annual interest rate of 3% forthwith;
- (3) Costs; and
- (4) Such further or other relief as this Honourable Court deems fit.

P8.36 Claim for relief under s 216 of the Companies Act – exclusion from participation in management and excessive remuneration paid to directors

[Allen & Gledhill LLP]

Parties

1. The 1st Defendant, Happy Chicken Pte Ltd ('the Company'), is a company incorporated in Singapore on 1 June 1990 with its registered office address at 123 Happy Villa Lane, #22-00, TH Teck Building, Singapore 987654.
2. The share capital of the Company is S\$10,000,000 comprising of 10,000,000 ordinary shares. As at the date of issue of the writ of summons, such shares in the Company are held as follows:

The 2nd Defendant ('Mr Lim') 4,000,000 shares 40%

The 3rd Defendant ('Mr Tan') 4,000,000 shares 40%

The Plaintiff 2,000,000 shares 20%

The Company

3. The principal objects for which the Company was established are to act as a chicken farm operator, with activities ranging from animal feeds production, hatchery (day-old chicks), parent stock breeding, slaughtering, chicken processing, and other objects stated in the Memorandum of Association.
4. In January 1978, the Plaintiff entered into a series of discussions with Mr Lim and Mr Tan, who had been friends of the Plaintiff for many years. The series of discussions took place at the Plaintiff's residence at 456, Enkidu Street, Singapore 452128 and concerned the possibility of the Plaintiff joining together with Mr Lim and Mr Tan to form a partnership to operate a chicken farm. The partnership between the Plaintiff, Mr Lim and Mr Tan was formed on 3 February 1978 with its place of business at 123 Happy Villa Lane, #22-00, TH Teck Building, Singapore 987654.
5. In January 1990, the Plaintiff entered into another series of discussions with Mr Lim and Mr Tan, who had been the Plaintiff's friends for many years and members of the partnership since February 1978. The series of discussions took place at Mr Lim's residence at Block 789, #06-06, Gilgamesh Street, Singapore 444556 and during these discussions the Plaintiff, Mr Lim and Mr Tan, agreed to convert the pre-existing partnership between the Plaintiff, Mr Lim and Mr Tan into a company, which would operate

the chicken farm that was being operated by the partnership, and have the same place of business as the partnership. During the discussions, Mr Lim and Mr Tan gave the Plaintiff to understand that:

- (1) The share capital of the company would be S\$10,000,000 divided into 10,000,000 shares of S\$1.00 each, of which Mr Lim and Mr Tan would hold 8,000,000 shares between them and the Plaintiff would hold 2,000,000 shares.
- (2) Until such time as the company was in a position to raise finance for itself, finance for the purchase of equipment for the operations of the chicken farm would be provided as to 70% by Mr Tan and Mr Lim and as to the balance by the Plaintiff.
- (3) The Plaintiff would receive full financial information about the company's business.
- (4) The Plaintiff, Mr Lim and Mr Tan would each be appointed a director of the company and participate in the conduct of the business of the Company.
- (5) The company's articles of association would regulate the ability of the shareholders to transfer their shares to the effect that each of the Plaintiff, Mr Lim and Mr Tan shall not be entitled to dispose or transfer any shares to an outsider whether by way of sale or otherwise except where a majority of the directors, in their absolute discretion, approve of the transferee and where the shares have first been offered to fellow shareholders.

Quasi-partnership: personal relationship involving mutual confidence

6. In due course, the Company was incorporated by the Plaintiff, Mr Lim and Mr Tan as the corporate vehicle for the purposes of converting their pre-existing partnership and putting their agreement into effect. In accordance with the said understanding, on 1 July 1990 each of the Plaintiff, Mr Lim and Mr Tan was appointed a director of the Company. On the same date, Mr Lim was appointed Company Secretary of the Company. Mr Lim and Mr Tan remain directors of the Company but, as hereafter appears, the Plaintiff was removed as a director on 4 August 2005.
7. The Company commenced trading in July 1990 and has done so ever since. The understanding mentioned above was put into effect and for some years the business of the Company was conducted harmoniously between the Plaintiff, Mr Lim and Mr Tan, and

by reason of the said understanding and close relationship, the Company has been and remains a quasi-partnership company.

Breakdown of relationship of trust and confidence

8. On 6 July 2005, the Plaintiff received a notice informing the Plaintiff of an extraordinary general meeting of the Company to be held on 4 August 2005 at which it was proposed to remove him as a director of the Company and to fix the amount payable to Mr Lim and Mr Tan by way of directors' remuneration from the Company at S\$300,000 each for the six-month period 1 July 2005 to 31 December 2005. In the six-month period immediately preceding 1 July 2005 (i.e. 1 January 2005 to 30 June 2005), each of the Plaintiff, Mr Lim and Mr Tan received S\$55,000 by way of directors' remuneration from the Company. The Plaintiff alleges that the amount of directors' remuneration payable to Mr Lim and Mr Tan for the six-month period 1 July 2005 to 31 December 2005 is excessive and is without any or any reasonable commercial justification.
9. Upon receipt of the notice, the Plaintiff immediately wrote to both Mr Lim and Mr Tan setting out his concerns as regards the proposed resolutions and asking them for an explanation. No response was received from either Mr Lim or Mr Tan and neither of them would discuss the Plaintiff's concerns or would give the Plaintiff any explanation for their conduct. Mr Tan stated that as he and Mr Lim own the majority of the shares in the Company and so in their view they could do what they wanted, and if the Plaintiff was not happy about it, he could go 'fly a kite'.
10. The extraordinary general meeting was held on 4 August 2006, when notwithstanding the understanding mentioned above, the resolutions relating to the removal of the Plaintiff as a director of the Company and as regards directors' remuneration was passed by the votes of Mr Tan and Mr Lim voting in favour, with the Plaintiff voting against.
11. Since the date of the passing of the resolution, the Plaintiff has been excluded from all participation in the management of the business of the Company, and he has been denied information about the Company's affairs.

Conclusions

12. By reason of the matters aforesaid the Plaintiff avers:
 - (1) That the Company was created on the basis of a quasi-partnership formed by the personal relationship involving

mutual confidence between the Plaintiff, and each of Mr Lim and Mr Tan.

- (2) That the affairs of the Company are being or have been conducted in a manner which it is unfairly prejudicial to the interests of the Plaintiff, and the relationship of mutual trust, goodwill and confidence between the Plaintiff on the one hand and Mr Lim and Mr Tan on the other which formed the basis of their agreement and/or understanding in participating in the conduct of the business of the Company and upon which the Company has been operated has irretrievably broken down.
- (3) The Plaintiff has lost all trust and confidence in Mr Lim and Mr Tan and in their willingness to conduct the affairs of the Company in accordance with the agreement and/or understanding in participating in the business of the Company and upon which the Company has been operated.
- (4) In the alternative in the premises it is just and equitable that the Company be wound up.

13. The Plaintiff therefore prays as follows:

- (1) That the Defendants Happy Chicken Pte Ltd, Mr Tan and Mr Lim may be ordered to purchase the Plaintiff's shares in Happy Chicken Pte Ltd without a discount and at a price to be determined by a valuer who shall be appointed by mutual agreement between the parties or by the Court;
- (2) In the alternative, that Happy Chicken Pte Ltd be wound up by the Court;
- (3) Costs; and
- (4) Such further or other relief as this Honourable Court deems fit.

P8.37 Claim for relief under s 216 of the Companies Act – using company funds for personal profit, denial of right to inspect accounts and removal from directorship in a company subsidiary

[Allen & Gledhill LLP]

Background and the Parties

1. The Plaintiff and the 2nd to 4th Defendants are the 4 sons of the late Tan Ah Leng ('Tan Snr') and the 5th Defendant.
2. The 1st Defendant, Shiny Sinkhole Holdings Pte Ltd, is a company incorporated in Singapore with its registered address at 123 Slippy Grove, #02-00 The Shiny Building Singapore 222333. It is the ultimate holding company of a group of about 8 companies in Singapore, Indonesia and Taiwan. These companies form part of the Shiny Group of Companies that was established just before the demise of Tan Snr in August 1985.
3. The share capital of the 1st Defendant (hereafter the 'Company') is S\$100,000,000 comprising 100,000,000 ordinary shares, and the Plaintiff together with the 2nd to 5th Defendants are and were at all material times registered shareholders of the Company. As at the date of issue of the Writ of Summons, such shares in the Company are held as follows:

S/N	Shareholder	No. of Shares	%
(1)	Plaintiff	20,000,000	20%
(2)	2nd Defendant	20,000,000	20%
(3)	3rd Defendant	20,000,000	20%
(4)	4th Defendant	20,000,000	20%
(5)	5th Defendant	20,000,000	20%

The Shiny Group of Companies

4. The following companies are wholly-owned subsidiaries of the Company and they share certain common directors with the Company:
 - (1) Shiny Steel Holdings Pte Ltd
 - (2) Shiny Investments Holdings Pte Ltd
 - (3) Shiny Properties Pte Ltd
 - (4) Shiny Realty Pte Ltd

(5) Shiny Industries Pte Ltd

(6) PT Shiny Resorts

(7) Shiny Trading (Taiwan) Co. Ltd

5. All the companies referred to in the preceding paragraph shall collectively be referred to herein as the Shiny Group of Companies. Further, there are a number of other companies which are controlled by the Shiny Group of Companies but which are no longer active and it is not necessary for the purpose of these proceedings to refer to them here.
6. In February 1969, the Company was founded by Tan Snr together with 2 others. From 1972 onwards, the Plaintiff assisted Tan Snr in the day-to-day operations and management of the Indonesian side of the Company's business. By 1980, the Plaintiff was the General Manager in charge of the Company's Indonesian operations.
7. Gradually, Tan Snr withdrew from the Indonesian business.
8. From about 1971/1972, the 2nd to 5th Defendants assisted Tan Snr in the Company's Singapore operations.
9. After the passing of Tan Snr in August 1985, in accordance with Chinese tradition, the 2nd Defendant was accorded the title of Chairman of the Company, as he was the eldest son of Tan Snr.
10. The Plaintiff was accorded the title of Vice Chairman of the Company as he was the second son of Tan Snr, and which title the 1st Plaintiff retained until 1 June 2004.
11. The 3rd Defendant was accorded the title President of the Company; the 4th Defendant was appointed Administrative Director of the Company; and the 5th Defendant was appointed Human Resource Director of the Company.
12. In the premises, the Company was founded as a family concern intended to hold the family's business interests in Singapore, Indonesia and Taiwan. It was wholly-owned by family members and its senior management consisted of family members. It has at all times subsequently remained wholly owned by the family. Further, the members of the Company have at all times reposed trust and confidence in one another at least until the events and matters pleaded below.
13. After the demise of Tan Snr, the Plaintiff continued to manage the entire Indonesian businesses of the Company. The management and day-to-day operations of the other Singapore businesses such

as shipping, construction and others were initially left to the 2nd and 3rd Defendants.

14. On the basis of mutual trust and confidence between the Plaintiff and the other shareholders of the Company, it was the understanding amongst the shareholders of the Company that the Plaintiff would put in his best efforts to manage the Indonesian businesses of Company, while the management and day-to-day operations of the family's non-Indonesian businesses were left entirely to the 2nd to 5th Defendants. In the premises, the Plaintiff trusted and relied upon the 2nd to 5th Defendants to manage, conduct and administer the affairs of these companies honestly, diligently and fairly in the interests of all its shareholders. The Plaintiff, in reliance on the understanding, spent most of his time in Indonesia taking care of the Indonesian timber businesses.
15. Unknown to the Plaintiff at that time, the 2nd to 5th Defendants, in their management of the businesses in Singapore, incurred substantial non-business related expenditure all of which were charged to the Shiny Group of Companies.

Oppression of the Minority

16. The affairs of the Company and/or its subsidiaries have been conducted and/or the powers of the 2nd to 5th Defendants as directors and/or shareholders have been exercised in a manner oppressive to the Plaintiff and/or in disregard of and/or are prejudicial to the Plaintiff's interests as a member and director of the Company.

Using Company funds for personal profit

17. In or around January 2002, the 3rd Defendant withdrew S\$3 million from the Company. The 2nd to 4th Defendants caused the sum withdrawn to be recorded as a 'loan' by the Company to the Plaintiff, the 2nd to 4th Defendants. The payment voucher of the Company recording the 'loan' to the said directors was signed and approved by the 2nd to 4th Defendants themselves, without the knowledge and consent of the Plaintiff who was then in Indonesia.
18. In breach of their fiduciary duties and in disregard of the Plaintiff's interest as a director and shareholder of the Company, the 2nd to 4th Defendants therefore caused the Plaintiff to be recorded as a joint debtor for the S\$3 million which was taken from the Company without the Plaintiff's knowledge and consent.
19. In or around 23 January 2003, which was about a year after taking out the self-authorised S\$3 million 'loan' from the Company, the

3rd Defendant returned the sum of S\$3 million to the Company, together with payment of S\$80,000, which was recorded as interest on the said 'loan'.

20. From an undated memorandum by the 3rd Defendant, it appeared that the 3rd Defendant had used the S\$3 million 'loan' for share investments and made a profit of S\$350,500. Instead of accounting to the Company for the whole of the profit of S\$350,500, the 3rd Defendant unilaterally decided to return the Company the sum of S\$80,000 which payment the 3rd Defendant described as interest on the 'loan', leaving a balance of S\$270,000, which was used by the 3rd Defendant towards part payment for the purchase of a BMW M3 car. The BMW M3 car was registered in the 3rd Defendant's name.
21. In the premises, the 2nd and 3rd Defendant, as directors of the Company and/or its subsidiaries, acted in breach of their fiduciary duty and were not acting in the interests of the Company and its subsidiaries and acted in complete disregard of the Plaintiff's interests as minority shareholders of the Company. The 3rd Defendant has also failed to account to the Company for the whole of the profits derived from the use of S\$3 million withdrawn from the Company.

Denial of the Plaintiff's right to inspect the books and records of the Company

22. By a memo dated 5 December 2005, the Plaintiff made a written request to the Company Secretary for copies of the Company's Notice of EGM which had been held on 30 November 2005 but which the Plaintiff had not received any notice of, minutes of meeting, and resolutions. On the instructions of the 2nd Defendant, the Company Secretary had been instructed not to disclose any documents to the Plaintiff.
23. On 8 December 2005, the Plaintiff wrote to the 2nd Defendant demanding copies of the Company's Notice of EGM, minutes of meeting, and resolutions. The 2nd Defendant continued to refuse to comply.
24. On 14 December 2005, the Plaintiff made known to the Company Secretary his intention to inspect the Company's books and records at the Company Secretary's offices at 10.00am on 17 December 2005. Unknown to the Plaintiff at the material time, his request was reported by the Company Secretary to the 2nd Defendant who deliberately removed from the Company Secretary all the

books and records of the Company just immediately prior to the Plaintiff's scheduled inspection.

25. On 19 December 2005, the Plaintiff through his solicitors demanded access to the aforesaid books and records of the Company before 12 noon on 23 December 2005.
26. Despite the Plaintiff's various requests as outlined above, the 2nd Defendant refused and/or failed to allow the Plaintiff to have any access to the books and records of the Company until 10 January 2006, when the 2nd Defendant informed the Plaintiff's solicitors that the books and records were back in the possession of the Company Secretary.
27. In the premises, the 2nd Defendant, as a director of the Company and/or its subsidiaries, was not acting in the interests of the Company and/or its subsidiaries. In breach of his fiduciary duties, his actions were motivated by self-interest to ensure that the Plaintiff did not have access and/or are not able to take steps to preserve their position and interests as shareholders of the Company.
28. Further and/or in the alternative, the 2nd Defendant has acted in breach of the common understanding amongst the shareholders of the Company when he sought to deny the Plaintiff access to the books and records of the Company. Such conduct of the affairs of the Company, in breach of the common understanding amongst its members, constitutes oppression of the Plaintiff and/or disregard of his interests as a member.

Alleged removal of Plaintiff as a Director of Shiny Steel Holdings Pte Ltd

29. Unknown to the Plaintiff at that time, an Extraordinary General Meeting of Shiny Steel Holdings Pte Ltd was purportedly held on 1 February 2006 at the Company Secretary's offices to, *inter alia*, remove the Plaintiff as a director of Shiny Steel Holdings Pte Ltd and to approve, confirm and ratify certain resolutions in writing which had previously not been validly passed in accordance with Shiny Steel Holdings Pte Ltd's articles of association as they had not been signed by the Plaintiff.

Particulars

Board Resolutions of Shiny Steel Holdings Pte Ltd sought to be ratified:

- (1) Resolution in writing dated 3 January 2006 to open a corporate expense account for use by the directors of Shiny Steel Holdings Pte Ltd;
 - (2) Resolution in writing dated 5 January 2006 to declare an interim dividend.
30. As no prior notice of the Extraordinary General Meeting had been given to the Plaintiff, only the 2nd to 5th Defendants together with the Company Secretary were present at this Extraordinary General Meeting.
 31. By a letter dated 2 February 2006, the 2nd Defendant notified the Plaintiff that he had been removed as a director of Shiny Steel Holdings Pte Ltd on 1 February 2006.
 32. In the premises, the 2nd to 5th Defendants as directors and/or as shareholders of the Company and/or its subsidiaries were not acting in the interests of the Company and/or its subsidiaries. In breach of their fiduciary duties, their actions were for their own personal benefit and were not prompted by any business considerations, but were clearly designed to ensure that they would be able to by way of a corporate expense account use Shiny Steel Holdings Pte Ltd funds to finance their personal expenditures. The 2nd to 5th Defendants had therefore acted in complete disregard of the Plaintiff's interests as a minority shareholder of the Company.
 33. Further and/or in the alternative, the 2nd to 5th Defendants have acted in breach of the common understanding amongst the shareholders of the Company in seeking to exclude the Plaintiff from the management of the Company and its businesses by removing the Plaintiff as a director of Shiny Steel Holdings Pte Ltd, and such conduct of the affairs of the Company and/or its subsidiaries in breach of the common understanding amongst its members constitutes oppression of the Plaintiff and/or disregard of his interests as a member.

Summary of grounds for relief under s 216 of the Companies Act

34. In summary, the principal complaints of the Plaintiffs are as follows:
 - (1) the 2nd to 5th Defendants and/or each of them and/or any combination of them had managed the affairs of the Company and/or its subsidiaries in a manner which completely disregards and prejudices the interests of the Plaintiff;

- (2) the 2nd to 4th Defendants and/or each of them and/or any combination of them have misused the funds and assets of the Company for the personal benefit of themselves, without the knowledge of the Plaintiff;
- (3) The 2nd to 5th Defendants and/or each of them and/or any combination of them have effectively sought to treat the funds and assets of the Company and its subsidiaries as their personal funds and assets;
- (4) The 2nd to 5th Defendants and/or each of them and/or any combination of them have deliberately attempted to remove the Plaintiff and to exclude him from the board of Shiny Steel Holdings Pte Ltd for an improper purpose and/or for their own personal benefit and acting in a manner which completely disregards and prejudices the interests of the Plaintiff;
- (5) The 2nd to 5th Defendants and/or each of them and/or any combination of them have acted in breach of the common understanding of the shareholders of the Company when they deliberately attempted to remove the Plaintiff and to exclude him from the board of Shiny Steel Holdings Pte Ltd. Such conduct of the affairs of the Company in breach of the common understanding of its members and in disregard of the actions of the Plaintiff taken in consequence of that common understanding constitutes oppression of the Plaintiff and/or disregard of his interests as a member;
- (6) The 2nd Defendant has denied the Plaintiff, as a director of the Company and/or its subsidiaries, the right to have free access to the books and records of the Company.

And the Plaintiff claims:

- (1) An order that the 3rd Defendant account to the Company for the profits derived from the use of the S\$3 million withdrawn from the Company in or around January 2002;
- (2) An order that the 2nd to 5th Defendants purchase the Plaintiff's shares in the Company, without a discount and at a price to be determined by a valuer who shall be appointed by mutual agreement between the parties or by the Court;
- (3) With regard to the purchase of the Plaintiff's shares in the Company as prayed for at paragraph (2) above, an order that any valuation as ordered by the Court shall fix the value which the shares would have had but for the effect of the Defendants' conduct and acts;

- (4) Alternatively, an order that the 2nd to 5th Defendants sell to the Plaintiff or the Company their shares of the Company at a fair value to be fixed;
- (5) A declaration that the purported notice convening a board meeting of Shiny Steel Holdings Pte Ltd on 1 February 2006 was void and of no effect;
- (6) Costs; and
- (7) Such further or other order as this Honourable Court deems fit.

P8.38 Defence to claim for relief under s 216 of the Companies Act for exclusion from participation in management and excessive remuneration paid to directors

[Allen & Gledhill LLP]

1. In this Defence, the 2nd and 3rd Defendants adopt the abbreviations pleaded in the Statement of Claim. Save where otherwise indicated, references to numbered paragraphs are references to the corresponding paragraphs of the Statement of Claim.
2. Paragraphs 1 to 4 are admitted.
3. The discussions pleaded in paragraph 5 are admitted. During the series of discussions, the Plaintiff made clear to the 2nd and 3rd Defendants that he decided to 'step back' and become a sleeping partner, that his interest in the proposed company and business of operating, *inter alia*, the chicken farm would be merely as a passive investor, and that he did not want to actively participate in the management of the company but would only be involved sporadically in the company's business. The Plaintiff also said during the discussion that he was not all that interested in being the director of the company and would be happy to resign at any time at the request of the 2nd and 3rd Defendants.
4. Accordingly, subject as pleaded at paragraph 3 above, paragraphs 5(1)-(5) are admitted.
5. Paragraph 6 is admitted.
6. As to paragraph 7, it is not admitted that the business of the Company was conducted harmoniously between the Plaintiff, Mr Lim and Mr Tan. Following his appointment as a director of the Company, the Plaintiff orally informed the 2nd and 3rd Defendants that other than receiving the annual accounts of the Company, he did not wish to be bothered with details of the business of the Company. In the circumstances, the 2nd and 3rd Defendants were obliged to conduct the business of the Company without any assistance from the Plaintiff. Save as aforesaid paragraph 7 is not admitted.
7. As to paragraphs 8 and 9:
 - (1) A notice was sent to the Plaintiff informing him of an extraordinary general meeting of the Company to be held on 4 August 2005.
 - (2) Prior to the sending of the notice, on or about 28 June 2005, the Plaintiff had come to TH Teck Building and accused the

2nd and 3rd Defendants of improper conduct in the running of the business of the Company. The 2nd and 3rd Defendants assured the Plaintiff that such was not the case and invited the Plaintiff to explain his reasons for making such an allegation. The 2nd and 3rd Defendant sought to assure the Plaintiff that as minority shareholders in the Company, they were very conscious of the need to act fairly between all the Company shareholders. Over the course of the next few days, however, the Plaintiff attended at TH Teck Building and continued making baseless allegations against the 2nd and 3rd Defendants as regards the running of the business of the Company and the Plaintiff's conduct therefore interfered with the running of the business of the Company.

- (3) The Plaintiff's conduct became so disruptive to the business of the Company that the 2nd and 3rd Defendants requested the Plaintiff to stop coming to 'cause trouble'. The Plaintiff refused, saying that while he was a director of the Company, the 2nd and 3rd Defendants could not stop him from doing whatever he wanted. The 3rd Defendant then reminded the Plaintiff that during the series of discussions prior to the formation of the Company, as pleaded at paragraph 3 above, the Plaintiff had said that he would resign as director at the request of the 2nd and 3rd Defendants. The 2nd and 3rd Defendants then invited the Plaintiff to resign his directorship in the Company, but the Plaintiff refused, and for these reasons, the 2nd and 3rd Defendants decided to call for an extraordinary general meeting of the Company and to propose a resolution to remove the Plaintiff as a director of the Company.
- (4) The 2nd and 3rd Defendants received a letter from the Plaintiff dated 8 July 2005 repeating the allegations he made as pleaded at paragraphs 7(2) and (3) above and asking the 2nd and 3rd Defendants to 'explain their conduct' but without giving any grounds whatsoever for his allegations. It is wholly denied that the 2nd and 3rd Defendants would not discuss the Plaintiff's concerns or give the Plaintiff any explanation for their conduct.
- (5) Further, during the series of discussions prior to the establishment of the Company between the Plaintiff, the 2nd Defendant and the 3rd Defendant, the 2nd and 3rd Defendants made clear to the Plaintiff that they expected to receive remuneration as executive directors of the Company and they expected such remuneration to exceed the remuneration

of the Plaintiff as he was a non-executive director. However in order to build up the business of the Company since the date of its incorporation, the 2nd and 3rd Defendants did not draw any remuneration from the Company in excess of that of the Plaintiff. It is admitted that in the six-month period from 1 January 2005 to 30 June 2005, the 2nd and 3rd Defendants received S\$55,000 by way of directors' remuneration from the Company. It is further admitted that for the period 1 July 2005 to 31 December 2005, the 2nd and 3rd Defendants had each received the sum of S\$300,000 by way directors' remuneration. Such sum represents their remuneration for acting as executive directors of the Company from 1 June 1990 (date of incorporation of the Company), and the Company was able to afford to pay such sums to them.

- (6) Save as aforesaid, paragraphs 8 and 9 are not admitted.
8. Paragraph 10 is admitted.
 9. It is admitted that since the date of the resolution the Plaintiff has been excluded from all participation in management of the Company. Save as aforesaid paragraph 11 is denied. The 2nd Defendant has offered to supply the Plaintiff management accounts for the Company and to provide the Company annual account as required by statute, but the Plaintiff has without explanation rejected this offer.
 10. Paragraphs 12(1), (2) and (4) is denied.
 11. The 2nd and 3rd Defendants are unable to admit to paragraph 12(3).
 12. By reasons of the matters aforesaid, it is denied that the Plaintiff is entitled to the relief claim or any relief.
 13. Save as hereinbefore expressly admitted or not admitted, the 2nd and 3rd Defendants deny each and every allegation as if the same had been set out seriatim and specifically traversed.

CHAPTER 9

COMPUTERS AND INFORMATION TECHNOLOGY

PRECEDENTS

- P9.01** Claim for delivery of goods pursuant to contract made on the internet
- P9.02** Claim for misrepresentation/defects in hardware and/or software/breach of contract
- P9.03** Defence of mistake in response to claim pursuant to contract made on the internet
- P9.04** Defence to claim for mistake pursuant to contract made on the internet

CHAPTER 9

COMPUTERS AND INFORMATION TECHNOLOGY

PRECEDENTS

P9.01 Claim for delivery of goods pursuant to contract made on the internet¹

[ATMD Bird & Bird LLP]

1. The Defendant operates a website, [Web address], to offer various products for sale on the internet.
2. On [date], the Plaintiff accessed the Defendant's website and saw the Defendant's offer of [goods] at the price of [amount] each.
3. On [date] at [time], the Plaintiff accepted the Defendant's offer by placing an order of [number] [goods] on the Defendant's website. The Plaintiff's purchase with the Defendant cost a total of [amount] at [amount] per [goods]. The Plaintiff would pay for the [goods] when they were delivered.
4. On this basis, the Plaintiff says that a contract was validly concluded between the Plaintiff and the Defendant ("the Agreement").
5. In breach of the Agreement, the Defendant failed to and/or refused to deliver the [goods] and/or perform its obligations under the Agreement.
6. As a consequence, the Plaintiff has suffered loss and damage:

Particulars

[Particulars of loss and damage]

AND the Plaintiff claims:

- (1) Damages of [amount];
- (2) Interests;
- (3) Costs; and
- (4) Any other relief that this Honourable Court deems fit.

¹ See P9.03.

P9.02 Claim for misrepresentation/defects in hardware and/or software/breach of contract²

[ATMD Bird & Bird LLP]

1. The Plaintiff is a company incorporated under the laws of [Singapore]. The Plaintiff carries on the business of [trade/business].
2. The Defendant is a company incorporated under the laws of [Singapore]. As far as the Plaintiff is aware, the Defendant operates a computer-related business specialising in [specialised trade].
3. On [date], the Defendant's representative, one Mr Y, orally represented to the Plaintiff's representative, one Mr X, that the Defendant was experienced in the [expertise] and its system was highly sophisticated, competent and able to [particularised strength of hardware or software].
4. On [date], Mr Y relied on Mr X's representation and was induced to enter into a written agreement with the Defendant on behalf of the Plaintiff ("the Agreement").

5. The Agreement contained the following express terms:

Particulars

[Particulars of terms]

6. The Agreement contained the following implied terms:

Particulars

[Particulars of terms]

7. The Plaintiff further relied on the skill and judgment of the Defendant and paid a deposit of [amount].
8. On [date], the Defendant purported to perform the Agreement by:

Particulars

[Particulars of performance]

9. Despite this, the Defendant was in breach of the Agreement in the following respects:

Particulars

[Particulars of breach]

10. Further, the Defendant's representations, in paragraph 3 above, were false and misleading.

² See P9.04.

Particulars

[Particulars of representations]

11. Alternatively, the Defendant did not have reasonable grounds to believe that the said representations were true at the time it entered into the Agreement and had made them negligently.
12. As a result of the Defendant's breach of contract and/or misrepresentation, the Plaintiff has suffered loss and damage.

Particulars

[Particulars of loss and damage]

13. Further and alternatively, the Plaintiff says there has been a total failure of consideration.

AND the Plaintiff claims:

- (1) Return of the deposit of [amount];
- (2) Damages of [amount];
- (3) Interests;
- (4) Costs; and
- (5) Any other relief that this Honourable Court deems fit.

P9.03 Defence of mistake in response to claim pursuant to contract made on the internet³

[ATMD Bird & Bird LLP]

1. Save that the Plaintiff placed an order for [number] [goods] on the Defendant's website, the Defendant denies paragraph 3 of the Statement of Claim.
2. The Defendant denies that a valid contract was concluded between the Plaintiff and the Defendant as alleged or at all. The Defendant says that the contract is void *ab initio* for mistake of fact.
3. The Defendant says that there was a unilateral mistake of fact on the Defendant's part.

Particulars

[Particulars of mistake]

4. The Defendant further says that the Plaintiff had knowledge of the mistake.

Particulars

[Particulars of knowledge]

5. In the circumstances, the Defendant says that it is not obliged to deliver any [goods] to the Plaintiff.
6. The Defendant does not admit that the Plaintiff has suffered any damage as alleged or at all.
7. Save as herein expressly admitted, the Defendant denies each and every allegation contained in the Statement of Claim as if the same were set out seriatim and specifically traversed.

3 See P9.01.

P9.04 Defence to claim for mistake pursuant to contract made on the internet⁴

[ATMD Bird & Bird LLP]

1. Paragraphs 1 and 2 of the Statement of Claim are admitted.
2. Save that the Plaintiff relied on the skill and judgment of the Defendant in entering into the agreement stated in the Statement of Claim ("the Agreement"), paragraph 3 of the Statement of Claim is denied.
3. Paragraph 4 of the Statement of Claim is denied. The Defendant says that clause [number] of the Agreement provided that the Agreement represented the complete intentions of the parties and superseded all previous communications and representations, whether written or oral. As such, the Defendant denies that the Plaintiff has placed any reliance on any alleged representation not embodied in the Agreement.
4. Paragraph 5 of the Statement of Claim is admitted.
5. Paragraph 6 of the Statement of Claim is denied. The alleged implied terms were excluded by clause [number] of the Defendant's standard terms of business.
6. Save that the Defendant received a deposit of [amount] from the Plaintiff, paragraph 7 of the Statement of Claim is denied.
7. Paragraph 8 of the Statement of Claim is admitted. The Defendant had performed the Agreement.

Particulars

[Particulars of performance]

8. The Defendant denies that it was in any breach of contract as alleged in paragraph 9 of the Statement of Claim or at all.
9. Further, the Defendant says that the Plaintiff had an opportunity to examine the goods supplied by the Defendant on [date] and did not report any defects. In fact, to the Defendant's knowledge, the Plaintiff had continued to use them from [date] and has therefore, under the Agreement, lost their right to reject the goods supplied by the Defendant.
10. Paragraphs 10 and 11 of the Statement of Claim are denied. The Defendant denies it has made any representations as alleged or at all.

⁴ See P9.02.

11. Further or alternatively, the Defendant says that it is entitled to rely on the following exclusion and limitation clauses of the Agreement, which the Defendant says were reasonable and fair.

Particulars

[Particulars of clauses and reasonableness/fairness]

12. Paragraph 12 of the Statement of Claim is denied.
13. Save as herein expressly admitted, the Defendant denies each and every allegation contained in the Statement of Claim as if the same were set out seriatim and specifically traversed.

CHAPTER 10

CONSTRUCTION

PRECEDENTS

- P10.01** Application to enforce adjudication determination – Originating Summons
- P10.02** Affidavit in support
- P10.03** Application for setting aside adjudication determination – Originating Summons
- P10.04** Direction to Auditor-General for payment into court
- P10.05** Notice of payment into court
- P10.06** Claim for call on an unconditional demand bond
- P10.07** Claim for payment under architect's certificates (SIA form, 9th Ed)
- P10.08** Claim for work done and variations
- P10.09** Claim for variation works
- P10.10** Claim for damages against architect and contractor for breach of contract and in tort
- P10.11** Claim against employer for work done and services rendered
- P10.12** Claim against employer for work done and services rendered where contractor alleges that employer wrongfully repudiated contract
- P10.13** Claim for work done
- P10.14** Claim for liquidated damages
- P10.15** Claim for release of retention sum
- P10.16** Generally endorsed claim for an injunction to restrain a call on a performance bond
- P10.17** Affidavit in support of an injunction to restrain a call on a performance bond
- P10.18** Claim by a management corporation for defects in common property
- P10.19** Claim by a management corporation for defects in common property
- P10.20** Defence of set-off on account of defects and counterclaim
- P10.21** Defence of architect alleging contractor's liability in reply to employer's claim for damages

- P10.22** Defence of contractor alleging architect's liability in reply to employer's claim for damages
- P10.23** Defence and counterclaim of employer in reply to contractor's claim for work done and services rendered in a completed contract

CHAPTER 10

CONSTRUCTION

PRECEDENTS

P10.01 Application to enforce adjudication determination - Originating Summons

[Rajah & Tann LLP]

LET ALL PARTIES attend before the Judge/Registrar on [date] at [time] am / pm on the hearing of an application by the abovenamed Plaintiff for the following Order:-

1. The Plaintiff be granted leave to enforce the adjudication determination dated [date], pursuant to Adjudication Application Number SOP/AA[000] of [yyyy], in the same manner as a Judgment or an Order of the Court, pursuant to Section 27 of the Building and Construction Industry Security of Payment Act (Cap. 30B), against the abovenamed Defendant, namely that:
 - (1) the Defendant shall pay the Plaintiff the adjudicated amount of S\$[amount];
 - (2) the date on which the adjudicated amount became due is [date];
 - (3) the Defendant shall pay to the Plaintiff interest at the rate of [percentage]% per annum on the aforesaid sum of S\$[amount], from [date] until the date of full payment; and
 - (4) the Defendant shall pay to the Plaintiff the entire/partial costs of the adjudication of S\$[amount] (being the adjudication application fee of S\$[amount] and adjudicator's fee of S\$[amount]).
2. The costs of and incidental to this application and the Judgment or Order to be entered hereunder be paid by the Defendant to the Plaintiff.

The grounds of this application are that the Defendant has failed to pay the adjudicated amount and are further elaborated in the affidavit of [deponent] filed herein.

P10.02 Affidavit in support

[Rajah & Tann LLP]

[Formal requirements]

I, [name of deponent] (NRIC/Passport No. and origin), care of [address], do make oath/affirm and say as follows:

1. I am the [designation] of the abovenamed Plaintiff and I am duly authorised to make this affidavit on behalf of the Plaintiff.
2. The facts deposed to herein are either within my personal knowledge and are true, or are derived from documents and records maintained by the Plaintiff and are true to the best of my knowledge, information and belief.
3. I make this affidavit in support of the Plaintiff's application for leave to enforce the adjudication determination dated [date] (the "Adjudication Determination"), pursuant to Adjudication Application No. SOP/AA[000] of [yyyy] (the "Adjudication Application"), in the same manner as a judgment or order of the court, pursuant to Section 27 of the Building and Construction Industry Security of Payment Act (Cap 30B) (the "SOP Act").
4. The documents referred to in this affidavit are exhibited herein, collectively marked "AA-1".
5. The Defendant is the [contractual role of Defendant] for [description of the project] (the "Project").
6. The Plaintiff was engaged by the Defendant, as [contractual role of the Plaintiff] to [description of works of Plaintiff] for the Project by way a contracted entered into on [date] (the "Contract"). Pursuant to Order 95, rule 2(2)(a) of the Rules of Court, a copy of the Contract is exhibited and annexed hereto at AA-1 at pages x to x.

I. Name and Addresses of parties

7. Pursuant to Order 95, rule 2(2)(b) of the Rules of Court, I set out below the names and respective usual or last known places of business of the Plaintiff and the Defendant.

[insert Plaintiff's address]

[insert Defendant's address]

Copies of the relevant business profile information on the Plaintiff and the Defendant are exhibited and annexed hereto at AA-1 at pages x to x.

II. Adjudication Application No. SOP/AA[000] of [yyyy]

8. On [date], the Plaintiff submitted its progress claim (ref: [reference no.]) dated [date] (the "Payment Claim") to the Defendant pursuant to Section 10 of the SOP Act for payment of S\$[amount to be paid] as the amount due for work done under the Contract.
9. On [date], the Defendant provided its payment response (the "Payment Response") amounting to S\$[amount stated]. [Alternatively] The Plaintiff did not receive a payment response from the Defendant.
10. On [date], the Plaintiff served on the Defendant the Plaintiff's notice of intention (the "NOI") to apply for adjudication pursuant to Section 13(2) of the SOP Act for the Payment Claim. Copies of the Payment Claim and the NOI are exhibited and annexed here to at AA-1 at pages x to x.
11. On [date], being entitled to make an adjudication application pursuant to Section 13(1) of the SOP Act, the Plaintiff lodged the Adjudication Application on the Payment Claim with the Singapore Mediation Centre ("SMC") as the Authorised Nominating Body under the SOP Act.
12. On [date], the SMC served on the Defendant the Plaintiff's Adjudication Application dated [date] and drew the Defendant's attention to Section 15(1) of the SOP Act in relation to lodgment with the SMC of a response to the said Adjudication Application within 7 days. A copy of this letter is exhibited and annexed hereto at AA-1 at pages x to x.
13. On [date], the Plaintiff lodged its adjudication response with the SMC (the "Adjudication Response"). [Alternatively] The Defendant did not lodge an adjudication response with the SMC.
14. On [date], the Plaintiff and Defendant were informed by the SMC that [name of adjudicator] had been appointed to act as the adjudicator in relation to the Adjudication Application (the "Adjudicator").
15. The Adjudicator determined the claims based on the documents submitted by both the Plaintiff and Defendant. These include the Plaintiff's written submissions with bundle of authorities and documents, a copy of which is exhibited and annexed hereto at AA-1 at pages x to x.
16. The Adjudicator further held an adjudication conference on [date], during which the Plaintiff and Defendant both made oral submissions.

17. On [date], the SMC served on the Plaintiff and the Defendant a copy of the Adjudication Determination, a copy of which is exhibited and annexed hereto at AA-1, pursuant to Order 95, rule 2(2)(a) of the Rules of Court.
18. In the Adjudication Determination, the Adjudicator determined that:
 - (1) That the Defendant shall pay to the Plaintiff the amount of S\$[insert amount] (the “Adjudicated Amount”);
 - (2) The Adjudicated Amount shall be paid on or before the due date is fixed as [date];
 - (3) The Defendant shall pay to the Plaintiff at the rate of [percentage]% per annum on any part of the Adjudicated Amount which remains unpaid as at the due date until the same is paid; and
 - (4) The Defendant shall entirely/partially bear the cost of the adjudication which consists of the adjudication application fee of S\$[amount] (including GST) and the adjudicator fee of S\$[amount] (including GST).

III. Non-payment by the Defendant

19. Accordingly, the Defendant was liable to pay the Plaintiff the total sum of S\$[amount] (being the sum of the Adjudicated Amount (S\$[amount]) and the cost of adjudication adjudged as payable by the Defendant (S\$[amount])), plus interest at the rate of [percentage]% per annum from [date] up to the date of full payment.
20. To date, neither the Plaintiff nor its solicitors have received payment of the said sum of S\$[amount] or any part thereof from the Defendant.
21. In the premises, I humbly pray that the Plaintiff’s application for leave to enforce the Adjudication Determination in the same manner as a Judgment or an Order of the Court be granted.

P10.03 Application for setting aside adjudication determination – Originating Summons

[Rajah & Tann LLP]

Let all parties concerned attend before the Court on the date and time to be assigned for the hearing on an application by the Plaintiff that:

1. The adjudication determination dated [date] in respect of the adjudication between the Plaintiff and Defendant in Adjudication Application No. SOP/AA[000] of [yyyy] (the “Adjudication Determination”) be set aside;
2. *[If applicable]* The Judgment dated [date] entered in favour of the Defendant in respect of the Adjudication Determination be set aside;
3. The costs of Adjudication Application No. SOP/AA[000] of [yyyy], namely the adjudication application fee of S\$[amount] (inclusive of GST) and the adjudicator’s fee of S\$[amount] (inclusive of GST) be borne by the Defendant;
4. The costs herein be borne by the Defendant; and
5. Such further and other relief as the Honourable Court deems fit.

The grounds of this application are set out in the affidavit of [deponent] dated [date], filed on [date].

P10.04 Direction to Auditor-General for payment into court

[Rajah & Tann LLP]

DIRECTION TO ACCOUNTANT-GENERAL FOR PAYMENT INTO COURT

Ledger Account

Pursuant to Order 95, rule 3(3) of the Rules of Court and Section 27(5) of the Building and Construction Industry Security of Payment Act (Cap. 30B), the Accountant-General is hereby directed to receive the sum of S\$[amount] (paid in on behalf of the Respondent as security for both: (i) the unpaid portion of the adjudication determination dated [date] made pursuant to Adjudication Application No. SOP/AA[000] of [yyyy] (the “Adjudication Determination”) being S\$[amount]; and (ii) the unpaid interest of the unpaid portion of the Adjudication Determination, being S\$[amount]).

P10.05 Notice of payment into court

[Rajah & Tann LLP]

NOTICE OF PAYMENT INTO COURT

TAKE NOTICE that the Respondents have paid the sum of Singapore Dollars [amount in words] (S\$[amount]) into Court pursuant to Order 95, rule 3(3) of the Rules of Court and Section 27(5) of the Building and Construction Industry Security of Payment Act (Cap. 30B).

P10.06 Claim for call on an unconditional demand bond

[Rajah & Tann LLP and Drew & Napier LLC]

1. The Plaintiff is and was at all material times a company carrying on the business of [business].
2. By an agreement in writing dated [date] (“Contract”), the Plaintiff engaged one [name] as the main contractor (“the Main Contractor”) for the project known as [name] (“the Project”).
3. Pursuant to the Contract, the Main Contractor procured a guarantee No. [number] (“the Guarantee”) dated [date] from the Defendant for the due performance of the Contract.
4. The Guarantee expressly provides, among other things, that:
 - (1) the Defendant unconditionally and irrevocably undertakes to pay in full forthwith upon demand in writing any sum or sums that may be demanded by the Plaintiff up to a maximum aggregate sum of S\$[amount] (“the Guaranteed Sum”); and
 - (2) the Guaranteed Sum shall be paid by the Defendant to the Plaintiff in full immediately upon demand for payment in writing from the Plaintiff without requiring any proof that the Plaintiff is entitled to such sum or sums under the contract or that the Main Contractor has failed to execute the contract or is otherwise in breach of the Contract and notwithstanding the existence of any differences or disputes between the Plaintiff and the Main Contractor arising under or out of or in connection with the Contract.
5. Pursuant to the terms of the Guarantee, the Plaintiff issued a written demand dated [date] to the Defendant for payment of the sum of S\$[amount] by [date].
6. [The Defendant has admitted to the Main Contractor that it is liable to make payment to the Plaintiff in a letter from the Defendant to the Main Contractor dated [date]. The Plaintiff shall refer to and rely upon the Defendant’s letter to the Main Contractor dated [date] for its full terms and effect.]
7. In breach of the terms of the Guarantee, the Defendant has failed to make any payment to the Plaintiff to date. The Plaintiff shall refer to and rely upon their solicitors’ letter to the Defendant dated [date] for its full terms and effect.

8. By reason of the aforesaid breach, the Plaintiff has suffered loss in the sum of S\$[amount], which sum the Plaintiff avers is indisputably due and owing from the Defendant to the Plaintiff.

AND the Plaintiff claims:

- (1) The sum of S\$[amount];
- (2) Interest at such rate and for such period as this Honourable Court thinks fit pursuant to Section 12 of the Civil Law Act (Cap 43, 1999 Rev Ed);
- (3) Costs; and
- (4) Such further and/or other relief as this Honourable Court deems fit and just.

P10.07 Claim for payment under architect's certificates (SIA form, 9th Ed)

[Rajah & Tann LLP and Drew & Napier LLC]

1. The Plaintiff is and was at all material times a company carrying on the business of building and non-building construction.
2. The Defendant is and was at all material times carrying on business of real estate development as an investment holding company.
3. By a contract in writing between the Plaintiff as contractor and the Defendant as employer, which was awarded to the Plaintiff by the Defendant pursuant to a Letter of Award dated [date], ("the Contract"), the Plaintiff agreed to build a [building], for the sum of [amount] or such other sum as should become payable thereunder.
4. The Contract, *inter alia*, incorporated the Articles and Conditions of Building Contract (Lump Sum) Ninth Edition, Reprint August 2011 published by the Singapore Institute of Architects, and the Appendix annexed thereto ("the Conditions of Contract").
5. It was an express term, by clause 31.(3) of the Conditions of Contract read with clause 31.(16) of the Conditions of Contract and the Period of Honouring Certificates stated in the Appendix to the said Conditions of Contract, that the architect should issue interim certificates stating the amount due to the Plaintiff from the Defendant within 14 days after receipt of the interim payment claim, and that the Plaintiff be entitled to payment within 35 days after the Plaintiff submitted the tax invoice to the Defendant.

[or where the Plaintiff is not a taxable person under the Goods and Services Tax Act, within 21 days after the payment claim is served on the Defendant by the Plaintiff under clause 31.(15) (a).]

6. Clause 24(1) of the Conditions of Contract provides:
"After the latest Date for Completion of the Works pursuant to clause 22.(1) of these Conditions has passed, then if at the said date there are no other matters entitling the Contractor to an extension of time and the Works nevertheless remain incomplete, the Architect may at any time thereafter up to and including the issue of the Final Certificate give a certificate setting out the Contract Completion Date (if necessary modified or recalculated under clause 10.(1) of these Conditions); the

total period of extension of time (if any); the consequential extended Contract Completion Date (if any); and certifying that the Contractor is in default in not having completed the Works by the stated Contract Completion Date or Extended Completion Date (as the case may be). Such certificate shall be issued to the Employer with a copy to the Contractor, and is hereinafter called a ‘Delay Certificate’.”

- 7. The rate of Liquidated Damages is stated in the Appendix to the Conditions of Contract as being S\$[amount] for each calendar day.
- 8. On or about [date], the architect named in the Contract (the “Architect”) issued a Completion Certificate pursuant to clause 24.(4) of the Conditions of Contract certifying that the work had been completed on [date].
- 9. Pursuant to the said terms, the Architect issued the following interim certificates (“Interim Certificates”) and a delay certificate on the following dates in the following amounts:

Certificate Nos.	Issue Date	Amount Paid	Date of Payment	Amount Due for Payment
[number]	[date]	S\$[amount]	S\$[amount] on [date] S\$[amount] on [date]	S\$[amount]
[number]	[date]	NIL	—	S\$[amount]
[number]	[date]	NIL	—	S\$[amount]
[number]	[date]	NIL	—	S\$[amount]
[number]	[date]	NIL	—	S\$[amount]
Delay certificate (latest completion date: [date])	[date]	S\$[amount] (liquidated damages at S\$[amount] for each calendar day for the period [date] to [date])	—	S\$[amount]
Total Amount Due				S\$[amount]

- 10. Clause 31.(13) of the Conditions of Contract, *inter alia*, states that full effect by way of summary judgment or interim award or otherwise shall, be given to all decisions and certificates of the Architect, whether for payment or otherwise, until final judgment or award, as the case may be, and until such final judgment or

award, such decisions or certificates shall be binding on the Defendant in relation to any matter which, under the terms of the Contract, the Architect has taken into account or allowed or disallowed in his certificates or otherwise.

11. In breach of contract, the Defendant failed to make payment under the Interim Certificates within 14 days or at all.

AND the Plaintiff claims:

- (1) The sum of S\$[amount];
- (2) Interest at such rate and for such period as this Honourable Court thinks fit pursuant to Section 12 of the Civil Law Act (Cap 43, 1999 Rev Ed);
- (3) Costs; and
- (4) Such further and/or other relief as this Honourable Court deems fit and just.

P10.08 Claim for work done and variations

[Rajah & Tann LLP]

1. The Plaintiff is and was at all material times a company carrying on the business of [business].
2. The Defendant is and was at all material times carrying on business of [business].
3. By an agreement made on [date], the Plaintiff contracted with the Defendant to construct [building] ("the Project") for a lump sum of S\$[amount] (excluding GST, which would be payable by the Defendant).
4. The Plaintiff completed its works on or about [date].
5. The Temporary Occupation Permit issued by the Building and Construction Authority, signifying the completion of the Project, was issued on [date].
6. Despite having completed its works, the Defendant has so far only paid the Plaintiff a sum of S\$[amount], out of the lump sum due of S\$[amount] (all figures excluding GST). Therefore, there remains outstanding from the Defendant to the Plaintiff a sum of S\$[amount].
7. In addition to the agreed works as aforesaid, the Plaintiff carried out numerous variation works on the request of the Defendant during the course of the Project. These works amounted to a sum of S\$[amount] (excluding GST).

Particulars of Variation Works

Date	Request	Amount
[to insert]	[to insert]	[to insert]

8. After the completion of the aforesaid works, the Defendant has since ignored, neglected and failed to pay to the Plaintiff the aforesaid outstanding sums despite its numerous requests for payment.
9. Under the circumstances, the Plaintiff claims the following sums against the Defendant:

(a) Balance of contract sum: S\$[amount]

Add

(b) Variation works:	S\$[amount]
Add 5% GST:	S\$[amount]

Total:	S\$[amount]

10. Alternatively, the Plaintiff claims a reasonable sum, fixed at S\$[amount] (excluding GST) against the Defendant on a *quantum meruit* basis, for work done at the request of the Defendant on account of the variation works.

AND the Plaintiff claims:

- (1) S\$[amount] being the balance sum due under the lump sum contract (inclusive of 5% GST);
- (2) S\$[amount] for the variation works (inclusive of 5% GST);
- (3) Alternatively, the sum of S\$[amount] being a reasonable sum payable on a *quantum meruit* basis on account of the variation works (inclusive of 5% GST);
- (4) Interest; and
- (5) Such further and/or other relief as this Honourable Court deems fit and just.

P10.09 Claim for variation works

[Drew & Napier LLC]

- 1. The Plaintiff is and was at all material times a company carrying on the business of [business].
- 2. The Defendant is and was at all material times carrying on business of [business].
- 3. By a contract between the Plaintiff and the Defendant dated [date] ("**Contract**"), the Plaintiff agreed to carry out and complete the construction of a [building] ("**Project**") for the Defendant at [address] ("**Site**") for a lump sum of \$[amount] (excluding GST, which was payable by the Defendant) or such sum as should become payable thereunder.
- 4. The Contract contained, *inter alia*, the following express terms:
 - (1) [to insert]; and
 - (2) [to insert].
- 5. The Plaintiff entered the site and carried out and completed the works in accordance with the Contract, achieving completion on [date].
- 6. [The Temporary Occupation Permit issued by the Building and Construction Authority, signifying the completion of the Project, was issued on [date].]
- 7. During the course of the Project, the Plaintiff carried out numerous variation works at the request of the Defendant during the course of the Project ("Variation Works"). These works amounted to a sum of S\$[amount] (excluding GST).

Particulars of Variation Works

Date	Request	Amount
[to insert]	[to insert]	[to insert]

- 8. Despite having completed the Project, the Defendant has so far only paid the Plaintiff a sum of S\$[amount], out of the lump sum due of S\$[amount] (all figures excluding GST). This is despite the Plaintiff's numerous requests for payment.
- 9. Under the circumstances, the Plaintiff claims the following sums against the Defendant:
 - (a) Balance of lump sum: S\$[amount]

Add

(b) Variation Works:	S\$[amount]
Add 7% GST:	S\$[amount]

Total:	S\$[amount]

10. Alternatively, the Plaintiff claims a reasonable sum, fixed at S\$[amount] (excluding GST) against the Defendant on a *quantum meruit* basis, for work done at the request of the Defendant on account of the Variation Works.

AND the Plaintiff claims:

- (1) S\$[amount] being the balance sum due under the lump sum contract (inclusive of 7% GST);
- (2) S\$[amount] for the Variation Works (inclusive of 7% GST);
- (3) Alternatively, the sum of S\$[amount] being a reasonable sum payable on a *quantum meruit* basis on account of the Variation Works (inclusive of 7% GST);
- (4) Interest at such rate and for such period as this Honourable Court thinks fit pursuant to Section 12 of the Civil Law Act (Cap 43, 1999 Rev Ed); and
- (5) Such further and/or other relief as this Honourable Court deems fit and just.

P10.10 Claim for damages against architect and contractor for breach of contract and in tort

[Rodyk & Davidson LLP]

1. At all material times, the 1st Defendant carried on the business of a professional architect, and the 2nd Defendants carried on the business of builders or building contractors.
2. By an agreement contained in or evidenced by [document] dated [date], (“the design and supervision contract”), the 1st Defendant agreed, in return for the remuneration specified therein, to, *inter alia*:
 - (1) design a 5-storey office and factory block at [site] (“the Works”);
 - (2) prepare the designs and drawings, specifications and schedules of rates showing and describing the work to be done in respect of the Works; and
 - (3) to supervise the construction of the Works.
3. By Clause 1 of the design and supervision contract, it was provided that the 1st Defendant should use all reasonable skill, care and diligence in performing his obligations under the contract.
4. It was an implied term of the design and supervision contract that the design would be fit for its intended purpose as a 5-storey office and factory block.
5. Further and or alternatively, the 1st Defendant owed the Plaintiffs a duty of care in designing and supervising the Works.
6. By an agreement contained in or evidenced by [document] dated [date] (“the construction contract”), the 2nd Defendants agreed to undertake the construction of the Works, subject to the terms and conditions therein, the Letter of Award dated [date], the tender documents and specifications, the contract drawings (“the Drawings”).
7. The express conditions of the construction contract included, *inter alia*, that:
 - (1) the 2nd Defendants would execute, complete and maintain the Works with due care and diligence;
 - (2) the 2nd Defendants were to comply with all written directions and instructions in relation thereto given by the 1st Defendant;
 - (3) all materials, goods and workmanship comprised in the Works shall, save where otherwise expressly state or required, be the

best of their described kinds and shall in all cases be in exact conformity with any contractual description or specification and of good quality.

8. The construction contract specifications provided, *inter alia*, that:
[Relevant contract specifications]
9. The Plaintiffs shall rely at trial or in other proceedings herein on the terms and conditions of the construction contract for its full meaning and effect.
10. Further and/or alternatively, the 2nd Defendants owed the Plaintiffs a duty of care in undertaking the Works.
11. Pursuant to the design and supervision contract, the 1st Defendant purported to design and prepare contract drawings, specifications and bills of quantities showing and describing the work to be done in respect of the Works.
12. Pursuant to the construction contract, the 2nd Defendants purported to carry out and complete the Works. On or about [date], the 1st Defendant issued a Completion Certificate for the Works.
13. On or about [date], large diagonal cracks started to appear across the vertical walls of the completed building. By way of a letter dated [date], the Plaintiffs gave notice of the cracks to the 1st and 2nd Defendants.
14. By exchange of correspondence between the parties between [date] and [date], the 1st and 2nd Defendants denied that the cracks were due to any default on their part.
15. On or about [date], the Plaintiffs engaged ABC Consultants to investigate the nature and cause of the cracks. On or about [date], ABC Consultants produced their interim report which stated, *inter alia*, that:

[Details]

16. On [date], the Building and Construction Authority declared that the building was a dangerous building under the relevant provisions of the Building Control Act (Cap 29), and ordered that the building be closed.
17. The 2nd Defendants were breach of their contractual duties under the construction contract and or were negligent.

Particulars

- (1) Misplacing and or failing to place at regular intervals steel reinforcement bars;
 - (2) Under-providing steel reinforcement bars;
 - (3) Defective lapping and or anchoring of horizontal reinforcement bars;
 - (4) Poor concrete quality control, including defective handling, mixing, placing and curing of the concrete;
 - (5) Failing to prepare any or adequate workshop drawings or detailed as-built drawings;
 - (6) Failing to comply with all relevant industry Codes of Practice on workmanship for reinforcement.
18. The 1st Defendant was in breach of the design and supervision contract and or negligent.

Particulars

- (1) Failing to adequately design the permanent structure so as to be capable of safely sustaining and transmitting normal usage loads expected of the permanent structure;
 - (2) Failing to adequately design the permanent structure with a sufficient margin of safety and strength;
 - (3) Failing to specify adequate numbers of steel reinforcement bars;
 - (4) Failing to specify adequate numbers of steel reinforcement bars of the adequate size;
 - (5) Designing the walls of the permanent structure to be too thin;
 - (6) Failing to adequately design or detail the Works or to prepare the drawings therefore;
 - (7) Failing to adequately inspect or supervise the 2nd Defendants' execution of the Works; and
 - (8) Approving the defective Works.
19. By reason of the matters set forth herein, the Plaintiffs have suffered loss and damage.

Particulars

[Particulars of loss and damage]

AND the Plaintiffs claim against the 1st and 2nd Defendants and each of them:

- (1) Damages;
- (2) Interest at such rate and for such period as this Honourable Court thinks fit pursuant to Section 12 of the Civil Law Act (Cap 43); and
- (3) Such further or other relief as this Honourable Court deems fit.

P10.11 Claim against employer for work done and services rendered

[Rodyk & Davidson LLP and Drew & Napier LLC]

1. At all material times, the Defendants were in the business of property development and construction, and the Plaintiffs were carrying on the business of building contractors.
2. By an agreement contained in or evidenced by [document] dated [date] ("Construction Contract"), the Defendants engaged the Plaintiffs to undertake the construction of [project name or nature of works to be carried out] ("Works"), for the lump sum of S\$[amount].
3. The agreement provided, *inter alia*, that payment for the construction services rendered by the Plaintiffs would be made to the Plaintiffs as follows:

[Particulars]

4. The Plaintiffs duly carried out the required construction works pursuant to the Construction Contract.
5. On [date], the contract administrator [name] issued a certificate certifying completion of the Works.
6. However, the Defendants have to date failed, refused and or neglected to make full payment of the sum of S\$[amount]. To date the Defendants have only made payments to the Plaintiffs amounting to the sum of S\$[amount] as follows:

[Particulars]

7. By reason of the aforesaid, the sum of S\$[amount] is due and owing to the Plaintiffs.

AND the Plaintiffs claim:

- (1) The sum of S\$[amount];
- (2) Interest at such rate and for such period as this Honourable Court thinks fit pursuant to Section 12 of the Civil Law Act (Cap 43, 1999 Rev Ed); and
- (3) Such further or other relief as this Honourable Court deems fit.

P10.12 Claim against employer for work done and services rendered where contractor alleges that employer wrongfully repudiated contract

[Rodyk & Davidson LLP and Drew & Napier LLC]

- 1. At all material times, the Defendants were in the business of property development and construction, and the Plaintiffs were carrying on the business of building contractors.
- 2. By an agreement dated [date] (“Construction Contract”), the Defendants engaged the Plaintiffs to undertake the construction of a [project name or nature of works to be carried out] (“Works”), for the contract price of S\$[amount].
- 3. It was an express term of the Construction Contract that:
 - (1) Under Clause 1, interim progress payments were to be made by the Defendants based on the issue of interim payment certificates issued by the contract administrator [name];
 - (2) Under Clause 2, final payment would be subject to re-measurement by the contract administrator [name]; and
 - (3) [Term(s) of the construction contract entitling the Plaintiff to terminate it in the event of persistent non-payment of interim payment certificates]
- 4. The Plaintiffs commenced work on [date].
- 5. The Plaintiffs submitted progress claims for work done and materials supplied for [date], [date], [date] and [date]. The contract administrator [name] duly issued interim payment certificates for [date], [date], [date] and [date].
- 6. However, the Plaintiffs thereafter failed to make full payment on the duly issued interim payment certificates for [date], [date], [date] and [date], the details of which are as follows:

Month	Amount Certified	Amount paid
[date]	S\$[amount]	S\$[amount]
[date]	S\$[amount]	S\$[amount]
[date]	S\$[amount]	S\$[amount]
	Subtotal: S\$[amount]	Subtotal: S\$[amount]
Total amount outstanding		S\$[amount]

- 7. In breach of the construction contract, the Defendants, failed, refused or neglected to make payment to the Plaintiffs on any of the interim payment certificates submitted, thereby evincing

an intention no longer to be bound by the contract between the parties.

8. On [date], the Plaintiffs were entitled to and did terminate the Construction Contract.
9. As a result of the above, the Plaintiffs have suffered loss and damage calculated as follows:

Particulars

S/No	Description	Amount
1	Outstanding interim payment certificates	S\$[amount]
2	[head of claim]	S\$[amount]
3	[head of claim]	S\$[amount]
4	Total	S\$[amount]

AND the Plaintiffs claim:

- (1) The sum of S\$[amount];
- (2) Alternatively, damages on a *quantum meruit* basis;
- (3) Interest at such rate and for such period as this Honourable Court thinks fit pursuant to Section 12 of the Civil Law Act (Cap 43, 1999 Rev Ed); and
- (4) Such further or other relief as this Honourable Court deems fit and just.

P10.13 Claim for work done

[TSMP Law Corporation]

1. At all materials times, the Plaintiff was a company in the business of mixed construction activities. The Defendant was a charitable organization in the business of providing non-western medical services.
2. By an agreement between the Defendant and the Plaintiff (the "Agreement") dated 22 April 2012, the Defendant engaged the Plaintiff as contractor to carry out certain works (the "Works") relating to the 'Proposed Additions & Alterations to a 10 Storey Block at ABC Road'. The Plaintiff will refer to and rely on the Agreement at trial for its full terms, meaning and effect as may be necessary.
3. The Plaintiff duly carried out the Works and, in or about August 2012, completed the Works.
4. Throughout the course of carrying out the Works, the Plaintiff has issued various invoices to the Defendant following the completion of various stages of work. The invoices for work done amounted to the sum of S\$154,320.57.

Particulars

S/No.	Date	Description	Amount (S\$)
1.	24-06-2012	1 st Progress Payment Claim for work done	45,571.32
2.	29-07-2012	2 nd Progress Payment Claim for work done	40,284.84
3.	28-05-2013	Claim for Variation Orders	12,682.60
4.	12-08-2013	3 rd Progress Payment Claim for work done	55,781.81
Total			S\$154,320.57

4. Between June and July 2012, the Defendant made payments to the Plaintiff in respect of the 1st Progress Payment Claim, 2nd Progress Payment Claim and the Claim for Variation Orders amounting to the total sum of S\$98,538.76.
5. However, the Defendant failed to make any further payment to the Plaintiff. Accordingly, there is a sum of S\$55,781.81 (inclusive of GST) due and payable from the Defendant to the Plaintiff in respect of the Works.

6. Despite numerous demands by the Plaintiff, the Defendant has, to date, failed, neglected and/or refused to make any payment of the outstanding sum of S\$55,781.81 to the Plaintiff.

AND the Plaintiff claims:

- (1) The sum of S\$55,781.81;
- (2) Interest;
- (3) Costs; and
- (4) Such further and/or other relief as this Honourable Court deems fit.

P10.14 Claim for liquidated damages

[Rajah & Tann LLP and Drew & Napier LLC]

1. The Plaintiff was the main contractor for the Project known as [name] (the “Project”).
2. The Defendant, as the subcontractor of the Plaintiff, carried out the [to insert] works for the Project (the “Sub-Contract Works”) under an agreement in writing dated [date] (the “Sub-Contract”).
3. The Plaintiff avers that pursuant to clause [number] of the Sub-Contract, read together with the Schedule to the Sub-Contract, the date of completion for the Sub-Contract Works is [date].
4. Pursuant to clause [number] of the Sub-Contract, the liquidated damages for delay is S\$[amount] per day for each day of delay or part thereof.
5. In breach of contract, the Defendant was in delay in the Sub-Contract Works and failed to complete them by the aforesaid prescribed completion date of [date]. Instead, the Defendant only completed the Sub-Contract Works on [date].
6. The Plaintiff hence claims against the Defendant liquidated damages for [number] days of delay amounting to S\$[amount].

AND the Plaintiff claims:

- (1) The sum of S\$[amount];
- (2) Interest at such rate and for such period as this Honourable Court thinks fit.

P10.15 Claim for release of retention sum

[Rajah & Tann LLP]

1. The Defendant was the main contractor for the Project known as [name] (the “Project”).
2. The Plaintiff, as the sub-contractor of the Defendant, carried out the [to insert] works for the Project (the “Works”) under an agreement in writing dated [date].
3. During the course of the Project, pursuant to the terms of the written agreement between the parties (the “Agreement”), the Plaintiff allowed the Defendant to deduct and retain 10% of the value of the work done in the Project as a retention sum.
4. It was a term of the Agreement that the retention sum for the Project would be released to the Plaintiff upon issuance of the maintenance certificate.
5. On [date], the Plaintiff completed the Works and the completion certificate was issued on [date].
6. On [date], the maintenance certificate for the Project was issued.
7. The total retention sum retained by the Defendant for the Works was S\$[sum] (the “Retention Sum”).
8. On [date], in accordance with the terms of the Agreement, the Plaintiff requested the Defendant to release the Retention Sum to it.
9. In breach of the terms of the Agreement, the Defendant wrongfully failed and / or refused and / or neglected to release the Retention Sum to the Plaintiff.

AND the Plaintiff claims:

- (1) The sum of S\$ [sum];
- (2) Interest;
- (3) Costs; and
- (4) Such further and/or other relief as this Honourable Court deems fit and just.

P10.16 Generally endorsed claim for an injunction to restrain a call on a performance bond

[Rajah & Tann LLP]

1. The Plaintiff avers that the Defendant's demand on [date] on the Performance Bond [No.] given by [name of financial institution] on [date] in favour of the Defendant ("the Guarantee") is unconscionable.
2. The Plaintiff's claim is for:
 - (a) A declaration that the Defendant's demand dated [date] on the Guarantee is unconscionable;
 - (b) An injunction to restrain the Defendant from receiving the sum of [amount] or any part thereof from [the financial institution] pursuant to the Defendant's said demand on the Guarantee;
 - (c) Further and/or in the alternative, an injunction to restrain the Defendant from commencing and/or continuing any proceedings, execution or legal process against [the financial institution] to compel its payment to the Defendant of the sum of [amount] or any part thereof pursuant to the Defendant's said demand on the Guarantee, including but not limited to proceedings in Suit No. [].

P10.17 Affidavit in support of an injunction to restrain a call on a performance bond

[Rajah & Tann LLP]

[Formal requirements]

1. I make this affidavit in support of the Plaintiff's application against the Defendant for:
 - (1) A declaration that the Defendant's demand dated [date] on Performance Bond [No.] given by [name of financial institution] on [date] in favour of the Defendant ("the Guarantee") is unconscionable;
 - (2) An injunction to restrain the Defendant from receiving the sum of [amount] or any part thereof from [the financial institution] pursuant to the Defendant's said demand on the Guarantee;
 - (3) Further and/or in the alternative, an injunction to restrain the Defendant from commencing and/or continuing any proceedings, execution or legal process against [the financial institution] to compel its payment to the Defendant of the sum of [amount] or any part thereof pursuant to Defendant's said demand on the Guarantee, including but not limited to proceedings in Suit No. [].
2. [Set out background facts]
3. I am advised and verily believe that [the financial institution] is not obliged to make payment of any amount to the Defendant pursuant to the said demand as the Guarantee is a conditional bond and not an unconditional bond. The salient terms of the Guarantee are as follows:

[Set out salient terms tending to demonstrate the Guarantee being a conditional bond]
4. For the reasons that follow, the Defendant has failed to fulfil the requisite conditions for making a call on the Guarantee; the Defendant's demand on the Guarantee is thus ineffective.

[Set out how the Defendant has failed to satisfy the relevant conditions]
5. Even if the Guarantee is a demand bond, it would be unconscionable for the Defendant to receive any payment from [the financial institution] pursuant to the bond, for the following reasons:

[Set out reasons demonstrating unconscionability, for instance:

The Plaintiff is not in breach of contract. It is in fact the Defendant's own acts of default and prevention that have hindered the

Plaintiff's execution of the contract. The works done by the Plaintiff have been consistently under-certified and the Defendant has continually underpaid the Plaintiff. [Elaborate on the facts]

The Defendant has not in fact suffered any loss whatsoever, and the Defendant's call on the Guarantee is an abusive one. The Defendant cannot possibly have any honest belief that it is entitled to call on the Guarantee as it has not sustained any loss that could in fact owe the Plaintiff monies.

The Defendant cannot in good faith believe that it has suffered a loss due to the liquidated damages allegedly owing from the Plaintiff. Throughout the course of the Project, no liquidated damages have been certified or even indicated to be deductible. [Elaborate on the facts]

Further evidence of the Defendant's own acknowledgment that monies are owing for work done under the Project is evident from the Defendant's own actions in making direct payment to the sub-contractors for the Project.

The Plaintiff is further of the view that the Defendant has wrongfully made direct payment to the subcontractors. [Elaborate on the facts].

Thus, not only does the Plaintiff not owe any monies to the Defendant, but it is in fact the *Defendant* who owes the *Plaintiff* monies (due to the works being consistently under-certified and underpaid). The Defendant is further holding on to retention monies of at least [set out amount].]

6. In the circumstances, the Plaintiff has a strong and viable claim against the Defendant. It would be patently unfair for the Defendant to receive payment under the Guarantee when the total sum payable by the Defendant to the Plaintiff far exceeds the amount demanded.
7. For the reasons set out above, I believe there is compelling evidence of unfairness and unconscionability in the Defendant making the demand on the Guarantee. There is no conceivable loss that the Defendant could have suffered that could entitle it to make a demand on the sum of [amount], when no liquidated damages at all are owing. In fact, the contractual date for completion for the Project is more than a year away. Quite the contrary, the *Defendant* owes the *Plaintiff* monies, making any demand on the Guarantee not only totally unwarranted, but eminently unfair, oppressive and unconscionable.

P10.18 Claim by a management corporation for defects in common property

[Rajah & Tann LLP]

1. The Plaintiff is a Management Corporation known as the Management Corporation Strata Title Plan No. [insert no.] of a sub-divided condominium known as [insert name of the development] at [insert address] and is a body corporate that was duly constituted under the Land Titles (Strata) Act (Cap. 158) (“LTSA”), now governed by the Building Maintenance and Strata Management Act 2004 (Cap. 30C) (“BMSMA”).
2. The 1st Defendant was at all material times a company incorporated under the laws of Singapore, and was the developer of the development.
3. The 2nd Defendant was at all material times a company incorporated under the laws of Singapore, and was the main contractor for the development, having been engaged by the 1st Defendant.
4. By virtue of the aforesaid applicable legislation, the Plaintiff comprises the subsidiary proprietors from time to time of all lots comprised in the strata title plan of the development.
5. Pursuant to the former section 33(2)(b) of the LTSA and the current section 24(2)(b) of the BMSMA, the Plaintiff has the capacity to sue in respect of any matter affecting the common property of the development.
6. The Plaintiff thus institutes this action on behalf of itself, representing all the subsidiary proprietors currently comprised in the strata title plan of the development. Of these subsidiary proprietors, those who had purchased their units directly from the Defendant (“the Original Purchasers”) are named and set out in the Schedule hereto.
7. The Temporary Occupation Permit for the development was granted on or about [date].
8. While the development is barely [insert no. of years] years old, numerous defects have become manifestly apparent. These defects are obvious on a mere visual inspection and no doubt demonstrate that there has been a failure to develop and/or construct the development in a good and workmanlike manner with reasonable skill and care and/or to ensure that the development is reasonably fit for the purpose for which it was intended.
9. The more critical defects include:

[set out the defects]

Claim Against the 1st Defendant: Claim in Contract

10. The Plaintiff brings a claim in breach of contract against the 1st Defendant on behalf of the Original Purchasers, who have authorised the Plaintiff and consented to the Plaintiff commencing such an action against the 1st Defendant for breach of contract.
11. In this regard, the Plaintiff shall be referring to and relying on the respective agreements entered into between the Original Purchasers and the 1st Defendant for their full terms and effect at the trial of this matter and at any interlocutory proceedings in this action. The agreements executed by the Original Purchasers and 1st Defendants were on the standard form prescribed by the Housing and Developers' Act (and shall hereinafter be referred to as the "S&PA").
12. The 1st Defendant is in breach of the following express and/or implied terms of the S&PA.

Particulars of Breach

[Set out express and/or implied terms of breach]

Claim against the 2nd Defendant: Claim in Tort

13. Further and/or in the alternative, the Plaintiff brings this action in tort against the 2nd Defendant for negligence.
14. As the main contractor engaged to carry out the construction of the development, the 2nd Defendant would have been aware and/or should have been aware that the 1st Defendant had intended to sell the sub-divided units and the common property in the development to various subsidiary proprietors.
15. The 2nd Defendant would also have been aware and/or should have been aware that in due course, a management corporation would be formed comprising the various subsidiary proprietors and that the management corporation would succeed the 1st Defendant.
16. The 2nd Defendant thus would have been aware and/or should have been aware that pursuant to the former section 48 of the LTSA and the current section 29 of the BMSMA, the Plaintiff would have the duty to control, manage and administer the common property of the development for the benefit of all subsidiary proprietors and would be responsible, *inter alia*, for the proper maintenance of

the common property and keeping the same in a state of good and serviceable repair.

17. The 2nd Defendant therefore must have known and/or should have known that any defects in the common property of the development would necessarily have to be made good by the Plaintiff, thereby causing loss and damage.
18. By virtue of the proximate relationship between the Plaintiff and the 2nd Defendant as demonstrated above, the 2nd Defendant owed the Plaintiff a duty of care to carry out its works in a good and workmanlike manner in accordance with the approved plans and specifications and market standards. The 2nd Defendant owed the Plaintiff a duty of care to exercise reasonable skill and care in the carrying out of the building works and to ensure that the common property was reasonably fit for its purpose.
19. The 2nd Defendant breached these duties of care.

Particulars of Breach

[Set out particulars of breach]

20. In the premises, the Plaintiff has suffered loss and damage as particularised above.

AND the Plaintiff claims:

- (1) Damages to be assessed;
- (2) Interest;
- (3) Costs; and
- (4) Such further or other relief as this Honourable Court may deem fit.

P10.19 Claim by a management corporation for defects in common property

[Drew & Napier LLC]

1. The Plaintiff is a Management Corporation known as the Management Corporation Strata Title Plan No. [number] of a sub-divided condominium known as [name of the development] at [address], and is a body corporate governed by the Building Maintenance and Strata Management Act (Cap. 30C, 2008 Rev Ed) (“BMSMA”).
2. By virtue of the aforesaid applicable legislation, the Plaintiff comprises the subsidiary proprietors from time to time of all lots comprised in the strata title plan of the development.
3. Pursuant to section 24(2)(b) of the BMSMA, the Plaintiff has the capacity to sue in respect of any matter affecting the common property of the development.
4. The Plaintiff thus institutes this action on behalf of itself, representing all the subsidiary proprietors currently comprised in the strata title plan of the development. Of these subsidiary proprietors, those who had purchased their units directly from the 1st Defendant (“Original Purchasers”) are named and set out in the Schedule hereto.
5. The 1st Defendant was at all material times a company incorporated under the laws of Singapore, carrying on, *inter alia*, the business of real estate development, and it was the developer of the development.
6. The 2nd Defendant was at all material times a company incorporated under the laws of Singapore, and it was the main contractor for the works at the development (“Building”).
7. The 1st Defendant engaged the 2nd Defendant to carry out the [works] works for the development.
8. The Temporary Occupation Permit for the development was granted on or about [insert date].
9. When the development was barely [insert no. of years] years old, numerous defects became manifestly apparent. These defects are obvious on a mere visual inspection and no doubt demonstrate that there was a failure to develop and/or construct the development in a good and workmanlike manner with reasonable skill and care and/or to ensure that the development is reasonably fit for the purpose for which it was intended.

10. From [insert date] to [insert date], [name] ("XYZ"), a firm of building surveyors, carried out a visual inspection of the Building, and advised the Plaintiffs to rectify a number of defects observed at various locations within the Building.
11. The particulars of their observations are as follows:
 - (1) [set out the defects]; and
 - (2) [set out the defects].
12. On [date], on the instructions of XYZ, ABC Investigation & Research Pte Ltd ("ABC") reported on tests and measurements carried out on selected structural elements on the [insert floor numbers] floors of the development.
13. On [date] ABC wrote to the Commissioner of Building Control to, *inter alia*, make the following recommendations:
 - (1) [to insert recommendations by ABC]; and
 - (2) [to insert recommendations by ABC].
14. By reason of the aforesaid, on [date] RRR Property Management Pte Ltd ("RRR"), the Plaintiffs' managing agents, engaged Dr AAA ("AAA"), a professional engineer, on behalf of the Plaintiffs to carry out a full structural investigation of the Building in accordance with the Building Control (Inspection of Buildings) Regulations 2000.
15. On [date], AAA's report to the Plaintiffs was completed and issued to the Plaintiffs. The following defects observed by AAA ("Defects") are given below, full particulars of which shall be referred to and relied upon for their full terms and effect at the trial and at any interlocutory proceedings in this action.
16. The Defects are only found in the common property of the Building.

Claim Against the 1st Defendant: Claim in Contract

17. The Plaintiff brings a claim in breach of contract against the 1st Defendant on behalf of the Original Purchasers. The Original Purchasers have authorised the Plaintiff and consented to the Plaintiff commencing such an action against the 1st Defendant for breach of contract.
18. In this regard, the Plaintiff shall refer to and rely upon the respective agreements entered into between the Original Purchasers and the 1st Defendant for their full terms and effect at the trial and at any interlocutory proceedings in this action. The agreements executed

by the Original Purchasers and 1st Defendants were based on the standard form prescribed by the Housing and Developers' Rules ("S&PA").

19. The 1st Defendant is in breach of the following express and/or implied terms of the S&PA.

Particulars of Breach

[Set out express and/or implied terms that were breached]

Claim against the 2nd Defendant: Claim in Tort

20. Further and/or in the alternative, the Plaintiff brings this action in tort against the 2nd Defendant for negligence.
21. As the main contractor engaged to carry out the construction of the development, the 2nd Defendant would have been aware and/or should have been aware that the 1st Defendant had intended to sell the sub-divided units and the common property in the development to various subsidiary proprietors.
22. The 2nd Defendant would also have been aware and/or should have been aware that in due course, a management corporation would be formed comprising the various subsidiary proprietors and that the management corporation would succeed the 1st Defendant.
23. The 2nd Defendant thus would have been aware and/or should have been aware that pursuant to section 29 of the BMSMA, the Plaintiff would have the duty to control, manage and administer the common property of the development for the benefit of all subsidiary proprietors and would be responsible, *inter alia*, for the proper maintenance of the common property and keeping the same in a state of good and serviceable repair.
24. The 2nd Defendant therefore must have known and/or should have known that any defects in the common property of the development would necessarily have to be made good by the Plaintiff, thereby causing loss and damage.
25. By virtue of the proximate relationship between the Plaintiff and the 2nd Defendant as demonstrated above, the 2nd Defendant owed the Plaintiff a duty of care to carry out its works in a good and workmanlike manner in accordance with the approved plans and specifications and market standards. The 2nd Defendant owed the Plaintiff a duty of care to exercise reasonable skill and care in the carrying out of the building works and to ensure that the common property was reasonably fit for its purpose.
26. The 2nd Defendant breached these duties of care.

Particulars of Breach

[Set out particulars of breach]

27. In the premises, the Plaintiff has suffered loss and damage as particularised above.

AND the Plaintiff claims:

- (1) Damages to be assessed;
- (2) Interest at such rate and for such period as this Honourable Court thinks fit pursuant to Section 12 of the Civil Law Act (Cap 43, 1999 Rev Ed);
- (3) Costs; and
- (4) Such further or other relief as this Honourable Court may deem fit.

P10.20 Defence of set-off on account of defects and counterclaim

[Rodyk & Davidson LLP]

1. [Admit contract]
2. [Set out express and/or implied and/or statutory terms as to the quality of materials and workmanship]
3. As to paragraph [number] of the Statement of Claim, it is admitted that the Plaintiff has executed the work alleged.
4. However, in breach of the terms pleaded at paragraph [2] above, the [materials supplied and installed by the Plaintiff was and/or the Plaintiff's work were] defective.

Particulars of Defects

[Particulars]

5. By reason of the said defects, the Defendant has suffered loss and damage, being the cost of rectification, amounting to S\$[amount].
6. The Defendant is hence entitled to set-off the sum of S\$[amount] against the amounts claimed by the Plaintiff.
7. If the Defendant is not entitled to the set-off as set out above, he will seek to counterclaim the amount owing to him as hereinafter appears in diminution or extinction of the Plaintiff's claim.

Counterclaim

8. The Defendant repeats paragraphs [2] and [5] of the Defence.

AND the Defendant therefore counterclaims:

- (1) The sum of S\$[amount];
- (2) Interest;
- (3) Costs; and
- (4) Such further and/or other relief as this Honourable Court deems fit and just.

P10.21 Defence of architect alleging contractor's liability in reply to employer's claim for damages

[Rodyk & Davidson LLP]

1. The 1st Defendant admits the design and supervision contract between the 1st Defendant and the Plaintiffs as pleaded at paragraph [number] of the Statement of Claim.
2. Pursuant to the design and supervision contract, 1st Defendant designed and prepared contract drawings, specifications and bills of quantities showing and describing the work to be done in respect of the Works.
3. The 1st Defendant admits that on [date] 1st Defendant issued a Completion Certificate for the Works.
4. The 1st Defendant denies the Plaintiffs' allegations that the 1st Defendant breached the terms of the design and supervision contract and or was negligent. The particulars of negligence pleaded at paragraph [number] of the Statement of Claim are denied and the Plaintiffs are put to strict proof thereof.
5. Further and or alternatively, the cracking and damage complained of was caused wholly or in part by the 2nd Defendants, including:
 - (1) failure to provide materials, goods and workmanship as required by the construction contract;
 - (2) failure to execute the works in a good and workmanlike manner;
6. Save as in hereinbefore expressly admitted, the 1st Defendant denies each and every allegation contained in the Statement of Claim as if the same were set forth seriatim and specifically traversed.

P10.22 Defence of contractor alleging architect's liability in reply to employer's claim for damages

[Rodyk & Davidson LLP]

1. The 2nd Defendant admits the construction contract between the 2nd Defendant and the Plaintiffs as pleaded at paragraph [number] of the Statement of Claim.
2. Under the terms of the construction contract, the design and specifications of the Works were not the responsibility of the 2nd Defendant. The 2nd Defendant will rely upon the construction contract for its full effect and meaning at trial or such other hearing hereof.
3. Pursuant to the construction contract, the 2nd Defendants duly executed the Works under the supervision of the 1st Defendant.
4. The 2nd Defendant admits that on [date] 1st Defendant issued a Completion Certificate for the Works.
5. The 2nd Defendant denies the Plaintiffs' allegations that the 2nd Defendant breached the terms of the construction contract and or was negligent. The particulars of negligence pleaded at paragraph [number] of the Statement of Claim are denied and the Plaintiffs are put to strict proof thereof.
6. Further and or alternatively, the cracking and damage complained of was caused wholly or in part by the 1st Defendants' breach of the design and supervision contract and or negligence. The 2nd Defendants will rely upon and adopt the Plaintiffs' allegations of design inadequacies and deficiencies against the 1st Defendant.
7. Save as in hereinbefore expressly admitted, the 2nd Defendant denies each and every allegation contained in the Statement of Claim as if the same were set forth seriatim and specifically traversed.

P10.23 Defence and counterclaim of employer in reply to contractor's claim for work done and services rendered in a completed contract

[Rodyk & Davidson LLP]

1. The Defendant admits the construction contract between the Defendant and the Plaintiff as pleaded at paragraph [number] of the Statement of Claim.
2. The contract provided, *inter alia*, that:
 - (1) Under Clause 5, the contract period was 3 months (i.e. the Works were to be completed by [date]), failing which Liquidated Damages at the rate of S\$[amount] per day are to be paid to the Defendant;
 - (2) Under Clause 6 the contractor is required to remedy and make good, at the contractor's own cost any defective works, failing which, the Defendant would be entitled to engage third parties to remedy the defective works, the cost of which the Defendant would be entitled to set-off against any monies as may be due to the Plaintiff.
3. The Works were only completed on [date], a delay of [number] days. Therefore by Clause 5, Liquidated Damages amounting to [amount] are payable by the Plaintiff to the Defendant.
4. On completion of the Works, the Plaintiff was notified by the Defendant's architectural and design consultants XYZ Architects of the following defective works:

[Details]

5. Despite demands by the Defendant for the defective works to be remedied, the Plaintiff refused, failed and or neglected to carry out the necessary rectification works. As a result, the Defendant engaged ABC Contractors to remedy the defective works at the cost of S\$[amount].
6. The Defendant is therefore entitled contractually and in equity to set off the Defendant's claim for Liquidated Damages of S\$[amount] and the rectification costs of S\$[amount] in diminution and or extinction of the Plaintiff's claim herein.
7. Save as in hereinbefore expressly admitted, the Defendant denies each and every allegation contained in the Statement of Claim as if the same were set forth seriatim and specifically traversed.

Counterclaim

The Defendant repeats paragraphs [numbers] of the Defence herein.

AND the Defendant counterclaims:

- (1) Liquidated damages of S\$[amount];
- (2) Rectification costs of S\$[amount];
- (3) Interest at such rate and for such period as this Honourable Court thinks fit pursuant to Section 12 of the Civil Law Act (Cap 43); and
- (4) Such further or other relief as this Honourable Court deems fit.

CHAPTER 11

CORPORATE INSOLVENCY

PRECEDENTS

- P11.01** Application by originating summons for leave to convene a meeting of creditors: s 210(1) CA
- P11.02** Affidavit in support of application for leave to convene a meeting of creditors
- P11.03** Application by originating summons for court approval of scheme of arrangement
- P11.04** Affidavit in support of application for court approval of scheme
- P11.05** Section 210(10) CA application by summons in the pending action
- P11.06** Affidavit in support of s 210(10) CA application in the pending action
- P11.07** Application by originating summons for judicial management order by a creditor
- P11.08** Affidavit in support of application for judicial management order by a creditor
- P11.09** Application by originating summons for judicial management order by the company
- P11.10** Affidavit in support of an application for judicial management order by the company
- P11.11** Application by summons for interim judicial management order
- P11.12** Affidavit in support of application for interim judicial management order
- P11.13** Application by summons for discharge of judicial management order
- P11.14** Affidavit in support of application for discharge of judicial management order
- P11.15** Application by originating summons by a creditor for a winding-up order (on grounds of insolvency)
- P11.16** Affidavit in support of creditor's application for a winding-up order on grounds of insolvency
- P11.17** Application by originating summons by a creditor to wind up a foreign company
- P11.18** Affidavit in support of an application to wind up a foreign company

- P11.19** Application by summons for appointment of provisional liquidator
- P11.20** Affidavit in support of application to appoint provisional liquidator
- P11.21** Application by summons for release of liquidator and dissolution of the company
- P11.22** Affidavit in support of application for release and dissolution
- P11.23** Application by originating summons for winding-up order
- P11.24** Affidavit in support of winding-up order
- P11.25** List of parties wishing to attend the hearing of the winding-up application
- P11.26** Advertisement of winding-up application
- P11.27** Notice of winding-up order
- P11.28** Notification to liquidator of order
- P11.29** Memorandum of Advertisement and Gazetting

CHAPTER 11

CORPORATE INSOLVENCY

PRECEDENTS

P11.01 Application by originating summons for leave to convene a meeting of creditors: s 210(1) CA

[WongPartnership LLP]

LET ALL PARTIES attend before the Judge in Chambers on [date], at [time] am/pm on the hearing of an application by [XYZ Pte Ltd] (the “Company”) for the following orders:

1. That the Company be at liberty to convene a meeting (the “Meeting”) of its creditors (as defined in the Scheme of Arrangement annexed hereto as Appendix I) to be held on or before [date] at a time and place to be determined, for the purpose of considering, and if thought fit, approving, with or without modification, the Scheme of Arrangement proposed to be made between the Company and its creditors pursuant to Section 210 of the Companies Act (Cap 50) (“the Act”).
2. That Mr/Ms [name] or failing him/her, Mr/Ms [name], both of the accounting firm of [Messrs ABC], be appointed Chairman of the Meeting and to report the results of the Meeting to the Court.
3. That at least [number] clear days before the date appointed for the Meeting, a notice convening the Meeting and enclosing a copy of:
 - (1) The Scheme of Arrangement;
 - (2) The Explanatory Statement required to be furnished pursuant to Section 211(1)(a) of the Act; and
 - (3) Proxy forms,be served by hand or sent by prepaid post addressed to each member of the Company and each creditor (as defined in the Scheme of Arrangement annexed hereto as Appendix I) at their registered or last known address.
4. That at least [number] clear days before the date appointed for the Meeting, a notice summoning the Meeting be advertised once in the “The Straits Times” [and any other publication].
5. That the Company be at liberty to apply.
6. That such other orders may be made providing such further or other relief as this Honourable Court deems fit.

P11.02 Affidavit in support of application for leave to convene a meeting of creditors

[WongPartnership LLP]

I, [name] of [address] do make oath/solemnly and sincerely affirm and say as follows:

1. I am a director of [XYZ Pte Ltd] (“the Company”) and I am duly authorised to make this affidavit on behalf of the Company.
2. Insofar as the matters deposed to herein are within my personal knowledge, and/or based on documents in the Company’s custody, power and possession and/or that of their solicitors, they are true. Insofar as they are not within my personal knowledge, and/or not based on documents in the Company’s custody, power and possession and/or that of their solicitors, they are true to the best of my knowledge, information and belief.
3. I make this affidavit in support of the Company’s application for leave of Court to convene a meeting (“Meeting”) of its creditors for the purpose of considering, and if thought fit, approving, with or without modification, the Scheme of Arrangement (“the Scheme”) proposed to be made between the Company and its creditors.

The Company’s Background

4. The Company was incorporated under the Companies Act (Cap 50) (“the Act”) on [date] as a private company limited by shares.
5. The registered office of the Company is at [address].
6. The authorised capital of the Company is [amount] divided into [number] shares of [amount] each. The amount of capital paid up or credited as paid up is [amount]. Now produced and shown to me marked “AA-1” is a copy of the results of a search dated [date] conducted on the records of the Accounting and Corporate Regulatory Authority.
7. The objects for which the Company was established are as follows:
 - (1) ...
 - (2) ...

and other objects set out in the Memorandum of Association of the Company. Now produced and shown to me marked “AA-2” is a copy of the Company’s Memorandum of Association and Articles of Association.

8. [For foreign companies, include details as to how the Company has assets in Singapore, or a sufficient nexus or connection with Singapore.]

The Company's Present Financial Position

8. [Background and any explanation for the Company's current financial situation. Also briefly state the different types of creditors the Company has. For example:
9. The financial difficulties that the Company is presently experiencing stem from the Company's recent strategy of diversification out of its core businesses.
10. This strategy has been financed largely by borrowings from various financial institutions. Due largely to the recent downturn in this sector of the economy, the Company has experienced cash flow problems which in turn have led to difficulties in servicing these borrowings. A number of these financial institutions have started to recall their loans.
11. Some of the Company's trade creditors have also threatened to commence legal proceedings against the Company to recover sums owed, further adding to the financial pressures on the Company.
12. Nevertheless, I verily believe that the Company's present difficulties are short term in nature. I also believe that the Company's core business is viable and that it will ultimately yield significant benefits in the long run. To this end, the Company intends to propose a Scheme of Arrangement to its creditors in order to allow the Company to continue with its core business and to steer the Company towards profitability.]

The Proposed Scheme of Arrangement

13. The salient features of the Scheme are as follows:
 - [(1) a complete moratorium on any action against the Company by any of its creditors;
 - (2) an orderly asset realisation, fund raising and restructuring programme by the Company under the supervision of the Scheme Manager;
 - (3) the payment of the net proceeds of this asset realisation, fund raising and restructuring programme into an account operated by the Scheme Manager to be distributed *pari passu* amongst the Company's creditors.]

14. Now produced and shown to me marked “AA-3” are copies of the proposed Scheme (in draft form) and the Explanatory Statement.
15. [To explain the impact of the Scheme on different classes of creditors (if any). To also include any other information that suggests a realistic prospect of the scheme receiving the requisite approval by the different classes of creditors.]
16. I am advised by the Company’s financial advisers and verily believe that the proposed Scheme will result in a better recovery for all creditors of the Company as compared to a compulsory liquidation or judicial management of the Company at this stage. [In the event of a liquidation, the break-up value of the Company is estimated to be around [amount] cents to the dollar, which is considerably less than the estimated return of [amount] cents to the dollar envisaged under the proposed Scheme.]

The Proposed Meeting

17. The Company proposes to convene the Meeting on [date] at [time and place] and to give all creditors [14 days] notice of the Meeting by way of advertisement in “The Straits Times”. In addition, the notice convening the Meeting will be served by hand or sent by prepaid post to all members of the Company and all creditors reflected in its records as at [date]. I verily believe that this will be sufficient notice for the creditors of the Company.

Classification of Creditors

18. The Company proposes that the scheme creditors vote according to these following classes. [Describe how the creditors grouped in each class have aligned interests.]

Chairman of the Meeting

19. The Company is proposing that Mr/Ms [name] of [Messrs ABC] or failing which Mr/Ms [name] of [Messrs ABC] be appointed as Chairman of the Meeting. Thereafter, Mr/Ms [name] will report the results of the Meeting to the Court.
20. In the premises, I humbly pray for an order in terms of the application filed herewith.

P11.03 Application by originating summons for court approval of scheme of arrangement

[WongPartnership LLP]

LET ALL PARTIES attend before the Judge in Chambers on [date], at [time] am/pm on the hearing of an application by [XYZ Pte Ltd] ("the Company") for the following orders:

1. That the Scheme of Arrangement ("the Scheme") approved at a meeting of the creditors (as defined in the Scheme annexed hereto) convened on [date] be sanctioned and approved by this Honourable Court pursuant to Section 210(3) of the Companies Act (Cap 50) ("the Act") so as to be binding on the Company and the creditors.
2. [That the Company be exempted, pursuant to Section 210(7) of the Act from annexing a copy of the Order to be made herein to every copy of its Memorandum of Association issued after the Order is made.]
3. That such other orders may be made providing such further or other relief as this Honourable Court deems fit.

P11.04 Affidavit in support of application for court approval of scheme

[Wong Partnership LLP and Drew & Napier LLC]

I, [name] of [address] do make oath/solemnly and sincerely affirm and say as follows:

1. I am a director of [XYZ Pte Ltd] (“the Company”) and I am duly authorised to make this affidavit on behalf of the Company.
2. Insofar as the matters deposed to herein are within my personal knowledge, and/or based on documents in the Company’s custody, power and possession and/or that of their solicitors, they are true. Insofar as they are not within my personal knowledge, and/or not based on documents in the Company’s custody, power and possession and/or that of their solicitors, they are true to the best of my knowledge, information and belief.
3. I make this affidavit in support of the Company’s application for the Court’s sanction of the Scheme of Arrangement (“the Scheme”) approved on [date] at a meeting of the creditors (as defined in the Scheme). Now produced and shown to me marked “AA-1” is a copy of the Scheme.

Notifying Creditors of the Scheme and Meeting

4. By an Order of Court dated [date] made by [...] in Originating Summons No [number], the Company was given liberty to convene a meeting (the “Meeting”) of its creditors for the purpose of considering, and if thought fit, approving, with or without modification, the Scheme of Arrangement proposed to be made between the Company and its creditors pursuant to Section 210 of the Companies Act (Cap 50) (the “Act”). Now produced and shown to me marked “AA-2” is a copy of the Order of Court dated [date].
5. Pursuant to the Order of Court dated [date], a notice convening the Meeting was despatched by prepaid post to each of the creditors at their registered or last known addresses. The said notice informed the creditors *inter alia* that the Meeting would be convened on [date] at [place]. The said notice also enclosed the following documents:
 - (1) The Scheme of Arrangement;
 - (2) The Explanatory Statement required to be furnished pursuant to Section 211(1)(a) of the Act; and
 - (3) Proxy forms.

6. In addition, the said notice was also advertised on [date] in “The Straits Times” newspapers.
7. As such, I verily believe that sufficient notice of the Meeting was given to the creditors, all of whom had the opportunity to attend and vote at the Meeting.

Approval by the Requisite Majority at the Meeting

8. The Scheme was put to the creditors at the duly convened Meeting held on [date] at the offices of Messrs XYZ, and was chaired by Mr [name]. I was present at the Meeting.
9. The Meeting was attended by [number] of the creditors who were owed the aggregate sum of S\$[amount]. [To also set out the number of proxies and who were appointed as proxies.] This amounts to [amount] per cent of the total liabilities of the Company. [To adapt accordingly if there is more than one class of creditors voting at the meeting].
10. At the Meeting, the Scheme was put to a vote and was approved by the requisite majority in number representing at least three-fourths in value of the creditors [or each class of creditors]. The following table sets out the outcome of the vote:

[Results of vote]

11. Now produced and shown to me marked “AA-3” is a copy of the report of the Chairman dated [date] providing an account of the Meeting and its outcome.

[The Chairman’s report should confirm, among other things, that he:

- (a) completed the adjudication of the proofs of debts prior to the creditors meeting(s);
 - (b) provided a list of the creditors and the corresponding amount of their claims that had been admitted for the purposes of voting prior to the creditors meeting(s); and
 - (c) posted a list of all creditors and their admitted amounts at the voting venue before the vote.]
12. By reason of the Explanatory Statement, the terms of the Scheme and the explanations given by the Chairman at the Meeting (as evidenced by “AA-3”), [and any other material information that was disclosed], I verily believe that the creditors have been provided with sufficient information in order for them to make an informed decision at the Meeting.

13. In the circumstances of the voting results set out in the table in Paragraph 10 above, the Scheme has obtained the approval of the requisite majority of the creditors under Section 210(3) of the Act.

Why the Scheme is Fair and Reasonable

14. It is clear that the Company is unable to meet in full the claims of the creditors. Given the present financial position of the Company, it is likely to go into liquidation at the suit of a creditor in the absence of a compromise or arrangement with its creditors. In the event the Company is wound up, it is estimated that the creditors will only be able to recover [amount] per cent of the sums owed by the Company.
15. The Scheme contemplates a restructuring and compromise of the unsecured sums owed by the Company to the creditors. The main features of the Scheme are as follows:

[Main features of the Scheme]

16. In the circumstances, I verily believe that the benefits of the Scheme are manifest and clear. If approved by the Court, the Scheme will place the creditors in a far better position than would be the case if the Company were to be wound up.

Disclosure of Material Information

17. I confirm that all material information [set out where applicable such material information, for example information which would allow the creditors to determine how their expected returns under the proposed scheme would be derived and information relating to the commercial viability of the implementation of the scheme as a whole, including where relevant and material, information on the benefits accruing to the scheme manager or his firm] has been disclosed to the creditors prior to the vote at the being taken at the Meeting].

Conclusion

17. The directors of the Company are satisfied that the Scheme, if sanctioned by the Court, is fair and reasonable to (in fact, in the best interests of) the creditors. The said Scheme has received the approval of the requisite majority of the creditors and I now humbly pray that this Court approves and sanctions the Scheme.

P11.05 Section 210(10) CA application by summons in the pending action

[WongPartnership LLP and Drew & Napier LLC]

LET ALL PARTIES attend before the Judge in Chambers on [date], at [time] am/pm on the hearing of an application by the Defendant for the following orders:

1. [That all further proceedings in this Suit be stayed/restrained;

OR

That the Plaintiff be restrained from enforcing the judgment dated [date] whether by process of execution, winding-up or in any other manner whatsoever];

2. There be liberty to apply;
3. That such further or other relief be granted as this Honourable Court deems fit; and
4. That the terms of this order shall not affect or concern anyone outside the jurisdiction of this Court until it is declared enforceable or is enforced by a Court in the relevant country and then they are to affect him only to the extent they have been declared enforceable or have been enforced UNLESS such person is:
 - (a) a person to whom this order is addressed or an officer or an agent appointed by power of attorney of such a person; or
 - (b) a person who is subject to the jurisdiction of this Court; and
 - (i) has been given written notice of this order at his residence or place of business within the jurisdiction of this Court; and
 - (ii) is able to prevent acts or omissions outside the jurisdiction of this Court which constitute or assist in a breach of the terms of this order.

P11.06 Affidavit in support of s 210(10) CA application in the pending action

[WongPartnership LLP]

I, [name] of [address] do make oath/solemnly and sincerely affirm and say as follows:

1. I am a director of [XYZ Pte Ltd], the Defendant in these proceedings. I am duly authorised to make this affidavit on behalf of the Defendant.
2. Insofar as the matters deposed to herein are within my personal knowledge and/or based on documents in the Defendant's custody, power and possession and/or that of its solicitors, they are true. Insofar as they are not within my personal knowledge and/or not based on documents in the Defendant's custody, power and possession and/or that of its solicitors, they are true to the best of my knowledge, information and belief.
3. I make this affidavit in support of the Defendant's application for an order that the Plaintiff be restrained until further order from taking any further steps in these proceedings and continuing these proceedings in any other way whatsoever. Such an order is necessary to enable the Defendant to continue with its restructuring plans, which are now at an advanced stage, to implement a Scheme of Arrangement under Section 210 of the Companies Act (Cap 50) ("the Act") for the benefit of the Defendant, its members, its employees and its creditors (including the Plaintiff).

The Defendant's Background

4. The Defendant was incorporated under the Act on [date] as [a private company limited by shares].
5. The registered office of the Defendant is at [address].
6. The authorised capital of the Defendant is [amount] divided into [number] shares of [amount] each. The amount of capital paid up or credited as paid up is [amount]. A copy of the results of a search dated [date] conducted at the records of the Accounting and Corporate Regulatory Authority is now produced and shown to me marked "AA-1".
7. The objects for which the Defendant was established are as follows:
 - (1) ...
 - (2) ...

and other objects set out in the Memorandum of Association of the Defendant. A copy of the Defendant's Memorandum of Association and Articles of Association is now produced and shown to me marked "AA-2".

8. [For foreign companies, include details as to how the Company has assets in Singapore, or a sufficient nexus or connection with Singapore].

The Defendant's Present Financial Position

9. The Defendant is presently facing financial difficulties that stem primarily from [for example: the Defendant's recent strategy of diversification out of its core businesses.
10. This strategy has been financed largely by borrowings from various financial institutions (including the Plaintiff). Due largely to the recent downturn in this sector of the economy, the Defendant has experienced cash flow problems which in turn have led to difficulties in servicing these borrowings. A number of these financial institutions (including the Plaintiff) have started to recall their loans.
11. Some of the Defendant's trade creditors have also threatened to commence legal proceedings against the Defendant to recover sums owed, further adding to the financial pressures on the Defendant.
12. Nevertheless, I verily believe that the Defendant's present difficulties are short term in nature. I also believe that the Defendant's core business is a viable one and that it will ultimately yield significant benefits in the long run.]
13. To this end, the Defendant has proposed a Scheme of Arrangement to its creditors (including the Plaintiff) in order to allow the Defendant to continue with its strategy to effectuate a turnaround of the Defendant into a going concern.

The Proposed Scheme of Arrangement ("the Scheme")

14. The salient features of the Scheme are as follows:
 - (1) a complete moratorium on any action against the Defendant by any of its creditors, including the Plaintiff;
 - (2) an orderly asset realisation, fund raising and restructuring programme by the Defendant under the supervision of the [Scheme Manager];

- (3) the payment of the net proceeds of this asset realisation, fund raising and restructuring programme into an account operated by the Scheme Manager to be distributed *pari passu* amongst the Defendant's creditors (including the Plaintiff).
15. Now produced and shown to me marked "AA-3" are copies of the proposed Scheme and the Explanatory Statement.
16. I am advised by the Defendant's financial advisers and verily believe that the proposed Scheme will result in a better recovery for all creditors of the Defendant as compared to a compulsory liquidation of the Defendant at this stage. [If possible, explain recovery for creditors under liquidation as compared to the proposed scheme, for example x cents for every dollar of debt].

The Present Action

17. The Plaintiff's claim in these proceedings is [for recovery of loans extended by the Plaintiff to the Defendant under various banking facilities. The Plaintiff has applied for summary judgment of its claim which is scheduled for hearing on [date]].
18. Apart from the Plaintiff, no other creditor has commenced legal proceedings against the Defendant. The Defendant's other creditors are prepared to allow the Defendant time to finalise the details of the scheme. Copies of standard letters written to the solicitors informing them of the Defendant's intended application pursuant to Section 210(1) of the Act are annexed hereto and marked as "AA-4". However, a judgment in the Plaintiff's favour in this action will almost certainly jeopardise the Defendant's efforts to restructure its business and to achieve an orderly realisation of its assets in the manner proposed under the Scheme.
19. A judgment in favor of one creditor is very likely to spark off a plethora of legal suits by other creditors of the Defendant, and this will ultimately lead to the demise of the Defendant. This would not be in anybody's interests, given that the creditors are likely to receive far less in a liquidation that is likely to lead to a fire sale of the Defendant's assets, as compared to their recovery under the Scheme.
20. I am advised by the Defendant's solicitors that the Plaintiff (through its solicitors) has refused to adjourn the hearing of the summary judgment application pending the convening of a creditors' meeting under Section 210 of the Act to consider the proposed Scheme.

21. In the circumstances, the Defendant has no reasonable alternative but to seek the intervention of the Court under Section 210(10) of the Act to restrain the Plaintiff from taking further steps in these proceedings which will jeopardise the Defendant's ongoing efforts to restructure its business in the ultimate interests of all of its creditors. I therefore humbly pray for an order in terms of the application filed herein.

P11.07 Application by originating summons for judicial management order by a creditor

[WongPartnership LLP]

LET ALL PARTIES CONCERNED attend before the Judge on [date/time], on the hearing of an application on the part of the Applicant, [AB Bank Ltd], for the following orders:

1. That [XYZ Pte Ltd] (“the Company”) be placed under the judicial management of a Judicial Manager;
2. That Mr/Ms [ABC] be appointed as Judicial Manager of the Company;
3. That the affairs, business and property of the Company be managed by the Judicial Manager herein appointed in order to achieve one or more of the following purposes:
 - (1) the survival of the Company, or the whole or part of its undertaking as a going concern;
 - (2) the approval under Section 210 of the Act of a compromise or arrangement between the Company and its creditors; and/or
 - (3) a more advantageous realisation of the Company’s assets than would be effected on a winding-up.
4. That the Judicial Manager be authorised to open and operate one or more separate bank accounts and that the signatories to the account or accounts be the Judicial Manager and/or a partner of [name of firm] who is a public accountant as may be nominated by the Judicial Manager;
5. That the Judicial Manager be authorised to appoint solicitors to assist him/her where appropriate;
6. That the Judicial Manager be granted leave to pay all the outstanding salaries of all the employees of the Company (including the requisite Central Provident Fund contributions and all reimbursements for expenses);
7. That the Judicial Manager be granted leave to pay all outstanding taxes and rental and all operating expenses incurred in the usual course of business in order to maintain the business of the Company as a going concern;
8. That the costs of and incidental to this application be paid by the Company or be paid out of its assets; and
9. That such further or other relief or order be given or made as this Honourable Court deems just.

P11.08 Affidavit in support of application for judicial management order by a creditor

[WongPartnership LLP]

I, [name] of [address] do make oath/solemnly and sincerely affirm and say as follows:

1. I am a director of [AB Bank Ltd], the Applicant herein. I am duly authorised to make this affidavit on behalf of the Applicant.
2. Insofar as the matters deposed to herein are within my personal knowledge and/or based on documents in the Applicant's custody, power and possession and/or that of its solicitors, they are true. Insofar as they are not within my personal knowledge and/or not based on documents in the Applicant's custody, power and possession and/or that of its solicitors, they are true to the best of my knowledge, information and belief.
3. [XYZ Pte Ltd] ("the Company") was incorporated under the Companies Act (Cap 50) ("the Act") on [date] as a private company limited by shares.
4. The registered office of the Company is at [address].
5. The authorised capital of the Company is [amount] divided into [number] shares of [amount] each. The amount of capital paid up or credited as paid up is [amount]. Now produced and shown to me marked "AA-1" is a copy of the results of a search dated [date] conducted on the records of the Accounting and Corporate Regulatory Authority.
6. The objects for which the Company was established are as follows:
 - (1) ...
 - (2) ...

and other objects set out in the Memorandum of Association of the Company. Now produced and shown to me marked "AA-2" is a copy of the Company's Memorandum of Association and Articles of Association.

7. For the reasons set out below, the Applicant believes that the Company is presently unable to pay its debts as they fall due and that the making of a judicial management order would be likely to achieve one or more of the following purposes set out in Section 227B(1)(b) of the Act, namely:
 - (1) [the survival of the Company, or the whole or part of its undertaking as a going concern];

- (2) [the approval under Section 210 of the Act of a compromise or arrangement between the Company and its creditors]; and/or
- (3) [a more advantageous realisation of the Company's assets than would be effected on a winding-up].

The Company's Profile

- 8. The Company's principal business is in [the manufacture and distribution of electrical goods].
- 9. [The Company has subsidiaries in Singapore, China, India and the Philippines and employs over 100 employees worldwide.]

Banking Facilities Granted by the Applicant [or Background to Debt Owed to Applicant]

- 10. [By way of a letter of offer dated [date], the Applicant granted various banking facilities to the Company. These banking facilities were subject to the Applicant's standard terms and conditions. Now produced and shown to me marked "AA-3" is a copy of the letter of offer from the Applicant.
- 11. The said banking facilities are secured by a joint and several guarantee dated [date] executed by the directors of the Company.
- 12. The Company has fully utilised the banking facilities under the letter of offer.]

The Company's Inability to Pay its Debts

- 13. [By a letter dated [date], the Applicant notified the Company that the banking facilities extended to the Company were terminated and demanded payment of the outstanding sums under those facilities. Now produced and shown to me marked "AA-4" is a copy of the said letter from the Applicant to the Company.
- 14. Despite such demand having been made, the Company has failed, refused and/or neglected to make payment of the outstanding sums due to the Applicant.
- 15. By a letter dated [date] from the Company to the Applicant, the Company has also admitted that it is facing cash flow problems and that it presently has insufficient funds to meet all of its obligations to its creditors. Now produced and shown to me marked "AA-5" is a copy of the said letter from the Company to the Applicant dated [date].]

Grounds for Grant of Judicial Management Order

16. Notwithstanding the Company's present difficulties, the Applicant believes that a judicial management order would likely result in [the survival of the Applicant] or the [preservation of its business as a going concern], or [the approval of a Scheme of Arrangement with its creditors] or [a more advantageous realisation of the Applicant's assets than would be possible on a winding-up]. On the other hand, if the Company is liquidated, there would be very low recovery by the creditors as the table below demonstrates [contrast break-up value in a judicial management as opposed to a liquidation].
17. [The financial difficulties that the Company is presently facing stem mainly from the Company's recent strategy of diversification out of its core businesses.]
18. This strategy has been financed to a large extent by borrowings from various financial institutions. Due largely to the recent downturn in this sector of the economy, the Company has experienced cash flow problems which in turn have led to difficulties in servicing these borrowings.
19. These problems have been exacerbated by internal differences between the directors and shareholders of the Company over the Company's strategy of diversification. This internal conflict has impaired the Company's operations and the morale of the Company's employees.
20. The Applicant understands that the Company is attempting to rehabilitate its business. However, in view of the ongoing internal dispute between the management and shareholders of the Company, it is important that the Company's rehabilitation efforts should be carried out under the auspices of an independent Court-appointed officer. The Applicant has no confidence in the ability of the current management to operate the Company profitably and to treat its creditors fairly.
21. The Company is also continuing to generate revenue from its operations and is still in possession of a number of valuable assets. The Applicant believes that the Company's business model remains viable in the long term despite its present lack of liquidity.
22. The Applicant therefore believes that an opportunity should be given for a judicial manager to examine and review the Company's operations and to report to the creditors as to the likelihood of a rehabilitation, a Scheme of Arrangement or a more advantageous realisation of assets than would be possible on a winding-up.

23. [To the best of the Applicant's knowledge, information and belief, no application for the compulsory winding-up of the Company has been presented as at the date of this application.]
24. The Applicant proposes that Mr/Ms [ABC] of the accounting firm of [name of firm] who, to the best of the Applicant's knowledge and belief is a public accountant, be appointed the Judicial Manager of the Company with all the powers attendant thereto as provided under the Act.
25. The aforesaid [ABC] is not an auditor of the Company. He/she has also given consent to act as the Judicial Manager of the Company. Now produced and shown to me marked "AA-6" is a copy of the Consent to Act executed by [ABC].
26. In the premises, I humbly pray for an order in terms of the Originating Summons.

P11.09 Application by originating summons for judicial management order by the company

[WongPartnership LLP]

LET ALL PARTIES CONCERNED attend before the Judge on [date/time], on the hearing of an application on the part of the Applicant, [XYZ Pte Ltd], for the following orders:

1. That the Applicant be placed under judicial management of a Judicial Manager;
2. That [ABC] be appointed as Judicial Manager of the Applicant;
3. That the affairs, business and property of the Applicant be managed by the Judicial Manager herein appointed in order to achieve one or more of the following purposes:
 - (1) [the survival of the Applicant, or the whole or part of its undertaking as a going concern];
 - (2) [the approval under Section 210 of the Act of a compromise or arrangement between the Applicant and its creditors]; and/or
 - (3) [a more advantageous realisation of the Applicant's assets than would be effected on a winding-up].
4. [That the Judicial Manager be authorised to open and operate one or more separate bank accounts and that the signatories to the account or accounts be the Judicial Manager and/or in his/her absence, such other persons as may be nominated by the Judicial Manager];
5. [That the Judicial Manager be granted leave to pay all the outstanding salaries of all the employees of the Applicant (including the requisite Central Provident Fund contributions and all reimbursements for expenses)];
6. [That the Judicial Manager be granted leave to pay all outstanding taxes and rental and all operating expenses incurred in the usual course of business in order to maintain the business of the Applicant as a going concern];
7. That the costs of and incidental to this application be paid by the Applicant or be paid out of its assets; and
8. That such further or other relief or order be given or made as this Honourable Court deems fit.

P11.10 Affidavit in support of an application for judicial management order by the company

[WongPartnership LLP]

I, [name] of [address] do make oath/solemnly and sincerely affirm and say as follows:

1. I am a director of [XYZ Pte Ltd], the Applicant herein. I am duly authorised to make this affidavit on behalf of the Applicant.
2. Insofar as the matters deposed to herein are within my personal knowledge and/or based on documents in the Applicant's custody, power and possession and/or that of its solicitors, they are true. Insofar as they are not within my personal knowledge and/or not based on documents in the Applicant's custody, power and possession and or that of its solicitors, they are true to the best of my knowledge, information and belief.
3. The Applicant was incorporated under the Companies Act (Cap 50) ("the Act") on [date] as a private company limited by shares.
4. The registered office of the Applicant is at [address].
5. The authorised capital of the Applicant is [amount] divided into [number] shares of [amount] each. The amount of capital paid up or credited as paid up is [amount]. Now produced and shown to me marked "AA-1" is a copy of the results of a search dated [date] conducted on the records of the Accounting and Corporate Regulatory Authority.
6. The objects for which the Applicant was established are as follows:
 - (1) ...
 - (2) ...and other objects set out in the Memorandum of Association of the Applicant. Now produced and shown to me marked "AA-2" is a copy of the Applicant's Memorandum of Association and Articles of Association.
7. The Applicant is presently unable to pay its debts as they fall due. However, the Applicant believes that the making of a judicial management order would be likely to achieve one or more of the following purposes set out in Section 227B(1)(b) of the Act, namely:
 - (1) [the survival of the Applicant, or the whole or part of its undertaking as a going concern;]

- (2) [the approval under Section 210 of the Act of a compromise or arrangement between the Applicant and its creditors]; and/or
 - (3) [a more advantageous realisation of the Applicant's assets than would be effected on a winding-up].
8. Pursuant to a members' resolution dated [date], the Applicant has therefore resolved to make this application to the High Court. Now produced and shown to me marked "AA-3" is a copy of the members' resolution dated [date].

The Applicant's Profile

9. The Applicant's principal business is in [the manufacture and distribution of electrical goods].
10. The Applicant has subsidiaries in Singapore and Thailand and employs over [number] employees worldwide.
11. Since 2002, the Applicant's activities have been dominated by the restructuring of the business operations of its subsidiary in Thailand. This subsidiary has been adversely affected by the general downturn in the Thai economy, which has in turn affected the Applicant's overall profitability.
12. The Applicant's aim is to return its business in Thailand to profitability within the next year and to integrate it with the rest of the Applicant's operations.
13. For the year ended [date], the Applicant sustained an after tax loss of [amount]. Now produced and shown to me marked "AA-4" is a copy of the Applicant's annual report for the year ended [date].
14. These losses can be attributed primarily to the poor performance of the Applicant's Thai subsidiary and the Applicant's efforts to restructure the same. The Applicant's restructuring exercise is expected to be completed by [date]. With the completion of the restructuring exercise, the Applicant fully expects to stabilise its operations and to nurse it back to a going concern.

The Applicant's Current Indebtedness

15. The Applicant's total liabilities for the year ended [date] amounted to [amount].
16. Of this total figure, [amount] is attributable to bank borrowings. Now produced and shown to me marked "AA-5" is a detailed breakdown of the Applicant's total assets and liabilities.
17. Although the total liabilities of the Applicant amounts to [amount], the total assets of the Applicant amounts to an aggregate of

[amount]. The Applicant therefore has a net asset value of [amount].

18. As mentioned above, the restructuring of the Applicant's Thai operations is expected to be completed by [date]. The restructuring is expected to return the Applicant to profitability.
19. [In addition, the Applicant also plans to dispose of certain of its assets and to use the funds realised to reduce its indebtedness, particularly its bank borrowings.]

The Applicant's Present Inability to Pay its Debts

20. [By a letter dated [date], AB Bank notified the Applicant that the banking facilities extended to the Applicant were terminated and demanded payment of the outstanding sums under those facilities. Now produced and shown to me marked "AA-6" is a copy of the said letter from AB Bank [any other demands made or steps taken/threatened by creditors].]
21. Due to the Applicant's present financial difficulties, the Applicant does not have sufficient funds to meet these demands.

Grounds for Grant of Judicial Management Order

22. Notwithstanding its present financial difficulties, the Applicant believes that a judicial management order would likely result in the survival of the Applicant or the preservation of its business as a going concern, or the approval of a Scheme of Arrangement with its creditors or a more advantageous realisation of the Applicant's assets than would be possible on a winding-up. On the other hand, if the Applicant is liquidated, there would be very low recovery by the creditors as the table below demonstrates [contrast break-up value in a judicial management with liquidation].
23. [As explained above, the Applicant's financial difficulties are due mainly to the poor performance of the Applicant's Thai subsidiary and the Applicant's efforts to restructure the same. With the completion of the restructuring exercise on [estimated date], the Applicant fully expects to bring its operations back to profitability.]
24. [The Applicant is still continuing to generate revenue from its operations and its overall business model remains viable in the long-term despite its present lack of liquidity.]
25. The making of a judicial management order would impose a moratorium on all legal actions and proceedings against the Applicant and prevent a disorderly scramble by the creditors for the assets of the Applicant. This will allow the Applicant to

continue unhindered with its restructuring exercise and its efforts to reduce its debt to the ultimate benefit of all creditors.

26. [To the best of the Applicant's knowledge, information and belief, no application for the compulsory winding-up of the Applicant has been presented as at the date of this application.]
27. The Applicant's bankers have in fact expressed support for this application. Now produced and shown to me marked "AA-7" is a copy of a letter dated [date] from the Applicant's bankers evidencing their support.
28. The Applicant proposes that Mr/Ms [ABC] of the accounting firm of [name of firm] who, to the best of the Applicant's knowledge and belief is an approved public accountant, be appointed the Judicial Manager of the Applicant with all the powers attendant thereto as provided under the Act.
29. The aforesaid [ABC] is not an auditor of the Applicant. He/she has also given his/her consent to act as the Judicial Manager of the Applicant. Now produced and shown to me marked "AA-8" is a copy of the Consent to Act executed by [ABC].
30. In the premises, I humbly pray for an order in terms of the Originating Summons.

P11.11 Application by summons for interim judicial management order

[WongPartnership LLP]

LET ALL PARTIES concerned attend before the Judge in Chambers on [date] at [time] am/pm on the hearing of an application on the part of the Applicant, AB Bank, for the following orders:

1. That Mr/Ms [ABC] of [name of firm] be appointed as the Interim Judicial Manager of [XYZ] (the “Company”) pursuant to Section 227B of the Companies Act (Cap 50) (“the Act”);
2. That the Interim Judicial Manager be empowered to exercise such functions, powers and duties of a judicial manager as provided in Part VIIIA and the Eleventh Schedule of the Act;
3. [That the time for the service of the application be abridged];
4. That there be liberty to apply; and
5. That the costs of and incidental to this application be paid by the Company out of its assets.

P11.12 Affidavit in support of application for interim judicial management order

[WongPartnership LLP]

I, [name] of [address], do make oath/solemnly and sincerely affirm and say as follows:

1. I am [a Vice President of the Applicant's asset management team], and I am duly authorised by the Applicant to make this affidavit on its behalf.
2. Insofar as the matters deposed to herein are within my personal knowledge, and/or based on documents in the custody, power and possession of the Applicant and/or its solicitors, they are true. Insofar as they are not within my personal knowledge and/or not based on documents in the custody, power and possession of the Applicant and/or its solicitors, they are true to the best of my knowledge, information and belief.
3. I make this affidavit in support of the Applicant's application for an order that the Company be placed under interim judicial management.

The Applicant

4. The Application for Judicial Management was filed on [date]. The Application is fixed for hearing on [date]. Now produced and shown to me marked "AA-1" is a copy of the said Application.
5. The grounds for the grant of a judicial management order are set out in the Application. In summary, the Application was filed [following the Company's default in making payment of sums due and owing under banking facilities extended by the Applicant. The Company has also admitted that it is facing cash flow problems and that it presently has insufficient funds to meet all of its obligations to its creditors].
6. [Notwithstanding the Company's present inability to pay its debts as they fall due, the Applicant believes that these financial difficulties are short-term in nature and have been exacerbated by a deadlock in the management of the Company. The Applicant also believes that the Company's business model remains viable and that there is therefore a reasonable probability that the making of a judicial management order will achieve one or more of the purposes spelt out under Section 227B(1)(b) of the Companies Act (Cap 50) ("the Act").]

Grounds for Interim Judicial Management Order

7. [Following the presentation of the Application on [date], the Company met with the Applicant to discuss the possibility of an amicable settlement. As a result of these discussions, it was agreed that the Company would appoint a special accountant to review the Company's financial position and to report their findings and recommendations to the Applicant. Accordingly, Mr/Ms [ABC] was appointed special accountant (the "Special Accountant").
8. The Special Accountant commenced his/her review on [date] and presented his/her findings and recommendations to the Applicant in a report dated [date] ("the Special Accountant's Report"). Now produced and shown to me marked "AA-2" is a copy of the Special Accountant's Report.
9. The Special Accountant's findings have given rise to much concern on the part of the Applicant. The key findings of the Special Accountant's Report are that there is significant conflict between certain members of the Company's board of directors. This conflict has in turn affected the Company's operations and the morale of the Company's employees. Without proper management, the financial situation of the Company will only continue to deteriorate.
10. More importantly, the Special Accountant has also found evidence that the Company has taken steps to dispose of a number of its key assets at less than market value and that the Company has in fact made payments to some of its creditors in preference to others.]
11. In view of [the findings in the Special Accountant's Report], there is a real danger that the Company's main assets would already have been dissipated by the time the Application is heard. It is therefore imperative that an interim judicial manager be appointed urgently to take control of the assets of the Company and to preserve their value for the benefit of its creditors pending the hearing of the Application.
12. The Applicant proposes that Mr/Ms [ABC] of the accounting firm of [name of firm] (the Judicial Manager nominated in the Application) be appointed the Interim Judicial Manager of the Company. Mr/Ms [ABC] has given his/her consent to act as Interim Judicial Manager of the Company. Now produced and shown to me marked "AA-3" is a copy of the Consent to Act executed by Mr/Ms [ABC].
13. In the premises, I humbly pray for an order in terms of the Applicant's application.

P11.13 Application by summons for discharge of judicial management order

[WongPartnership LLP]

LET ALL PARTIES concerned attend before the Judge in Chambers on [date] at [time] am/pm on the hearing of an application on the part of the Judicial Manager of [XYZ Pte Ltd] for the following orders:

1. That the Order of Court dated [date] ordering that [XYZ Pte Ltd] (“the Company”) be placed under the judicial management of Mr/Ms [ABC] be discharged pursuant to Section 227Q(1) of the Companies Act (Cap 50) (“the Act”);
2. That Mr/Ms [ABC] be released from liability in respect of any act or omission by him/her in the management of the Company or otherwise in relation to his/her conduct as Judicial Manager pursuant to Section 227Q(4) of the Act;
3. That the costs of and incidental to this application be paid by the Company out of its assets; and
4. That such other orders may be made providing such further or other relief as this Honourable Court deems fit.

P11.14 Affidavit in support of application for discharge of judicial management order

[WongPartnership LLP and Drew & Napier LLC]

I, [name] of [address], do make oath / solemnly and sincerely affirm and say as follows:

1. I am the Judicial Manager of [XYZ Pte Ltd] (“the Company”) appointed pursuant to an Order of Court dated [date] (“the JM Order”). Now produced and shown to me marked “ABC-1” is a copy of the JM Order.
2. Insofar as the matters deposed to herein are within my personal knowledge and/or based on documents in the Judicial Manager’s custody, power and possession and/or their solicitors, they are true. Insofar as they are not within my personal knowledge, and/or not based on documents in the Judicial Manager’s custody, power and possession and/or their solicitors, they are true to the best of my knowledge, information and belief.
3. I make this affidavit in support of my application for orders that the JM Order be discharged and that I be released from liability in respect of any act or omission by me in the management of the Company or otherwise in relation to my conduct as Judicial Manager.
4. On [date], the Company was placed under judicial management upon the application of [AB Bank Ltd]. As Judicial Manager appointed pursuant to the JM Order, my duty was to manage the affairs, business and property of the Company in order to achieve one or more of the following purposes:
 - (1) the survival of the Company, or the whole or part of its undertaking as a going concern;
 - (2) the approval under Section 210 of the Companies Act (Cap 50) (“the Act”) of a compromise or arrangement between the Company and any such persons as are mentioned in that section; and/or
 - (3) a more advantageous realisation of the Company’s assets than would be effected on a winding-up.
5. Following my appointment as Judicial Manager, I examined the Company’s business and reviewed its accounts.
6. On [date] I filed my Statement of Proposals pursuant to Section 227M of the Act. Now produced and shown to me marked “ABC-2” is a copy of the Statement of Proposals.

7. The main proposal made by me was for a Scheme of Arrangement (the “Proposed Scheme”) to be proposed between the Company and its creditors pursuant to Section 210 of the Act. The proposed Scheme envisages [a partial conversion of debt to equity and for the balance to be paid by way of instalments over a period of 5 years]. The detailed terms of the Proposed Scheme are set out in the Statement of Proposals.
8. On [date], a meeting of the Company’s creditors was summoned pursuant to Section 227M of the Act to consider, and if thought fit, approve the Statement of Proposals. The Statement of Proposals was not approved by the requisite majority of the creditors present and voting in person or by proxy.
9. On [date], I reported on the results of the meeting to this Honourable Court. Now produced and shown to me marked “ABC-3” is a copy of my report filed on [date].
10. I verily believe that the proposals made in the Statement of Proposals are the only realistic and viable option for the Company to continue as a going concern. As the creditors have declined to approve the terms of the Proposed Scheme, I verily believe that the Company will not be able to continue as a going concern. Further, I also verily believe that there is now no reasonable prospect for a more advantageous realisation of the Company’s assets than would be effected on a winding-up.
11. In the premises, I verily believe that the purposes for which the JM Order was made are incapable of achievement and I therefore humbly pray for an order in terms of the present application.

P11.15 Application by originating summons by a creditor for a winding-up order (on grounds of insolvency)

[WongPartnership LLP and Drew & Napier LLC]

LET ALL PARTIES CONCERNED attend before the Judge on [date/time] on the hearing of an application by the Plaintiff, AB Bank Ltd, for the following orders:

1. A winding-up order be made against the Defendant;
2. That Mr/Ms [name] be appointed as Liquidator of the Defendant;
3. That the costs of the proceedings be taxed, if not agreed or fixed, and be paid to the Plaintiff out of the assets of the Defendant;
4. [That the Liquidator be entitled to exercise all the powers set out in Section 272 of the Act]; and
5. That such further or other relief or order be given or made as this Honourable Court deems just.

P11.16 Affidavit in support of creditor's application for a winding-up order on grounds of insolvency

[WongPartnership LLP]

I, [name] of [address] do make oath/solemnly and sincerely affirm and say as follows:

1. I am a director of [AB Bank Ltd], the Plaintiff herein. I am duly authorised to make this affidavit on behalf of the Plaintiff.
2. Insofar as the matters deposed to herein are within my personal knowledge and/or based on documents in the Plaintiff's custody, power and possession and/or that of its solicitors, they are true. Insofar as they are not within my personal knowledge and/or not based on documents in the Plaintiff's custody, power and possession and or that of its solicitors, they are true to the best of my knowledge, information and belief.
3. [XYZ Pte Ltd] ("the Defendant") was incorporated under the Companies Act (Cap 50) ("the Act") on [date] as a private company limited by shares.
4. The registered office of the Defendant is at [address].
5. The authorised capital of the Defendant is [amount] divided into [number] shares of [amount] each. The amount of capital paid up or credited as paid up is [amount].
6. The objects for which the Defendant was established are as follows:
 - (1) ...
 - (2) ...and other objects set out in the Memorandum of Association of the Defendant.
7. The Defendant is indebted to the Plaintiff as at the date of this application in the sum of [amount], being [the sum adjudged to be due and owing to the Plaintiff pursuant to a Judgment dated [date] made by this Honourable Court in Suit No [number]].
8. On [date], the Plaintiff, through its solicitors, served on the Defendant by hand at its registered office a letter of demand requiring the Defendant to pay the said sum of [amount] which demand was in the following terms:

[Terms of statutory demand]

9. More than three weeks have now elapsed since the service of the said demand on the Defendant. The Defendant has not made

payment of the said sum nor has it made any satisfactory offer to the Plaintiff to secure or compound the same. As such, pursuant to Section 254(2)(a) of the Act, the Defendant is deemed to be insolvent and unable to pay its debts.

10. [Alternatively, the Defendant is insolvent and unable to pay its debts. In this regard, the Plaintiff will rely on the following facts:

Material facts relied on (other than the statutory demand) and such particulars as are sufficient to clarify the precise nature of the case]

11. In the premises, I humbly pray for an order in terms of the application filed herewith.

P11.17 Application by originating summons by a creditor to wind up a foreign company

[Wong Partnership LLP and Drew & Napier LLC]

LET ALL PARTIES CONCERNED attend before the Judge on [date/time] on the hearing of an application by the Plaintiff, AB Bank Ltd, for the following orders:

1. That XYZ (“the Defendant”) be wound up by the Court under the provisions of the Act;
2. That Mr/Ms [name] be appointed the Liquidator of the Defendant;
3. That the Plaintiff’s costs in the proceedings be taxed, if not agreed or fixed and be paid to the Plaintiff out of the assets of the Defendant;
4. [That the Liquidator be entitled to exercise all the powers set out in Section 272 of the Act]; and
5. That such further or other relief or order be given or made as this Honourable Court deems just.

P11.18 Affidavit in support of an application to wind up a foreign company

[WongPartnership LLP]

I, [name] of [address] do make oath/solemnly and sincerely affirm and say as follows:

1. I am a director of [AB Bank Ltd], the Plaintiff herein. I am duly authorised to make this affidavit on behalf of the Plaintiff.
2. Insofar as the matters deposed to herein are within my personal knowledge and/or based on documents in the Plaintiff's custody, power and possession and/or that of its solicitors, they are true. Insofar as they are not within my personal knowledge and/or not based on documents in the Plaintiff's custody, power and possession and or that of its solicitors, they are true to the best of my knowledge, information and belief.
3. XYZ (the "Defendant") was incorporated in [the United Kingdom] on [date] as a company limited by shares. It is a foreign company as defined under Section 4(1) of the Companies Act (Cap 50) ("the Act") and an "unregistered company" as defined under Section 350 of the Act for the purposes of Division 5 of the Act.
4. The registered office of the Defendant in [the United Kingdom] is at [foreign address]. The principal place of business of the Defendant in Singapore (and as such, its registered office for the purposes of these proceedings pursuant to Section 351(1)(a) of the Act) is at [Singapore address].
5. The authorised capital of the Defendant is [amount] divided into [number] shares of [amount] each. The amount of capital paid up or credited as paid up is [amount].
6. The objects for which the Defendant was established are as follows:
 - (1) ...
 - (2) ...and other objects set out in the Memorandum of Association of the Defendant.
7. [To the best of the Plaintiff's knowledge, information and belief, the Defendant has carried on business operations in Singapore since [date]. The Defendant also has assets in Singapore, namely, [known assets in Singapore].]

[Other facts that show a sufficient nexus between the Defendant and Singapore so as to justify the making of a winding-up order by the Court]

8. The Defendant is indebted to the Plaintiff as at the date of this application in the sum of [amount], being [the sum adjudged to be due and owing to the Plaintiff pursuant to a Judgment dated [date] made by this Honourable Court in Suit No [number]].
9. On [date], the Plaintiff, through its solicitors, served on the Defendant [by hand at its principal place of business in Singapore] [by delivering to the Defendant's secretary/director/manager/principal officer] a letter of demand requiring the Defendant to pay the said sum of [amount] which demand was in the following terms:

[Terms of statutory demand]

10. More than three weeks have now elapsed since the service of the said demand on the Defendant. The Defendant has not made payment of the said sum nor has it made any satisfactory offer to the Plaintiff to secure or compound the same. As such, pursuant to Section 351(2)(a) of the Act, the Defendant is deemed to be insolvent and unable to pay its debts.
11. [Alternatively, the Defendant is insolvent and unable to pay its debts. In this regard, the Plaintiff will rely on the following facts:

Material facts relied on (other than the statutory demand) and such particulars as are sufficient to state the precise nature of the case.]
12. In the premises, I humbly pray for an order in terms of the application filed herewith.

P11.19 Application by summons for appointment of provisional liquidator

[WongPartnership LLP and Drew & Napier LLC]

LET ALL PARTIES concerned attend before the Judge in Chambers on [date] at [time] am/pm on the hearing of an application on the part of the Plaintiff, AB Bank, for the following orders:

1. That Mr/Ms [ABC] of [name of firm] be appointed as the Provisional Liquidator of the Defendant pursuant to Section 267 of the Companies Act (Cap 50) ("the Act");
2. That the Provisional Liquidator be empowered to exercise all the functions and powers of a liquidator as provided in the Act;
3. [That the time for the service of the application be abridged];
4. That there be liberty to apply; and
5. That the costs of the proceedings be taxed, if not agreed or fixed, and be paid to the Plaintiff out of the assets of the Defendant.

P11.20 Affidavit in support of application to appoint provisional liquidator

[WongPartnership LLP]

I, [name] of [address], do make oath / solemnly and sincerely affirm and say as follows:

1. I am [a Vice President of the Plaintiff's asset management team], and I am duly authorised by the Plaintiff to make this affidavit on its behalf.
2. Insofar as the matters deposed to herein are within my personal knowledge and/or based on documents in the custody, power and possession of the Plaintiff and/or its solicitors, they are true. Insofar as they are not within my personal knowledge, and/or not based on documents in the custody, power and possession of the Plaintiff and/or its solicitors, they are true to the best of my knowledge, information and belief.
3. I make this affidavit in support of the Plaintiff's application for an order that Mr/Ms [ABC] of [name of firm] be appointed the Provisional Liquidator of the Defendant pending the hearing of the application for winding-up ("Application") on [date].

The Application

4. The Application was presented on [date] and is fixed for hearing on [date]. Now produced and shown to me marked "AA-1" is a copy of the said Application.
5. The grounds for the winding up of the Defendant are that the Defendant is insolvent and unable to pay its debts.

Grounds for Appointment of Provisional Liquidator

6. Following the presentation of the Application on [date], certain facts have come to light which lead the Plaintiff to believe that [the assets of the Defendant are in serious jeopardy] and/or [there is a real danger that the assets will be dissipated before the hearing of the Application].
7. [Specifically, the Plaintiff has evidence that the Defendant has taken steps to dispose of a number of its key assets at less than market value.]

[Facts which show that the assets of the Defendant are in serious jeopardy or that there is a real danger that the assets will be dissipated before the hearing of the Application.]

8. In view of these findings, there is a real danger that the Defendant's main assets would already have been dissipated by the time the Application is heard. It is therefore imperative that a Provisional Liquidator be appointed to preserve the status quo and whatever assets and value the Defendant still possesses for the benefit of its creditors pending the hearing of the Application.
9. The Plaintiff proposes that Mr/Ms [ABC] of [name of firm] (the Liquidator nominated in the Application) be appointed the provisional liquidator of the Defendant pending the hearing of the winding-up application. Mr/Ms [ABC] has given his/her consent to act as provisional liquidator of the Defendant. Now produced and shown to me marked "AA-2" is a copy of the Consent to Act executed by Mr/Ms [ABC].
10. In the premises, I humbly pray for an order in terms of the application filed herewith.

P11.21 Application by summons for release of liquidator and dissolution of the company

[WongPartnership LLP]

LET ALL PARTIES concerned attend before the Judge in Chambers on [date] at [time] am/pm on the hearing of an application on the part of the Liquidator of the abovenamed Company for the following orders:

1. That the Liquidator of the abovenamed Company be released and discharged from all liability in respect of any act done or default made by him in the administration of the abovenamed Company or otherwise in relation to his conduct as Liquidator;
2. That the said Company be dissolved;
3. That pursuant to Section 320(3) of the Companies Act (Cap 50) (“the Act”), the Liquidator be at liberty upon the dissolution of the Company to destroy all books, accounts and records of the Company other than the file of proceedings in the winding up of the Company; and
4. That the costs of and incidental to this application be deemed to be part of the costs and expenses of the winding up of the Company.

P11.22 Affidavit in support of application for release and dissolution

[WongPartnership LLP]

I, [name] of [address], do make oath / affirm and say as follows:

1. I am the Liquidator of the abovenamed company appointed pursuant to an Order of Court dated [date].
2. The matters deposed to herein are within my personal knowledge and/or based on documents in my custody, power and possession and are true.
3. On [date] I sent to all creditors and to all contributories, a notice pursuant to Rule 149 of the Companies (Winding Up Rules) of my intention to apply to the Court for my release as the Liquidator of the Company, together with a statement of receipts and payments. Now produced and shown to me marked "AA-1" is a copy each of the respective notices and the statements accompanying each notice.
4. The notices and accompanying statements were sent by post to the respective addresses of the creditors and contributories as reflected in the Company's records. There were no objections made to me or filed in court within the prescribed 21 days period.
5. Now produced and shown to me marked "AA-2" is a copy of my report made on [date] on summarising the results of my investigation into the affairs of the Company and the likelihood of further realisations to be made. As stated in the report [all property of the Company has been realised and no further property of the Company can be realised for the benefit of the creditors and contributories of the Company [elaborate on distribution of dividends, if any; returns to contributories; if any]].
6. For the reasons set out in the report, I humbly pray for orders to be made in terms of the prayers sought in the application herein including dissolution of the Company and my release as Liquidator.

P11.23 Application by originating summons for winding-up order

[TSMP Law Corporation]

Let all parties concerned attend before the Judge on [year] at [time] am/pm on the hearing of an application by the Plaintiff that:-

1. a winding-up order be made against the Defendant;
2. [State identity of private liquidator/the Official Receiver] be appointed as Liquidator of the Defendant;
3. the costs of and incidental to the winding up be agreed or taxed and paid to the Plaintiffs out of the assets of the Defendant; and
4. such further and other relief as this Honourable Court may deem fit.

P11.24 Affidavit in support of winding-up order

[TSMP Law Corporation]

I, [name] ([identification number]) of [address], do solemnly and sincerely make oath / affirm and say as follows:-

1. [Introduce deponent and set out relationship to Plaintiff, if Plaintiff is an entity]
2. The matters set out in this affidavit are within my personal knowledge and/or based on the documents that I have access to. Unless I state otherwise, the facts and matters stated in this affidavit are within my personal knowledge, or based on documents which I have access to, and are true to the best of my knowledge, information and belief.
3. I make this affidavit in support of the Plaintiffs' application for a winding-up order to be made against the Defendant pursuant to [state relevant section(s)] of the Companies Act (Cap 50) (the "Act").

The Parties

4. (*If Plaintiff is an entity*) The Plaintiff was incorporated in [jurisdiction] on [date] and has its registered office at [address]. Annexed hereto and marked "[Exhibit No.]" is a copy of the Accounting and Corporate Regulatory Authority search on the Plaintiff dated [date].
5. The Defendant was incorporated in [jurisdiction] on [date] and has its registered office at [address]. Annexed hereto and marked "[Exhibit No.]" is a copy of the Accounting and Corporate Regulatory Authority search on the Plaintiff dated [date].
6. [State background of and relationship between Plaintiff and Defendant giving the Plaintiff *locus standi* to make such an application under the Act]

Grounds for the present application

7. I am advised and do verily believe that under [state relevant section(s)] of the Act, the Plaintiff may apply to the Court for an order that the Defendant be wound up on the ground that [state ground briefly]:-
 - (1) [State background leading up to present application]
 - (2) [State circumstances of and reasons for the present application, e.g. if relying on ground of inability to pay debts, to exhibit supporting documents showing such inability]

8. Accordingly, the Plaintiff humbly pray for an order that the Defendant be wound up pursuant to section [state relevant section(s)] of the Act and that [State identity of private liquidator/ the Official Receiver] be appointed as Liquidator of the Defendant.

P11.25 List of parties wishing to attend the hearing of the winding-up application

[TSMP Law Corporation]

LIST OF PARTIES WISHING TO ATTEND THE HEARING OF THE WINDING-UP APPLICATION

The following are the names of those who have given notice of their intention to attend the hearing of the Winding-Up Application herein on the [day] day of [month] [year].

Name	Address	Name and address of Solicitors of parties who have given notice	Creditors Amount Debt	Contributories Number of Shares	Opposing	Supporting

Dated this [day] day of [month] [year]

[FIRM NAME]
Solicitors for the Plaintiff

P11.26 Advertisement of winding-up application

[TSMP Law Corporation]

ADVERTISEMENT OF WINDING-UP APPLICATION

Notice is hereby given that an application for the Winding-Up of the abovenamed Defendant, **[COMPANY TO BE WOUND UP]** ([identification number]) (the “**Company**”) by the High Court of the Republic of Singapore was, on the [day] day of [month] [year], filed by **[PETITIONER]** ([identification number]) of [address], a [state relation] of the Company and that the winding-up application is directed to be heard before the Honourable Court sitting at the High Court of the Republic of Singapore at [time] on [day], the [day] day of [month] [year]; and any creditor or contributory of the Company desiring to support or oppose the making of an order on the winding-up application may appear at the time of hearing by himself or his counsel for that purpose; and a copy of the winding-up application will be furnished to any creditor or contributory of the Company requiring the copy of the winding-up application by the undersigned on payment of the regulated charges for the same.

The Plaintiff’s address is [address].

The Plaintiff’s solicitors are [firm name] of [address].

[FIRM NAME]

Solicitors for the Plaintiff

Note: Any person who intends to appear on the hearing of the winding-up application must serve on or send by post to the Plaintiff’s solicitors, [firm name] of [address], notice in writing of his intention to do so. The notice must state the name and address of the person, or, if a firm, the name and address of the firm, and must be signed by the person, firm, or his or their Solicitors (if any) and must be served, or if posted, must be sent by post in sufficient time to reach the Plaintiff’s solicitors not later than 12 o’clock noon of the [day] day of [month] [year] (the day before the day appointed for the hearing of the winding-up application).

P11.27 Notice of winding-up order

[TSMP Law Corporation]

NOTICE OF WINDING-UP ORDER

In the Matter of **[COMPANY TO BE WOUND UP]**

Winding-Up Order made the [day] day of [month] [year]

Name and Address of Liquidator: [to state]

[FIRM NAME]

Solicitors for the Plaintiff

Note:

- a) All creditors of the abovenamed company should file their proof of debt with the Liquidator who will be administering all affairs of the company.
- b) All debts due to the abovenamed company should be forwarded to the liquidator.

P11.28 Notification to liquidator of order

[TSMP Law Corporation]

**NOTIFICATION TO LIQUIDATOR OF ORDER
PRONOUNCED ON APPLICATION FOR WINDING-UP**

To the Liquidators,
c/o The Official Receiver
The Insolvency & Public Trustee’s Office
URA Centre, East Wing,
45 Maxwell Road, #05-11/#06-11,
Singapore 069118

Order pronounced this [day] day of [month] [year], by the Honourable [state name of Judge/Judicial Commissioner], the winding-up application for the winding-up of the under-mentioned Defendant under the Companies Act, Chapter 50, and for the appointment of [state appointed Liquidator] as Liquidator.

Name of Company	Registered office	Applicants’ Solicitors	Date of winding-up application
[to state]	[to state]	[to state]	[to state]

Dated this [day] day of [month] [year]

[FIRM NAME]
Solicitors for the Plaintiff

P11.29 Memorandum of Advertisement and Gazetting

[TSMP Law Corporation]

MEMORANDUM OF ADVERTISEMENT AND GAZETTING

Name of Paper	Date of Issue	Date of Filing	Nature of Order, etc.
Gazette	[date]	[date]	Gazetting and advertisement of presentation and hearing of winding-up application for the winding-up of the abovenamed Defendant
[publication]	[date]	[date]	
[publication]	[date]	[date]	
[publication]	[date]	[date]	

Dated this [day] day of [month] [year]

[FIRM NAME]

Solicitors for the Plaintiff

CHAPTER 12

DEFAMATION

PRECEDENTS

- P12.01** Claim for damages for slander through telephone conference and libel through e-mail (general indorsement on writ)
- P12.02** Claim for damages for slander affecting official, professional or business reputation and slander imputing criminal offence committed
- P12.03** Claim for special damages for slander
- P12.04** Claim for damages including aggravated damages for libel (natural ordinary meaning)
- P12.05** Claim for damages for libel (innuendo)
- P12.06** Claim for damages and injunction for libel published on the internet
- P12.07** Claim for damages for foreign publication, in foreign language
- P12.08** Defence of fair comment
- P12.09** Defence of qualified privilege, justification and mitigation of damages
- P12.10** Defence of absolute privilege
- P12.11** Reply to plea of fair comment alleging malice
- P12.12** Reply to plea of justification and qualified privilege

INCIDENTAL DOCUMENTS

- P12.13** Application for determination of meaning of the words under Ord 14 r 12
- P12.14** Affidavit in support of application for determination of meaning of the words under Ord 14 r 12
- P12.15** Offer to make amends for unintentional defamation and accompanying affidavit
- P12.16** Letter of demand before action in case of internet libel
- P12.17** Apology for internet libel

CHAPTER 12

DEFAMATION

PRECEDENTS

P12.01 Claim for damages for slander through telephone conference and libel through e-mail (general indorsement on writ)

[Drew & Napier LLC]

The Plaintiff's claim is for:

1. Damages for slander in respect of the words ("the Words") spoken and published by the Defendant with reference to the Plaintiff in the course of a telephone conference with [the Plaintiff's customers] on or about [date].
2. Damages for libel in respect of the Words contained in an e-mail dated [date], published and/or caused to be published by [the Defendant] to [the Plaintiff's customers].
3. An injunction to restrain the Defendant whether by himself, his servants or agents or otherwise from further publishing or causing to be published the Words or any similar words defamatory of the Plaintiff.
4. Costs.

P12.02 Claim for damages for slander affecting official, professional or business reputation and slander imputing criminal offence committed

[Drew & Napier LLC]

1. The Plaintiff is and was at all material times a professional [sculptor and landscape designer].
2. The Defendant is an art teacher in the National Art Academy.
3. From [date] to [date], the Plaintiff was employed by [XYZ Ministry] under a contract to design and build a new rooftop garden in [XYZ Ministry's new office building].
4. On or about [date], the Defendant spoke and published the following words ("the Words") defamatory of the Plaintiff in the way of his office, profession, calling, trade and/or business to one [Mr ABC] of [XYZ Ministry]:

"The work done by [the Plaintiff] is of appalling quality. He ought not to be paid a penny for such work. With his track record for having such poor skills, workmanship and quality of work, it is a wonder that he could have been awarded the contract. He must clearly have offered some cut backs or under table money to the person awarding him the contract."

5. In their natural and ordinary meaning, the Words meant and/or were understood to mean:

Particulars

- (1) The Plaintiff is incompetent in his work and/or profession and/or business and/or trade;
- (2) The quality of the Plaintiff's work is so bad, he does not deserve and/or ought not to be paid for it; and
- (3) The Plaintiff obtained the contract from [XYZ Ministry] by corrupt means.
6. The Words were calculated to disparage the Plaintiff in his office, profession, calling, trade and/or business. The Plaintiff shall rely on Section 5 of the Defamation Act (Cap 75).
7. Further and/or alternatively, the Words alleged that the Plaintiff is guilty of a criminal offence, namely corruption, under Section 5 of the Prevention of Corruption Act (Cap 241), and punishable upon conviction to a fine not exceeding \$100,000 or to imprisonment for a term not exceeding 5 years or to both.

8. In the circumstances, the Plaintiff's reputation, both personal and as a professional has been seriously injured and he has suffered embarrassment, distress and hurt to his feelings.
9. On [date], the Plaintiff, through his solicitors, issued a letter of demand to the Defendant demanding that the Defendant:
 - (1) Publish, at the Defendant's own expense, an apology ("the Apology") and undertaking in terms of the Plaintiff's draft, which was enclosed;
 - (2) Compensate the Plaintiff by way of damages; and
 - (3) Agree to indemnify the Plaintiff in respect of the costs incurred in connection with this matter.
10. The Defendant has, to date, refused to comply with the Plaintiff's demand.
11. Unless restrained, the Defendant will further publish or cause to be published the same or similar words defamatory of the Plaintiff.

AND the Plaintiff claims:

- (1) Damages for slander to be assessed;
- (2) An injunction restraining the Defendant, whether by himself, his servants, agents, or otherwise howsoever, from publishing or causing to be published the Words or similar words defamatory of the Plaintiff, in any manner whatsoever;
- (3) Costs; and
- (4) Such other and further relief as this Honourable Court deems fit.

P12.03 Claim for special damages for slander

[Drew & Napier LLC]

1. The Plaintiff is and was at all material times an [Assistant Public Relations Manager] in the employ of a company known as [XYZ Pte Ltd].
2. The Defendant is a [Defendant's particulars].
3. From [date] to [date], the Plaintiff was employed by [XYZ Pte Ltd] as its [Assistant Public Relations Manager], under an employment contract.
4. On or about [date], the Defendant spoke and published the following words ("the Words") defamatory of the Plaintiff to one Mr [LMN], a non-executive director and shareholder of [XYZ Pte Ltd]:

"[The Plaintiff] is not only a liar, he is prone to bouts of depression and known for his frequent outbursts of anger in front of valued customers. Keeping him in the company will only lead to financial ruin. Something must be done to get him out, and get him out fast."

5. In their natural and ordinary meaning, the Words meant and/or were understood to mean:

[Meanings of the Words]

6. By reason of the publication of the Words, the Plaintiff has suffered serious injury to his personal and business reputation, and has suffered financial loss.

Particulars

- (1) On [date], as a result of the publication of the Words, Mr [LMN] caused and/or procured [XYZ Pte Ltd] to terminate the Plaintiff's services under his employment contract with immediate effect;
- (2) At the time of termination, the Plaintiff's employment contract still had 3 years left to run;
- (3) The Plaintiff has thereby suffered loss and damage, which included special damage of [amount] which he would otherwise have received under his employment contract; and
- (4) Despite his efforts, the Plaintiff has, to date, been unable to find reasonable alternative employment.

7. On [date], the Plaintiff, through his solicitors, issued a letter of demand to the Defendant demanding that the Defendant:
 - (1) Publish, at the Defendant's own expense, an apology ("the Apology") and undertaking in terms of the Plaintiff's draft, which was enclosed;
 - (2) Compensate the Plaintiff by way of damages; and
 - (3) Agree to indemnify the Plaintiff in respect of the costs incurred in connection with this matter.
8. The Defendant has, to date, refused to comply with the Plaintiff's demand.

AND the Plaintiff claims:

- (1) Damages for slander;
- (2) Costs; and
- (3) Such other and further relief as this Honourable Court deems fit.

P12.04 Claim for damages including aggravated damages for libel (natural ordinary meaning)¹

[Drew & Napier LLC]

1. The Plaintiff is and was at all material times a resident at [The ABCD], a condominium situated at [address of property], and a former chairman and member of the Management Committee of [The ABCD].
2. The Defendant is also a resident at [The ABCD].
3. On or about [date], the Defendant published and/or caused to be published a letter ("the Letter") dated [date] and titled ['Serious Breach'] to all subsidiary proprietors and residents of [The ABCD].

Particulars

- (1) On [date], 1 week before the eve of the Annual General Meeting ("AGM") when elections of the new Management Committee was to be held, the Defendant distributed, and/or caused to be distributed, the Letter to the occupants of each unit in [The ABCD] by leaving a copy of the same in their respective mailboxes;
- (2) The Defendant procured copies of the Letter to be handed out to all subsidiary proprietors and/or their proxies at the AGM held on [date]; and
- (3) On or about [date], the Defendant mailed copies of the Letter to all subsidiary proprietors not residing at [The ABCD].
4. The Letter contained, *inter alia*, the following words ("the Words") defamatory of the Plaintiff:

"Serious Breach

We became aware only recently that Big Man has been secretly using, without permission, the Management Committee lounge to entertain guests when he was a Committee Member 2 years ago. Why did Big Man not obtain the proper and requisite permission if he genuinely needed to use the lounge for legitimate purposes such as carrying out Management Committee work. Further, why did Big Man not let anyone know he had been using the Management Committee lounge, but only did so secretly. This is a serious violation of the Rules & Regulations set down by the Management Committee and the MCST By-laws."

1 See P12.08 and P12.09.

5. The Words referred and were understood to refer to the Plaintiff.

Particulars

- (1) The Plaintiff was the Chairman of the Management Committee of [The ABCD] for the last 10 years, and was therefore a well-known and/or recognised figure amongst the subsidiary proprietors and residents of [The ABCD]; and
 - (2) The Plaintiff is commonly known and referred to by the subsidiary proprietors and residents of [The ABCD] as “Big Man”.
6. In their natural and ordinary meaning, the Words meant and/or were understood to mean that the Plaintiff:
- (1) Had abused his position as a Committee Member by secretly using the Management Committee lounge for personal matters;
 - (2) Had acted in a dishonest manner in his use of the Management Committee lounge; and/or
 - (3) Had committed a serious offence.
7. By reason of the publication of the Words, the Plaintiff has been injured in his reputation, and has suffered distress and hurt to his feelings.
8. On [date], the Plaintiff, through his solicitors, issued a letter of demand to the Defendant demanding that the Defendant:
- (1) Publish, at the Defendant’s own expense, an apology and undertaking in terms of the Plaintiff’s draft, which was enclosed;
 - (2) Compensate the Plaintiff by way of damages; and
 - (3) Agree to indemnify the Plaintiff in respect of the costs incurred in connection with this matter.
9. The Defendant has, to date, failed and/or refused to comply with the Plaintiff’s demand.
10. The Plaintiff will also rely, *inter alia*, on the following facts and matters in support of his claim for aggravated damages:
- (1) The Defendant’s refusal to apologise;
 - (2) The Defendant published the Letter despite knowing that the allegations contained in the Words were false and/or was reckless or indifferent to their truth; and

Particulars

[Particulars of the Defendant's knowledge]

- (3) The mode, extent and timing of the publication;

Particulars

- (a) The Plaintiff and Defendant were both running for elections to the Management Committee at the AGM on [date];
 - (b) The Defendant deliberately chose to distribute and circulate the Letter containing the Words, to the subsidiary proprietors and residents of [The ABCD], one week before the AGM;
 - (c) The Defendant distributed and circulated the Letter again at the AGM, to ensure that those intending to vote at the election would read the Words;
 - (d) In the circumstances, the Defendant published the Words for maximum effect as part of a deliberate plan to enhance his election prospects, and/or to damage the Plaintiff's prospects; and
 - (e) The Defendant also sent copies of the Letter to subsidiary proprietors not residing at [The ABCD], in order to maximise the extent of publication of the Letter.
11. Unless restrained, the Defendant will further publish or cause to be published the same or similar words defamatory of the Plaintiff.

AND the Plaintiff claims:

- (1) Damages for libel, including aggravated damages, to be assessed;
- (2) An injunction restraining the Defendant, whether by himself, his servants, agents, or otherwise howsoever, from publishing or causing to be published the Words or similar words defamatory of the Plaintiff, in any manner whatsoever;
- (3) Costs; and
- (4) Such other and further relief as this Honourable Court deems fit.

P12.05 Claim for damages for libel (innuendo)

[Drew & Napier LLC]

1. The Plaintiff is and was at all material times [Plaintiff's particulars].
2. The Defendant is a [Defendant's particulars].
3. On or about [date], the Defendant published and/or caused to be published, to [Mr ABC], a letter ("the Letter") dated [date] of and about the Plaintiff.
4. The Letter contained, *inter alia*, the following words ("the Words") defamatory of the Plaintiff:
[The words complained of, including the headlines, text, captions and/or photographs]
5. In their natural and ordinary meaning, the Words meant and/or were understood to mean:
[Natural and ordinary meanings of the words complained of]
6. Further and/or alternatively, by way of innuendo, the Words meant and/or were understood to mean:
[Innuendo meanings of the words complained of]

Particulars

- (1) [Factual basis of the knowledge possessed by the reader of the Words who understood the Words in the innuendo meaning pleaded]
- (2) For the reasons set out above, the aforesaid facts and matters were and/or would have been known to [Mr ABC], the recipient of the Letter, and he would have understood the Words to bear the meanings set out in paragraph 6 above.
7. By reason of the publication of the Words, the Plaintiff has been injured in his reputation, and has suffered distress, embarrassment, and hurt to his feelings.
8. On [date], the Plaintiff, through his solicitors, issued a letter of demand to the Defendant demanding that the Defendant:
 - (1) Publish, at the Defendant's own expense, an apology ("the Apology") and undertaking in terms of the Plaintiff's draft, which was enclosed;
 - (2) Compensate the Plaintiff by way of damages; and
 - (3) Agree to indemnify the Plaintiff in respect of the costs incurred in connection with this matter.

9. The Defendant failed and/or refused to comply with the Plaintiff's demand.

AND the Plaintiff claims:

- (1) Damages to be assessed;
- (2) Costs; and
- (3) Such other and further relief as this Honourable Court deems fit.

P12.06 Claim for damages and injunction for libel published on the internet

[Drew & Napier LLC]

1. The Plaintiff is and was at all material times a [Plaintiff's particulars].
2. The Defendant is a [Defendant's particulars], and is the author and/or editor of a website ("the Website") on the Internet.
3. At all material times, the Website was and had been open to general access by any user of the Internet.
4. On or about [date], the Defendant published and/or caused to be published an article ("the Article") entitled [title] on the Website with an address at [website address].
5. The Article contained the following words ("the Words") defamatory of the Plaintiff:
[The words complained of, including headings, text of the Article, captions, etc]
6. In their natural and ordinary meaning, the Words meant and/or were understood to mean:
[Meanings of the Words]
7. The Words were transmitted and/or caused to be transmitted and published by the Defendant on the Internet until at least [date].
8. At the relevant times, the Internet had millions of users all of whom had free and open access to the Words. It can be inferred that a large but unquantifiable number of users in Singapore and around the world read the Article.
9. The Words were republished on the Internet on various websites. These sites include, *inter alia*, the following:
[State websites and addresses]
10. It was foreseeable and/or the natural, ordinary and probable consequence of the publication of the Words on the Website, that the Words would be republished over the Internet and that the readers of the websites listed in Paragraph 9 would have read and/or accessed and/or downloaded the Words.

Particulars

[Facts showing that it was the foreseeable and/or natural, ordinary and probable consequence of the publication of the Words on the Website, that the Words would be republished over the Internet

and that the readers of the websites listed in Paragraph 9 would have read and/or accessed and/or downloaded the Words]

11. By reason of the publication and republication of the Words, the Plaintiff has been injured in his reputation, and has suffered distress and hurt to his feelings.
12. On [date], the Plaintiff, through his solicitors, issued a letter of demand to the Defendant demanding that the Defendant:
 - (1) Publish, at the Defendant's own expense, an apology ("the Apology") and undertaking in terms of the Plaintiff's draft, which was enclosed;
 - (2) Compensate the Plaintiff by way of damages; and
 - (3) Agree to indemnify the Plaintiff in respect of the costs incurred in connection with this matter.
12. The Defendant failed and/or refused to comply with the Plaintiff's demand.
13. Unless restrained, the Defendant will further publish or cause to be published the same or similar words defamatory of the Plaintiff.

AND the Plaintiff claims:

- (1) Damages to be assessed;
- (2) An injunction restraining the Defendant, whether by himself, his servants, agents, or otherwise howsoever, from publishing or causing to be published the Words or similar words defamatory of the Plaintiff, in any manner whatsoever;
- (3) Costs; and
- (4) Such other and further relief as this Honourable Court deems fit.

P12.07 Claim for damages for foreign publication, in foreign language

[Drew & Napier LLC]

1. The Plaintiff is and was at all material times a [Plaintiff's particulars].
2. The Defendant is a [Defendant's particulars].
3. On or about [date], the Defendant published and/or caused to be published an article ("the Article") entitled [title] about the Plaintiff. The Article appeared on page [number] of the magazine entitled [title] ("Magazine"), having wide circulation in Singapore and Malaysia, dated [date].
4. The Article contained, *inter alia*, the following words in Malay ("the Words") defamatory of the Plaintiff:
[The words complained of, including the headlines, text, captions and/or photographs]
5. A true and accurate translation into English of the Words is as follows:
[English translation of the Words]
6. In their natural and ordinary meaning, the Words meant and/or were understood to mean:
[Natural and ordinary meanings of the words complained of]
7. The publication of the Words complained of in Malaysia is and was actionable by the law of Malaysia. The Plaintiff will rely on the presumption that the law of Malaysia is the same as the law of Singapore.
10. By reason of the publication of the Words, the Plaintiff has been injured in his reputation, and has suffered distress and hurt to his feelings.
11. On [date], the Plaintiff, through his solicitors, issued a letter of demand to the Defendant demanding that the Defendant:
 - (1) Publish, at the Defendant's own expense, an apology ("the Apology") and undertaking in terms of the Plaintiff's draft, which was enclosed;
 - (2) Compensate the Plaintiff by way of damages; and
 - (3) Agree to indemnify the Plaintiff in respect of the costs incurred in connection with this matter.

12. The Defendant failed and/or refused to comply with the Plaintiff's demand.
13. Unless restrained, the Defendant will further publish or cause to be published the same or similar words defamatory of the Plaintiff.

AND the Plaintiff claims:

- (1) Damages to be assessed;
- (2) An injunction restraining the Defendant, whether by himself, his servants, agents, or otherwise howsoever, from publishing or causing to be published the Words or similar words defamatory of the Plaintiff, in any manner whatsoever;
- (3) Costs; and
- (4) Such other and further relief as this Honourable Court deems fit.

P12.08 Defence of fair comment²

[Drew & Napier LLC]

1. Paragraphs 1 and 2 of the Statement of Claim are admitted.
2. Save that the Defendant published a letter (“the Letter”) dated [date], paragraph 3 of the Statement of Claim is denied.
3. It is admitted that the Letter contained the words (“the Words”) as reproduced and defined in paragraph 4 of the Statement of Claim. The Words formed part of the Letter, the whole of which the Defendant shall refer for the context and true meaning of the Words.
4. It is denied that the Words bore and/or were understood to bear and/or were capable of bearing:
 - (1) The meanings or any of them pleaded in paragraph 5 or 6 of the Statement of Claim; and/or
 - (2) Any meaning defamatory of the Plaintiff.

Fair Comment

5. Further and/or alternatively, if and in so far as the Words made or contained the following comment or expression of opinion, namely [the comment], they were fair comment on a matter of public interest, namely [the alleged public interest].

Particulars

[Particulars of facts upon which the comment is based]

6. The Defendant will rely, if necessary, on Section 9 of the Defamation Act (Cap 75).
7. Paragraph 7 of the Statement of Claim is denied.
8. Paragraphs 8 and 9 of the Statement of Claim are denied, save that the Plaintiff, through his solicitors, did issue a letter of demand dated [date] to the Defendant.
9. Save as is hereinbefore expressly admitted, the Defendant denies each and every allegation in the Statement of Claim as if the same had been set forth herein and specifically traversed.

² See P12.04 and P12.11.

P12.09 Defence of qualified privilege, justification and mitigation of damages³

[Drew & Napier LLC]

1. Paragraphs 1 and 2 of the Statement of Claim are admitted.
2. Save that the Defendant published a letter (“the Letter”) dated [date] and titled [“Serious Breach”] to all subsidiary proprietors and residents of [The ABCD] by the following means, paragraph 3 of the Statement of Claim is denied:
 - (1) distributing the Letter to each unit in The ABCD on [date]; and
 - (2) handing out the Letter at the AGM held on [date].
3. Save that the Letter contained the words (“the Words”) set out and/or reproduced therein, paragraph 4 of the Statement of Claim is denied.
4. Paragraph 5 of the Statement of Claim is admitted.
5. It is denied that the Words, in their natural and ordinary meaning, bore and/or were understood to bear and/or were capable of bearing the meanings or any of them pleaded in paragraph 6 of the Statement of Claim, or any defamatory meaning.
6. Further and/or alternatively, the Words, read in the context of the Letter and/or the matters set out therein, meant and/or were understood to mean that:
 - (1) the Plaintiff did not inform and/or notify any person in the Management Committee office and/or any member of the Management Committee of his use, and/or intention to use, the Management Committee lounge; and
 - (2) the Plaintiff’s actions constituted a breach of the Rules & Regulations.

Justification

7. If and in so far as the Words in their natural and ordinary meaning bore and/or were understood to bear the meanings set out in paragraph 6 above, they were true in substance and in fact.

Particulars of Justification

- (1) The Plaintiff was a former member of the Management Committee of [The ABCD];

3 See P12.04 and P12.12.

- (2) At all material times, members of the Management Committee of [The ABCD] were entitled to book and make use of the Management Committee lounge for purposes of carrying out their respective Management Committee duties and/or work;
 - (3) The use of the Management Committee lounge is subject to the Rules & Regulations set down by the Management Committee and also the MCST By-laws of [The ABCD];
 - (4) Specifically, under the section entitled "Guidelines for Use of Management Committee lounge" set out in the MCST By-laws, it was stated as follows:

"for the purposes of ensuring accountability, before a Committee Member uses the Management Committee lounge, he is to fill in a request form and submit the same to the Management Committee office."
 - (5) On or about [date] and [date], [the Plaintiff], while he was still a Committee Member, used the Management Committee office without completing and/or submitting the necessary request form; and
 - (6) [The Plaintiff] also failed inform any other member of the Management Committee and/or any of the staff in the Management Committee office of his use of the Management Committee lounge and/or his intention to do so.
8. If and in so far as the Words in their natural and ordinary meaning bore and/or were understood to bear the meanings set out in paragraph 6 of the Statement of Claim, they were true in substance and in fact. The Defendant repeats the particulars set out in paragraph 7 above.
9. The Defendant shall rely on Section 8 of the Defamation Act (Cap 75).

Qualified Privilege

10. Further and/or alternatively, if (which is denied) the Words were defamatory of the Plaintiff, the same were published on an occasion of qualified privilege.

Particulars of Privilege

- (1) The Plaintiff was a former member of the Management Committee of [The ABCD];
- (2) The Defendant is a current member of the Management Committee of [The ABCD];

- (3) At all material times, both the Plaintiff and the Defendant were running for the election ("Election") into the Management Committee of [The ABCD], which election was to be held at the Annual General Meeting on [date];
 - (4) The Letter refers to matters which relate to and/or impact on the Plaintiff's fitness to hold office as a Management Committee member;
 - (5) The Letter was published only to the subsidiary proprietors of [The ABCD], who were entitled to vote at the Election;
 - (6) In the circumstances, the Defendant had a legitimate duty and/or interest to communicate the Words and/or the matters therein to the subsidiary proprietors of [The ABCD], who had a legitimate interest to receive and/or be informed of the same; and
 - (7) The Defendant and the subsidiary proprietors therefore had a common and corresponding interest in the subject-matter of the Words.
11. Paragraph 7 of the Statement of Claim is denied.
 12. Paragraphs 8 and 9 of the Statement of Claim are denied save that the Plaintiff, through his solicitors, did issue a letter of demand dated [date] to the Defendant.
 13. It is denied that the Plaintiff is entitled to an award of aggravated damages by reason of the facts and matters alleged in paragraph 8 of the Statement of Claim or otherwise. The Defendant will rely on the matters pleaded in paragraphs 7 to 10 above in answer to the matters alleged in paragraph 10 of the Statement of Claim.

[Any other relevant matters which:

 - (1) meet and/or answer the allegations the Plaintiff made in support of the claim for aggravated damages; and
 - (2) demonstrate that the claim for aggravated damages is misconceived in fact and/or law.]
 14. Further, if necessary, the Defendant will rely on the following facts and matters in mitigation of damages:
 - (1) The Plaintiff has at all material times borne a general bad reputation as a person who flagrantly disregards Rules and Regulations and/or By-laws and/or who abuses his position as Committee Member; and

(2) In support of the above, the Defendant will rely on the following matters and/or evidence:

[Particulars and/or evidence supporting the evidence of bad reputation]

15. Save as is hereinbefore expressly admitted, the Defendant denies each and every allegation in the Statement of Claim as if the same had been set forth herein and specifically traversed.

P12.10 Defence of absolute privilege

[Drew & Napier LLC]

(a) Statements made by advocate in judicial proceedings

1. If the Words were defamatory of the Plaintiff, which is denied, the Words were published on an occasion of absolute privilege.

Particulars

- (1) The Defendant is and was at all material times an Advocate and Solicitor of the Supreme Court of Singapore;
- (2) The Words were set out in, and read out from, a set of written submissions tendered by the Defendant in proceedings before the High Court of Singapore in Suit No [number]; and
- (3) The Words were published by the Defendant in his capacity as an advocate and solicitor for [DEF], the [defendant/plaintiff] in Suit No. [number], and in the course of the said proceedings.

(b) Fair and Accurate Reporting of Proceedings In Public – Section 11 Defamation Act (Cap 75)

2. If the Words were defamatory of the Plaintiff, which is denied, the Words were published on an occasion of absolute privilege pursuant to section 11 of the Defamation Act (Cap 75), being a fair and accurate report of proceedings in public before the [High Court] of Singapore, and published contemporaneously with those proceedings.

Particulars

- (1) On [date], [ZXY], the Plaintiff, was charged under section 300 of the Penal Code (Cap 224) for the murder of one [MNO];
- (2) The aforesaid matter came up for hearing on [date] in the High Court of Singapore;
- (3) The Defendant published a report, containing the Words, of the said proceedings in its newspaper on [date], one day after the matter came up for hearing; and
- (4) In the premises, the report was published contemporaneously and is accordingly subject to and/or protected by absolute privilege.

P12.11 Reply to plea of fair comment alleging malice⁴

[Drew & Napier LLC]

1. The Plaintiff joins issue with the Defendant on his defence filed on [date] save for the admissions it contains and those averments therein which are expressly admitted below.
2. It is denied that the Words were fair comment on a matter of public interest as alleged in paragraph 5 of the Defence or at all:
 - (1) The Words and/or the allegations contained therein were facts and not comment, and/or were not capable of being comment;
 - (2) Further and/or alternatively, it is denied that any alleged comment conveyed by the Words was based upon the facts alleged in the particulars under paragraph 5 of the Defence;
 - (3) Further and/or alternatively, the allegations relied on in support of the alleged comment are false and/or unfounded, and the true facts do not support, and are incapable of supporting, the alleged comment; and
 - (4) Further and/or alternatively, the alleged comment did not concern and/or was incapable of concerning any matter of public interest.
3. Further and/or alternatively, the Words were published by the Defendant maliciously.

Particulars

[Facts and/or matters upon which the Plaintiff asserts evidences and/or occasions the Defendant's malice]

⁴ See P12.08.

P12.12 Reply to plea of justification and qualified privilege⁵

[Drew & Napier LLC]

1. The Plaintiff joins issue with the Defendant on his defence filed on [date] save for the admissions it contains and those averments therein which are expressly admitted below.
2. It is denied that the Words and the meanings pleaded in paragraph 6 of the Defence and/or paragraph 6 of the Statement of Claim are true and/or substantially true.

[Plaintiff's response to the particulars set out by the Defendant in support of the plea of justification; as far as possible, the Plaintiff should put forward a positive case as to his version of the facts and matters which form the basis of the plea of justification]

3. It is denied that the Words were published on an occasion of qualified privilege.

[Basis for the Plaintiff's claim that the Words were not subject to qualified privilege]

4. Further and/or alternatively, the Words were published by the Defendant maliciously. The Plaintiff will rely on the following facts and matters in support:

- (1) The nature and gravity of the Words;
- (2) The Defendant knew that the Words published were untrue, alternatively the Defendant was reckless as to whether they were true or false:

Particulars

- (a) The Defendant is a Management Committee Member and a subsidiary proprietor of [The ABCD], and therefore knows, or ought to have known the terms of the By-Laws.
- (b) The Defendant therefore knew and/or ought to have known that the By-Laws do not stipulate that use of the Management Committee lounge without approval amounts to a serious violation of the same. The requirement of approval is merely a guideline of good practice recommended to be taken.
- (c) In the premises, the Defendant published and/or caused the Words to be published maliciously, knowing that they were untrue, alternatively recklessly, not caring whether they were true or false out of spite or ill will towards the Plaintiff.

⁵ See P12.09.

(4) The mode, extent and timing of the publication:

Particulars

- (a) The Defendant deliberately published the Words widely for maximum effect as part of a deliberate plan to enhance his election prospects, and/or to damage the Plaintiff's prospects of being elected to the Management Committee.
- (b) The Defendant distributed the Letter to all units of [The ABCD] despite knowing that a good number were occupied by tenants, who could not vote at the AGM and/or had no interest in knowing the allegations contained therein.
- (c) Having already distributed the Letter on [date], the Defendant distributed and circulated the Letter again at the Annual General Meeting on [date], by procuring copies of the Letter to be handed out to the subsidiary proprietors of [The ABCD] who attended the same, to ensure that those intending to vote at the election would read the Words.
- (d) The Defendant also sent copies of the Letter to subsidiary proprietors not residing at [The ABCD], although the Letter would be received by the said subsidiary proprietors after the AGM.

INCIDENTAL DOCUMENTS

P12.13 Application for determination of meaning of the words under Ord 14 r 12

[Drew & Napier LLC]

LET ALL PARTIES concerned attend before the Court on the date and time to be assigned for a hearing of an application on the part of the Plaintiff for the following order(s):

1. The natural and ordinary meaning of the words contained in the letter dated [date] (“the Words”) as pleaded in paragraph 4 of the Statement of Claim be determined pursuant to Order 14, Rule 12 of the Rules of Court.
2. The costs of this application to be costs in the cause.
3. Such further and/or other relief as this Honourable Court deems fit.

The grounds of this application are:

1. The determination of the natural and ordinary meaning of the Words will result in a saving of time and/or costs; and
2. Further and fuller grounds are set out in the affidavit of [name] filed on [date] in support of this application.

P12.14 Affidavit in support of application for determination of meaning of the words under Ord 14 r 12

[Drew & Napier LLC]

I, [name] (NRIC No [number]), of [address], do solemnly and sincerely affirm/ make oath and say as follows:

1. I am the Plaintiff herein.
2. Unless stated otherwise, the matters set out in this affidavit are within my personal knowledge and information or obtained from documents and papers in my possession and power. Insofar as they are within my personal knowledge, they are true. Insofar as they are obtained from documents and papers in my possession and power, they are true to the best of my knowledge, information and belief.⁶
3. I make this affidavit in support of my application under Order 14, Rule 12 of the Rules of Court for the determination of the natural and ordinary meaning of the words (“the Words”) contained in a letter dated [date]. A copy of the said letter is annexed hereto and marked “ABC-1”.

Natural and Ordinary Meaning of the Words

4. My claim against the Defendant is that the Defendant had caused a letter containing the Words, dated [date], to be published to various third parties.
5. It is my case that the natural and ordinary meaning of the Words is that [pleaded meaning]. This is defamatory of me as it disparages my reputation and/or character.
6. On [date], the Defendant filed his Defence, *inter alia*, denying that the Words bore any meaning defamatory of me. The Defendant, has, in the alternative, pleaded that the Words bear a different meaning, namely [meanings, if any].
7. The Defendant also asserts in his Defence that if his meaning is upheld, he was justified in publishing the Words as they were true, and/or the Words were published on an occasion of qualified privilege.

6 Since the Ord 14 r 12 application may finally resolve the case as a whole, the matters set out in the affidavit should be within the deponent’s personal knowledge. However, if this application is combined with an application for summary judgment, it is arguable that personal knowledge is not essential and that the affidavit may contain statements of information and belief with sources and grounds stated thereof (see paras 12.22 and 12.23 above).

8. In the circumstances, one of the issues to be determined in this action is the meaning of the Words.
9. I am advised and verily believe that this issue is suitable for determination without a full trial, as I am only relying on the natural and ordinary meaning of the Words, and no extrinsic evidence is required and/or admissible.
10. Further, I am also advised and verily believe that if this application is allowed, it will conclusively and fully determine the issue of the meaning of the Words. This would result in a considerable saving of time and costs as parties will then be able to ascertain if the Words are indeed defamatory, and if so, what defences are available to the Defendant.
11. In the premises, I respectfully ask this Honourable Court to make an order in terms of the application herein.

P12.15 Offer to make amends for unintentional defamation and accompanying affidavit

[Drew & Napier LLC]

Dear Sir/Madam

I refer to your letter of [date], wherein you assert that my article ("Article") entitled [title] published in the newspapers on [date] may be understood to be defamatory of you.

I wish to state that the Article was published innocently and was not intended to defame you in any way.

Further, in compliance with Section 7 of the Defamation Act (Cap 75), I enclose an affidavit setting out the facts which show that the Article was published innocently and without intention of defaming you. I am confident that the matters set out in the affidavit will satisfy you that we had exercised reasonable care in the publication of the Article and were unaware of the circumstances that it might be understood to bear a defamatory meaning.

For the above reasons, we hope that you will accept that we acted entirely innocently. Without admitting liability, we are ready and hereby offer to publish a suitable correction and unreserved apology on terms as those enclosed herein immediately. We are also prepared to pay all your reasonable legal costs incurred to date.

Yours faithfully

Affidavit Accompanying Offer of Amends

I, [name] (NRIC No [number]), of [address], do solemnly and sincerely affirm/ make oath and say as follows:

1. I am the editor of [company name] and am duly authorised to make this affidavit.
2. On [date], I received a letter dated [date], addressed to the editor of [company name], asserting that we had, on [date], published an article ("Article") entitled [title] in the newspapers, which Article was defamatory of [Plaintiff]. A copy of the aforesaid letter is annexed hereto and marked "ABC-1".
3. I wish to state that both [company name] and I had no knowledge that the Article would be understood to be defamatory of [Plaintiff]. I set out below the matters upon which I say the Article was published innocently and without intention to defame [Plaintiff]:

[Facts/matters upon which the Defendant relies on to say that Article was published innocently and without intention to defame]

4. By reason of the aforesaid, I confirm that the Article for which a complaint was made was published innocently.
5. On [date], on behalf of [company's name], I wrote to [Plaintiff] offering to make amends pursuant to Section 7 of the Defamation Act (Cap 75). A copy of the aforesaid letter is annexed hereto and marked "ABC-2".

P12.16 Letter of demand before action in case of internet libel

[Drew & Napier LLC]

Mr ABC

[address]

Dear Sirs

Defamation

1. We act for [client].
2. On or about [date], on a website with an address at [website address] ("the Website"), you published and/or caused to be published an article ("the Article") entitled [title].
3. The Article contains, among other things, the following words ("Words") of and about our client:

[The words complained of, including headings, text of the Article, captions, etc]
4. The Words mean, and are understood to mean that:

[Defamatory meanings of the Words]
5. The above allegations are false and baseless. They constitute a very serious libel against our client, disparages him and impugns our client's character and integrity. Further, they have caused our client considerable hurt and embarrassment.
6. It is also clear that the Words were published maliciously.
7. The Article and/or the Words have been read and continue to appear on the Website where they are and continue to be available and accessible to all and sundry.
8. You have also published a link to the Article on your Facebook Timeline ("Facebook Timeline") at [address].
9. Further, it was foreseeable and/or the natural, ordinary and probable consequence of your publication of the Article that it would be republished widely over the Internet, as has happened, and that readers of these other websites would visit the Website and read the Article. For example, the Article has been republished on [website] with an address at [website address] and [website] with an address at [website address].
10. In the premises, our client requires you to:

- (1) Immediately remove the Article from the Website, the link to the Article on the Facebook Timeline, and from any other medium on which you have posted the Article;
 - (2) Inform us, within [number] days of the date of this letter, which other websites you have posted this Article on;
 - (3) Publish, at your own expense, within [number] days of the date of this letter, an apology and undertaking in terms of the draft which is enclosed. The apology and undertaking are to be published without any amendment and with appropriate prominence having regard to the size of the Article, on the Website and on any other medium on which you have posted the Article. The said apology and undertaking are to remain on your website, your Facebook Timeline and on any other medium on which you have posted the Article for the same number of days that the Article remained on it;
 - (4) Compensate our client by way of damages; and
 - (5) Agree to indemnify our client in respect of the costs and expenses which he will have incurred in connection with this matter.
11. Our client requires your written confirmation that you have complied with and will comply with these conditions, as well as your offer of damages, within [number] days from the date of this letter, failing which our instructions are to commence legal proceedings against you and all other persons and parties who are responsible.
 12. All our client's rights, including our client's rights against all other parties responsible for the Words and their publication, are expressly reserved.

P12.17 Apology for internet libel

[Drew & Napier LLC]

1. On or about [date], I / We published / caused an article ("the Article") to be published on a website with an address at [website address]. The Article contained the following words ("the Words") of and about [the Plaintiff]:

[The words complained of, including headings, text of the Article, captions, etc]

2. I / We recognise that the Words mean and are understood to mean that:

[Defamatory meanings of the Words]

3. I / We admit and acknowledge that the above allegations are false and completely without foundation.
4. I / We unreservedly apologise to [the Plaintiff] for the distress and embarrassment caused to him by these allegations. I / We undertake not to make further allegations to the same or similar effect.
5. I / We have agreed to pay [the Plaintiff], by way of compensation, the sum of [amount], being the damages and costs incurred by him in connection with this matter.
6. I / We have removed the Article and the links to the Article.

[Defendant]

Date:

CHAPTER 13

EMPLOYMENT

PRECEDENTS

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- P13.02** Claim by employee against employer for unpaid bonus
- P13.03** Claim by employee for damages for wrongful dismissal/breach of contract
- P13.04** Claim by employee for salary and damages for wrongful dismissal/breach of contract
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- P13.20** Defence to claim for breach of confidence – defence of first defendant

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CHAPTER 13

EMPLOYMENT

PRECEDENTS

P13.01 Claim by employee against employer for unpaid salary¹

[KhattarWong LLP]

1. The Defendants employed and appointed the Plaintiff as its' [designation] pursuant to the terms and conditions set out in a Service Agreement dated [date] ("the Service Agreement") entered into between the Plaintiff and the Defendants.
2. The following are, *inter alia*, the terms and conditions set out in the Service Agreement which are relevant to this matter:

[Relevant terms and conditions]

[For example:

- (1) Under Clause 3.1 thereof, the Defendants would during the Plaintiff's employment pay to the Plaintiff a salary of S\$[amount] per month, which would be payable in arrears on the first working day of each month. This salary would be reviewed yearly and be varied at the Defendants' discretion.]

The Plaintiff shall at the trial and at any proceedings refer to the Service Agreement (in its entirety, if necessary) and other documents (if required) for their full terms, effect and true purport thereof.

3. In breach of the terms of the Service Agreement, the Defendants wrongfully failed, neglected and/or refused to pay the Plaintiff's monthly salary of S\$[amount] for the months of [June 2004 to October 2004] (both months inclusive), i.e., a total sum of S\$[amount] or to make contribution to the Central Provident Fund Board in respect thereof amounting to S\$[amount].
4. Further, in breach of the terms of the Service Agreement, the Defendants wrongfully failed, neglected and/or refused to reimburse the Plaintiff the sum of S\$[amount] being expenses reasonably incurred by the Plaintiff in the discharge of his duties during the course of his employment.

¹ See P13.12 and P13.28.

5. By way of a letter dated [date], the Plaintiff tendered his resignation as [position] of the Defendants. By a letter dated [date], the Defendants duly accepted the Plaintiff's resignation and stated that the Plaintiff's last day of service would be [date].
6. The Defendants were and remain indebted to the Plaintiff in the total sum of S\$[amount], the short particulars and the breakdown of which are as follows:

Particulars

- (1) In respect of [number of] months unpaid salary: S\$[amount]
- (2) In respect of unpaid expenses: S\$[amount]
- (3) In respect of [] S\$[amount]
7. By the Plaintiff's solicitors' letter dated [date] sent to the Defendants by AR registered and ordinary post, the Plaintiff demanded from the Defendants payment of the total sum of S\$[amount], such payment to be made within [7] days of the date thereof. The Defendants have, up to date, failed, neglected and/or refused to make any payment to the Plaintiff.

AND the Plaintiff claims:

- (1) The sum of S\$[amount];
- (2) Interest on the sum of S\$[amount] at the rate of [amount] per cent per annum from the date of the Writ up to the date of Judgment;
- (3) An order that the Defendants should pay to the Central Provident Fund contributions in respect of the Plaintiff amounting to S\$[amount] in respect of the months of [month] to [month];
- (4) Costs; and
- (5) Such further or other relief as this Honourable Court deems fit.

P13.02 Claim by employee against employer for unpaid bonus²

[KhattarWong LLP]

1. The Defendants are and were at all material times a company incorporated in the Republic of Singapore and having its registered office at [address].
2. The Plaintiff was at all material times an employee of the Defendants.
3. By an Agreement dated [date] (“the Agreement”) made between the Plaintiff and Defendants, it was provided that the Defendants would pay the Plaintiff a fixed salary and variable salary in the form of bonus payable in accordance with company policy. Further, under the Agreement, the Plaintiff was entitled to 21 days annual leave.
4. The Defendants declared a bonus for each of the years from [year] to [year] and paid all employees including the Plaintiff the sums calculated when the bonus was declared.
5. By a letter dated [date] the Plaintiff exercised his right to terminate the Agreement by giving 3 months’ notice of resignation.
6. On or about [date] shortly after the Plaintiff had tendered his Notice of Resignation the Defendants declared a bonus of [amount] months for all employees for the year [year].
7. On the last day of his service, the Plaintiff was paid the fixed salary due to him but the Defendants wrongfully failed, refused and/or neglected to pay him the bonus declared and salary in lieu of leave not taken.
8. By a notice of demand dated [date], sent by the Plaintiff’s solicitors to the Defendants, the Plaintiff demanded payment within 7 days of the total sum of S\$[amount] comprising the bonus of [number] months declared by the Defendants which is due to the Plaintiff as variable salary plus the sum of S\$[amount] in respect of leave not taken.
9. The Defendants have failed, neglected and/or refused to make payment to the Plaintiff of the said sum of S\$[amount] or any part thereof.

2 See P13.13.

AND the Plaintiff claims against the Defendants:

- (1) The sum of S\$[amount];
- (2) Interest on the said sum pursuant to Section 12 of the Civil Law Act;
- (3) Costs; and
- (4) Such further or other relief as this Honourable Court deems fit.

P13.03 Claim by employee for damages for wrongful dismissal/breach of contract³

[KhattarWong LLP]

1. The Defendants are and were at all material times carrying on the business of [type of business] in Singapore.
2. By a contract of employment dated [date] made between the Plaintiff and the Defendants (“the Employment Contract”), the Plaintiff was employed as a [designation] of the Defendants at a salary of S\$[amount] per month.
3. Pursuant to Clause [number] of the Employment Contract, notice of termination from either the Plaintiff or the Defendants was to be 3 months in writing, or alternatively, payment of salary in lieu of notice.⁴
4. In breach of Clause [number] of the Employment Contract, the Defendants purported to terminate the Employment Contract with immediate effect by way of a letter to the Plaintiff dated [date], without giving notice or payment in lieu of notice as required.⁵
5. By reason of the said breach, the Plaintiff has suffered loss and damage.

AND the Plaintiff claims:

- (1) Damages to be assessed;
- (2) Interest;
- (3) Costs; and
- (4) Such further or other relief.

³ See P13.14, P13.15, P13.16 and P13.17.

⁴ Where the contract of employment provides for a period for termination, that is to be adhered to: see D Barker, *A Guide to Termination of Employment in Singapore* (LexisNexis Butterworths, 2008), pp 3–4, 31–33.

⁵ For a discussion on the law on payment in lieu of notice, see D Barker, *ibid* pp 8–10.

P13.04 Claim by employee for salary and damages for wrongful dismissal/breach of contract⁶

[KhattarWong LLP]

1. On or about [date], the Plaintiff, a Singapore Citizen, commenced employment with [name of company] ("A Co"), a company within the Defendant's group of companies.
2. On or about [date], at the request of A Co's management, the Plaintiff's employment was transferred to B Co Pte Ltd, a former sister company of the Defendant company as the Southeast Asian Area Representative of the said company. The Agreement relating to the Plaintiff's employment with B Co Pte Ltd was contained in or evidenced in writing by, *inter alia*, a memorandum dated [date] from [name] to the Plaintiff ("the said Memorandum").
3. When B Co Pte Ltd voluntarily liquidated in or about 1989, the Plaintiff's employment was transferred to the Defendant company on the same terms and conditions as set out in the said Memorandum as revised by subsequent correspondence between the parties ("the said Agreement").
4. It was an express term of the said Agreement, *inter alia*, that:
 - (1) With effect from [date], the Plaintiff would be paid a basic monthly salary of S\$[amount] and a further sum of S\$[amount] being the employer's Central Provident Fund⁷ contribution thereon;
 - (2) The Plaintiff should enjoy unlimited free use of a company car provided by the Defendant company, most recently a [type of car];
 - (3) The Plaintiff would receive a monthly living allowance most recently amounting to S\$[amount];
 - (4) The Defendant company would provide full medical and life insurance coverage to the Plaintiff;
 - (5) The Plaintiff would receive full reimbursement of all expenses incurred by him in the normal course of performing business for the Defendant company;

⁶ See P13.17.

⁷ In Singapore, it is important to include a claim for CPF contributions. This is not an insignificant component of an employee's salary base. For the latest rates, see Part II (Contributions to Fund) and First Schedule to the Central Provident Fund Act (Cap 36).

- (6) The Plaintiff would receive salary on a *pro rata* basis for all accumulated annual leave.
5. It was an implied term of the said Agreement that the Plaintiff's employment should be determinable only by reasonable notice. Reasonable notice, in the circumstances, is 3 months' notice.
6. By a letter dated [date], the Defendant company wrongfully and in breach of the said Agreement terminated the Plaintiff's employment with effect from [date], thereby only giving the Plaintiff one month's notice in writing of the determination of his employment rather than the 3 months' notice that he was entitled to. The Plaintiff was allowed the use of his rental accommodation and company car up to the middle of [month] but the Defendant company ceased paying him all the other benefits he was entitled to on [date].
7. By reason of the matters aforesaid, the Plaintiff has been wrongfully deprived of the salary and benefits he would otherwise have enjoyed and earned and he has thereby suffered loss and damage.

Particulars

- (1) Loss of basic salary for the period of [2] months
- (2) Loss of employer's CPF contributions for the period of [2] months
- (3) Loss of monthly rental allowance for the period of [1½] months
- (4) Loss of use of company car for the period of [2] months valued at the cost of renting an equivalent car for the said period
- (5) Loss of life insurance coverage and full private medical costs for the period of [2] months
- (6) Business expenses incurred by the Plaintiff on the Defendant company's behalf prior to his termination
- (7) Removal costs incurred by the Plaintiff by reason of his termination
- (8) Salary in lieu of accrued annual leave of [number] days
8. Further the Defendant company failed, refused or neglected to pay the Plaintiff his salary for the month of [month] amounting to [amount].
9. The Plaintiff will give such credit or seek such adjustment in respect of tax and Central Provident Fund contributions as may be appropriate.

10. Further, the Plaintiff is entitled to interest pursuant to Section 9 of the Civil Law Act (Cap 43) and hereby claims to recover interest on the amount found to be due to him at such rate and for such period as to this Honourable Court may appear just.

AND the Plaintiff claims:

- (1) Salary for the month of [month];
- (2) Damages to be assessed;
- (3) Interest pursuant to Section 9 of the Civil Law Act (Cap 43) at such rate and for such period as this Honourable Court deems fit;
- (4) Costs; and
- (5) Such further or other relief as this Honourable Court deems fit.

P13.05 Claim by employee for retrenchment benefits⁸

[KhattarWong LLP]

1. The Defendants are a company incorporated in Singapore, who are the authorised distributors of [type of goods] ("the Equipment").
2. The Plaintiff was formerly an employee of the Defendants holding the position of [Manager] of their [Maintenance] Division ("the said Division"), having commenced employment with the Defendants on or about [date].
3. By a letter dated [date], the Defendants had confirmed the promotion of the Plaintiff to Manager of the said Division and had agreed to pay to the Plaintiff salary and benefits set out therein. It was stipulated in the said letter that save as amended therein, the terms and conditions of the Plaintiff's Employment Contract dated [date] would continue to be applicable.
4. Under Clause [number] of the Plaintiff's Employment Contract, either party could terminate the contract by serving 3 months' notice or paying 3 months' salary in lieu thereof.
5. Under Clause [number] of the Plaintiff's Employment Contract, in the event of his retrenchment, the Plaintiff would be entitled to receive [number] months' salary for each year or part thereof worked by him for the Plaintiff, as a retrenchment benefit.
6. Under Clause [number] of the Plaintiff's Employment Contract, it was agreed that the Plaintiff would devote his full time to his employment and would not assist with or be interested or involved in any other business, except with the Defendants' consent.
7. On or about [date], the Defendants announced that they were closing the said Division and that all employees in the said Division would be retrenched and would be paid retrenchment benefits in accordance with the terms and conditions of their employment contracts.
8. On or about [date] shortly before the said announcement, the Defendants purported to terminate the Plaintiff's employment with immediate effect on the ground that the Plaintiff had breached his contract of employment by having assisted with or been interested or involved in the business of [name of firm], a firm in which his wife is the sole proprietor.

⁸ See P13.18.

9. The Plaintiff was never at any time involved or interested in his wife's said business. Further, the Defendants were fully aware at all material times the Plaintiff's wife was carrying on the business of [type of business] and had never raised any objections thereto.
10. In all the circumstances, the Defendants' alleged termination of the Plaintiff's employment was wrongful and in breach of contract. Further, the Defendants alleged termination of the Plaintiff's employment was a wrongful attempt to avoid paying the Plaintiff the retrenchment benefits which would become due to him on the closing down of the said Division.
11. As a consequence of the Defendants' wrongful conduct, the Plaintiff has suffered loss and damages as follows:

Particulars

- (1) S\$[amount] being salary in lieu of notice;
- (2) S\$[amount] being retrenchment benefits due and owing to him

AND the Plaintiff claims:

- (1) S\$[amount];
- (2) Alternatively damages;
- (3) Further or other relief; and
- (4) Costs.

P13.06 Claim by employee for damages, for injuries sustained in the course of employment⁹

[KhattarWong LLP]

1. The Plaintiff's claim is for damages for personal injuries and consequential losses suffered by him as a result of an accident which occurred on the [date] of [month and year] at the restaurant known as [name] at [address] Singapore (hereinafter "the Restaurant").
2. At all material times the Defendants were engaged in selling food and drinks at the Restaurant for consumption within the premises.
3. At all material times the Defendants were the occupiers and/or persons having the control of the works carried out at the Restaurant, which constituted a workplace within the meaning of the Workplace Safety and Health Act (Cap 354A) ("the said Act").
4. At all material times, the Plaintiff was employed by the Defendants as a waiter and general helper under a work pass issued by the Ministry of Manpower.
5. On the [date] day of [month and year] at about [time] a.m., the Plaintiff was in the course of his employment instructed to move [number] cartons of drinks which had been unloaded and stacked at the back door of the Restaurant to a refrigerator within the Restaurant, to unpack the cartons and store the drinks in the refrigerator.
6. At about [time] p.m., the Plaintiff was carrying one carton of drinks to the said refrigerator when the Plaintiff slipped and fell to the floor and the carton landed on the Plaintiff's left foot. As a consequence, the Plaintiff suffered the injuries particularised below, loss and damages.
7. The said injuries, loss and damages were caused by negligence on the part of the Defendants, and/or their servants or agents and/or by breach of the duty owed by the Defendants as employers to take reasonable care for the safety of the Plaintiff and/or by breach of the duty owed by the Defendants as occupiers of the Restaurant to take adequate measures for the safety of the Plaintiff. The Plaintiff relies on the particulars below and on the doctrine of *res ipsa loquitur*.

⁹ See P13.19.

Particulars of negligence and breach of duty

- (1) Instructing the Plaintiff to lift and carry heavy loads without first giving proper instructions;
 - (2) Failing to provide a safe place for the Plaintiff to work or a safe means of access to the Plaintiff's place of work;
 - (3) Causing or permitting the floor of the Restaurant to remain in a slippery and dangerous state;
 - (4) Failing to take any or any adequate or effective measures to clean the floor of the said Restaurant and make it safe to walk;
 - (5) Failing to have any or any adequate regard to the weight of the cartons and other obstacles present at the Restaurant and the risk of tripping and falling;
 - (6) Failing to provide any supervision or direction for the task of carrying the cartons of drinks when they knew or ought to have known that the task required some supervision;
 - (7) Failing to provide any equipment and suitable equipment to facilitate the task of carrying the cartons of drinks;
 - (8) Failing to provide or maintain a safe or proper system of work;
 - (9) Exposing the Plaintiff to a risk of damage or injury about which they knew or ought to have known.
8. Further or in the alternative, the said accident was caused by the breaches on the part of the Defendants, their servants or agents, of their statutory duties under the said Act.

Particulars of breaches of statutory duties

- (1) Breaching Section 11 of the said Act by failing as occupier to take reasonably practicable measures to ensure that the work place is safe for every person within the premises including the Plaintiff;
 - (2) Breaching Section 12 of the said Act by failing as employer of the Plaintiff to take reasonably practicable measures to ensure the safety of the Plaintiff at work.
9. The above are the best particulars which the Plaintiff can give at this time and further particulars may be given after discovery/interrogatories. The Plaintiff also relies on the doctrine of *res ipsa loquitur*.

10. As a result of the Defendants' said negligence and/or breach of duty and/or breach of statutory duties, the Plaintiff has suffered injuries and incurred damages, loss and expense.

Particulars of personal injuries

The Plaintiff was [number] years of age at the time of the accident. Annexed hereto and collectively marked as Annex "A" is the following:

- (1) Medical report by Dr. [name], Department of [department], [name] Hospital

Further medical evidence, if any, will be adduced at the trial.

Particulars of special damages

A statement of Special Damages pursuant to Order 18 Rule 12(IA) of the Rules of Court is annexed hereto and marked as Annexure "B".

And the Plaintiff claims:

- (1) Damages;
- (2) Interest thereon at such rate and for such period as the Court may deem just;
- (3) Costs; and
- (4) Further or other relief as this Honourable Court deems fit.

P13.07 Claim by employer for damages and an account of profits for breach of confidence¹⁰

[KhattarWong LLP]

1. The Plaintiffs are and were at all material times carrying on the business of [type of business] in Singapore.
2. The 1st Defendant was formerly an employee of the Plaintiffs pursuant to an employment contract dated [date]. The 2nd Defendant was at all material times carrying on the business of [type of business] in Singapore.
3. Under the terms of the 1st Defendant's employment contract, the 1st Defendant had agreed that he would not at any time either during his employment with the Plaintiffs or subsequently directly or indirectly disclose to any person or use for his own or any other personal benefit any confidential information, pertaining to the Plaintiffs' business and affairs including information on all existing and contemplated products, pricing structures, customer list, customer records to any person, without the Plaintiffs' prior written consent.
4. As an employee of the Plaintiffs, the 1st Defendant was further subject to an implied duty of fidelity, trust and confidence pursuant to which the 1st Defendant was required to act in the Plaintiffs' interests and not to disclose to any third party or use for his own or any persons benefit any confidential information belonging to the Plaintiffs, including any customer lists.
5. The 1st Defendant's employment with the Plaintiffs terminated on [date], upon the expiry of a notice of termination served by him.
6. In breach of the above express and implied provisions of his employment contract, the 1st Defendant had on or about [date], prior to the termination of his employment, downloaded and/or made copies of the Plaintiffs' customer list from the Plaintiffs' computerised database and had without the consent of the Plaintiffs disclosed and/or provided copies of the said information to the 2nd Defendant.¹¹
7. The 2nd Defendant is and was at all material times aware or, in the alternative, should have known at all material times and in all the circumstances, that the Plaintiffs' customer list was information

¹⁰ See P13.20, P13.21, P13.22 and P13.23.

¹¹ The law relating to confidentiality and trade secrets is generally found in English common law.

confidential to and belonging to the Plaintiffs and had been unlawfully procured by the 1st Defendant.

8. On or about the [date], the 1st Defendant commenced employment with the 2nd Defendants in the position of [designation].
9. The 1st and 2nd Defendants have wrongfully made use of the Plaintiffs' abovementioned confidential information for the purposes of the 2nd Defendant's business, and have, on the basis of information in the Plaintiffs' said customer list, made approaches to some of the Plaintiffs' customers and persuaded the said customers to give their business to the 2nd Defendant instead of the Plaintiffs.

Particulars¹²

[Particulars]

10. As a consequence of the aforesaid breaches of contract and/or fidelity, trust and confidence on the 1st Defendant's part and of the 2nd Defendant's wrongful use of confidential information, the Plaintiffs have suffered loss and damage.

AND the Plaintiffs claim:

- (1) Damages;
- (2) An account of profits made by the 2nd Defendant as a consequence of their wrongful utilisation of confidential information belonging to the Plaintiffs;
- (3) Further or other relief; and
- (4) Costs.

12 In a claim for breach of confidence, it is important that full details of the allegations are set out, including investigation reports if available. The provision of full particulars will obviate the need for further and better particulars.

P13.08 Claim by employer for damages and injunction against employee for breach of confidence and inducement of breach of contract¹³

[KhattarWong LLP]

1. The Plaintiffs are a company engaged in the manufacture, sale and maintenance of [type of equipment] (“the Equipment”) to industries such as [type of industry]. Their products include [type of product] (“XYZ”).
2. For a period of about 3 years, the 1st Defendant was employed by the Plaintiffs and held several senior positions within the Plaintiffs’ organisation. Pursuant to the terms of the contract of employment between the Plaintiffs and the 1st Defendant; and/or pursuant to the 1st Defendant’s equitable duties owed to the Plaintiffs, the 1st Defendant owed:
 - (1) A duty of good faith and fidelity to the Plaintiffs;
 - (2) A duty so long as the contract of employment subsisted not to misuse any information confidential to the Plaintiffs or to disclose such information to a third party; and
 - (3) A duty to the Plaintiffs, following the termination of the 1st Defendant’s contract of employment, not to use or disclose any trade secrets or other information deemed confidential by the Plaintiffs.
3. The 1st Defendant’s employment was terminated by the Plaintiffs on or about [date].
4. The 2nd Defendants are competitors of the Plaintiffs in the same business and they service the same industries. The 3rd Defendants are wholly-owned by the 2nd Defendants and act as the 2nd Defendants’ local business presence.
5. The 1st Defendant was employed by the Defendants on or about [date].
6. By virtue of his previous positions within the Plaintiffs’ organisation, the 1st Defendant had access to the Plaintiffs’ [Customer List and Database] (“the CLD”). The CLD is the Plaintiffs’ software and contains [contents] belonging to the Plaintiffs (“the Plaintiffs’ confidential information”) and relating to, *inter alia*, its [XYZ] business. The CLD was developed and implemented by the Plaintiffs at great expense on or about [date]. The 1st Defendant

¹³ See P13.20, P13.21, P13.22, P13.23 and P13.27.

was involved in the conceptualisation of the CLD during the early stages of its development and is familiar with its capabilities and features. In the circumstances, the 1st Defendant knew or ought reasonably to have known that the CLD was proprietary to the Plaintiffs and contained confidential information pertaining to the Plaintiffs' customers.

7. On or about [date], the 1st Defendant approached one [Mr. ABC] to obtain a copy of the Plaintiffs' confidential information for the 2nd and 3rd Defendants' use. The 1st Defendant gave explicit instructions to [Mr. ABC] on how to send the Plaintiffs' confidential information to the 1st Defendant's new e-mail address at the 2nd and 3rd Defendants' offices. The 1st Defendant then asked [Mr. ABC] to delete his record of the e-mail after it had been sent.
8. [Mr. ABC] is an employee of the Plaintiffs and was responsible for administering the CLD. [Mr. ABC] was also formerly a subordinate of the 1st Defendant prior to the 1st Defendant's departure from the Plaintiffs and the 1st Defendant knew that [Mr. ABC] was responsible for administering the CLD. Complying with the 1st Defendant's instructions, [Mr. ABC] sent a copy of the Plaintiffs' confidential information to the Defendants by e-mail that same day. [Mr. ABC] resent a copy of the Plaintiffs' confidential information to the Defendants again the following day, on or about [date].
9. These breaches were discovered by the Plaintiffs on or about [date].

Particulars of Breach

10. The 1st Defendant was aware, or in the alternative ought reasonably to have known, that the Plaintiffs' confidential information unlawfully procured by him from the Plaintiffs' employee was confidential and proprietary to the Plaintiffs.
11. By reason of his unlawful procurement of the Plaintiffs' confidential information and disclosures to the 2nd and 3rd Defendants, the 1st Defendant acted in breach of each of the terms of his contract of employment, as pleaded in paragraph 2 and/or his equitable duties.
12. Additionally, the 2nd and 3rd Defendants were aware, or alternatively ought reasonably to have known, that the Plaintiffs' confidential information supplied to them through the unlawful acts of the 1st Defendant was confidential and was proprietary to the Plaintiffs. In the premises and at all material times, the 2nd and 3rd Defendants were under a duty of confidence to the Plaintiffs

not to use or disclose the Plaintiffs' confidential information or any part thereof supplied by the 1st Defendant.

13. In approaching the Plaintiffs' employee to unlawfully procure the Plaintiffs' confidential information, and knowing that the Plaintiffs' employee was under the same or similar terms of employment and equitable duties as pleaded in paragraph 2, and by reason of the matters pleaded in paragraphs 10 and 11, the 1st Defendant has unlawfully interfered with the Plaintiffs' legitimate business interests in the knowledge that such interference would result in loss and damage to the Plaintiffs. As these unlawful acts were done in his capacity as an employee of the 2nd and 3rd Defendants and for the furtherance of their business interests, the 2nd and 3rd Defendants are consequently liable for the acts of the 1st Defendant.
14. The Defendants have also conspired to induce the breach of contract and/or equitable duties of fidelity or confidence by the Plaintiffs' employee and/or their ex-employee, the 1st Defendant.
15. The Plaintiffs are unable to give further particulars of the Defendants' breaches until after discovery herein.¹⁴
16. By reason of the acts of each of the Defendants the Plaintiffs have suffered loss and damage.

Particulars of Loss and Damage

17. The Plaintiffs' confidential information was obtained by the Defendants in soft copy format and can be duplicated and disseminated easily through electronic means. The Defendants and/or any other competitor of the Plaintiffs would be able to unfairly target and entice the Plaintiffs' customers using confidential data and information collated and developed about the Plaintiffs' customers over the years. Alternatively, the Defendants and/or any other competitor of the Plaintiffs would be able to develop a competing system to the Plaintiffs to obtain an illegitimate business advantage. This would deny the Plaintiffs any chance of legitimately conducting its business in an already highly competitive industry.

14 The plaintiff would have to consider whether pre-action discovery or interrogatories pursuant to Order 24, r 6 or Order 26 respectively is necessary to establish a cause of action. The court will not permit pre-action discovery if its only purpose is to obtain evidence that will be available in the ordinary course of the proceedings. For extensive commentaries on these rules, see *Singapore Civil Procedure 2015* (Sweet & Maxwell).

18. Additionally, were the Plaintiffs' customers to learn that their confidential information contained within the Plaintiffs' CLD had been disclosed to third parties, the damage to the Plaintiffs' reputation and the loss of their clients' confidence in them would be irretrievable damage.
19. The Plaintiffs are unable to provide further particulars of the loss or damage suffered by it through the Defendants' acts until after discovery herein.
20. Unless the Defendants are restrained by this Honourable Court, they threaten and intend to continue the acts complained of.

AND the Plaintiffs claim:

- (1) An injunction to restrain the Defendants by their affiliates, agents and/or servants from:
 - (a) Unlawfully interfering with the Plaintiffs' business interests;
 - (b) Inducing breach of contract or equitable duties of fidelity or confidence by the Plaintiffs' employee and/or ex-employee; and/or
 - (c) Conspiring to injure the Plaintiffs by inducing a breach of contract or equitable duties of fidelity or confidence by the Plaintiffs' employee and/or ex-employee;
- (2) Damages against the 1st Defendant for breach of contract and/or for breach of equitable duties of confidence by procuring or attempting to procure the Plaintiffs' confidential information or property amounting to trade secrets, i.e., the Customer List and Database software, and the codes and information contained therein ("the Plaintiffs' Property");
- (3) An injunction restraining the Defendants, by their affiliates, agents and/or servants, from dealing in any way with the Plaintiffs' Property;
- (4) An order that the Defendants, by their affiliates, agents and/or servants, deliver up and forfeit to the Plaintiffs all hard and soft copies of the Plaintiffs' Property and any of the Plaintiffs' Property that has been obtained, modified or adapted by the Defendants, by their affiliates, agents and/or servants, and destroy all copies of the same in their custody, power and control;
- (5) An inquiry as to damages; or at the option of the Plaintiffs, an account of profits;

- (6) An order for the payment of all sums found due to the Plaintiffs upon taking of such inquiry or account together with interest pursuant to Section 12 of the Civil Law Act;
- (7) Costs; and
- (8) Such other orders as this Honourable Court thinks fit.

P13.09 Claim by employer for misuse of confidential information/breach of directors' duties/conspiracy to defraud¹⁵

[KhattarWong LLP]

1. The Plaintiffs are and were at all material times in the business of providing [type of services] services.
2. The 1st Defendant was, until his dismissal on [date] a Director of the Plaintiffs. The 1st Defendant has and has had an interest in the 3rd Defendants within the meaning of Section 156 of the Companies Act in that his wife, one [name], was, and remains, a shareholder and Director of the 3rd Defendants from [date] to [date]. The 1st Defendant had a duty to disclose these facts to the Directors of the Plaintiffs, but failed to do so.
3. The 2nd Defendant was, at all material times until his dismissal on [date] a Director of X, a holding company of the Plaintiffs. At all material times from [date] to [date] the 2nd Defendant was the Chief Executive Officer and a Director of the Plaintiffs and was responsible for the management of the Plaintiffs. The 2nd Defendant has and has had an interest in the 3rd Defendants within the meaning of Section 156 of the Companies Act in that his sister was, and remains, a shareholder and Director of the 3rd Defendants from [date] to [date] and the 2nd Defendant had a duty to disclose those facts to the Directors of the Plaintiffs but failed to do so.
4. The 3rd Defendants are a company which was incorporated in Singapore on [date].
5. The Plaintiffs are and were at all material times the owners of or otherwise beneficially entitled to deal with information of a confidential character being the list of the Plaintiffs' customers and agents, their addresses and the contact persons (each part of and all such information being "Confidential Information").

Misuse of confidential information

6. From about [date] until about [date], the Plaintiffs communicated the Confidential Information to the 1st and 2nd Defendants from the commencement time of their employment with the Plaintiffs, and the 1st and 2nd Defendants received the Confidential Information knowing the same to be confidential and without giving any consideration therefrom.

¹⁵ See P13.24.

7. The Confidential Information was communicated to the 1st and 2nd Defendants for the sole and only purpose of enabling the 1st and 2nd Defendants to consolidate and further enhance the business of the Plaintiffs and for no other purpose.
8. In the premises, the 1st and 2nd Defendants received the Confidential Information knowing the limited purpose for which it was communicated, by reason of which they became, and were at all material times, under a duty of confidence to the Plaintiffs in respect of such Confidential Information and each part thereof, and were not and are not entitled to use the Confidential Information or any part thereof without the prior consent of the Plaintiffs for any purpose other than that which it was supplied to them by the Plaintiffs.
9. In breach of the said obligation of confidence and without the consent of the Plaintiffs, the 1st and 2nd Defendants have unlawfully made use of the Confidential Information. The 3rd Defendants have unlawfully made profits or taken advantages for themselves by exploiting Confidential Information made known to them.

Particulars

- (1) From [date] to [date], the 1st and 2nd Defendants, in their capacity as Directors of the Plaintiffs, and without declaring to the Board of Directors of the Plaintiffs their interests in the 3rd Defendants, gave or allowed the 3rd Defendants a substantial discount when they placed orders with the Plaintiffs. They had not disclosed their interest in such contracts with the 3rd Defendants to the Directors of the Plaintiffs in breach of their respective duties under Section 156 and Section 157 of the Companies Act and at common law. The Plaintiffs would not have given such a discount to the 3rd Defendants.
 - (2) [Other particulars]
10. By reason of the said breaches of confidence, the Plaintiffs have suffered and continue to suffer damage.

Particulars of damage

- (1) Loss of the difference between the usual full value of the orders placed by the 3rd Defendants with the Plaintiffs from [date] to [date] and the discounted amount invoiced, the difference being [amount] of the total orders, a loss which amounts to [amount].

(2) [Other particulars of damage].

Breach of contract of employment

11. Further, the following were express or implied terms of the contract of employment between the Plaintiffs and the 1st and 2nd Defendants:
 - (1) A duty to act in the interests of the Plaintiffs;
 - (2) A duty, so long as such contract of employment subsisted, not to misuse any information confidential to the Plaintiffs or to disclose such information to any third party;
 - (3) A duty, following the termination of such contract of employment, not to use or disclose any trade secrets or other highly confidential information of the Plaintiffs.
12. The confidential information relevant to this action is as particularised in paragraph 5 hereof.
13. By reasons of the matters referred to in paragraphs 6-9 hereof, the 1st and 2nd Defendants have acted in breach of each of the terms of their contracts of employment set out in paragraph 11 hereof.
14. By reason of the said breaches, the Plaintiffs have suffered and continue to suffer damages.

Particulars of damage

- (1) Loss of the difference between the usual full value of the orders placed by the 3rd Defendants with the Plaintiffs from [date] to [date] and the discounted amounts involved, the difference being [amount] of the total orders, a loss which amounts to [amount];
- (2) [Other particulars of damage];
- (3) Each of the Defendants is severally liable to account to the Plaintiffs for the profits earned, or advantages gained, by them by reason of the said breaches.

Breach of fiduciary duty

15. Further, the 1st and 2nd Defendants owed to the Plaintiffs a fiduciary duty by virtue of their undertaking to act in the interests of the Plaintiffs and their ability to affect the interests of the Plaintiffs. Their duties include, *inter alia*:
 - (1) A duty to act bona fide in the interests of the Plaintiffs;
 - (2) A duty to act for the proper purposes of the Plaintiffs in relation to its affairs.

16. In our about [date] to [date], the 1st and 2nd Defendants acted in breach of their duties as aforesaid.

Particulars

- (1) The 1st and 2nd Defendants set up, assisted to set up or conspired to set up the 3rd Defendants, a company which was to compete with the Plaintiffs;
 - (2) The 1st and 2nd Defendants allowed or caused the Confidential Information above to be passed to and used by the 3rd Defendants;
 - (3) The 1st and 2nd Defendants allowed, procured or assisted in procuring the discounts particularised in paragraphs 9(1) and 10(1), (2) hereof.
17. By reason of the 1st and 2nd Defendants' breach of fiduciary duty, the Plaintiffs have suffered, and continue to suffer loss and damage.

Particulars of Damage

- (1) Loss of the difference between the usual full value of the orders placed by the 3rd Defendants with the Plaintiffs from [date] to [date] and the discounted amounts involved, the difference being [amount] of the total orders, a loss which amounts to [amount];
- (2) [Other particulars of damage];
- (3) Each of the Defendants is severally liable to account to the Plaintiffs for the profits earned, or advantages gained, by them by reason of the said breaches.

Conspiracy to defraud¹⁶

18. Further, or in the alternative, in the premises, the facts and matters set out in paragraphs [number] to [number] hereof were overt acts on the part of the Defendants, pursuant to a conspiracy to defraud the Plaintiffs.
19. In addition to the facts and matters set out in paragraphs [number] to [number] hereof, the 1st, 2nd and 3rd Defendants, and employees of the 3rd Defendants, from in or about [date] to [date], approached employees of the Plaintiffs to leave the employment

16 For a discussion on the law relating to conspiracy, see Bullen & Leake and Jacob, *Precedents of Pleadings* (15th Ed) (Sweet & Maxwell, 2004), Vol 2 at pp 809–817 (Section 50: Conspiracy); pp 819–822 (Section 51: Inducing Breach of Contract and Unlawful Interference). See also generally *Faccenda Chicken Ltd v Fowler* [1985] All ER 724.

of the Plaintiffs and join the new business, namely the business of the 3rd Defendants.

From in or about [date] to [date], the 1st and 2nd Defendants unlawfully conspired to injure the Plaintiffs by:

- (1) Setting up the 3rd Defendants whilst still employees and/or directors of the Plaintiffs for the purpose of the 3rd Defendants carrying on a business with employees, the Confidential Information and other information of the Plaintiffs;
 - (2) [Other particulars].
20. By reason of the conspiracy to defraud, the Plaintiffs have suffered and continue to suffer loss and damage.

Particulars of damage

- (1) Loss of the difference between the usual full value of the orders placed by the 3rd Defendants with the Plaintiffs from [date] and [date] and the discounted amounts involved, the difference being [amount] of the total orders, a loss which amounts to [amount];
 - (2) [Other particulars of damage];
 - (3) Each of the Defendants is severally liable to account to the Plaintiffs for the profits earned, or advantages gained, by them by reason of the said breaches.
21. Notwithstanding that the Plaintiffs did by letter dated [date] to the 1st Defendant, when terminating his employment with the Plaintiffs, inform him that he should not use any information of the Plaintiffs which might in any way prejudice the interest of the Plaintiffs or contact employees of the Plaintiffs in any way which might derogate from their duties to the Plaintiffs or induce them to leave the employ of the Plaintiffs, the 1st Defendant, in concert with the 2nd Defendant, has continued to approach employees of the Plaintiffs, continued to cause the 3rd Defendants to employ employees of the Plaintiffs and continued to use Confidential Information to the detriment of the Plaintiffs.

AND the Plaintiffs claim:

- (1) An order that the 1st and 2nd Defendants and each of them, by themselves, their servants or agents or otherwise howsoever be restrained and an injunction be granted restraining each of them from:
 - (a) Disclosing, divulging, using or misusing, or otherwise making use of any Confidential Information acquired by them

either during the course of or after their respective periods of employment by the Plaintiffs; and

- (b) Soliciting orders from or otherwise dealing with any customer or agent of the Plaintiffs for the supply of services of the type sold by the Plaintiffs;
- (2) An order that the 3rd Defendants by themselves, their servants or agents or otherwise howsoever be restrained and an injunction be granted restraining them, their servants, agents and employees from:
[Acts to be restrained]
- (3) Against each of the Defendants, an inquiry as to damages for misuse of confidential information, breach of their respective contracts of employment, breach of fiduciary duties and conspiracy to defraud as particularised in paragraphs [number] hereof and/or an account of profits and payments of the sums found due and/or damages;
- (4) Against the 1st and 2nd Defendants, an inquiry as to damages for breach of Sections 156 and 157 of the Companies Act and/or an account of profits and payment of the sums found due;
- (5) Damages;
- (6) Interest on any sum awarded to the Plaintiffs at the rate prescribed in the Rules of the Supreme Court, or at such other rate as the Court deems fit;
- (7) Costs; and
- (8) Such further or other relief as this Honourable Court deems fit.

P13.10 Claim by employer for injunction restraining breach of non-competition clause¹⁷

[KhattarWong LLP]

1. The Plaintiffs are and were at all material times carrying on the business of [type of business] in Singapore.
2. By a letter of appointment dated [date] issued by the Plaintiffs which was duly accepted and executed by the Defendant on [date], the Defendant was employed by the Plaintiffs in the position of [designation].
3. Under Clause [number] of the said letter of appointment, the Defendant agreed that he would not without the Plaintiffs' prior written consent be employed or engaged by or otherwise assist in any business which is similar to or in competition with the Plaintiffs' business for a period of [number] months after the cessation of the Defendant's employment with the Plaintiffs ("the relevant clause").
4. The Defendant's employment with the Plaintiffs terminated on or about [date].
5. By the Plaintiffs' letter dated [date] to the Defendant, the Plaintiffs, *inter alia*, reminded the Defendant of the provisions of the relevant clause.
6. In breach of the relevant clause, the Defendant joined [ABC Co Pte Ltd ("ABC")] soon after leaving the Plaintiffs' employment and before the cessation of [number] months.
7. [ABC] is in the business of [type of business] and is in direct competition with the Plaintiffs.
8. By the Plaintiffs' solicitors letter dated [date] which was served on the Defendant personally, the Plaintiffs demanded that the Defendant resign from his employment with [ABC] with immediate effect, with proof of his resignation to be provided within seven days.
9. The Defendant failed to respond to the Plaintiffs' solicitors' letter. To date, the Defendant is still under the employment of [ABC].

AND the Plaintiffs claim:

- (1) An injunction restraining the Defendant from acting in breach of the terms of his employment with the Plaintiffs;
- (2) Costs; and
- (3) Such other relief as this Honourable Court may deem just.

¹⁷ See P13.26 and P13.27.

P13.11 Claim by employer for injunction restraining breach of non-competition clause and wrongful inducement of breach of contract¹⁸

[KhattarWong LLP]

1. The Plaintiffs are and were at all material times carrying on the business of [type of business] in Singapore.
2. The 1st Defendant is a former employee of the Plaintiffs.
3. The 2nd Defendant is a company incorporated in Singapore carrying on the business of [type of business] and is one of the Plaintiffs' main competitors.
4. By the contract of employment dated [date] made by the Plaintiffs and the 1st Defendant, the Defendant was employed by the Plaintiffs in the position of [designation].
5. Under Clause [number] of the said letter of appointment, the 1st Defendant agreed that he would not without the Plaintiffs' prior written consent be employed or engaged by or otherwise assist in any business which is similar to in competition with the Plaintiffs' business for a period of [number] months after the cessation of the Defendant's employment with the Plaintiffs ("the non-competition clause").
6. The Defendant's employment with the Plaintiffs terminated on or about [date].
7. By the Plaintiffs' letter dated [date] to the Defendant, the Plaintiffs, *inter alia*, reminded the 1st Defendant of the provisions of the non-competition clause.
8. By the Plaintiffs' letter dated [date] to the 2nd Defendant, the Plaintiffs informed the 2nd Defendant of the provisions of the non-competition clause and gave them notice that the 1st Defendant would breach his contractual obligation to the Plaintiffs if he were to become an employee of the 2nd Defendant prior to [date].
9. Despite having knowledge of the terms of the non-competition clause which had been brought to their attention as aforesaid, the 2nd Defendant wrongfully induced the 1st Defendant to breach the contractual obligations owed by the 1st Defendant to the Plaintiffs pursuant to the non-competition clause by entering into a contract of employment with the 2nd Defendant on or about [date].

¹⁸ See P13.26 and P13.27.

10. In breach of his obligations under the non-competition clause, the 1st Defendant has without the Plaintiffs' consent been employed and/or engaged by or has otherwise assisted the 2nd Defendant in their business since about [date]. As a consequence of the 1st Defendant's aforesaid breaches of contract and the 2nd Defendant's unlawful conduct of inducing the 1st Defendant to breach his contractual obligations to the Plaintiffs, the Plaintiffs have suffered loss and damage.

AND the Plaintiffs claim:

- (1) An injunction restraining the 1st Defendant from acting in breach of the terms of his employment with the Plaintiffs;
- (2) An injunction restraining the 2nd Defendant from continuing to employ the 1st Defendant in breach of the terms of his employment with the Plaintiffs;
- (3) Damages; and
- (4) Such other relief as this Honourable Court may deem just.

P13.12 Defence by employer to claim for non-payment of salary¹⁹

[KhattarWong LLP]

1. Paragraph 1 of the Statement of Claim is admitted. The Defendants also aver that the Defendants were at all material times, engaged in the business of [type of business]. For ease of reference, the Defendants adopt the nomenclature of the Plaintiff in the Statement of Claim.
2. Save that the Defendants deny that under the heading “Monthly Pay” in Annex A of the Service Agreement, the Plaintiff was to be paid a monthly salary of S\$[amount] for the period commencing [date], paragraph 2 of the Statement of Claim is admitted to the extent that it accurately quotes the terms of the Service Agreement. The Defendants aver that the Service Agreement also contained, *inter alia*, the following express terms:

[Relevant express terms, for example:

(1) APPOINTMENT

The Employee is hereby appointed to work for the Defendants in the position of [designation].]

The Defendants shall refer to and rely on the Service Agreement at the hearing of the trial or other hearing of this matter for its full terms and effect.

3. Paragraph 3 of the Statement of Claim is denied. The Defendants aver that under the terms of the Service Agreement, the Defendants are not required to pay to the Plaintiff the sum of S\$[amount] per month for any of the months during the Plaintiff’s employment, including the months of [months]. The Defendants further plead as follows:
 - (1) Pursuant to Annex A of the Service Agreement, the payment of S\$[amount] from [date] was to be made after the Plaintiff completed [the Project].
 - (2) In the event that [the Project] has not been successfully completed, the Plaintiff would not be paid the salary of S\$[amount] a month, but would continue to be paid the salary of S\$[amount] per month pursuant to Clause [number] of the Service Agreement.

¹⁹ See P13.01 and P13.28.

- (3) At no time during the period in which the Plaintiff was employed, was [the Project] completed. The Defendants had also informed the Plaintiff several times during the course of the Plaintiff's employment, that [the Project] was on going but was not completed and is currently still on going.
- (4) In the premises, the Plaintiff is not entitled to the payment of a monthly salary of S\$[amount].
4. Save that the sum of S\$[amount], being the expenses reasonably incurred by the Plaintiff in the discharge of his duties during the course of his employment was not paid to the Plaintiff, paragraph 4 of the Statement of Claim is denied.
5. Paragraph 5 of the Statement of Claim is admitted.
6. Paragraph 6 of the Statement of Claim is denied. The Defendants aver that based on the terms of the Service Agreement, only the total sum of S\$[amount] is due to the Plaintiff, the particulars of which are set out below:

Particulars

[Particulars]

7. Save that the Plaintiff did, send to the Defendants by AR registered and ordinary post, a solicitor's letter dated [date] in which the Plaintiff demanded payment of the sum of S\$[amount] within [7] days and that the Defendants have not made payment of the said sum of S\$[amount], paragraph 7 of the Statement of Claim is denied. The Defendants aver that the Defendants are not obliged either by the terms of the Service Agreement or otherwise, to pay to the Plaintiff the said sum of S\$[amount] and repeat paragraph 6 herein.
8. The Defendants expressly reserve the right to revise their quantification of the salary payable to the Plaintiff as may be necessary.
9. Save as hereinbefore expressly admitted, the Defendants deny the matters set out in the Statement of Claim as if the same were set out seriatim and specifically traversed.

Counterclaim

10. The Defendants repeat paragraphs 1 to 9 herein.
11. In order to induce the Defendants to contract with the Plaintiff under and according to the terms of the Service Agreement, the Plaintiff represented to the Defendants that:

- (1) The Plaintiff was an employee of [ABC Ltd] (“ABC”);
 - (2) The Plaintiff held an executive appointment in ABC;
 - (3) The Plaintiff was directly responsible for the successful project roll out of the ABC project known as “ABC XYZ”; and
 - (4) As an employee of ABC, the Plaintiff was paid a salary of more than the equivalent of S\$[amount] in [pounds sterling].
12. The said representations were made by and are to be inferred from oral statements made by the Plaintiff between [date] to [date] to the Defendants’ Chief Executive Officer [Mr. DEF] during a job interview, and to [Mr. HIJ] who was also a director, and shareholder of the Defendants, both on separate occasions. The representation by the Plaintiff that the Plaintiff was an employee of ABC is also made by and is to be inferred from written statements in the Plaintiff’s Curriculum Vitae attached to an e-mail from the Plaintiff to the Defendants on or about [date] at [time] a.m. in which, the Defendants aver, the Plaintiff stated that he was an employee of ABC, or alternatively, gave the Defendants the impression that he was working in ABC.
13. Acting on the faith and truth of the said representations, the Defendants were induced to enter into the Service Agreement with the Plaintiff on the terms stated therein because of the following reasons:
- (1) The Defendants specifically intended to employ a former ABC employee as the Chief Operating Officer (“COO”) of the Defendants because the Defendants needed the COO to spearhead marketing and the business development in [Europe] and thus required an individual with the relevant high level industry/business contacts in [Europe], which only an employee holding an executive appointment would likely have;
 - (2) In the Defendants’ view at the material time, a former employee would have a significantly higher standing in the network operator business community than an individual who had been contracted by ABC; and
 - (3) In the Defendants’ view at the material time, a former employee would have the relevant area of knowledge and experience which an individual who had been contracted to work on just a particular project would not have.

14. The Defendants have since discovered and the fact is that each of the said representations was untrue in that:
 - (1) The Plaintiff was not an employee of ABC but had only been contracted to assist ABC in an ABC project, "ABC XYZ";
 - (2) The Plaintiff did not hold an executive appointment in ABC but was only the [Project Manager or Technical Co-ordinator] in the ABC project "ABC XYZ";
 - (3) The Plaintiff was not directly responsible for the successful project roll out of the ABC project known as "ABC XYZ" but was merely one of the individuals who assisted in the said project; and
 - (4) The Plaintiff was not paid a salary of more than the equivalent of S\$[amount] in [pounds sterling].
15. The Plaintiff made the said representations fraudulently and either knowing that they were false and untrue or recklessly not caring if they were false or true. The Defendants aver that:
 - (1) The Plaintiff, at the time at which he made the representations pleaded in paragraph 14 herein, knew or ought to have known of their untruth;
 - (2) The Plaintiff, deliberately and/or wilfully misrepresented the truth when he wilfully misrepresented facts, as pleaded in paragraph 14 herein and in the premises, such deliberate misrepresentation on his part was fraudulent and/or dishonest and/or deceitful;
 - (3) In the premises, the Plaintiff had acted with an intention to defraud and/or with dishonest intention in that, *inter alia*, the Plaintiff was aware or ought to have been aware, at all material times, that the Defendants had intended an individual with the necessary high level industry/business contacts in [Europe] and/or [the United Kingdom] and/or that the Defendants would be induced to contract with the Plaintiff if they believed that he would add commercial value, which he would not be able to do if he were not an employee of ABC and lacked the necessary expertise.
 - (4) The Defendants further aver that the Plaintiff knew or ought to have known that by representing that he was receiving a salary higher than the equivalent of S\$[amount] in [pounds sterling], that the Defendants would be induced to pay him

the sum not substantially below the sum of S\$[amount] and accordingly, had and/or was activated by fraudulent intention.

16. Further or alternatively, if the said representations were not made fraudulently, the Defendants will rely on the provisions of Section 2 of the Misrepresentation Act as entitling him to, in the premises, the relief claimed herein.
17. By reason of the matters aforesaid, the Defendants have suffered loss and damage, the particulars of which are, *inter alia*, as follows:

Particulars

[Particulars, for example:

- (1) The Defendants have made payment of the sum of S\$[amount] as salaries to the Plaintiff for the months of [date].]

AND the Defendants counterclaim against the Plaintiff:

- (1) Damages to be assessed;
- (2) Interest pursuant to Section 12 of the Civil Law Act;
- (3) Costs; and
- (4) Such further or other relief as this Honourable Court deems fit.

P13.13 Defence by employer to claim for non-payment of bonus²⁰

[KhattarWong LLP]

1. Paragraphs 1 and 2 of the Statement of Claim are admitted.
2. The Defendants deny that there was an agreement to pay the Plaintiff variable salary in the form of a bonus payable in accordance with company policy. Save as aforesaid, paragraph 3 of the Statement of Claim is admitted.
3. With respect to paragraph 4 of the Statement of Claim, the Defendants say that it was their practice to declare a bonus each year in their sole discretion, but they had no obligation to do so.
4. Paragraph 5 of the Statement of Claim is admitted.
5. The Defendants admit that they had in their discretion declared a bonus for the year [year], which was payable under their company policy to all employees who had not resigned at the time the bonus was declared and who remained employees at the time of payment.
6. Paragraph 7 of the Statement of Claim is admitted. The Defendants say however that no bonus was payable to the Plaintiff as he had resigned before bonus for the year [year] was declared. The Defendants say further that under the Agreement the Plaintiff was not entitled to be paid salary in lieu of leave not taken.
7. The Defendants admit receiving the notice mentioned in paragraph 8 of the Statement of Claim.
8. With respect to paragraph 9 of the Statement of Claim, the Defendants reiterate that they have no obligation to pay the Plaintiff the sum claimed or any part thereof.
9. Save as expressly admitted above, the Defendants deny each and every allegation of the Statement of Claim as if each were expressly set out and specifically traversed.

²⁰ See P13.02.

P13.14 Defence by employer to claim for wrongful dismissal²¹

[KhattarWong LLP]

1. The Defendants admit paragraphs 1 to 3 of the Statement of Claim.
2. Paragraph 4 of the Statement of Claim is denied.
3. It was an implied condition of the Plaintiff's employment that he would during his employment act honestly and in the Defendants' interest.
4. On or about [date], the Defendants discovered that the Plaintiff was guilty of misconduct inconsistent with the above implied conditions of his employment.

Particulars

[Particulars]

5. By reason of the Plaintiff's above conduct, the Defendants were entitled to dismiss the Plaintiff without notice.
6. By a letter dated [date], the Defendants notified the Plaintiff that he had been dismissed with immediate effect on the ground of misconduct inconsistent with the above implied condition of his service.
7. In all the above circumstances, the Defendants deny liability for the Plaintiff's claim.
8. Save as is expressly admitted herein, the Defendants deny each and every allegation in the Statement of Claim as if the same were set forth separately and expressly denied.

²¹ See P13.03 and P13.29.

P13.15 Defence by employer to claim for wrongful dismissal (failure to report to work)²²

[KhattarWong LLP]

1. Paragraphs 1, 2 and 3 of the Statement of Claim are admitted.
2. Save that the Defendants terminated the Plaintiff's services with immediate effect by way of a letter to the Plaintiff dated [date], paragraph 4 of the Statement of Claim is denied.
3. Pursuant to Clause [number] of the Contract of Employment dated [date] made between the Plaintiff and the Defendants ("Contract of Employment"), the Defendants were entitled to summarily dismiss the Plaintiff if the Plaintiff had been continuously absent from work for more than 3 days without prior leave of absence being granted by the Defendants or without reasonable excuse.
4. In breach of Clause [number] of the Contract of Employment, the Plaintiff failed to report from work from [date] to [date] without any prior leave of absence from the Defendants and/or without reasonable excuse.
5. In consequence of the Plaintiff's said breach, the Defendants terminated the Plaintiff's employment as aforesaid on [date].
6. Paragraph 5 of the Statement of Claim is denied and the Plaintiff is put to strict proof thereof.
7. In the premises, the Defendants deny that they are liable to the Plaintiff as alleged or at all.
8. Save as is hereinbefore expressly admitted, the Defendants deny each and every allegation contained in the Statement of Claim as if the same were set forth seriatim and specifically traversed.

²² See P13.03 and P13.29.

P13.16 Defence by employer to claim for wrongful dismissal (misconduct)²³

[KhattarWong LLP]

1. Paragraphs 1, 2 and 3 of the Statement of Claim are admitted.
2. Save that the Defendants terminated the Plaintiff's services with immediate effect by way of a letter to the Plaintiff dated [date], paragraph 4 of the Statement of Claim is denied.
3. It was an implied term of the Employment Contract that the Plaintiff would carry out his duties as employee with due care and would at all material times act in the Defendant's interest.
4. Pursuant to Clause [number] of the Employment Contract dated [date], the Defendants were entitled to summarily dismiss the Plaintiff if the Plaintiff had been guilty of any serious negligence and/or gross misconduct in the carrying out of his duties as employee.
5. In breach of the abovementioned implied term of his Employment Contract, the Plaintiff was guilty of serious negligence and/or gross misconduct in the carrying out of his duties as employee.

Particulars

[Particulars]

6. In consequence of the Plaintiff's said conduct, the Defendants terminated the Plaintiff's employment as aforesaid on [date].
7. Paragraph 5 of the Statement of Claim is denied and the Plaintiff is put to strict proof thereof.
8. In the premises, the Defendants deny that they are liable to the Plaintiff as alleged or at all.
9. Save as is hereinbefore expressly admitted, the Defendants deny each and every allegation contained in the Statement of Claim as if the same were set forth seriatim and specifically traversed.

Counterclaim

10. The Defendant repeats paragraphs 3 to 5 of the Defence.
11. As a consequence of the Plaintiff's aforesaid negligence and misconduct, the Defendants have incurred expenses and suffered loss and damages.

²³ See P13.03 and P13.29.

Particulars

[Particulars]

AND the Defendants counterclaim:

- (1) The sum of S\$[amount];
- (2) Damages to be assessed;
- (3) Costs; and
- (4) Such other relief as this Honourable Court may deem just.

P13.17 Defence by employer to claim for salary and damages pursuant to wrongful dismissal²⁴

[KhattarWong LLP]

1. It is admitted that the Plaintiff was at one time employed with A Co Ltd. Save as aforesaid, paragraph 1 of the Statement of Claim is not admitted.
2. It is admitted that on or about [date], the Plaintiff was employed by B Co Pte Ltd in place of A Co Ltd, as B Co Pte Ltd's Southeast Asian Area Representative.
3. It is denied that the agreement relating to the Plaintiff's employment with B Co Pte Ltd was contained in or evidenced in writing by the said Memorandum. The said Memorandum set out general terms and conditions of potential employment with BP Co Pte Ltd. These were expressly stated to be subject to the approval of BP Co Pte Ltd, and it was further stated in the Memorandum that the Plaintiff was to be officially notified by BP Co Pte Ltd of the conditions once the company was under way.
4. The benefits that the Plaintiff were to get under his employment with B Co Pte Ltd were as set out in a telex from B Co Pte Ltd to the Plaintiff dated [date] namely:
 - (1) Bachelor's accommodation and utilities to be provided by B Co Pte Ltd;
 - (2) Medical insurance to be provided by B Co Pte Ltd;
 - (3) Vehicle to be provided by B Co Pte Ltd;
 - (4) Tax allowance equivalent to Singapore tax liability to be paid from Hong Kong;
 - (5) Business travel at company expense;
 - (6) Central Provident Fund ("CPF") contributions in accordance with statutory requirements

In addition, his leave entitlements were transferred from A Co Ltd to B Co Pte Ltd, as confirmed by telex from B Co Pte Ltd. Save as aforesaid, paragraph 2 of the Statement of Claim is not admitted.

5. It is admitted that B Co Pte Ltd has been dissolved pursuant to a member's voluntary winding-up. It is further admitted that the Plaintiff was employed by the Defendants in place of B Co Pte Ltd. It is denied that the terms of the Plaintiff's employment with

²⁴ See P13.04.

the Defendants are as set out in the Memorandum as revised by subsequent correspondence between the parties. It is admitted that the Plaintiff was employed with B Co Pte Ltd, save that there was to be no separate payment of a cost of living allowance, and no payments by the Defendants via Hong Kong.

6. From the documents supplied by the Plaintiff's solicitors in response to a request from the Defendants' solicitors, following a Notice to Produce, the "subsequent correspondence" referred to in paragraph 3 of the Statement of Claim comprises two letters to the Plaintiff from the Defendants' Managing Director, dated [date] and [date], and captioned "Annual Review of Salary". The letter dated [date] stated that the Plaintiff's "adjusted monthly rate" was S\$[amount] with effect from [date]. The letter dated [date] stated that the Plaintiff would have a monthly salary structure comprising basic salary of S\$[amount] and bonus of S\$[amount]. Save as aforesaid, paragraph 3 of the Statement of Claim is not admitted.
7. With reference to sub-paragraphs under paragraph 4 of the Statement of Claim, the Defendants plead as follows:
 - (1) Basic monthly salary – with effect from [date], the Plaintiff's basic monthly salary was S\$[amount] and not S\$[amount]. The Plaintiff would also be paid CPF contributions in accordance with statutory requirements;
 - (2) Company car – the Plaintiff did have the use of a company car;
 - (3) Monthly rental allowance – there was no separate payment of a monthly rental allowance. The Defendants provided paid accommodation, most recently at [address] pursuant to a monthly tenancy made on [date] at a rental of S\$[amount] per month;
 - (4) Medical and life insurance coverage – only medical insurance coverage was provided. The Defendants were not required to provide life insurance coverage;
 - (5) Reimbursement of expenses – in accordance with the Defendants' policy, they would reimburse expenses that had been incurred for their benefit, which had their prior approval, and which were duly authenticated;
 - (6) Pay in lieu of accumulated annual leave – this was not a term of the Plaintiff's employment.
8. With reference to paragraph 5 of the Statement of Claim, it is admitted that the notice required to determine the Plaintiff's

employment should be reasonable notice. Reasonable notice, in the circumstances, is one month's notice. In paragraph 6 of the Statement of Claim, the Plaintiff has admitted receiving one month's notice.

9. At meetings in [place] on [date], the Plaintiff was orally informed by the Defendants' representative [name] that his employment would be terminated at the end of [month]. The Plaintiff thus had more than three months' notice of termination. The Defendants' Managing Director's letter to the Plaintiff dated [date] confirmed in writing the decision to terminate the Plaintiff's employment.
10. With reference to paragraph 6 of the Statement of Claim, in [month], the Plaintiff voluntarily vacated the premises provided for him as accommodation, and returned the company car.
11. It is denied that the Plaintiff has suffered loss and damage as alleged in paragraph 7 of the Statement of Claim or at all. The Plaintiff has been given reasonable notice of termination, and received his contractual entitlements up to his last day of service, i.e., [date].
12. If, which is denied, the Plaintiff did not receive reasonable notice of termination, any damages payable should be calculated based on the notice given on [date], as pleaded in paragraph 9 above. Further, the Defendants plead with reference to the subparagraphs under paragraph 7 of the Statement of Claim in the following paragraphs.
13. Loss of basic monthly salary (paragraph 7(1) of the Statement of Claim):
 - (1) The Plaintiff's claim is only for basic monthly salary, which was S\$[amount];
 - (2) An additional sum of S\$[amount] was stated in the Defendants' Managing Director's letter dated [date] as "bonus". A bonus is inherently a discretionary payment on the part of the employer, and is not a contractual entitlement;
 - (3) The said Memorandum (which is relied upon by the Plaintiff) itself states "It will be the policy to issue bonuses from each profit centre to senior staff based on 10% of the pre-tax profit." In [year], the Defendants only made a profit of [amount] before taxation, and a loss of [amount] after taxation. On the basis of the said Memorandum the policy would be for [amount] per cent of the pre-tax profit, i.e., [amount] to be shared amongst the Defendants' senior staff. For [year], the company made a

loss both before and after taxation. Whether on the basis of the said Memorandum or otherwise the Plaintiff cannot justify receiving a monthly bonus of [amount];

- (4) The Defendants seek credit or reimbursement (as the case may be) of amounts overpaid to the Plaintiff as bonus and CPF contributions thereon.
14. Loss of employer's CPF contributions (paragraph 7(2) of the Statement of Claim) – whether the Plaintiff's basic monthly salary was S\$[amount] or S\$[amount], employer's contribution would be S\$[amount], in accordance with statutory requirements, and not S\$[amount] as claimed. The Defendants seek credit or reimbursement (as the case may be) of excessive CPF contributions paid.
15. Loss of monthly rental allowance (paragraph 7(3) of the Statement of Claim) – no rental allowance was given. Instead, the company paid accommodation, which was vacated voluntarily by the Plaintiff in [month].
16. Loss of use of company car (paragraph 7(4) of the Statement of Claim) – the company car was voluntarily returned by the Plaintiff in [month]. The Defendants put the Plaintiff to strict proof of the sum of S\$[amount] a month claimed as the cost of renting an equivalent car.
17. Loss of life insurance coverage and full private medical costs (paragraph 7(5) of the Statement of Claim) – the Plaintiff was not entitled to be provided with life insurance coverage. The Defendants put the Plaintiff to strict proof of his private medical costs for the period claimed.
18. Business expenses incurred (paragraph 7(6) of the Statement of Claim) – in the Plaintiff's solicitors' letter dated [date], only the sum of S\$[amount] was claimed as reimbursement of expenses. The Defendants put the Plaintiff to strict proof of the sum of S\$[amount] now claimed in the Statement of Claim, and of the fact that prior approval for these expenses had been given by the Defendants.
19. Reimbursement of removal costs (paragraph 7(7) of the Statement of Claim):
 - (1) This is not a contractual benefit. The Plaintiff himself has not pleaded it in paragraph 4 of the Statement of Claim as a term of his contract of employment;

- (2) The incurring of removal costs does not depend on whether the Plaintiff's contract was terminated with, or without, reasonable notice;
 - (3) The Defendants put the Plaintiff to strict proof of the amount claimed.
20. Salary in lieu of accrued annual leave (paragraph 7(8) of the Statement of Claim):
 - (1) This is not a contractual benefit. The Plaintiff himself has not pleaded it in paragraph 4 of the Statement of Claim as a term of his contract of employment;
 - (2) The Defendants put the Plaintiff to strict proof that he had accumulated [number] days of annual leave;
 - (3) On [date], a cheque for the sum of S\$[amount] was given to the Plaintiff, and the Plaintiff presented the cheque for payment. The sum of S\$[amount] included the sum of S\$[amount] being pay in lieu of [number] days unused leave. The Plaintiff's conduct is an admission that he had not accumulated any more than [number] days unused leave, which was his yearly entitlement;
 - (4) The Plaintiff has received S\$[amount], paid via Hong Kong, on account of accrued annual leave. The Defendants seek credit or reimbursement (as the case may be) for this payment.
21. With reference to paragraph 8 of the Statement of Claim, the Defendants say that they had paid the sum of S\$[amount] as employee's CPF contribution for the month of [month]. The balance of the Plaintiff's salary for the month of [month] was paid to the Inland Revenue Authority of Singapore ("IRAS") pursuant to a direction dated [date]. By the said deduction, the IRAS directed the Defendants to remit the sum of S\$[amount] on account of the Plaintiff's tax liability. This sum was duly paid to the IRAS by the Defendants on or about [date]. The Plaintiff has thus effectively been paid his net salary of S\$[amount] for [month], and the sum of S\$[amount] over and above it. The Defendants seek credit repayment (as the case may be) for the sum of S\$[amount].
22. In [year], the Defendants paid into the Plaintiff's CPF account the sum of S\$[amount] on account of the basic salary of S\$[amount], bonus of S\$[amount] and [number] days accrued annual leave. Only S\$[amount] has to be paid as combined employee's and employers' contribution. The Defendants seek credit or repayment (as the case may be) of the excess CPF contribution of S\$[amount].

23. The Defendants have reimbursed [name] the sum of S\$[amount] being an advance taken by the Plaintiff from [name] in [date]. The Defendants seek credit or repayment (as the case may be) for this sum.
24. The Defendants have also made advances to the Plaintiff totalling S\$[amount] which the Plaintiff has not repaid. The Defendants seek credit or repayment (as the case may be) for this sum.
25. Further, the Plaintiff has received payment via Shanghai of [amount] a month from funds belonging to the company. Such payments are unjustifiable. The Defendants will rely on the Plaintiff's solicitors' letter dated [date] as an admission that the sum of [amount] a month was being paid to the Plaintiff via Shanghai. The Plaintiff has not claimed the sum of [amount] a month in the Statement of Claim (despite having demanded payment through his solicitors). This will be relied on as an admission that the Plaintiff is not entitled to such payments.
26. Save as hereinbefore specifically admitted, the Defendants deny each and every allegation contained in the Statement of Claim as though the same were herein set out and traversed seriatim.
27. The Defendants have the following counterclaim which they will seek to use by way of abatement or set-off to extinguish or diminish the Plaintiff's claim.

Counterclaim

28. The Defendants repeat their Defence herein.
29. Payments have been made by the Defendants or out of their funds, to the Plaintiff or for his benefit, which exceed the Plaintiff's contractual entitlements. The Defendants seek repayment of the excess.

AND the Defendants counterclaim:

- (1) An account of the sums paid from the Defendants' funds to the Plaintiff's CPF account, and an inquiry into the amount by which the Defendants' share of contributions to the Plaintiff's CPF account exceeded the requirements of the Central Provident Fund Act;
- (2) An account and inquiry into all sums received by the Plaintiff in account of bonus and accrued leave;
- (3) An account and inquiry into all sums received by the Plaintiff from the Defendants' funds, which were paid to the Plaintiff via Shanghai, or otherwise outside Singapore;

- (4) An account and inquiry into all sums paid to the Plaintiff or for his benefit, by the Defendants or from their funds, which exceed the Plaintiff's entitlements under his contract of employment with the Defendants;
- (5) An order that the Plaintiff repay the Defendants the excess payment found upon the said accounts and inquiries;
- (6) Interest on such sums, at such rate, and for such period as the Court thinks fit, pursuant to Section 9 of the Civil Law Act; and
- (7) An indemnity in respect of any liability which the Defendants may come under, whether to the IRAS, the CPF Board or otherwise howsoever, by reason of the Plaintiff's acts or omissions in relation to the salary, bonus, CPF contributions and other payments made to him or for his benefit.

P13.18 Defence to claim for retrenchment benefits²⁵

[KhattarWong LLP]

1. Paragraphs 1 to 7 of the Statement of Claim are admitted.
2. With respect to paragraph 8 of the Statement of Claim, the Defendants say that they had properly terminated the Plaintiff's employment contract with immediate effect on the ground of his gross misconduct, particulars of which are as follows:
 - (1) Paragraphs 9, 10 and 11 of the Statement of Claim are denied.
 - (2) Save as is expressly admitted above, the Defendants deny each and every allegation in the Statement of Claim.

²⁵ See P13.05.

P13.19 Defence to claim for damages for injuries sustained in the course of employment²⁶

[KhattarWong LLP]

1. Paragraph 1 of the Statement of Claim is denied and the Plaintiff is put to strict proof. The Defendants say that the Plaintiff was not present at the alleged location, namely at the Restaurant known as [name] (“the Restaurant”) at the alleged time, namely at about [time].
2. Paragraphs 2 to 5 of the Statement of Claim are admitted.
3. Paragraphs 6 and 7 of the Statement of Claim are denied and the Plaintiff is put to strict proof. The Defendants say that there was no such accident as alleged or at all.
4. Even if there was such an accident (which is denied) the Defendants say that the alleged accident was caused solely and/or contributed to by the negligence of the Plaintiff.

Particulars of negligence of the Plaintiff

- (1) Failing to take any or reasonable care of his own well-being in all the circumstances;
 - (2) Failing to clean the floor of the Restaurant and to ensure that the floor was dry and not slippery;
 - (3) Failing to ensure that the floor of the Restaurant was clean, dry and not slippery before he commenced the work of moving cartons of drinks;
 - (4) Failing to pay adequate attention to his surroundings thereby failing to prevent the said accident from occurring;
 - (5) Failing to take evasive action or otherwise to avoid the said accident;
 - (6) Exposing himself to risk of injury; and
 - (7) Failing to observe the work conditions in or around the vicinity so as to deal with the ordinary exigencies of work.
5. The above are the best particulars that the Defendants can give herewith until after discovery and/or interrogatories.
 6. Further and/or in the alternative, even if there was such an accident (which is denied) the Defendant avers that the Plaintiff was acting outside the scope of his employment with the Defendants.

²⁶ See P13.06.

7. The said injuries, loss and damages and the causation thereto as pleaded in Paragraph 10 of the Statement of Claim are denied and the Plaintiff is put to strict proof thereof.
8. Save as in hereinbefore expressly admitted, the Defendants deny each and every allegation contained in the Statement of Claim as if the same were set forth seriatim and specifically traversed.

P13.20 Defence to claim for breach of confidence – defence of first defendant²⁷

[KhattarWong LLP]

1. Paragraphs 1 to 5 of the Statement of Claim are admitted.
2. Paragraph 6 of the Statement of Claim is denied. The 1st Defendant says further that he had worked for the Plaintiff for 15 years and that in the course of his said employment he acquired knowledge of identities of all the Plaintiffs' major customers and was well acquainted with and had dealt with all the Plaintiffs' major customers.
3. The 1st Defendant has no knowledge as to paragraph 7 of the Statement of Claim.
4. Paragraph 8 of the Statement of Claim is admitted.
5. With respect to paragraph 9 of the Statement of Claim, the 1st Defendant says that he has been acquainted with the customers and dealt with the customers specified in paragraph 9 for many years and was fully entitled to approach the said customers after the termination of his employment with the 1st Defendant. Save as expressly admitted herein, the 1st Defendant denies paragraph 9 of the Statement of Claim.
6. Paragraph 10 of the Statement of Claim is denied.
7. Save as has been expressly admitted herein, the Defendant denies each and every allegation in the Statement of Claim as if the same were set forth herein and separately denied.

²⁷ See P13.07.

P13.21 Defence to claim for breach of confidence – defence of second defendant²⁸

[KhattarWong LLP]

1. The 2nd Defendant admits paragraphs 1, 2 and 5 of the Statement of Claim.
2. The 2nd Defendant has no knowledge of and makes no admission with respect to paragraphs 3 and 4 of the Statement of Claim.
3. Paragraphs 6 and 7 of the Statement of Claim are denied.
4. Paragraph 8 of the Statement of Claim is admitted.
5. Paragraphs 9 and 10 of the Statement of Claim are denied.
6. Save as has been expressly admitted herein, the 2nd Defendant denies each and every allegation in the Statement of Claim as if the same were set forth herein and separately denied.

²⁸ See P13.07.

P13.22 Defence to claim for breach of confidence – defence of first defendant²⁹

[KhattarWong LLP]

1. Paragraph 1 of the Statement of Claim is not admitted.
2. Save that the Plaintiffs were the 1st Defendant's previous employers, paragraph 2 of the Statement of Claim is not admitted and the Plaintiffs are put to strict proof thereof.
3. The 2nd Defendants are the 1st Defendant's current employers.
4. Paragraphs 3 and 5 of the Statement of Claim are admitted.
5. Save that the Plaintiffs and the 2nd Defendants are in the same industry and that the 3rd Defendant are wholly-owned by the 2nd Defendants, paragraph 4 of the Statement of Claim is not admitted and the Plaintiffs are put to strict proof thereof.
6. Save that while in the Plaintiffs' employ, the 1st Defendant had access to Plaintiffs' Customer List and Database ("the CLD") system and that the 1st Defendant was involved in the conceptualisation of the CLD during the early stages of development, paragraph 6 of the Statement of Claim is not admitted and the Plaintiffs are put to strict proof thereof.
7. Paragraph 7 of the Statement of Claim is denied. At all material times the 1st Defendant's office e-mail was [e-mail address]. On or about [date], the 1st Defendant had asked [Mr. ABC] ("Mr. ABC") to e-mail a copy of a demonstration file to him at [e-mail address]. The requested demonstration file contained dummy information and did not contain any confidential information. Furthermore, the 1st Defendant did not ask [Mr. ABC] to send confidential information nor did the 1st Defendant tell [Mr. ABC] to delete his message from his sent box.
8. To date the Defendants have not received a copy of the Plaintiffs' CLD system or any confidential software, data or information from the Plaintiffs, their employees or otherwise.
9. On [date] at about [time] p.m., the 2nd Defendants' sales director [Mr. DEF] ("Mr. DEF") telephoned the 1st Defendant. [Mr. DEF] had asked the 1st Defendant whether any of the Plaintiffs' employees had sent the 1st Defendant anything by e-mail.

²⁹ See P13.08.

10. The 1st Defendant informed [Mr. DEF] that he had contacted a former colleague from the Plaintiffs for a demonstration file, but confirmed that he had not received any e-mails from the former colleague or the Plaintiffs.
11. [Mr. DEF] told the 1st Defendant not to access his office e-mail until further notice from him and the 1st Defendant complied.
12. On [date], the 2nd Defendants' Vice-President, [Mr. HIJ] gave the Plaintiffs' [Mr. MNO] a verbal assurance that the Defendants did not receive any e-mail from the Plaintiffs.
13. The next morning ([date]) at the 2nd Defendants' office, [Mr. DEF] and the 2nd Defendants' Senior System Analyst, [Mr. STU], checked the 2nd Defendants' computer e-mail server and confirmed that the Defendants did not receive any e-mails from the Plaintiffs.
14. Shortly thereafter, [Mr. DEF] instructed the 1st Defendant to access his office e-mail in his presence and in the presence of [Mr. STU] at the 1st and 2nd Defendants' office. There were no e-mails from the Plaintiffs to the 1st Defendant.
15. [Mr. DEF] had also checked the 1st Defendant's office e-mail log for the day before ([date]). His check confirmed that the 1st Defendant did not access his office e-mail after receiving his telephone call the night before.
16. To date the Defendants have not received any confidential software, data or information from the Plaintiffs, their employees, by email or otherwise.
17. By reason aforesaid, the 1st Defendant has not breached his employment contract with the Plaintiffs, nor has he breached any confidence with the Plaintiffs or any equitable duties of fidelity to the Plaintiffs, or at all. The Plaintiffs have, therefore, not suffered loss and damage.
18. Paragraphs 8 to 20 of the Statement of Claim are denied. The Plaintiffs are put to strict proof of the Defendants' breaches, as well as the loss and damage the Plaintiffs have suffered.
19. Save as is expressly admitted above, the 1st Defendant denies each and every allegation contained in the Statement of Claim as if the same was set forth seriatim and specifically traversed.

P13.23 Defence to claim for breach of confidence – defence of second and third defendants³⁰

[KhattarWong LLP]

1. The 2nd and 3rd Defendants do not admit paragraphs 1, 2 and 3 of the Statement of Claim and make no comment thereon.
2. Save that the 2nd and 3rd Defendants are in the same business as the Plaintiffs and that the 3rd Defendants are wholly-owned by the 2nd Defendants, the 2nd and 3rd Defendants do not admit paragraph 4 of the Statement of Claim.
3. The 2nd and 3rd Defendants admit paragraph 5 of the Statement of Claim.
4. Save that the 2nd and 3rd Defendants knew that the 1st Defendant was a former employee of the Plaintiffs who had held the position of [designation] and that he had left the Plaintiffs' employ on or about [date], the 2nd and 3rd Defendants have no knowledge of the statements in paragraph 6 of the Statement of Claim and make no comment thereon.
5. The 2nd and 3rd Defendants deny paragraph 7 of the Statement of Claim. The 2nd and 3rd Defendants aver that the 1st Defendant only asked the Plaintiffs' employee, [Mr. ABC], to e-mail to him a copy of a demonstration file which only contained dummy information and did not contain any confidential information. Further, the 2nd and 3rd Defendants deny that the 1st Defendant had asked [Mr. ABC] to delete his record of the e-mail after it had been sent.
6. The 2nd and 3rd Defendants do not admit paragraph 8 of the Statement of Claim. However, the 2nd and 3rd Defendants aver that none of the e-mails allegedly sent by [Mr. ABC] was received either by the 2nd or 3rd Defendants, whether in their Lotus Notes server or otherwise.
7. The 2nd and 3rd Defendants do not admit paragraph 9 of the Statement of Claim. However, the 2nd and 3rd Defendants aver that on the evening of [13 November 2002] the Plaintiffs' [Mr. MNO] contacted the 2nd Defendants' Vice President and General Manager, [Mr. HIJ], and informed [Mr. HIJ] that the 1st Defendant had allegedly approached one of his former colleagues from the Plaintiffs and asked for some proprietary software belonging to the Plaintiffs containing confidential information and a customer

³⁰ See P13.08.

database. [Mr. MNO] also informed [Mr. HIJ] that the Plaintiffs' employee had tried to send the confidential information on [date] by an attachment to an e-mail but had failed to do so and that he then broke the file down into two separate files of smaller sizes and sent them to the 1st Defendant again. [Mr. HIJ] assured [Mr. MNO] that if the confidential information allegedly sent by the Plaintiffs' employee had been received by the 2nd or 3rd Defendants, they would delete the same and ensure that no copies were made.

8. Thereafter, at [Mr. HIJ's] direction, the 3rd Defendants' Sales Director, [Mr. DEF], immediately commenced an investigation into the Plaintiffs' allegation. [Mr. DEF] immediately contacted the 1st Defendant and after speaking to the 1st Defendant, [Mr. DEF] reported to [Mr. HIJ] that the 1st Defendant had said that although he had contacted one of his former colleagues at the Plaintiffs he had merely asked for a demonstration file or template and not the database and that he had not received any e-mails from the Plaintiffs on that day. [Mr. HIJ] then informed [Mr. MNO] that [Mr. DEF] had contacted the 1st Defendant who had confirmed that the e-mails allegedly sent by the Plaintiffs' employee had not been received by him and also that although the 1st Defendant did contact someone in the Plaintiffs he had only asked for a demonstration file or template which did not contain any customer information.
9. On the morning of the next day, [date], [Mr. DEF], with the assistance of the 2nd Defendants' Senior Systems Engineer, [Mr. STU], was able to confirm that no message from the Plaintiffs had been received in the 2nd Defendants' Lotus Notes server or the 1st Defendant's e-mail folder as at that time.
10. Thereafter, [Mr. DEF] contacted the Plaintiffs' [Mr. JKL] and informed him that the 2nd Defendants were conducting their investigation into the matter. [Mr. JKL] then informed [Mr. DEF] that the files were allegedly sent by the Plaintiffs' employee on [date] at [3.34 p.m. and 4.00 p.m.], they were both about [13MB] in size and that they were sent to the e-mail address [address]. [Mr. DEF] subsequently contacted [Mr. JKL] again later on the same morning to inform him that the e-mails allegedly sent by the Plaintiffs' employee had not been received by the 1st Defendant or by the 2nd and 3rd Defendants but [Mr. JKL] was not available. [Mr. DEF] left a message for [Mr. JKL] to return his call but [Mr. JKL] did not do so.
11. Despite the assurance given by [Mr. HIJ] on behalf of the 2nd and 3rd Defendants to the Plaintiffs on [date] that if the confidential

information allegedly sent by the Plaintiffs' employee had been received by the 2nd or 3rd Defendants they would delete the same and would ensure that no copies of the same were made, and the subsequent confirmation by the 2nd and 3rd Defendants that the confidential information allegedly sent by the Plaintiffs' employee had not been received by the Defendants, the Plaintiffs commenced the suit herein and obtained and served an injunction against each of the Defendants on [date].

12. The 2nd and 3rd Defendants aver that at all material times, the 1st Defendant's e-mail address was and is [address]. The 2nd and 3rd Defendants further aver that at all material times there was a maximum message size restriction of [5MB] on the 2nd and 3rd Defendants' internet e-mail gateway. Therefore, the e-mails with the attached files of [13MB] size allegedly sent by the Plaintiffs' employee to the e-mail address [address] on [date] could not have been received by the Defendants at all.
13. In view of paragraphs 6 to 10 above the 2nd and 3rd Defendants deny paragraphs 10, 11 and 12 of the Statement of Claim. In particular, the 2nd and 3rd Defendants deny that the 1st Defendant had procured, whether unlawfully or otherwise, any confidential information from the Plaintiffs. The 2nd and 3rd Defendants also deny that the 1st Defendant had made any disclosure of the Plaintiffs' confidential information to the 2nd or 3rd Defendants or that the 1st Defendant had supplied the 2nd or 3rd Defendants with the Plaintiffs' confidential information.
14. In view of paragraph 13 above, the 2nd and 3rd Defendants deny paragraphs 13 and 14 of the Statement of Claim.
15. In view of the foregoing, the 2nd and 3rd Defendants deny paragraph 16 of the Statement of Claim and put the Plaintiffs to strict proof of the loss and damage allegedly suffered.
16. Save that the 2nd and 3rd Defendants deny the allegation that the Plaintiffs' confidential information was obtained by the Defendants in soft copy format the 2nd and 3rd Defendants make no comment on paragraphs 17 and 18 of the Statement of Claim and put to the Plaintiffs to strict proof thereof.
17. The 2nd and 3rd Defendants deny paragraph 20 of the Statement of Claim. The 2nd and 3rd Defendants aver that the 2nd and 3rd Defendants had given their assurance to the Plaintiffs that they would delete the Plaintiffs' confidential information if they received it and had conducted an investigation which determined that the e-mails allegedly sent by the Plaintiffs' employee had not

been received by the Defendants. In view of the foregoing, the Plaintiffs had no reasonable grounds to and could not in good faith aver that the Defendants would threaten or had the intention to continue the acts complained of.

18. In the premises, the 2nd and 3rd Defendants deny that they are liable to the Plaintiffs for any of the remedies or reliefs claimed or at all.
19. Save as is hereinbefore expressly admitted above, the 2nd and 3rd Defendants hereby deny each and every allegation contained in the Statement of Claim as if the same was set forth seriatim and specifically traversed.

P13.24 Defence to claim for misuse of confidential information/breach of directors' duties/conspiracy to defraud – defence of first defendant³¹

[KhattarWong LLP]

1. Paragraph 1 of the Statement of Claim is admitted.
2. With respect to paragraph 2 of the Statement of Claim, the Defendants admit that the 1st Defendant was appointed a Director of the Plaintiffs on or about [date] and that his wife was a shareholder and director of the 3rd Defendants as at [date] and still is. Save as aforesaid, all other allegations in paragraph 2 are denied. The Defendants further say that although the 1st Defendant did not at all material times have any duty to disclose to the Plaintiffs' directors the fact that his wife [name] was a shareholder and director of the 3rd Defendants, the 1st Defendant did intend to disclose these facts to the Plaintiffs' Directors at the next Board meeting. In view of the sudden and unexpected dismissal of the 1st Defendant, the 1st Defendant did not have an opportunity to do this. Further, from the time of incorporation of the 3rd Defendants until the 1st Defendants' dismissal on [date], no meetings of the Plaintiffs' Board of Directors were held.
3. With respect to paragraph 3 of the Statement of Claim, the Defendants say that the 2nd Defendant was until [date] a director and employee of X Co Ltd, holding the position of [designation]. The Defendants admit that [name] (the 2nd Defendant's sister) was a shareholder and director of the 3rd Defendants as at [date] and remains such a shareholder and director. Save as aforesaid, all the other allegations contained in paragraph 3 are denied.
4. The Defendants further aver that:
 - (1) The 2nd Defendant was not and never has been a director or employee of the Plaintiffs, and he was not responsible for the Plaintiffs' management.
 - (2) Although the 2nd Defendant had no interest in the 3rd Defendants within the meaning of Section 156 of the Companies Act as alleged, the 2nd Defendant nevertheless intended to disclose that his sister was a shareholder and director of the 3rd Defendants to the directors of the Plaintiffs' holding company X Co Ltd at the next meeting of the Board of Directors. However, in view of his dismissal as employee and

³¹ See P13.09.

director of X Co Ltd on [date], the 2nd Defendant never had an opportunity to do so.

5. Paragraph 4 of the Statement of Claim is admitted.
6. Paragraph 5 of the Statement of Claim is not admitted. The Defendants say that the information therein described was in all the circumstances not of a confidential character.
7. Paragraph 6 of the Statement of Claim is denied. The Defendants further aver that:
 - (1) Upon the 1st Defendant's appointment as Director of the Plaintiffs, the Plaintiffs did not have any customers and it was the 1st Defendant who built up a list of customers for the Plaintiffs by introducing to the Plaintiffs companies known to him prior to his employment with the Plaintiffs or with which he had dealings prior to his said employment;
 - (2) As for the 2nd Defendant, he was never an employee nor did he ever manage the Plaintiffs.
8. Paragraphs 7 and 8 of the Statement of Claim are denied.
9. Paragraph 9 of the Statement of Claim is denied. With respect to the Particulars set out herein, the Defendants' position is set out below.
 - (1) Paragraph 9(1) is denied. The Defendants say further that the 2nd Defendant was never a director of the Plaintiffs nor was he involved in the management thereof and was no way involved in the giving of any discount whatsoever to the 3rd Defendants or any customers of the Plaintiffs. With respect to the 1st Defendant, the Defendants further say that the discount allowed to the 3rd Defendants was commonly allowed by the Plaintiffs to its customers, and usual in the trade;
 - (2) [Address other Particulars listed in the Statement of Claim]
10. Paragraph 10 of the Statement of Claim and the Particulars of Damage set out therein are denied. The Defendants make no admission as to the alleged or any loss or damage suffered by the Plaintiffs.
11. With respect to paragraph 11 of the Statement of Claim, the Defendants say that although the 1st Defendant was an employee of the Plaintiffs, the 2nd Defendant never was an employee and accordingly owed the Plaintiffs no duties or obligations as such.

12. Paragraph 11(3) is denied. No admission is made with respect to the remaining allegations in paragraph 11 of the Statement of Claim.
13. With respect to paragraph 12 of the Statement of Claim, the Defendants say that the information particularised in paragraph 5 of the Statement of Claim is in all the circumstances not confidential.
14. Paragraph 13 of the Statement of Claim is denied.
15. Paragraph 14 of the Statement of Claim and the Particulars of Damage set out therein are denied. The Defendants make no admission as to the alleged or any loss or damage suffered by the Plaintiffs.
16. Paragraph 15 of the Statement of Claim is denied.
17. Paragraph 16 of the Statement of Claim and the Particulars set out therein are denied.
18. Paragraph 17 of the Statement of Claim and the Particulars set out therein are denied. The Defendants make no admission as to the alleged or any loss or damage suffered by the Plaintiffs.
19. Paragraphs 18 and 19 of the Statement of Claim and the Particulars set out therein are denied. With respect to the said Particulars, the Defendants further rely in the matters set out below:
 - (1) [Address other Particulars listed in the Statement of Claim]
20. Paragraph 20 of the Statement of Claim and the Particulars set out therein are denied. The Defendants make no admission as to the alleged or any loss or damage suffered by the Plaintiffs.
21. Save that the 1st Defendant did receive a letter dated [date] from the Plaintiffs, paragraph 21 of the Statement of Claim is denied.
22. Save as is hereinbefore expressly admitted, the Defendants deny each and every allegation contained in the Statement of Claim as if the said allegations were set out seriatim and expressly traversed.

P13.25 Defence to claim for breach of non-competition clause³²

[KhattarWong LLP]

1. Paragraphs 1 and 2 of the Statement of Claim are admitted.
2. With respect to paragraph 3 of the Statement of Claim, the Defendant admits that the letter of appointment contained a clause in the terms set out in paragraph 3 (“the non-competition clause”). The Defendant says however that the restrictive covenants contained in the non-competition clause are not enforceable, as they are not reasonable in all the circumstances. In this connection, the Defendant relies on the following:

(1) [...]
3. Paragraphs 4 and 5 of the Statement of Claim are admitted.
4. With respect to paragraph 6 of the Statement of Claim, the Defendant admits that he commenced employment with ABC Co Pte Ltd (“ABC”) on or about [date]. The Defendant says however that he was fully entitled to join ABC and had acted properly in doing so, as the restrictions contained in the non-competition clause are unenforceable, being unreasonable in all the circumstances.
5. Paragraph 7 of the Statement of Claim is not admitted.
6. Paragraphs 8 and 9 of the Statement of Claim are admitted.
7. In all the circumstances, the Defendant is not liable for the Plaintiffs’ claim.
8. Save as is hereinbefore expressly admitted, the Defendant denies each and every allegation contained in the Statement of Claim as if the same were set forth seriatim and specifically traversed.

³² See P13.10.

P13.26 Defence to claim for breach of non-competition clause and wrongful inducement of breach of contract – defence of first defendant³³

[KhattarWong LLP]

1. Paragraphs 1 to 4 of the Statement of Claim are admitted.
2. With respect to paragraph 5 of the Statement of Claim, the 1st Defendant admits that Clause [number] of his letter of appointment is in the terms set out in paragraph 5 of the Statement of Claim. The 1st Defendant says however that the restrictions contained in clause 5 are in restraint of trade and they are unenforceable, as they do not protect any legitimate business interest of the Plaintiff and are unreasonable in all the circumstances. In this connection, the 1st Defendant will rely on the following:

(1) [...]

3. Paragraph 6 of the Statement of Claim is admitted.
4. The 1st Defendant has no knowledge of paragraph 8 of the Statement of Claim.
5. No admission is made with respect to paragraph 9 of the Statement of Claim.
6. Paragraph 10 of the Statement of Claim is denied.
7. Save as is hereinbefore expressly admitted, the 1st Defendant deny each and every allegation contained in the Statement of Claim as if the same were set forth seriatim and specifically traversed.

33 See P13.11 and P13.25.

P13.27 Defence to claim for breach of non-competition clause and wrongful inducement of breach of contract – defence of second defendant³⁴

[KhattarWong LLP]

1. The 2nd Defendant admits paragraphs 1 to 4 of the Statement of Claim.
2. The 2nd Defendant has no knowledge of paragraph 5 of the Statement of Claim. The 2nd Defendant further says that a clause in terms of paragraph 5 of the Statement of Claim would constitute a restrictive covenant or non-competition clause which unreasonable in all the circumstances and therefore unenforceable. In this connection, the 2nd Defendant will rely on the following:
 - (1) [...]
3. Paragraph 6 of the Statement of Claim is admitted.
4. The 2nd Defendant has no knowledge of paragraph 7 of the Statement of Claim.
5. With respect to paragraph 8 of the Statement of Claim, the 2nd Defendant admits that the Plaintiff sent them a letter in the terms set out therein.
6. Paragraph 9 of the Statement of Claim is denied.
7. The 2nd Defendant makes no admission as to paragraph 10 of the Statement of Claim.
8. Save as is hereinbefore expressly admitted, the 2nd Defendant denies each and every allegation contained in the Statement of Claim as if the same were set forth seriatim and specifically traversed.

³⁴ See P13.11 and P13.26.

P13.28 Reply and defence to counterclaim (claim for unpaid salary)³⁵

[KhattarWong LLP]

1. The Reply and Defence to Counterclaim herein is filed without prejudice to the Plaintiff's right to apply to strike out the Defence and Counterclaim or any part thereof.

Reply

2. The Plaintiff joins issue with the Defendants on all the matters stated in his Defence save insofar as the same consists of admissions or is admitted herein.
3. In respect of paragraph 3 of the Defence, the Plaintiff says that "Monthly Pay" as referred to in the Service Agreement refers to the monthly salary to be paid by the Defendants to the Plaintiff in the amount of S\$[amount], regardless of whether the project was completed. The Plaintiff further avers that the project was in fact completed as far as the Plaintiff was concerned for the following reasons:

[Particulars]

Defence to counterclaim

4. The Plaintiff repeats paragraph 3 herein.
5. Save that the Plaintiff had not represented that he held an "executive appointment" at ABC Ltd and had not been paid a salary of more than S\$[amount] as an employee of ABC Ltd, paragraph 11 of the Defence is admitted.
6. Paragraph 12 is denied and the Defendants put to strict proof thereof. The Plaintiff avers that while representations were made to the Defendants' CEO in respect of the Plaintiff's last held job, the Plaintiff did not say that it was an "executive appointment" and in fact used the term "Project Co-ordinator". Further, no representation as to the Plaintiff's salary was mentioned and/or can be inferred from the Plaintiff's curriculum vitae.
7. Paragraph 13 is not admitted, and the Plaintiff says that he has no knowledge of the matters pleaded therein.
8. Paragraph 14 is denied. The Plaintiff avers that he in fact became an employee of ABC Ltd upon signing an employment agreement with ABC on [date]. As a Project Co-ordinator, the Plaintiff was

³⁵ See P13.01 and P13.12.

heavily involved in the successful project roll out of “ABC ZYZ” and therefore directly responsible for it.

9. Paragraph 15 is denied.
10. In respect of paragraphs [number] and [number], the Plaintiff avers that insofar as the Plaintiff had made representations regarding his previous employment, such representations were true.
11. In respect of paragraph [number], the Plaintiff avers that he has no knowledge of the Defendants’ intentions and the Defendants are put to strict proof thereof. The Plaintiff further avers that he was in fact an employee of ABC Ltd and had added commercial value to the Defendant company by spearheading the following developments and/or projects:
[Particulars]
12. In respect of paragraph 16, the Plaintiff repeats paragraph 8 herein.
13. Paragraphs 19 and 20 are not admitted, and the Defendants are put to strict proof thereof should refer only to paragraph 17 of the Defence.
14. Save as hereinbefore expressly admitted, the Defendants deny the matters set out in the Counterclaim as if the same were set out seriatim and specifically traversed.

P13.29 Reply to defence to claim for wrongful dismissal (misconduct)³⁶

[KhattarWong LLP]

1. Paragraph 3 of the Defence is admitted.
2. The Plaintiff joins issue with the Defendants on paragraphs 4 and 5 of the Defence.
3. Further or in the alternative, the Defendants had acted in breach of Section 14 of the Employment Act, in that the Defendants did not hold any inquiry in relation to the allegations of misconduct made against the Plaintiff and he was not given any reasonable opportunity to explain his conduct.
4. Save that the Plaintiff received the letter dated [date] from the Defendants, the Plaintiff joins issue with the Defendants on paragraphs 6, 7 and 8 of the Defence.
5. Save in so far as they consist of admissions, the Plaintiff joins issue with the Defendants on all the allegations in the Defence.

³⁶ See P13.03 and P13.14.

CHAPTER 14

ENTERTAINMENT

PRECEDENTS

- P14.01** Claim for breach of fiduciary duty
- P14.02** Claim by manager for breach of contract
- P14.03** Claim for a declaration of joint authorship and a share in copyright
- P14.04** Claim for a declaration that agreement is void as an unreasonable restraint of trade
- P14.05** Claim for a declaration that agreement was validly rescinded on the grounds of misrepresentation and/or undue influence
- P14.06** Defence to claim for breach of fiduciary duty
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- P14.10** Defence to claim for a declaration that agreement was validly rescinded on the grounds of misrepresentation and/or undue influence

CHAPTER 14

ENTERTAINMENT

PRECEDENTS

P14.01 Claim for breach of fiduciary duty¹

[ATMD Bird & Bird LLP]

1. The Plaintiff was at all material times a playwright for stage plays.
2. The Defendants were at all material times a company incorporated in the Republic of Singapore, having their registered office at [address]. The Defendants are engaged in the business of producing stage performances and publishing literary and dramatic works by local writers and playwrights.
3. By a written agreement dated [date] (“the Agreement”), the Plaintiff assigned to the Defendants the full and entire copyright in all his plots and scripts (collectively “the Works”), in all territories throughout the world, for [number] years, in consideration for royalties to be paid to him by the Defendants.
4. It was agreed that the Defendants would pay to the Plaintiff [amount] per cent of the net profit generated from the exploitation of the Works.
5. By reason of the Defendants having substantial control over the Plaintiff’s livelihood as a playwright, the Defendants occupy a fiduciary position in relation to the Plaintiff, and accordingly, they owe to the Plaintiff the following fiduciary duties:
 - (1) A duty to act in good faith;
 - (2) A duty not to place themselves in situations where their own interests are contrary to those of the Plaintiff;
 - (3) A duty to fully inform the Plaintiff of the facts and implications of any situations where a conflict of interests arises; and
 - (4) A duty to advise the Plaintiff to seek independent legal or other appropriate advice in situations where there is a potential conflict of interests.

¹ See P14.06.

6. The Defendants appointed their wholly-owned subsidiary, [company name] (“the Translator”), on [date], to translate the Works into the Malay language.
7. Pursuant to the appointment, the Defendants paid the Translator \$[amount] for the translation work done on the Works (“the Translation Fee”).
8. The Plaintiff contends that the Translation Fee is grossly in excess of the going commercial rate chargeable for translation of dramatic works such as the Works.
9. By reason of the above, the Defendants are in breach of their fiduciary duties.

Particulars of Breach

- (1) The Defendants did not engage the Translator in good faith. The engagement of the Translator was plainly prejudicial to the Plaintiff’s interests as the excessive Translation Fee constitutes part of the expenses incurred by the Defendants in the course of their exploitation of the Works. In turn, the net profit generated through the said exploitation is diminished, and the Plaintiff would be in receipt of less payment from the Defendants as a result.
 - (2) The Defendants have placed themselves in a position of conflict as their duty to the Plaintiff is contrary to their own interests in the Translator;
 - (3) The Defendants’ engagement of the Translator for a hefty Translation Fee was made without the Plaintiff’s consent.
 - (4) Since the Translator is a wholly-owned subsidiary of the Defendants, the Defendants have made a direct or indirect profit from the fees received by the Translator.
 - (5) Any direct or indirect profits made by the Defendants, through their arrangements with the Translator, had not been brought to the Plaintiff’s attention.
10. The Plaintiff is, as a consequence of the above, entitled to claim damages and/or equitable compensation for the Defendants’ breach of fiduciary duty.

AND the Plaintiff claims:

- (1) Damages and/or equitable compensation for breach of fiduciary duty;

- (2) All necessary accounts and inquiries and an order for payment of all sums found to be due to the Plaintiff on the taking of such accounts or inquiries;
- (3) Interest;
- (4) Costs; and
- (5) Such further or other relief as this Honourable Court deems appropriate.

P14.02 Claim by manager for breach of contract²

[ATMD Bird & Bird LLP]

1. The Plaintiff was at the material time a programme coordinator within the music industry, and was interested in becoming a manager of record artistes.
2. The Defendant was at the material time an unknown singer at the XY Bar, and was aspiring to be a record artiste.
3. On or about [date], during a lunch meeting, the Plaintiff and the Defendant discussed and agreed orally on the following (“the Agreement”):
 - (1) The Plaintiff would manage, exclusively, the Defendant’s singing activities, specifically, to liaise with record companies and procure recording contracts for the Defendant;
 - (2) The Defendant would pay to the Plaintiff, as a manager’s fee, a sum equivalent to 25 per cent of the value of any recording contract the Defendant obtains for the Plaintiff.
4. The following terms are implied into the Agreement, to give business efficacy:
 - (1) Where the Plaintiff has incurred expenses in the course of acting as the Defendant’s manager, he would be reimbursed by the Defendant accordingly and promptly;
 - (2) Unless either party gives reasonable notice to the other, the Agreement would continue to subsist. The Plaintiff contends that 2 months would be a reasonable notice period, in the circumstances.
5. Between [date] and [date] the Plaintiff arranged, at his own cost, for a famous photographer, AB, to take publicity shots for the Defendant. He also arranged for the Defendant to meet with 4 well-known record producers, namely CD, EF, GH, and IJ, as part of the pursuit of a recording contract for the Defendant. As a result of the Plaintiff’s effort, the Defendant attracted the interest of several major record companies, the particulars of which are set out below.

Particulars

[Particulars]

6. The Defendant has acted in breach of the Agreement in that:

² See P14.07.

- (1) Without the knowledge of the Plaintiff, on or around [date], the Defendant entered into a recording contract with [record company];
 - (2) The Defendant has failed and/or refused to pay or account to the Plaintiff in relation to any advances, royalties or other sums which were paid or became payable to the Defendant as a result of the Defendant entering into the recording contract with [record company];
 - (3) Contrary to the Agreement the Defendant purported to appoint a third party, one GS, as his manager, without the knowledge of the Plaintiff and without terminating the Agreement.
7. By reason of the breaches pleaded in paragraph 6 above, the Plaintiff has suffered loss and damage. The Plaintiff contends that:
- (1) The Plaintiff is now deprived of the opportunity to earn the manager's fee as pleaded above, since the Defendant has denied the Plaintiff a chance at procuring a recording contract for the Defendant;
 - (2) The Plaintiff is entitled to an account of all sums due and owing to him under the Agreement and an order that the Defendant pay to him all sums found due upon taking such account.
8. Alternatively, if there was no contract between the Plaintiff and the Defendant (which is denied), or if the Agreement did not contain the terms pleaded in paragraphs 3 and 4 above, the Plaintiff says as follows:
- (1) Between [date] and [date] the Plaintiff carried out amongst other things the services referred to in paragraph 5 above ("Services") for the Defendant, with the expectation that he would be reimbursed by the Defendant;
 - (2) Accordingly, the Plaintiff is entitled to payment for the Services at a reasonable rate. The Plaintiff contends that the reasonable rate of payment is as pleaded in paragraph 3(2) above.

AND the Plaintiff claims:

- (1) An account of all sums due to him under the Agreement and an order that the Defendant pay to the Plaintiff all sums found due to him;
- (2) Alternatively, damages for breach of contract;
- (3) Alternatively, reasonable compensation for the rendering of the Services provided to the Defendant;

- (4) Interest;
- (5) Costs; and
- (6) Such further or other relief as this Honourable Court deems appropriate.

P14.03 Claim for a declaration of joint authorship and a share in copyright³

[ATMD Bird & Bird LLP]

1. The Plaintiff was at all material times a freelance composer in spiritual music.
2. The Defendants were at all material times members of the popular spiritual music band known as The Three Heavenly Kings (“the Group”).
3. On [date], the Defendants met the Plaintiff at a social gathering. An informal discussion followed and the Defendants expressed interest in collaborating with the Plaintiff for their new album. At the same gathering, the Defendants invited the Plaintiff to join them for one of their practice sessions in their private studio.
4. The Plaintiff first attended the Defendants’ practice session on [date], where he played one of his melody lines to the Defendants on his flute. The Defendants then started contributing by playing their instruments, namely, the cymbals, harp, glockenspiel and organ, along with the melody. Further refinements were made until both the Plaintiff and the Defendants were satisfied with the final tune. The final tune was then recorded in the same studio.
5. In the same manner as described in paragraph 4 above, a series of 12 other titles (“the Titles”) were composed, refined and recorded at various practice sessions between [date] and [date].
6. By virtue of this particular manner of composing the Titles, the Plaintiff has made important and original contributions to the creation of the Titles.
7. The Plaintiff and the Defendants are hence joint authors of the Titles, each entitled to own a part of the copyright subsisting in them.
8. The Plaintiff contends that he is entitled to at least a share of [amount] per cent of the copyright in the Titles or, alternatively, to such share as the Court deems fit.
9. On [date], the Defendants entered into a publishing agreement (“the Publishing Agreement”) with [record company] (“the Publisher”) without the Plaintiff’s knowledge. Pursuant to the Publishing Agreement, they released an album titled “The Voices of Changi Beach” (“the Album”).

3 See P14.08.

10. The Album comprises the 13 Titles which were jointly composed, refined and recorded by the Plaintiff and the Defendants as set out in paragraphs 4 and 5 above.
11. The Defendants, however, had in their Publishing Agreement:
 - (1) Warranted that each of the Titles were solely composed by them, and that they were in sole possession of the copyright therein;
 - (2) Purported to assign to the Publisher the entire copyright in the Album in consideration for royalties and advances against royalties from the Publisher.

AND the Plaintiff claims:

- (1) A declaration that:
 - (a) the Plaintiff and the Defendants are joint authors of the Album;
 - (b) the Plaintiff is entitled to a [amount] per cent share of copyright in the Album or such other share as the Court thinks fit;
 - (c) the Defendants have, by their actions, infringed the Plaintiff's copyright in the Album.
- (2) An account of all sums due and owing by the Defendants to the Plaintiff, in respect of the Album, and an order for payment to the Plaintiff of all sums found to be due on the taking of such account;
- (3) Further or in the alternative, an account of profits or an inquiry as to damages, and payment of all sums found to be due upon the taking of such account or inquiry;
- (4) Interest;
- (5) Costs; and
- (6) Such further or other relief as this Honourable Court deems appropriate.

P14.04 Claim for a declaration that agreement is void as an unreasonable restraint of trade⁴

[ATMD Bird & Bird LLP]

1. The Plaintiff was at all material times a magician.
2. The Defendants were at all material times a company incorporated in the Republic of Singapore, having their registered office at [address]. The Defendants are engaged in the business of operating the AB Theme Park in Singapore.
3. By a contract in writing dated [date] (“the Agreement”), entered into by the Plaintiff and the Defendants, it was agreed that the Plaintiff would stage magic performances at the Defendants’ AB Theme Park exclusively.
4. By Clause 11 of the Agreement, it was provided that the Agreement would last for an initial period of 1 year, and that the Defendants may, at their sole option, extend the duration of the Agreement by further extensions of 1 year at a time, up to a maximum duration of 10 years.

The Plaintiff will refer to the full terms of the Agreement at the hearing of this action.

5. The Defendants extended the duration of the Agreement for the second, third and fourth consecutive periods by way of letters, addressed to the Plaintiff, dated [date], [date] and [date].
6. On [date], the Plaintiff’s solicitors wrote to the Defendants stating the following:
 - (1) That the Agreement was an unreasonable restraint of the Plaintiff’s trade, and should be void and unenforceable;
 - (2) That the Plaintiff intended to enter into a performance agreement with XY Circus Pte Ltd.
7. By a letter dated [date], the Defendants denied that the Agreement was void or unenforceable, and required the Plaintiff to continue performing his obligations under the Agreement. The Defendants also threatened to take out an injunction to prevent the Plaintiff from entering into a performance agreement with XY Circus Pte Ltd or any other person or company.
8. The Agreement is unfair to the Plaintiff on the following grounds:

4 See P14.09.

- (1) It has the potential of subsisting for 10 years, which is an excessive restraint on the Plaintiff's ability to trade;
- (2) The Agreement may only be terminated by the Defendants but not the Plaintiff.

AND the Plaintiff claims:

- (1) A declaration that the Agreement is void and unenforceable as an unreasonable restraint of trade;
- (2) Costs; and
- (3) Such further order and/or relief as this Honourable Court deems appropriate.

P14.05 Claim for a declaration that agreement was validly rescinded on the grounds of misrepresentation and/or undue influence⁵

[ATMD Bird & Bird LLP]

1. The Plaintiff was at the material time 22 years old and was aspiring to be a screen actress.
2. The Defendant was at the material time a manager for models and screen performance artistes.
3. On or about [date], the Plaintiff met the Defendant at the Guitarists Club in The Phoenix, Orchard. The Defendant was then 45 years old. He introduced himself as an “Artiste Development Manager” with influential contacts and networks in the television industry.
4. The Defendant subsequently arranged to meet with the Plaintiff at his office to seek advice on how she could realise her dreams. The Plaintiff played to the Defendant a videotape of her acting out some of her favourite scenes from the movies and showed him the various certifications she had obtained from her acting classes. The Defendant complimented the Plaintiff’s talent and offered to act as her manager and to procure screen performance contracts for her.
5. Being highly impressed by the Defendant’s vast experience and extensive connections, the Plaintiff reposed great trust and confidence in the Defendant, and readily agreed to his proposal.
6. Not long after their meeting at the Defendant’s office, the Defendant handed to the Plaintiff a management agreement (“the Agreement”) on [date]. He did not explain the terms in it to her, but merely told her that all the terms were standard terms used for contracts within the industry. He invited her to sign the Agreement promptly and hinted at the possibility of terminating his services for the Plaintiff because he was contemplating becoming the manager of another young aspiring artiste.
7. The Plaintiff was afraid that the Defendant would cease making any efforts to promote her if she hesitated in signing the Agreement, or attempted to negotiate on any of the terms in the Agreement. The Agreement was signed by the Plaintiff on the same day it was presented to her, on [date].

⁵ See P14.10.

8. Pursuant to the Agreement, the Defendant became the Plaintiff's sole and exclusive manager for a fixed term of 6 years.
9. Further, the Agreement provided for the Plaintiff to pay to the Defendant 40 per cent of all income earned by her from all activities in the entertainment industry.
10. The Plaintiff will refer to the full terms of the Agreement at the hearing of this action.
11. On [date] the Defendant successfully obtained a movie acting contract ("Evergreen Contract") for the Plaintiff with Evergreen Productions Ltd, pursuant to which an advance of \$100,000 was paid to the Defendant.
12. On [date] the Plaintiff met a fellow artiste, AB, and told him that she was liable to pay 40 per cent of her income to the Defendant. AB told her that 40 per cent was an unusually high percentage to pay to a manager in the entertainment industry.
13. The Plaintiff subsequently found out that the percentage paid to a manager in the same industry usually does not exceed 20 per cent.
14. Consequently, the Agreement should be set aside on one or more of the following grounds:
 - (1) The Plaintiff had relied upon the Defendant's misrepresentation, that the terms were standard in the music industry, when she signed the Agreement;
 - (2) The Defendant took advantage of the trust and confidence which the Plaintiff reposed in him by inducing her into an agreement that was patently contrary to her interests in that the percentage payable to him was double that of the average in the industry.
15. On [date] the Defendant wrote an e-mail to the Plaintiff informing her that he had credited an amount of \$60,000 into her personal bank account and that he had paid himself a sum of \$40,000 as provided for under the Agreement.
16. The Plaintiff replied by e-mail dated [date] stating that she refused to be bound by the terms of the Agreement and demanded the repayment of \$40,000.
17. The Defendant has thus far failed and/or refused to return to the Plaintiff the sum of \$40,000. The Defendant owes a fiduciary duty to the Plaintiff and should accordingly return her money, together with such interest at such rate and for such period as the Court may deem fit.

AND the Plaintiff claims:

- (1) A declaration that the Agreement has been validly rescinded on the grounds of misrepresentation and/or undue influence;
- (2) Alternatively, damages for misrepresentation;
- (3) In any event, payment of the sum of \$40,000;
- (4) Interest;
- (5) Costs; and
- (6) Such further or other relief as this Honourable Court deems appropriate.

P14.06 Defence to claim for breach of fiduciary duty⁶

[ATMD Bird & Bird LLP]

1. Save where these otherwise appear, references to paragraph numbers below are to paragraphs in the Statement of Claim.
2. Paragraphs 1 to 4 are admitted.
3. Save that it is admitted that the Defendants owe to the Plaintiff a duty to act in good faith, paragraph 5 is denied.
4. Paragraphs 6 and 7 are admitted.
5. Paragraph 8 is denied. The Defendants' case is as follows:
 - (1) There is little demand for dramatic works of the same genre as the Works, and hence, the Works are exceptionally difficult to promote;
 - (2) In order to generate income from the exploitation of the Works, it was necessary to engage a skilled translator of exceptional linguistic abilities, so as to ensure accurate translation of the Works, and that the Malay versions of the Works retained the same attractive and captivating elements present in the original Works;
 - (3) The Translator was selected for their highly reputed team of exceptional and highly skilled translators. Furthermore, the other well-known Translators which were considered had all proposed to charge a rate of at least \$[sum which is more than Translation Fee].

Particulars

[Particulars]

- (4) The Translator has exerted unusual efforts in the translation of the Works, and their efforts have helped the Works to achieve greater success than any other translator would have been likely to achieve;
- (5) In the circumstances the Translation Fee fairly reflected the value of the Translator's services.
6. Paragraph 9 is denied. It is the Defendants' case that:
 - (1) Their appointment of the Translator was made in good faith and was not prejudicial to the Plaintiff's interests. It is also

⁶ See P14.01.

denied that the Translation Fee is excessive. Paragraphs 5(1)–(5) above are repeated;

- (2) There was no conflict between their duty to the Plaintiff and their interests in the Translator, as the engagement of the Translator was for the joint benefit of all the parties;
 - (3) The Defendants deny that the Plaintiff had no knowledge of, and did not consent to, the engagement of the Translator. The Defendants had informed the Plaintiffs that they proposed to appoint the Translator in the course of negotiating the Agreement. The Plaintiff was at that time represented by solicitors and accordingly had every opportunity to take independent legal advice on the Defendants' proposal;
 - (4) To the extent that the Defendants have benefited, as a parent company of the Translator, such a benefit was not obtained through a breach of the Defendants' fiduciary duty to the Plaintiff;
 - (5) In light of paragraph (4) above, the Defendants were under no obligations to bring to the Plaintiff's attention any profits made by the Translator, in relation to the translation of the Works.
7. Paragraph 10 is denied and the Defendants repeat paragraph 6 above.
 8. Further or in the alternative, the Plaintiff's failure to bring this or any claim within a reasonable time, despite having knowledge or the means of knowledge, of the facts on which the claims are based, constitutes a bar by laches and/or acquiescence and prevents him from acting upon such claims now.
 9. Accordingly, it is denied that the Plaintiff is entitled to the relief claimed or any other relief.
 10. Save as expressly admitted, the Defendants deny each and every allegation contained in the Statement of Claim as if the same were set out seriatim and specifically traversed.

P14.07 Defence to claim by manager for breach of contract⁷

[ATMD Bird & Bird LLP]

1. Save where these otherwise appear, references to paragraph numbers below are to paragraphs in the Statement of Claim.
2. Paragraphs 1 and 2 are admitted.
3. Paragraph 3 is denied and the Defendant's case is as follows:
 - (1) The Plaintiff met the Defendant on or about [date]. At the meeting, the Plaintiff told the Defendant that he had heard a demo recording made by the Defendant and was confident that the Defendant can become a popular record artiste if the right opportunities were presented to him;
 - (2) The Plaintiff also represented to the Defendant that he could arrange for the Defendant to be a featured vocalist at a concert which the "[name]" were going to stage in Singapore in [month and year]. He also said that he was certain of securing a recording contract for the Defendant in Singapore within 4 months with either [name of entity] or another suitable record label;
 - (3) The Defendant agreed with the Plaintiff at the same meeting that, he would enter into a written management contract with the Plaintiff and pay him a fee equivalent to 25 per cent of the value of the recording contract, only if the Plaintiff secured the recording contract for him in the first place. No further details were discussed and no agreement was entered into;
 - (4) The Defendant had no legal representation at that time and he was under the impression that a written management contract, binding the parties, would only be created later, and that the terms of such a contract would be negotiated at the same time with the terms of any recording contract secured by the Plaintiff.
4. Paragraph 4 is denied and the Defendant avers as follows:
 - (1) The Plaintiff and the Defendant did not enter into a management agreement in [month and year] or at any other time;
 - (2) The prospect of the parties entering into a management contract never materialised because the Plaintiff's efforts to secure a recording contract for the Defendant had failed;

⁷ See P14.02.

- (3) The terms pleaded in paragraph 4 are not, as alleged by the Plaintiffs, implied terms of the oral agreement (existence of which is, in any event, denied by the Defendant). Any “agreements” reached during the meeting on [date] were no more than an agreement to agree and/or was void for uncertainty since the parties did not agree as to its essential terms;
 - (4) Further or alternatively, if (which is denied) the parties did enter into the alleged oral agreement, the duration of the contract was not specifically discussed and either party would be entitled to terminate the contract. If (which is also denied) there exists any implied obligation to give reasonable notice, such notice period would not exceed 1 month.
5. Paragraph 5 is denied and it is the Defendant’s case that:
 - (1) All of the Plaintiff’s efforts were no doubt made with the aim of securing a recording contract for the Defendant;
 - (2) By [month and year], nearly a year after the parties’ first meeting, the Plaintiff’s efforts still did not pay off and the Defendant’s contact with the Plaintiff became very infrequent. The Defendant reckoned that the Plaintiff actually did not possess the requisite contacts to secure a recording contract for him;
 - (3) Sometime in [month and year], the Defendant met with the Plaintiff and expressed his frustration that no progress had been made towards securing a recording contract in more than a year and stated that he no longer wanted the Plaintiff to represent him. From that time onwards, the Plaintiff ceased making efforts towards securing a recording contract for the Defendant and the Defendant looked to other people for assistance in his endeavour to become a record artiste.
6. It is admitted that the Defendant entered into a recording contract with [record company] on about [date]. Save as aforesaid, paragraph 6 is denied. The Defendant avers that:
 - (1) The Plaintiff has made no contribution towards the Defendant’s procurement of the said contract;
 - (2) Sometime in [month and year], the Defendant rented a private studio with his own money (at a cost of approximately \$500) and recorded a song called “Rain”;

- (3) The Defendant gave the demo recording of the song “Rain” to one GS, a professional record artiste manager whom the Defendant met sometime in [month and year];
 - (4) GS took the said demo recording to [record company] in [month and year] and scheduled numerous meetings with [record company] to promote the Defendant’s singing talent and potential as a songwriter. A recording contract was eventually entered into between [record company] and the Defendant.
7. The Defendant admits that the Plaintiff was refused payment and/or an account of monies paid to the Defendant in relation to the recording contract with [record company]. Save as aforesaid, paragraph 6 is denied. The Defendant’s case is as follows:
 - (1) The Defendant denies that the Plaintiff is entitled to claim from any monies the Defendant is paid, in relation to his recording contract with [record company], or at all;
 - (2) It is also denied that the Plaintiff is entitled to any account, as alleged in paragraph 7, or at all;
 - (3) The Defendant denies having ever entered into any agreement appointing the Plaintiff as his exclusive manager. For that reason, paragraph 6(3) is denied. The Defendant further avers that he was free to engage the services of GS in whichever way he saw fit.
8. The Defendant denies that the Plaintiff has suffered any loss or damage as alleged in paragraph 7 or at all. The Plaintiff’s claim for the lost opportunity to procure a recording contract for the Defendant is denied in the following circumstances of the Plaintiff’s own case:
 - (1) The Plaintiff and the Defendant had never specifically agreed on the duration for which the Plaintiff was to represent the Defendant;
 - (2) The Plaintiff had more than 1 year to secure a recording contract for the Defendant;
 - (3) At the meeting in [month and year], where the Defendant stated clearly that he no longer wanted the Plaintiff to try to procure any recording contracts for him, the Plaintiff ceased all liaison and promotional activities done for the benefit of the Defendant; and

- (4) The Plaintiff was not involved in the [record company]'s grant of the recording contract to the Defendant. The contract resulted from the Defendant's own and GS's efforts.
- 9. Save that the Defendant does not admit that the Plaintiff had incurred expenses in carrying out the Services as pleaded, paragraph 8 is denied. The Defendant further contends as follows:
 - (1) The Services referred to in paragraph 5 were provided by the Plaintiff gratuitously; and/or
 - (2) Any payment or reimbursement, for the Services referred to in paragraph 5, would only be made if the Plaintiff had successfully secured a recording contract for the Defendant – which he never did.
- 10. Save as expressly admitted, the Defendant denies each and every allegation contained in the Statement of Claim as if the same were set out seriatim and specifically traversed.

P14.08 Defence to claim for a declaration of joint authorship and a share in copyright⁸

[ATMD Bird & Bird LLP]

1. Save where these otherwise appear, references to paragraph numbers below are to paragraphs in the Statement of Claim.
2. Paragraphs 1 to 2 are admitted.
3. As to paragraph 3:
 - (1) It is denied that the Defendants ever had an informal discussion with the Plaintiff regarding the possibility of collaborating with the Plaintiff;
 - (2) It is further denied that the Defendants invited the Plaintiff to join them at their practice sessions to explore the possibilities of the alleged collaboration. The Defendants aver that they merely invited the Plaintiff to visit them at their practice sessions whenever the Plaintiff needed company when he practised his flute.
4. Paragraphs 4 – 8 are denied. The Defendants’ case is as follows:
 - (1) Between [date] and [date], the Defendants alone composed the Titles. Each of the 13 tunes in the Titles were composed, recorded and performed, solely by the Defendants in their private studio;
 - (2) The composition of the each of the 13 tunes in the Titles had been completed by the Defendants before it was introduced to the Plaintiff. The Plaintiff had merely visited the Defendants during some of their practice sessions and played his flute along with the Defendants;
 - (3) It is denied that the Plaintiff’s action of playing his flute along with the Defendants at their practice sessions, was significant in bringing the music of any one of the 13 tunes to its final form. The Plaintiff had not expended any original skill or labour of sufficient significance to make him a joint author of the Titles or to entitle him to own any part of the copyright.
5. As to paragraph 9, it is admitted that the Defendants entered into the Publishing Agreement with [record company], however, the Defendants do not admit that the Plaintiff had no knowledge of the Publishing Agreement.

⁸ See P14.03.

6. Save that it is admitted that the Album comprises the Titles which the Plaintiff alleges to have jointly composed (which, in any event, is denied), paragraph 10 is denied.
7. Paragraph 11 is admitted. The Defendants aver that they had correctly warranted that they were the first copyright owner of the Titles and that they had the rights to assign that copyright to the [record company].
8. Accordingly, it is denied that the Plaintiff is entitled to the relief claimed in the Statement of Claim or any relief.
9. Save as expressly admitted, the Defendants deny each and every allegation contained in the Statement of Claim as if the same were set out seriatim and specifically traversed.

P14.09 Defence to claim for a declaration that agreement is void as an unreasonable restraint of trade⁹

[ATMD Bird & Bird LLP]

1. Save where these otherwise appear, references to paragraph numbers below are to paragraphs in the Statement of Claim.
2. Paragraphs 1 to 7 are admitted.
3. Paragraph 8 is denied. The Defendants aver that the Agreement is not unfair to the Plaintiff and that any restraint of the Plaintiff's trade is justified in that:
 - (1) The Plaintiff received independent advice, from his solicitors, throughout the negotiations leading to the Agreement;
 - (2) In the course of negotiations for the Agreement, the Plaintiff had represented that he regarded the terms of the Agreement as being unreasonable, but he would accept them on the condition that the Defendants increased his monthly remuneration from 13 per cent to 20 per cent of the gross ticket sales of AB Theme Park every month;
 - (3) The Defendants took into account the time period for which the contract could potentially subsist and acceded to the Plaintiff's condition;
 - (4) If the Agreement is an unreasonable restraint of trade (which is denied) the Plaintiff has waived his right, to contest its validity and enforceability, by reaping the benefit of drawing a higher remuneration for the performance of the same duties without complaint, whilst knowing full well that the Agreement was allegedly unenforceable.
4. Save as expressly admitted, the Defendants deny each and every allegation contained in the Statement of Claim as if the same were set out seriatim and specifically traversed.

Counterclaim

5. The Defendants repeat their defence set out in paragraphs 1 to 4 above.

AND the Defendants counterclaim:

- (1) A declaration that the Agreement is valid and binding upon the Plaintiff;

⁹ See P14.04.

- (2) An injunction to prevent the Plaintiff from entering into a performance agreement, with XY Circus Pte Ltd or any other person or company, to perform magic shows, for a period of up to [period] or up to such time as the Court may deem reasonable;
- (3) Costs; and
- (4) Such further or other relief as this Honourable Court deems appropriate.

P14.10 Defence to claim for a declaration that agreement was validly rescinded on the grounds of misrepresentation and/or undue influence¹⁰

[ATMD Bird & Bird LLP]

1. Save where these otherwise appear, references to paragraph numbers below are to paragraphs in the Statement of Claim.
2. Paragraphs 1 to 4 of the Statement of Claim are admitted.
3. The Defendant does not admit paragraph 5. The Defendant says that the Plaintiff is, and was in [month and year], a worldly lady, with many friends in the entertainment industry. The Defendant was merely one of the vast number of people with whom the Plaintiff spoke to about her career at about that time.
4. Save that it is admitted that an agreement was handed to the Plaintiff on [date], paragraph 6 is denied. The Defendant avers that he told the Plaintiff that most of the terms in the agreement were standard in the entertainment industry but that she should nonetheless seek legal advice from a solicitor who is experienced in entertainment-related contracts before signing it. The Defendant denies that he made any representations on terminating his services for the Plaintiff, much less use these to coerce the Plaintiff to sign the Agreement promptly.
5. Save that it is admitted that the Plaintiff signed the Agreement on [date], paragraph 7 is denied.
6. Paragraphs 8 to 11 are admitted.
7. As to paragraph 12:
 - (1) The Defendant does not admit that the Plaintiff had the alleged conversation with AB on [date] or any other date. However, the Defendant believes that AB is a long time friend of the Plaintiff's, and that they knew each other long before they had the alleged conversation. Prior to signing the Agreement, the Plaintiff had told the Defendant that she had sought the opinion of AB, and that – as a result of her meeting with AB – she was happy with the terms;
 - (2) It is denied that 40 per cent is an unusually high percentage to pay a manager of an artiste when the Plaintiff's age and level

¹⁰ See P14.05.

of experience are taken into account. Furthermore, there is no standard or usual manager's percentage for the industry.

8. Paragraph 13 is denied. Paragraph 7(2) above is repeated.
9. As to paragraph 14:
 - (1) It is denied that the Defendant made the alleged or any misrepresentation;
 - (2) It is denied that the Defendant took advantage of the Plaintiff;
 - (3) It is denied that the Agreement was contrary to the Plaintiff's interests. Even if the percentage payable to the Defendant was unusually high (which is denied), the Plaintiff's interests had not been compromised. The Defendant is a remarkably talented manager and, at the time of the Agreement, the Plaintiff was little known in the movie industry. Further, the advance paid under the Evergreen Contract was in itself exceptionally high for a new artiste, like the Plaintiff herself then, and it is unlikely that the Plaintiff could have procured such a sizeable advance without the help of the Defendant;
 - (4) If the Agreement was patently contrary to the Plaintiff's interests (which is denied), any presumption of undue influence is still denied. The Plaintiff took or appeared to have taken independent legal advice before she entered into the Agreement.
10. Paragraph 15 is admitted.
11. As to paragraph 16, the Plaintiff's e-mail dated [date] is admitted. The Defendant avers that the Plaintiff is neither entitled to rescind the Agreement nor make a demand for \$40,000 or any sum from the Defendant.
12. Save that the Defendant has not returned the sum of \$40,000 to the Plaintiff, paragraph 17 is denied. The Defendant denies that he holds the sum of \$40,000, for the Plaintiff, as a fiduciary.
13. It is consequently denied that the Plaintiff is entitled to the relief claimed or any relief.
14. In the alternative, if the Agreement is validly rescinded, the Defendant admits that he is liable to the Plaintiff for the difference between \$40,000 and a reasonable amount for the procurement of the Evergreen Contract for her benefit. Notwithstanding the above admission, it is the Defendant's case that \$40,000 would be a reasonable reward for the work he had done.

15. Where necessary, the Defendant will seek to set off his counterclaim against any sum for which he is liable to the Plaintiff.
16. Save as expressly admitted, the Defendant denies each and every allegation contained in the Statement of Claim as if the same were set out *seriatim* and specifically traversed.

Counterclaim

17. The Defendant is entitled to and claims a declaration that the Agreement is valid and subsisting.
18. In the alternative, if the Defendant is liable to pay \$40,000 to the Plaintiff (which is denied), the Defendant is entitled to and claims a reasonable fee for the work he has done in procuring the Evergreen Contract for the Plaintiff.

AND the Defendant counterclaims:

- (1) A declaration that the Agreement is valid and binding upon the Plaintiff;
- (2) Fee for the work done by the Defendant in procuring the Evergreen Contract for the Plaintiff;
- (3) Interest;
- (4) Costs; and
- (5) Such further or other relief as this Honourable Court deems appropriate.

CHAPTER 15

FALSE IMPRISONMENT

PRECEDENTS

P15.01 Claim for damages for false imprisonment (no reasonable grounds for arrest)

P15.02 Defence against claim for false imprisonment (no restraint of liberty)

P15.03 Defence against claim for false imprisonment (reasonable grounds for arrest)

CHAPTER 15

FALSE IMPRISONMENT

PRECEDENTS

P15.01 Claim for damages for false imprisonment (no reasonable grounds for arrest)

[Rajah & Tann Singapore LLP]

1. The Plaintiff is a sales executive working at [company and address].
2. The 1st Defendant is, at all material times, the owner of a departmental store located at [address].
3. The 2nd Defendant is, at all material times, a security guard employed by the 1st Defendant.
4. On or about [date], the Plaintiff was shopping at the 1st Defendant with her 2 children aged 2½ years and 4 years. After shopping for about 2 hours, the Plaintiff made payment for her purchases at the 1st Defendant's cashier counter.
5. When the Plaintiff and her 2 children were trying to leave, the 2nd Defendant, an employee of the 1st Defendant, wrongfully arrested the Plaintiff and her 2 children when there was no lawful ground for arrest and no reasonable suspicion that any seizable offence had been committed.

Particulars

- (1) As the Plaintiff and her children were trying to leave the 1st Defendant, the 2nd Defendant stopped them. The 2nd Defendant informed the Plaintiff that the figures on the bill were incorrect and asked the Plaintiff to accompany him to the security office to have her bags checked;
- (2) The Plaintiff refused as her 2 children were tired and had to return home for their afternoon milk feeds and naps;
- (3) The 2nd Defendant then grabbed the Plaintiff's arm and refused to let her leave. The 2nd Defendant then loudly ordered the Plaintiff to follow him to the 1st Defendant's security office. This was done in a public area where several other shoppers were present. The Plaintiff was thus arrested by the 2nd Defendant and compelled to follow the 2nd Defendant to the

security office where her bags were checked and the children as well as the Plaintiff were searched;

- (4) The Plaintiff and her 2 children were compelled to remain in the security office for about 45 minutes while the searches were being conducted. Thereafter, the Plaintiff and her 2 children were allowed to leave.
6. By reason of the matters set out above, the Plaintiff has sustained loss and damage.

Particulars

- (1) Loss of liberty for 45 minutes;
- (2) Damage to reputation for being wrongfully arrested; and
- (3) Distress during the period of confinement.
7. As the employer of the 2nd Defendant, the 1st Defendant is vicariously liable to the Plaintiff for the tortious conduct of the 2nd Defendant carried out in the course of his employment.

AND the Plaintiff claims against the 1st and 2nd Defendants:

- (1) Damages, including aggravated damages, for false imprisonment;
- (2) Costs; and
- (3) And such further or other relief as this Honourable Court deems fit or just.

P15.02 Defence against claim for false imprisonment (no restraint of liberty)

[Rajah & Tann Singapore LLP]

1. It is admitted that the 1st Defendant is, at all material times, the owner of a departmental store located at [address] and that the 2nd Defendant is, at all material times, a security guard employed by the 1st Defendant [or paragraphs [number] to [number] of the Statement of Claim are admitted].
2. It is admitted that on or about [date], the Plaintiff was shopping at the 1st Defendant's departmental store with her 2 children [or paragraphs [number] to [number] of the Statement of Claim are admitted].
3. It is denied that when the Plaintiff and her 2 children were trying to leave the 1st Defendant's departmental store, the 2nd Defendant, as an employee of the 1st Defendant, had wrongfully arrested the Plaintiff and her 2 children when there was no lawful ground for arrest and no reasonable suspicion that any seizable offence had been committed [or paragraphs [number] to [number] of the Statement of Claim are denied].

Particulars

- (1) As the Plaintiff and her children were trying to leave the 1st Defendant, the 2nd Defendant approached them and requested the Plaintiff to accompany him to the security office to have her bags checked.
- (2) The Plaintiff explained that she is willing to assist but that she had to leave within the hour. The 2nd Defendant assured the Plaintiff that the inspection would not take more than 1 hour.
- (3) The Plaintiff and her 2 children then consented to the 2nd Defendant's request and willingly followed him to the security office and remained there for about 45 minutes while the searches were being conducted. Thereafter, the Plaintiff and her 2 children left.
4. The Defendants further aver that, at all material times, the Plaintiff consented to go to the security office with the 2nd Defendant and she did not indicate that she wanted to leave.
5. In the premises, it is denied that the Plaintiff was falsely imprisoned, whether as alleged or at all. It is further denied that the Plaintiff is entitled to damages, or aggravated damages, whether as alleged or at all.

6. Save as in hereinabove specifically admitted, the Defendants deny each and every allegation contained in the Statement of Claim as though the same were set out herein and specifically traversed seriatim.

P15.03 Defence against claim for false imprisonment (reasonable grounds for arrest)

[Rajah & Tann Singapore LLP]

1. It is admitted that the 1st Defendant is, at all material times, the owner of a departmental store located at [address] and that the 2nd Defendant is, at all material times, a security guard employed by the 1st Defendant [or paragraphs [number] to [number] of the Statement of Claim are admitted].
2. It is admitted that on or about [date], the Plaintiff was shopping at the 1st Defendant's departmental store with her 2 children [or paragraphs [number] to [number] of the Statement of Claim are admitted].
3. It is denied that when the Plaintiff and her 2 children were trying to leave the 1st Defendant, the 2nd Defendant, as an employee of the 1st Defendant, had wrongfully arrested the Plaintiff and her 2 children when there was no lawful ground for arrest and no reasonable suspicion that any seizable offence had been committed [or paragraphs [number] to [number] of the Statement of Claim are denied].

Particulars

- (1) The 2nd Defendant saw the Plaintiff place a watch into her handbag instead of her shopping basket.
- (2) The 2nd Defendant was not able to see if the Plaintiff had made payment for the said watch when the Plaintiff made payment for the rest of her purchases at the 1st Defendant's cashier counter.
- (3) As the Plaintiff and her children were trying to leave the departmental store, the 2nd Defendant approached them requested the Plaintiff to accompany him to the security office to have her bags checked.
- (4) The Plaintiff refused as she said that she was in a hurry.
- (5) The 2nd Defendant then held the Plaintiff's arm and refused to let her leave. The 2nd Defendant then firmly asked the Plaintiff to follow him to the 1st Defendant's security office.
- (6) The 2nd Defendant brought the Plaintiff and her children to the security office where her bags were checked and the children as well as the Plaintiff were searched.

- (7) After the searches were completed and the watch was not found in the Plaintiff's possession, the Plaintiff and her children were allowed to leave.
4. The Defendants aver that, at all material times, the 2nd Defendant had reasonable grounds to believe that the Plaintiff had committed theft of a watch.
 5. In the premises, it is denied that the Plaintiff was falsely imprisoned, whether as alleged or at all. It is further denied that the Plaintiff is entitled to damages, or aggravated damages, whether as alleged or at all.
 6. Save as in hereinabove specifically admitted, the Defendants deny each and every allegation contained in the Statement of Claim as though the same were set out herein and specifically traversed seriatim.

CHAPTER 16

GOODS AND SERVICES

AGENCY

Precedents

- P16.01** Claim for money had and received by agent
- P16.02** Claim by principal against agent for account
- P16.03** Claim by agent for breach of contract
- P16.04** Claim by agent for anticipatory breach of contract
- P16.05** Claim by agent for commission
- P16.06** Claim by agent for commission due
- P16.07** Claim by third person against principal for breach of contract entered into by agent
- P16.08** Claim by third person for tort committed by agent
- P16.09** Claim by third person against agent for breach of warranty of authority
- P16.10** Defence denying agency
- P16.11** Defence to claim for commission
- P16.12** Defence by agent denying liability to account
- P16.13** Defence by agent that he contracted as agent for disclosed and named principal
- P16.14** Defence by agent that he contracted as agent for unnamed principal
- P16.15** Reply alleging holding out

ASSIGNMENT

Precedents

- P16.16** Claim under a legal or statutory assignment
- P16.17** Claim under an equitable assignment
- P16.18** Defence (general)
- P16.19** Defence that debt incapable of being assigned
- P16.20** Defence of incomplete legal or statutory assignment
- P16.21** Set-off of a debt which accrued due from assignor to defendant before assignment

CONSPIRACY

Precedents

- P16.22** Claim of conspiracy to defraud/injure by unlawful means
- P16.23** Claim for conspiracy to injure by lawful means
- P16.24** Claim of conspiracy to injure (damage to reputation/ interlocutory injunction)
- P16.25** General defence denying conspiracy
- P16.26** Defence denying conspiracy to defraud/injure by unlawful means (not party to conspiracy)
- P16.27** Defence denying conspiracy to defraud/injure by unlawful means (asserting good faith in interests of plaintiff)
- P16.28** Defence alleging justification

CONTRACTS FOR SERVICES

Precedents

- P16.29** Claim for work done
- P16.30** Claim for quantum meruit
- P16.31** Defence alleging work not requested
- P16.32** Defence alleging work not done by the Plaintiff
- P16.33** Defence alleging work not completed
- P16.34** Defence and counterclaim where contractor sued for negligent work
- P16.35** Counterclaim for work done negligently

CONTRACTS FOR THE SALE OF GOODS

Precedents

- P16.36** Claim for price of goods sold and delivered
- P16.37** Claim for price of goods agreed to be sold
- P16.38** Claim for price of goods sold under a cif contract
- P16.39** Claim for price of goods sold under a fob contract
- P16.40** Claim for instalments due under a conditional sale or credit-sale agreement
- P16.41** Claim for damages for non-acceptance
- P16.42** Claim for the price of goods sold, damages for non-acceptance and damages for repudiation of sale contract

- P16.43** Claim for price due on a contract for sale by instalments and damages for repudiation
- P16.44** Claim for recovery of price following non-delivery
- P16.45** Claim for damages for non-delivery
- P16.46** Claim for damages for non-delivery alleging special damage on resale (including the cost of defending proceedings)
- P16.47** Claim for damages for late delivery
- P16.48** Claim for wrongful conversion, delivery up and declaration of constructive trusteeship
- P16.49** Claim for specific performance
- P16.50** Claim for breach of condition of title
- P16.51** Claim for breach of warranty of quiet possession
- P16.52** Claim for breach of express condition of quality and for misrepresentation
- P16.53** Claim for breach of the implied condition of reasonable fitness (general)
- P16.54** Claim for breach of implied condition of reasonable fitness (specific purpose communicated to seller)
- P16.55** Claim for breach of implied condition of conformity with description (future goods)
- P16.56** Claim for breach of implied condition of conformity with sample
- P16.57** Denial of non-delivery
- P16.58** Denial of non-delivery (reliance on waiver or on buyer's breach of contract)
- P16.59** Denial of late delivery
- P16.60** Denial of late delivery (reliance on waiver or variation of delivery date or on buyer's breach of contract)
- P16.61** Defence relying on wrongful refusal by buyer to accept delivery with counterclaim for price or damages for non-acceptance
- P16.62** Defence relying on unpaid seller's lien with counterclaim for price
- P16.63** Defence relying on stoppage in transit, lien and resale of goods with counterclaim for loss on resale
- P16.64** Defences of seller – denial of express condition or warranty and of misrepresentation
- P16.65** Defences of seller – denial of breach of implied conditions and warranties

- P16.66** Defences of seller – Denial of implied condition of reasonable fitness
- P16.67** Defences of seller – denial that sale is one by description and denial of non-conformity with description
- P16.68** Defences of seller – denial that sale is one by sample and denial of non-conformity with sample
- P16.69** Defences of seller – denial of right to reject after acceptance of goods and reliance on affirmation of contract
- P16.70** Defences of seller – reliance on exemption clause where Unfair Contract Terms Act does apply
- P16.71** Defences of seller – reliance on exemption clause where Unfair Contract Terms Act does not apply
- P16.72** Defence of buyer – denial of the making of a contract of sale
- P16.73** Defence of buyer – denial of any delivery and denial of delivery on time
- P16.74** Defence of buyer – denial of claim that buyer is unwilling to make payment
- P16.75** Defence of buyer – denial that payment of the price was due when the writ was issued (credit not expired or bill of exchange not yet matured)
- P16.76** Defence of buyer – defence of tender and refusal by seller to deliver
- P16.77** Defence of buyer – denial that price claimed is reasonable and defences arising out of third party valuation
- P16.78** Defence of buyer – defence of rejection of goods sold on approval and denial of approval of goods
- P16.79** Defence of buyer – defence of return of goods supplied on sale or return and denial of adoption of goods
- P16.80** Defence of buyer – denial of sufficiency of documents under a cif contract
- P16.81** Defence of buyer – denial of delivery fob
- P16.82** Defence of buyer – denial of payment due under acceleration clause or minimum payment clause in conditional sale agreement
- P16.83** Defence of buyer – defence of rejection for breach of implied conditions
- P16.84** Defence of buyer – defence of set-off and counterclaim for damages for breach of implied warranties
- P16.85** Defence of buyer – defence of rejection for breach of express condition of quality and rescission for misrepresentation

- P16.86** Defence of buyer – defence of set-off and counterclaim for damages for breach of express condition of quality and for misrepresentation
- P16.87** Defence of buyer – defence putting exemption clause in issue

CREDIT, FINANCE AND LEASING

Precedents

- P16.88** Claim for breach of hire-purchase agreement
- P16.89** Claim for breach of term lease agreement
- P16.90** Claim on personal guarantees given with regard to a term lease master agreement

INDUCING BREACH OF CONTRACT

Precedents

- P16.91** Claim for damages for inducing breach of contract
- P16.92** Defence to claim for damages for inducing breach of contract (no knowledge)
- P16.93** Defence to claim for damages for inducing breach of contract (no breach/inducement)
- P16.94** Defence to claim for damages for inducing breach of contract (lawful excuse)

INTIMIDATION

Precedents

- P16.95** Claim for damages for intimidation
- P16.96** Claim for damages and an injunction for intimidation
- P16.97** Defence denying intimidation

WRONGFUL INTERFERENCE AND UNLAWFUL INTERFERENCE

Precedents

- P16.98** Claim for conversion (by taking)
- P16.99** Claim for conversion (by transfer)
- P16.100** Claim for detinue
- P16.101** Claim for trespass to goods
- P16.102** Unlawful interference with trade or business – natural justice

CHAPTER 16

GOODS AND SERVICES

AGENCY

PRECEDENTS

P16.01 Claim for money had and received by agent

[Tan Kok Quan Partnership]

1. By an agreement in writing dated [date], the Plaintiff agreed to employ the Defendant, and the Defendant agreed to sell [goods], and receive payment therefor, as the Plaintiff's agent.
2. The Defendant secured an order for [quantity of goods] from [Mr X] for S\$[amount]. Hence, on or about [date], the Plaintiff delivered the [goods] to the Defendant.
3. The Defendant delivered the [goods] to [Mr X] and received the purchase price.

However, the Defendant has failed to pay the said price to the Plaintiff.

AND the Plaintiff claims:

- (1) S\$[amount];
- (2) Interest; and
- (3) Costs.

P16.02 Claim by principal against agent for account

[Tan Kok Quan Partnership]

1. The Plaintiff is a [particulars]. The Plaintiff employed the Defendant as the Plaintiff's agent for the sale of [goods].
2. It was an implied term of the agreement, and/or it was the duty of the Defendant to render a true and full account to the Plaintiff of all sale proceeds collected by him.
3. The Defendant has collected money from the customers but in breach of the agreement and/or of the said duty, has failed, neglected or refused to deliver a true and full account to the Plaintiff.

AND the Plaintiff claims:

- (1) An account of what is due to the Plaintiff from the Defendant in respect of moneys received by the Defendant and an order for payment by the Defendant to the Plaintiff of the sum found due on the taking of such account;
- (2) Interest on the sum found due to the Plaintiff on the taking of the account; and
- (3) Costs.

P16.03 Claim by agent for breach of contract

[Tan Kok Quan Partnership]

1. By an agreement in writing dated [date] the Defendants agreed to appoint the Plaintiff as sole agent for the sale of the Defendants' product known as [product].
2. By Clause [number] of the agreement the Plaintiff agreed to use his best endeavours to obtain orders for the Defendants' said product. The Defendants agreed to pay to the Plaintiff a commission of [amount] per cent at the end of every month based on amounts received from customers in the preceding month.
3. On or about [date], the Plaintiff informed the Defendants of [number] orders for the Defendants' product. However, the Defendants in breach of the agreement refused or failed to accept any of the orders.
4. By reason of the matters aforesaid, the Plaintiff has lost the commission which he would have otherwise earned on the orders referred to in paragraph 3 herein.

Particulars of Loss and Damage

[Particulars]

AND the Plaintiff claims:

- (1) S\$[special damages];
- (2) Interest; and
- (3) Costs.

P16.04 Claim by agent for anticipatory breach of contract

[Tan Kok Quan Partnership]

1. By an agreement in writing dated [date] between the Plaintiff and Defendant, the Defendant agreed to appoint the Plaintiff as the Defendant's agent for the sale of the Defendant's goods for the period of [date] to [date].
2. It was an express term of the said agreement that the Defendant would pay the Plaintiff a commission of [amount] per cent on all orders obtained by the Plaintiff on behalf of the Defendant.
3. By a letter from the Defendant to the Plaintiff dated [date], the Defendant, in breach of the said agreement, informed the Plaintiff that he would be unable to appoint the Plaintiff.
4. By reason of the matters aforesaid, the Defendant has wrongfully repudiated the said agreement.
5. The Plaintiff, as he was entitled to do, accepted the repudiation in a letter [from his solicitor] dated [date].
6. By reason of the matters aforesaid, the Plaintiff has lost the commission he would have otherwise earned under the said agreement.
7. Further, the Plaintiff has incurred expense in attempting to mitigate his loss.

Particulars of expenses

[Particulars]

AND the Plaintiff claims:

- (1) Damages;
- (2) Interest; and
- (3) Costs.

P16.05 Claim by agent for commission

[Tan Kok Quan Partnership]

1. The Plaintiff is and was at all material times a housing agent carrying on business at [company name and address].
2. On or about [date] the Defendant requested the Plaintiff to find a purchaser for his house at [address].
3. By a contract in writing dated [date], the Defendant agreed to pay to the Plaintiff a commission of [amount] per cent on the purchase price paid by any person introduced to the Defendant by the Plaintiff, and who subsequently purchases the Defendant's house.
4. On or about [date] the Plaintiff introduced [Mr X] to the Defendant. By on or about [date], [Mr X] signed a Sale and Purchase Agreement to buy the said house.
5. By reason of the matters aforesaid, there is due and owing to the Plaintiff the sum of S\$[amount] (being [amount] per cent of the purchase price).
6. However, in breach of the agreement, referred to in paragraph 3 herein, the Defendant has failed, refused and/or neglected to pay the Plaintiff the said sum, or any sum.

AND the Plaintiff claims:

- (1) The sum of S\$[amount];
- (2) Interest; and
- (3) Costs.

P16.06 Claim by agent for commission due

[Tan Kok Quan Partnership]

1. The Plaintiff is an agent of the Defendants for the sale of [goods]. The Defendants are the [suppliers] of the said [goods].
2. By a contract in writing dated [date] between the Plaintiff and the Defendants, the Defendants agreed to pay to the Plaintiff commission at the rate of [amount] per cent of all [goods] sold by the Defendants to purchasers introduced to the Defendants by the Plaintiff.
3. Clause [number] of the contract provided that the Defendants shall at the end of every month furnish an account of sales achieved by the Plaintiff on behalf of the Defendants and that the Defendants shall pay the commission due by the 15th day of the following month.
4. The Plaintiff in pursuance of the contract introduced [number] persons to the Defendants who purchased the said [goods].
5. The Defendants have failed, refused and/or neglected to deliver to the Plaintiff any account of the sales effected as a result of introductions made by the Plaintiff, and to pay the Plaintiff any of the commission which is due although the Plaintiff has by letter(s) dated [date], requested the Defendants to do so.
6. By reason of the matters aforesaid the Plaintiff has suffered loss and damage.

AND the Plaintiff claims:

- (1) An account of all sales achieved by the Plaintiff on behalf of Defendants and of the amount of commission due;
- (2) An order for payment by the Defendants of sums found due to the Plaintiff on the taking of such account together with the said interest thereon;
- (3) Alternatively, damages for loss of commission and interest thereon; and
- (4) Costs.

P16.07 Claim by third person against principal for breach of contract entered into by agent

[Tan Kok Quan Partnership]

1. The Plaintiff is a [particulars] carrying on business at [address] and the Defendant is a [particulars] carrying on business at [address].
2. By an agreement in writing dated [date] made between the Plaintiff of the one part and [XYZ] as agent for and on behalf of the Defendant of the other part it was agreed that the Defendant would sell and the Plaintiff would buy [goods] to be delivered to the Plaintiff by [date].
3. In breach of the said agreement, the Defendant failed to deliver any of the said goods by [date] or at all.
4. The Plaintiff was unable to obtain a sufficient quantity of [goods] from any other source until [date].
5. Hence, the Plaintiff has suffered loss and damage.

AND the Plaintiff claims:

- (1) Damages;
- (2) Interest; and
- (3) Costs.

P16.08 Claim by third person for tort committed by agent

[Tan Kok Quan Partnership]

1. On or about [date], the Plaintiff was a passenger in the 1st Defendants' car with the registration number [number] which was driven by the 2nd Defendant. At all material times, the 2nd Defendant was the employee of the 1st Defendants.
2. The said car collided with a lorry with the registration number [number] along [ABC Road] at about [time].
3. The collision was caused by the negligence of the 2nd Defendant in the course of his employment as agent of the 1st Defendants. The Plaintiff suffered personal injury, loss and damage in consequence.

Particulars of Negligence

[Particulars]

Particulars of Injuries

[Particulars]

Particulars of Special Damage

[Particulars]

AND the Plaintiff claims:

- (1) General damages;
- (2) S\$[special damages];
- (3) Interest; and
- (4) Costs.

P16.09 Claim by third person against agent for breach of warranty of authority

[Tan Kok Quan Partnership]

1. On or about [date], the Defendant orally represented that he was the agent of [Mr X] and purported to make a contract between the Plaintiff and [Mr X].
2. The Defendant impliedly warranted that he was authorised by [Mr X] to make the contract. Further, the Plaintiff entered into the said contract in reliance on the said warranty.
3. In the event, the Defendant was not authorised by [Mr X] and [Mr X] has refused to abide by the said contract.
4. The Defendant is in breach of his warranty of authority.
5. The Plaintiff has been unable to enforce the contract against [Mr X] and has thereby suffered loss and damage.

AND the Plaintiff claims:

- (1) Damages;
- (2) Interest; and
- (3) Costs.

P16.10 Defence denying agency

[Tan Kok Quan Partnership]

1. The Defendant denies that he agreed to engage the Plaintiff as his agent as alleged in paragraph 1 of the Statement of Claim or at all.
2. Save that the Defendant admits that he refused to recognise the Plaintiff as his agent, paragraphs [numbers] of the Statement of Claim are denied.

P16.11 Defence to claim for commission

[Tan Kok Quan Partnership]

1. The Defendant denies that he requested the Plaintiff to find a purchaser for the said or any house as alleged in the Statement of Claim or at all, or that he agreed to pay the alleged or any commission.
2. The Defendant admits that [Mr X] purchased the house but denies that [Mr X] was introduced by the Plaintiff. Hence, the Plaintiff is not entitled to any commission.

P16.12 Defence by agent denying liability to account

[Tan Kok Quan Partnership]

1. The Defendant admits that he agreed to act as the agent of the Plaintiff but avers that the terms of the agency are not fully set out in the Statement of Claim. The full terms are set out in the agreement dated [date]. The Defendant will refer to the same at the trial for its full terms and effect.
2. Clause [number] of the agreement provided that the Defendant was to render an account only when sales exceed S\$[amount]. However, this condition has not been met.

P16.13 Defence by agent that he contracted as agent for disclosed and named principal

[Tan Kok Quan Partnership]

The Defendant admits that he entered into an agreement with the Plaintiff as alleged in the Statement of Claim. However, the Defendant avers that the agreement was made by him not on his own account but as agent for and on behalf of [Mr X]. The Defendant further avers that this was known to the Plaintiff at the time the agreement was entered into.

P16.14 Defence by agent that he contracted as agent for unnamed principal

[Tan Kok Quan Partnership]

The Defendant admits that he entered into an agreement with the Plaintiff as alleged in the Statement of Claim. However, the Defendant avers that the agreement was made by him not on his own account, but as agent for and on behalf of an unnamed principal. The Defendant further avers that this was known to the Plaintiff at the time the agreement was entered into.

P16.15 Reply alleging holding out

[Tan Kok Quan Partnership]

1. The Plaintiff joins issue with the Defendant upon his Defence save insofar as the same consists of admissions.
2. Over the period [date] to [date], the Defendant held out [Mr X] as the general manager of the Defendant's business and represented that [Mr X] had authority to enter into the contract.
3. The Plaintiff entered into the contract in the belief induced by such holding out. In the premises, the Defendant is estopped from denying the authority of [Mr X].

ASSIGNMENT

PRECEDENTS

P16.16 Claim under a legal or statutory assignment

[Tan Kok Quan Partnership]

1. The Defendant owed [Mr X] (“the Assignor”) the sum of S\$[amount] (“the Debt”) being the price of goods sold and delivered by the Assignor to the Defendant under a written contract dated [date] made between them.
2. By way of an assignment dated [date] made under the Assignor’s hand, he absolutely assigned the Debt to the Plaintiff.
3. By way of a letter dated [date], the Assignor gave the Defendant notice in writing of the said assignment.
4. Notwithstanding demands, the Defendant has wrongfully failed and/or refused to pay the Plaintiff the Debt which amounts to S\$[amount].

AND the Plaintiff claims:

- (1) S\$[amount];
- (2) Interest; and
- (3) Costs.

P16.17 Claim under an equitable assignment

[Tan Kok Quan Partnership]

1. The Defendant owed the 2nd Plaintiff the sum of S\$[amount] (“the Debt”) being the price of goods sold and delivered by the 2nd Plaintiff to the Defendant under a written contract dated [date] made between them.
2. By way of an assignment dated [date], the 2nd Plaintiff assigned the Debt to the 1st Plaintiff and gave oral notice of the said assignment to the 1st Plaintiff.
3. Notwithstanding demands, the Defendant has wrongfully failed and/or refused to pay the 1st Plaintiff the Debt which amounts to S\$[amount].

AND the 1st Plaintiff claims:

- (1) S\$[amount];
- (2) Interest; and
- (3) Costs.

P16.18 Defence (general)

[Tan Kok Quan Partnership]

1. The Defendant denies that [Mr X] (“the Assignor”) assigned the Debt to the Plaintiff as alleged or at all *or* that there was any debt to be assigned [Particulars].

P16.19 Defence that debt incapable of being assigned

[Tan Kok Quan Partnership]

1. The Defendant denies that the Debt was capable of being assigned, as Clause [number] of the original contract prohibited assignments.
2. Hence, the alleged assignment is of no effect whatsoever.

P16.20 Defence of incomplete legal or statutory assignment

[Tan Kok Quan Partnership]

The Defendant denies that the assignment was in writing or that the assignment was absolute, as it was by way of charge only or notice in writing of the alleged assignment was given to him.

P16.21 Set-off of a debt which accrued due from assignor to defendant before assignment

[Tan Kok Quan Partnership]

1. The Defendant admits that he entered into the contract dated [date] to buy goods from the Assignor and paid the full contract price. However, it was subsequently discovered that goods worth S\$[amount] were defective and could not function. These goods were returned and accepted by the assignor on or about [date].
2. Hence, prior to the alleged assignment, the Assignor owed the Defendant the sum of S\$[amount].
3. The said sum of S\$[amount] is still due and owing from the Assignor to the Defendant.
4. Hence, the Defendant is entitled to set off the said sum of S\$[amount] against the amount claimed by the Plaintiff.

CONSPIRACY

PRECEDENTS

P16.22 Claim of conspiracy to defraud/injure by unlawful means

[Harry Elias Partnership]

1. At all material times:
 - (1) The Plaintiff, a company incorporated in Singapore, carried on business as [nature of the Plaintiff's business].
 - (2) From [date] to [date], the 1st Defendant was a Director of the Plaintiff, employed as its managing director.
 - (3) From [date] to [date] the 2nd Defendant was a director of the Plaintiff, employed as its [...] director.
 - (4) The 3rd Defendant, a company incorporated in Singapore, carried on business as [nature of business].
 - (5) The 1st and 2nd Defendant are directors of the 3rd Defendant and owned and controlled the 3rd Defendant.
2. In their capacities as its directors, the 1st and 2nd Defendants and each of them owed the following fiduciary duties to the Plaintiff:
 - (1) A duty to act in good faith and in the best interests of the Plaintiff;
 - (2) A duty not to act for a purpose collateral to the purposes conferred by the Plaintiff's Articles;
 - (3) A duty not to act so as to place himself in a position in which his personal interests did or might conflict with the interests of the Plaintiff;
 - (4) A duty not to make any secret profit or receive any secret payment from any third party with whom he was dealing whether in his capacity as a director of the Plaintiff or otherwise;
 - (5) A duty to account for any such secret profit or secret payment.
3. The 1st and 2nd Defendants wrongfully and with intent to injure the Plaintiff and/or to cause loss to the Plaintiff by unlawful means conspired and combined together to defraud the Plaintiff and to conceal such fraud and the proceeds of such fraud from the Plaintiff.

Particulars

- (1) The 1st Defendant caused and procured the Plaintiff to use the letter of credit facilities of the 3rd Defendant and pay a commission of [amount] per cent.
- (2) The 1st and 2nd Defendants caused and negotiated the transfer of contracts for the sale of goods to be supplied by the Plaintiff to its customer, [name], to be cancelled and transferred to the 3rd Defendant.
- (3) The 1st and 2nd Defendants, using the 3rd Defendant, invoiced the Plaintiff twice for the same goods and services provided by the 3rd Defendant.
4. Pursuant to and in furtherance of the conspiracy pleaded in paragraph 3 above the 1st, 2nd and 3rd Defendants carried out the following unlawful acts and means by which the Plaintiff was injured.
5. As a result of the matters set out in paragraphs 3 and 4 above the Plaintiff has suffered loss and damage [particulars of unlawful acts and particulars of damage].

AND the Plaintiff claims against the 1st, 2nd and 3rd Defendants:

- (1) Damages for the 1st and 2nd Defendants' breach of fiduciary duties;
- (2) An account of all sums misappropriated by the 1st, 2nd and 3rd Defendants as set out in paragraph 5 above and an order for payment to the Plaintiff of all sums found due on the taking of the account;
- (3) An account of all sums received by the 1st, 2nd and 3rd Defendants and each of them which were secret profits received in fraud of the Plaintiff under paragraph [number] above and an order for payment to the Plaintiff of all sums found due on the taking of the account.

P16.23 Claim for conspiracy to injure by lawful means

[Harry Elias Partnership]

1. The Plaintiff owned a business styled as [name] that carried on [nature of business] (“the Shop”).
2. The Defendants live at various addresses within the vicinity of the Shop.
3. On or before [date], the Defendants (or any two or more together) conspired and combined together wrongfully and with the sole or predominant intention of injuring the Plaintiff and/or of causing loss to the Plaintiff by damaging or destroying his business. The motivation of the Defendants was wholly unreasonable and unjustified.
4. Pursuant to and in furtherance of the conspiracy pleaded in paragraph 3 above the Defendants (or one or more of them) on numerous occasions between [date] did the following by which the Plaintiff was injured.

[Particulars of acts committed]

5. As a result of the Defendants’ conspiracy as set out in paragraphs 3 and 4 above the Plaintiff has suffered loss and damage.

[Particulars of damage]

P16.24 Claim of conspiracy to injure (damage to reputation/ interlocutory injunction)

[Harry Elias Partnership]

1. The 1st Plaintiff is a company dealing in [nature of business].
2. The 2nd Plaintiff held the position of [designation] in [name of Company] from the period [date] to [date].
3. At the material time, the Defendant was employed as the 2nd Plaintiff's secretary and reported directly to the Plaintiff on all matters.
4. During the course of the Defendant's employment, the 2nd Plaintiff and the Defendant were involved in a personal relationship, which ended in [month and year].
5. On or around [date], the Defendant tendered her resignation and a few days thereafter proceeded to send out various letters to the 2nd Plaintiff and the Company as well as other persons.

[List of dates of publication and persons to whom these were published]

6. The Defendant has repeatedly and with intent to injure the 1st and 2nd Plaintiffs threatened on diverse dates in her letters to the 2nd Plaintiff and other persons to publish or cause to be published in the newspapers in Singapore information obtained by her during the course of her employment, in breach of her employment contract/in breach of the implied terms set out in [...] as well as information of her personal and/or working relationship with the 2nd Plaintiff.

Particulars

[Publications]

7. Further, the Defendant and person or persons whose name or names are unknown to the Plaintiffs on diverse dates wrongfully and/or with the paramount intent to injure the 1st and 2nd Plaintiffs conspired with and agreed together to publish and/or caused to publish the information as set out in paragraph 6 herein.
8. The 1st and 2nd Plaintiffs aver that by such publication that has been made, they have suffered damage.
9. Further, the 1st and 2nd Plaintiffs aver that by such publication that has been threatened to be made, the 1st and 2nd Plaintiffs have and will continue to suffer real and substantial damage if the Defendant is not restrained by an injunction of the court.

AND the Plaintiffs claim against the Defendant:

- (1) Damages;
- (2) An injunction against the Defendant, whether by herself, her servants or agents or otherwise howsoever, to be restrained from disclosing, whether directly or indirectly to anyone (other than the relevant authorities, her solicitors and court) any information whatsoever acquired by her during her period of employment with the 1st Plaintiff on the personal affairs of the 2nd Plaintiff excluding his relationship with the Defendant; and
- (3) An injunction against the Defendant whether by herself, her servants or agents or otherwise howsoever, to be restrained and is hereby restrained from disclosing to any newspaper or other media (whether within or outside Singapore) or to the employees of the 1st Plaintiff or otherwise publishing for public dissemination any information on the relationship between the Defendant and the 2nd Plaintiff.

P16.25 General defence denying conspiracy

[Harry Elias Partnership]

1. The Defendants deny that they have or that any of them has at any time conspired to injure the Plaintiff as alleged or at all.
2. Further or in the alternative, it is denied that the Defendants had as their sole or dominant purpose of any such alleged conspiracy, which is denied, to cause injury to the Plaintiff.
3. The Defendants deny that they have or that any of them have committed any of the acts alleged as set out in paragraph [number] of the Statement of Claim and the particulars therein or any wrongful act towards the Plaintiff company pursuant to a conspiracy or at all.
4. The Defendants deny that the Plaintiff has suffered the alleged damage or any damage as a result of any act of the Defendants or any one of the Defendants.
5. Save as expressly admitted herein, the Defendants and each of them deny each and every allegation in the statement of claim as if the same were set out and herein traversed seriatim.

P16.26 Defence denying conspiracy to defraud/injure by unlawful means (not party to conspiracy)

[Harry Elias Partnership]

1. It is denied that the 2nd Defendant was a party to the alleged or any conspiracy. On [date before alleged conspiracy] the 2nd Defendant told the 1st Defendant that he was extremely unhappy with the progress of his career with the Plaintiff and that he intended to resign as a director and employee of the company.
2. Thereafter the 2nd Defendant did not attend the offices of the Plaintiff or communicate with the 1st Defendant or any other employee of the Plaintiff at any time, although his formal resignation was not given for one month after that date.
3. It is further denied that the 2nd Defendant carried out or had any knowledge of any of the facts or matters, whether pursuant to any conspiracy (which is denied) as alleged or otherwise.

P16.27 Defence denying conspiracy to defraud/injure by unlawful means (asserting good faith in interests of plaintiff)

[Harry Elias Partnership]

1. The alleged or any conspiracy, breach of duty, fraud, unlawful interference or concealment are denied.
2. The 1st and 2nd Defendants were entitled to the payments of S\$[amount] each which were bonuses paid in recognition of their contribution to the significant increase in profits which the Plaintiff enjoyed in the year [year], which arose on profits in the previous year.
3. Further, the 1st and 2nd Defendants aver that the bonuses were authorised by the Plaintiff in a meeting of its board on [date], at which the Plaintiff's legal advisers were present.
4. The 1st and 2nd Defendants aver that the use of the 3rd Defendant's letter of credit facilities at a commission was done in the best interests of the Plaintiff. It was for the purposes of securing a contract for [contract description] for the Plaintiff. At that time, the Plaintiff was unable to obtain further letter of credit facilities with the bank.
5. At all times the 1st and 2nd Defendants acted in good faith and in the best interests of the Plaintiff.

P16.28 Defence alleging justification

[Harry Elias Partnership]

1. The Defendants deny that they have or that any of them has at any time conspired to injure the Plaintiff as alleged or at all.
2. Further or in the alternative, it is denied that the Defendants had as their sole or dominant purpose of any such alleged conspiracy, which is denied, to cause injury to the Plaintiff.
3. The Defendants admit [the acts that are not denied] (“the Acts”). The Defendants aver that the Acts carried out were done in good faith for the purpose of promoting their interests.

Particulars of Justification

[Particulars of circumstances and the factual matrix which is relied on to show justification for committing the admitted acts]

4. Save for the acts as set out in paragraph 3 herein, the Defendants deny that they committed any of the alleged acts set out in paragraph [number] of the Statement of Claim or any wrongful act towards the Plaintiff.
5. The Defendants deny that the Plaintiff has suffered the alleged damage or that any damage suffered by the Plaintiff, which is denied, was caused or occasioned by the alleged conspiracy or at all.

CONTRACTS FOR SERVICES

PRECEDENTS

P16.29 Claim for work done

[Tan Kok Quan Partnership]

1. The Plaintiff is a [particulars].
2. By a contract evidenced by letters between the Plaintiff and the Defendant dated [date] it was agreed that the Plaintiff would install [goods] for the Defendant at [address].
3. It was an express term of the said agreement that the Defendant would pay the Plaintiff S\$[amount] within [number] month(s) from the completion of the work.
4. The Plaintiff installed the [goods] by [date] but in breach of the agreement the Defendant has failed, refused and/or neglected to pay the sum of S\$[amount].

AND the Plaintiff claims:

- (1) S\$[amount];
- (2) Interest;
- (3) Costs; and
- (4) Such further or other relief as this Honourable Court deems fit.

P16.30 Claim for quantum meruit

[*Tan Kok Quan Partnership*]

1. The Plaintiff is a [particulars].
2. At the Defendant's request, the Plaintiff agreed to install [goods] for the Defendant at [address].
3. It was an express, alternatively an implied term of the agreement that the Defendant would pay to the Plaintiff a reasonable sum for the work.
4. The Plaintiff completed the work by [date]. However, in breach of the agreement the Defendant has failed, refused and/or neglected to pay the Plaintiff a reasonable or any sum.
5. On a *quantum meruit* basis, a reasonable remuneration for the work is S\$[amount].

AND the Plaintiff claims:

- (1) S\$[amount] or in the alternative, damages to be assessed;
- (2) Interest;
- (3) Costs; and
- (4) Such further or other relief as this Honourable Court deems fit.

P16.31 Defence alleging work not requested

[Tan Kok Quan Partnership]

The Defendant denies that the alleged or any work carried out by the Plaintiff was carried out for the Defendant or at his request.

P16.32 Defence alleging work not done by the Plaintiff

[Tan Kok Quan Partnership]

The Defendant denies that the Plaintiff carried out any of the alleged work. It was carried out by [name] instead.

P16.33 Defence alleging work not completed

[Tan Kok Quan Partnership]

1. The Defendant admits that he has not paid the Plaintiff S\$[amount].
2. The work was not completed, and remains uncompleted.

Particulars

[Particulars]

3. Hence, the Defendant denies that the Plaintiff is entitled to any payment for the work done.

P16.34 Defence and counterclaim where contractor sued for negligent work

[Tan Kok Quan Partnership]

1. The Defendant denies that the work was done negligently or without reasonable care and skill.
2. The Defendant denies that the defects alleged were caused by him.
3. In breach of Clause [number] of the contract, the Plaintiff has failed, refused and/or neglected to pay the Defendant the contract price of S\$[amount] by [date]. Hence, the Defendant has suffered loss and damage.
4. If, which is denied, the Defendant is liable for any of the defects alleged, the Defendant will rely on his counterclaim herein by way of set-off in extinction or diminution of the Plaintiff's alleged claim.

Counterclaim

5. The Defendant repeats paragraphs 1 to 4 above.

AND the Defendant counterclaims:

- (1) The contract price of S\$[amount];
- (2) Interest;
- (3) Costs; and
- (4) Such further or other relief as this Honourable Court deems fit.

P16.35 Counterclaim for work done negligently

[Tan Kok Quan Partnership]

1. The work was done negligently and there are defects.

Particulars of Negligence

[Particulars]

Particulars of Defects

[Particulars]

2. Notwithstanding demands, the Plaintiff refused to make good the defects. Hence, the Defendant had to engage an alternative contractor at a cost of S\$[amount] to make good the said defects.

Particulars of Loss and Damages

[Particulars]

AND the Defendant counterclaims:

- (1) S\$[amount] or in the alternative, damages to be assessed;
- (2) Interest;
- (3) Costs; and
- (4) Such further or other relief as this Honourable Court deems fit.

CONTRACTS FOR THE SALE OF GOODS

PRECEDENTS

P16.36 Claim for price of goods sold and delivered

[Rajah & Tann Singapore LLP]

1. The Plaintiff is in the business of [type of business].
2. The Defendant is in the business of [type of business].
3. By an agreement dated [date] (“the Agreement”) the Plaintiff agreed to sell and the Defendant agreed to buy [description of item] for the sum of S\$[amount].
4. The Agreement is evidenced by [details of agreement].
5. On [date] the Plaintiff delivered the goods to the Defendant.
6. Notwithstanding several demands made by and on behalf of the Plaintiff on [details of demands] the Defendant has failed and/or refused to pay the sum of S\$[amount].

AND the Plaintiff claims:

- (1) S\$[amount]; and
- (2) Interest at the rate of [contractual or statutory interest] from the date of this writ until final payment.

P16.37 Claim for price of goods agreed to be sold

[Rajah & Tann Singapore LLP]

1. The Plaintiff is in the business of [type of business].
2. The Defendant is in the business of [type of business].
3. By an agreement dated [date] ("the Agreement") the Plaintiff agreed to sell and the Defendant agreed to buy and collect [description of item] for the sum of S\$[amount].
4. The Agreement is evidenced by [details of agreement].
5. On [date] the Plaintiff gave notice to the Defendant to collect the goods.
6. Notwithstanding several demands made by and on behalf of the Plaintiff on [details of demands] the Defendant has failed and/or refused to collect the goods or pay the sum of [amount].

AND the Plaintiff claims:

- (1) S\$[amount]; and
- (2) Interest at the rate of [contractual or statutory interest] from the date of this writ until final payment.

P16.38 Claim for price of goods sold under a cif contract

[Rajah & Tann Singapore LLP]

1. The Plaintiff is in the business of [type of business].
2. The Defendant is in the business of [type of business].
3. By written agreement dated [date] (“the Agreement”) the Plaintiff agreed to sell and the Defendant agreed to buy [description of item] for the sum of S\$[amount] to be shipped between [dates] cif to [destination]. Payment to be made against documents.
4. The Agreement is evidenced by [details of agreement].
5. On [date] the [items] were shipped on board [details].
6. On [date] the Plaintiff forwarded to the Defendant:
 - (1) Invoice dated [date];
 - (2) Bill of lading dated [date]; and
 - (3) An insurance policy [details].
7. Notwithstanding several demands made by and on behalf of the Plaintiff on [details of demands] the Defendant has failed and/or refused to accept the documents and has failed and/or refused to make payment for the sum of S\$[amount].

AND the Plaintiff claims:

- (1) S\$[amount]; and
- (2) Interest at the rate of [contractual or statutory interest] from the date of this writ until final payment.

P16.39 Claim for price of goods sold under a fob contract

[Rajah & Tann Singapore LLP]

1. The Plaintiff is in the business of [type of business].
2. The Defendant is in the business of [type of business].
3. By written agreement dated [date] (“the Agreement”) the Plaintiff agreed to sell and the Defendant agreed to buy [description of item] for the sum of S\$[amount] fob [location] on [date]. Payment to be made against documents.
4. The Agreement is evidenced by [details of agreement].
5. On [date] the [items] were shipped on board [details].
6. On [date] the Plaintiff forwarded to the Defendant:
 - (1) Invoice dated [date]; and
 - (2) Bill of lading dated [date].
7. Notwithstanding several demands made by and on behalf of the Plaintiff on [details of demands] the Defendant has failed and/or refused to accept the documents and has failed and/or refused to make payment for the sum of [amount].

AND the Plaintiff claims:

- (1) S\$[amount]; and
- (2) Interest at the rate of [contractual or statutory interest] from the date of this writ until final payment.

P16.40 Claim for instalments due under a conditional sale or credit-sale agreement

[Rajah & Tann Singapore LLP]

1. The Plaintiff is in the business of [type of business].
2. The Defendant is in the business of [type of business].
3. By an agreement dated [date] (“the Agreement”) the Plaintiff agreed to sell and the Defendant agreed to buy [description of item] for the sum of [amount].
4. The goods were to be delivered in [number] instalments of [details of instalments] delivered on [dates]. Payment for each instalment was to be made within [details] of delivery.
5. The Agreement is evidenced by [details of agreement].
6. The Plaintiff delivered instalment [number] and [number] on [date] and [date].
7. Notwithstanding several demands made by and on behalf of the Plaintiff on [details of demands] the Defendant has failed and/or refused to make payment for the sum of [amount] for instalment [number] delivered on [date].

AND the Plaintiff claims:

- (1) S\$[amount] representing instalment number [number]; and
- (2) Interest at the rate of [contractual or statutory interest] from the date of this writ until final payment.

P16.41 Claim for damages for non-acceptance

[Rajah & Tann Singapore LLP]

1. The Plaintiff is in the business of [type of business].
2. The Defendant is in the business of [type of business].
3. By an agreement dated [date] ("the Agreement") the Plaintiff agreed to sell and the Defendant agreed to buy [description of item] for the sum of S\$[amount].
4. The Agreement is evidenced by [details of agreement].
5. On [date] the Plaintiff delivered goods to the Defendant but the Defendant refused to accept delivery or make payment for it.
6. On [date] the Plaintiff sold the goods for S\$[amount] which was the market price.
7. By reason of the aforesaid, the Defendant has repudiated the Agreement and the Plaintiff has suffered loss:

Particulars

- (1) Difference between agreed price and market price S\$[amount]
- (2) Additional transportation charges of S\$[amount]
- (3) Additional storage charges of S\$[amount]

AND the Plaintiff claims:

- (1) S\$[amount];
- (2) Damages; and
- (3) Interest at the rate of [contractual or statutory interest] from the date of this writ until final payment.

P16.42 Claim for the price of goods sold, damages for non-acceptance and damages for repudiation of sale contract

[Rajah & Tann Singapore LLP]

1. The Plaintiff is in the business of [type of business].
2. The Defendant is in the business of [type of business].
3. By an agreement dated [date] (“the Agreement”) the Plaintiff agreed to sell and the Defendant agreed to buy [description of item] for the sum of S\$[amount].
4. The Agreement is evidenced by [details of agreement].
5. On [date] the Plaintiff delivered goods to the Defendant but the Defendant refused to accept delivery or make payment for it.
6. On [date] the Plaintiff has not been able to find a buyer for the goods.
7. By reason of the aforesaid, the Defendant has repudiated the Agreement and the Plaintiff has suffered loss:

Particulars

- | | |
|--|-------------|
| (1) The price of the goods | S\$[amount] |
| (2) Additional transportation charges of | S\$[amount] |
| (3) Additional storage charges of [amount] | |
| per [period] | S\$[amount] |

AND the Plaintiff claims:

- (1) S\$[amount];
- (2) Damages; and
- (3) Interest at the rate of [contractual or statutory interest] from the date of this writ until final payment.

P16.43 Claim for price due on a contract for sale by instalments and damages for repudiation

[Rajah & Tann Singapore LLP]

1. The Plaintiff is in the business of [type of business].
2. The Defendant is in the business of [type of business].
3. By an agreement dated [date] ("the Agreement") the Plaintiff agreed to sell and the Defendant agreed to buy [description of item] for the sum of S\$[amount].
4. The goods were to be delivered in [number] instalments of [details of instalments] delivered on [dates]. Payment for each instalment was to be made within [details] of delivery.
5. The Agreement is evidenced by [details of agreement].
6. The Plaintiff delivered instalment [number] and [number] on [date] and [date].
7. Notwithstanding several demands made by and on behalf of the Plaintiff on [details of demands] the Defendant has failed and/or refused to make payment for the sum of S\$[amount] for instalment [number] delivered on [date].
8. By reason of the aforesaid, the Defendant has repudiated the Agreement and the Plaintiff has suffered loss:

Particulars

- | | |
|--|-------------|
| (1) Instalment [number] | S\$[amount] |
| (2) Loss of profit on instalment [numbers] | S\$[amount] |
| (3) [Details of other losses] | S\$[amount] |

AND the Plaintiff claims:

- (1) S\$[amount];
- (2) Damages; and
- (3) Interest at the rate of [contractual or statutory interest] from the date of this writ until final payment.

P16.44 Claim for recovery of price following non-delivery

[Rajah & Tann Singapore LLP]

1. The Plaintiff is in the business of [type of business].
2. The Defendant is in the business of [type of business].
3. By an agreement dated [date] (“the Agreement”) the Plaintiff agreed to buy and the Defendant agreed to sell [description of item] for the sum of S\$[amount] to be delivered to the Plaintiff on [date].
4. The Agreement is evidenced by [details of agreement].
5. On [date] the Plaintiff paid to the Defendant the sum of [amount].
6. On [date] the Defendant failed to deliver the goods to the Plaintiff.
7. Notwithstanding several demands made by and on behalf of the Plaintiff on [details of demands] the Defendant has repeatedly failed and/or refused to deliver the goods.
8. By reason of the aforesaid, the Defendant has repudiated the Agreement.
9. Further and in the alternative, there has been a total failure of consideration.

AND the Plaintiff claims:

- (1) S\$[amount]; and
- (2) Interest at the rate of [contractual or statutory interest] from the date of this writ until final payment.

P16.45 Claim for damages for non-delivery

[Rajah & Tann Singapore LLP]

1. The Plaintiff is in the business of [type of business].
2. The Defendant is in the business of [type of business].
3. By an agreement dated [date] ("the Agreement") the Plaintiff agreed to buy and the Defendant agreed to sell [description of item] for the sum of S\$[amount] to be delivered to the Plaintiff on [date].
4. The Agreement is evidenced by [details of agreement].
5. On [date] the Defendant failed to deliver the goods to the Plaintiff.
6. Notwithstanding several demands made by and on behalf of the Plaintiff on [details of demands] the Defendant has repeatedly failed and/or refused to deliver the goods.
7. As a result of the Defendant's failure to deliver, on [date] the Plaintiff was forced to purchase goods at S\$[amount] which is the market price.
8. By reason of the aforesaid, the Defendant has repudiated the Agreement and the Plaintiff has suffered loss.

Particulars

- (1) Difference between agreed price and market price S\$[amount]
- (2) [Details of other losses] S\$[amount]

AND the Plaintiff claims:

- (1) S\$[amount]; and
- (2) Interest at the rate of [contractual or statutory interest] from the date of this writ until final payment.

P16.46 Claim for damages for non-delivery alleging special damage on resale (including the cost of defending proceedings)

[Rajah & Tann Singapore LLP]

1. The Plaintiff is in the business of [type of business].
2. The Defendant is in the business of [type of business].
3. By an agreement dated [date] (“the Agreement”) the Plaintiff agreed to buy and the Defendant agreed to sell [description of item] for the sum of S\$ [amount] to be delivered to the Plaintiff on [date].
4. The Agreement is evidenced by [details of agreement].
5. At the time of the Agreement, the Defendant was aware that the goods were purchased by the Plaintiff for resale onwards to [Third Party].
6. On [date] the Defendant failed to deliver the goods to the Plaintiff.
7. Notwithstanding several demands made by and on behalf of the Plaintiff on [details of demands] the Defendant has repeatedly failed and/or refused to deliver the goods.
8. As a result of the Defendant’s failure to deliver on [date] and as a result of the Plaintiff being unable to obtain goods from other suppliers, the Plaintiff thereby breached its contract with [Third Party].
9. On [date] the [Third Party] commenced proceedings against the Plaintiff. The Plaintiff reasonably defended those proceedings. However, on [date] the [Third Party] was awarded damages of S\$[amount] and costs of S\$[amount] against the Plaintiffs.
10. By reason of the aforesaid, the Defendant has repudiated the Agreement and the Plaintiff has suffered loss.

Particulars

- | | |
|--|-------------|
| (1) Loss of profit on resale | S\$[amount] |
| (2) Damages paid to [Third Party] | S\$[amount] |
| (3) Costs of defending action brought by [Third Party] | S\$[amount] |

AND the Plaintiff claims:

- (1) Damages; and
- (2) Interest at the rate of [contractual or statutory interest] from the date of this writ until final payment.

P16.47 Claim for damages for late delivery

[Rajah & Tann Singapore LLP]

1. The Plaintiff is in the business of [type of business].
2. The Defendant is in the business of [type of business].
3. By an agreement dated [date] ("the Agreement") the Plaintiff agreed to buy and the Defendant agreed to sell [description of item] for the sum of S\$[amount] to be delivered to the Plaintiff on [date].
4. The Agreement is evidenced by [details of agreement].
5. At the time of the Agreement, the Defendant was aware that the goods were purchased by the Plaintiff for resale onwards to [Third Party].
6. On [date 1] the Defendant failed to deliver the goods to the Plaintiff.
7. The Defendant only delivered the goods to the Plaintiff on [date 2].
8. By reason of the aforesaid, the Defendant has breached the Agreement and the Plaintiff has suffered loss.

Particulars

- (1) Loss of profit on resale of goods on [date 1] S\$[amount]

AND the Plaintiff claims:

- (1) Damages; and
- (2) Interest at the rate of [contractual or statutory interest] from the date of this writ until final payment.

P16.48 Claim for wrongful conversion, delivery up and declaration of constructive trusteeship

[Lee & Lee]

1. The Plaintiff has at the request of the 1st Defendant supplied and delivered to the 1st Defendant various [description of goods] to the value of [amount] over the period [date] to [date], full particulars of which are known to the 1st Defendants and short particulars are as follows:

Particulars

The Particulars herein are set forth in Annex A hereto.

2. Despite the said [amount] being due and payable, the 1st Defendant has failed, refused and/or neglected to pay the same. By [1st Defendant's solicitor's] letter of [date], the Plaintiff demanded payment of the said amount, and in response, the 1st Defendant returned to the Plaintiff [description of goods] valued at [amount].
3. By [1st Defendant's solicitor's] further letters, and in particular, its letter dated [date], the Plaintiff demanded payment of the balance sum of [amount] due in respect of the said [description of goods].
4. Notwithstanding the above, the 1st Defendants have to date failed, refused and/or neglected to pay the said sum of [amount] to the Plaintiff or any part thereof or at all.
5. Further and/or in the alternative, the said [description of goods] were supplied pursuant to various terms and conditions, which provided *inter alia* that until such time as the Plaintiff was paid in full, property in the [description of goods] did not pass to the 1st Defendant, and the 1st Defendant furthermore held the said [description of goods] as a fiduciary agent and bailee on behalf of the Plaintiff.

Particulars

The express terms and conditions incorporated as part of the contract of supply of the [description of goods] to the 1st Defendant as set out in each invoice accompanying the delivery of the [description of goods] included, *inter alia*:

[terms]

6. On or about [date], despite written requests by the Plaintiff, the 1st Defendant wrongfully and in breach of [term] of the said contract refused to permit the Plaintiffs' representatives access to the [description of goods] to recover the same.

7. Further and/or in the alternative, the 1st Defendant has by its failure and refusal to give delivery of the [description of goods], wrongfully converted the same.
8. Further and/or in the alternative, the 1st Defendant as a fiduciary agent of the Plaintiff in connection with the [description of the goods] is liable to account to the Plaintiffs for the balance [description of goods] not returned to the Plaintiff as set out in paragraph 2 hereof, or the value of such [description of goods].
9. The 2nd Defendant was incorporated on or about [date]. The promoters and shareholders of the 2nd Defendant were the 3rd Defendant and one [name], who were also appointed the Directors of the 2nd Defendant.
10. Without the consent of the Plaintiffs as the owners of the [description of goods] in question, the 2nd Defendants purportedly took over the retail outlets and operations of the 1st Defendant.
11. In breach of trust and/or the 1st Defendant's contractual and/or bailment obligations to the Plaintiffs, the 2nd Defendants were given possession of the [description of goods]. Thereafter, the 1st Defendants effectively ceased trading. At no time were the Plaintiffs informed of these events, nor did they consent to the same.
12. On account of the 3rd Defendant being concurrently a Director of both the 1st and the 2nd Defendants up to [date], during which time the said transfers took place, the 2nd Defendant was at all times aware of and/or had constructive knowledge of the fact that the title in the [description of goods] was retained by the Plaintiffs. Despite such knowledge, the 2nd Defendant persisted in its sale and other dealings in the [description of goods], and thus converted the same to its own purposes.
13. Further and/or in the alternative, by virtue of the matters pleaded in paragraphs 10 and 11, the 2nd Defendant was in knowing receipt of the [description of goods] as the property of the Plaintiff, and that it is liable to account to the Plaintiff for all proceeds thereof as trustee and fiduciary.
14. Further and/or in the alternative, the Plaintiffs will aver that the incorporation of the 2nd Defendant by the 3rd Defendant is a sham, and that the 2nd Defendant is effectively the alter ego of the 3rd Defendant, incorporated for the sole purpose of evading the claims of the Plaintiff, and also to divert the [description of goods] delivered to the 1st Defendant to the 2nd Defendant. This is apparent alternatively to be inferred from the following:

Particulars

- (1) Without notice to the Plaintiffs, the 2nd Defendant purportedly took over the retail premises of the 1st Defendant as the party carrying on the business of the 1st Defendant, but the operations of the 2nd Defendant practically remained that of the 1st Defendant's, and through the 2nd Defendant, sales of the [description of goods] continued.
- (2) Notwithstanding the intention of the 1st Defendant to cease trading, which intention the 3rd Defendant was clearly aware of, the 1st Defendant and the 3rd Defendant continued to order stocks of [description of goods] from the Plaintiff up until [date].
15. By virtue of the matters aforesaid, the 3rd Defendant was knowingly a party to the carrying on of the business of the 1st Defendant and the 2nd Defendant with intent to defraud the Plaintiff and for other fraudulent purposes, and is liable personally to the Plaintiff in respect of the debts incurred by the 1st Defendant and/or of the acts of the 2nd Defendant.
16. By reason of the matters aforesaid, the 2nd Defendants have held and now hold the [description of goods] and the proceeds of all dealings therein as constructive trustees for the Plaintiff, and are accountable to them as such.
17. By reason of the matters aforesaid, the Plaintiff has suffered and/or will suffer loss and damage, and will continue to suffer loss or damage unless restrained by the Court.

And the Plaintiff claims:

- (1) Against the 1st Defendant:
 - (a) The sum of [amount];
 - (b) An order for delivery up to the Plaintiff of any [description of goods] in the possession or control of the 1st Defendant;
 - (c) An inquiry as to the dealings by the 1st Defendant in respect of the [description of goods] and the proceeds thereof;
- (2) Against the 2nd Defendant:
 - (a) A declaration that the 2nd Defendant received the [description of goods] as constructive trustee for the Plaintiff and further, that it was knowingly a party to the carrying on of the business of the 1st Defendant with intent to defraud the Plaintiff and for other fraudulent purposes;

- (b) An inquiry as to the dealings by the 2nd Defendant in respect of any [description of goods] in the proceeds thereof;
 - (c) An order for delivery up to the Plaintiff of any [description of goods] in the possession or control of the 2nd Defendant;
 - (d) An account of all proceeds from sales of the [description of goods] by the 2nd Defendant;
- (3) Against the 3rd Defendant:
- (a) a declaration that the 3rd Defendant was knowingly a party to the carrying on of the business of the 1st Defendant and the 2nd Defendant with intent to defraud the Plaintiff in respect of debts incurred by the 1st Defendant;
 - (b) A declaration that the 2nd Defendant was the alter ego of the 3rd Defendant;
 - (c) An order that the 3rd Defendant be liable personally to the Plaintiff in respect of the debts incurred by the 1st Defendant;
- (4) Against all dependents:
- (a) An injunction against all of the Defendants that they shall each, whether by themselves, their servants or agents, or otherwise, cease all dealings in connection with any [description of goods] for which the Plaintiffs have not been paid the purchase price;
 - (b) Damages;
 - (c) Interest on all sums due to the Plaintiffs;
 - (d) Costs; and
 - (e) Further or such other relief as the Court deems fit.

[Annex A]

P16.49 Claim for specific performance

[Rajah & Tann Singapore LLP]

1. The Plaintiff is in the business of [type of business].
2. The Defendant is in the business of [type of business].
3. By an agreement dated [date] (“the Agreement”) the Plaintiff agreed to buy and the Defendant agreed to sell [description of item] for the sum of S\$[amount] to be delivered to the Plaintiff on [date].
4. The Agreement is evidenced by [details of agreement].
5. On [date] the Plaintiff tendered the sum of [amount] to the Defendant. However, the Defendant failed and/or refused to deliver the goods to the Plaintiff.
6. By reason of the aforesaid, the Plaintiff is entitled to delivery up of the goods.
7. Further or in the alternative, the Defendant has breached the Agreement and the Plaintiff has suffered loss.

Particulars

- (1) The difference between the agreed price and the market price S\$[amount]

AND the Plaintiff claims:

- (1) An order that the Defendant deliver up the goods within [time period];
- (2) Damages; and
- (3) Interest at the rate of [contractual or statutory interest] from the date of this writ until final payment.

P16.50 Claim for breach of condition of title

[Rajah & Tann Singapore LLP]

1. The Plaintiff is in the business of [type of business].
2. The Defendant is in the business of [type of business].
3. By an agreement dated [date] ("the Agreement") the Plaintiff agreed to buy and the Defendant agreed to sell [description of item] for the sum of S\$[amount].
4. The Agreement is evidenced by [details of agreement].
5. Pursuant to Section 12(1) of the Sale of Goods Act (Cap 393) it was an implied condition of the Agreement that the Defendant had the right to sell the goods.
6. On [date] the [true owner], who at all material times was the true owner of the goods, demanded delivery of the goods and the Plaintiff had no option but to comply with the demand. As such the Defendant had at no time the right to sell the goods to the Plaintiff.
7. By reason of the aforesaid, the Defendant has breached the Agreement.
8. Further and in the alternative, there has been a total failure of consideration.

AND the Plaintiff claims:

- (1) S\$[amount];
- (2) Damages; and
- (3) Interest at the rate of [contractual or statutory interest] from the date of this writ until final payment.

P16.51 Claim for breach of warranty of quiet possession

[Rajah & Tann Singapore LLP]

1. The Plaintiff is in the business of [type of business].
2. The Defendant is in the business of [type of business].
3. By an agreement dated [date] (“the Agreement”) the Plaintiff agreed to buy and the Defendant agreed to sell [description of item] for the sum of S\$[amount].
4. The Agreement is evidenced by [details of agreement].
5. Pursuant to Section 12(2) of the Sale of Goods Act (Cap 393) the Agreement contained, *inter alia*, implied warranties that:
 - (1) The goods were and should remain free from any undisclosed encumbrance;
 - (2) The Plaintiff should enjoy quiet possession of the goods.
6. On [date], the [chargor] demanded payment of all sums due from the Defendant which had been secured by a charge on the goods.
7. On [date], the [chargor] commenced proceedings against the Plaintiff by way of suit [number] for delivery up of the goods and for an injunction to prevent the Plaintiff from disposing of the goods.
8. On [date], a settlement was reached in suit [number] whereby the Plaintiff was to pay to the [chargor] the sum of [amount] to discharge the injunction and the charge on the goods.
9. By reason of the aforesaid, the Defendant has breached the implied warranties and the Plaintiff has suffered loss.

Particulars

- | | |
|---|-------------|
| (1) Payment to the chargor | S\$[amount] |
| (2) Costs of reasonably defending suit [number] | S\$[amount] |
| (3) [Details of other losses] | S\$[amount] |

AND the Plaintiff claims:

- (1) Damages; and
- (2) Interest at the rate of [contractual or statutory interest] from the date of this writ until final payment.

P16.52 Claim for breach of express condition of quality and for misrepresentation

[Rajah & Tann Singapore LLP]

1. The Plaintiff is in the business of [type of business].
2. The Defendant is in the business of [type of business].
3. On [date], the Defendant represented to the Plaintiff that the goods being sold had the following:
 - (1) [Quality 1];
 - (2) [Quality 2].
4. Acting in reliance on the representations, the Plaintiff entered into an agreement dated [date] ("the Agreement") to buy the goods from the Defendant for the sum of S\$[amount].
5. The Agreement is evidenced by [details of agreement]. Further the Agreement expressly stated that the goods would have:
 - (1) [Quality 1];
 - (2) [Quality 2].
6. Pursuant to Section 13(1) of the Sales of Goods Act (Cap 393) the Agreement contained an implied condition that the goods would correspond with the description.
7. Further or in the alternative, the Agreement contained an express condition that the goods would have:
 - (1) [Quality 1];
 - (2) [Quality 2].
8. The said representations were false in that the goods had in fact:
 - (1) [Quality 3];
 - (2) [Quality 4].
9. By reason of the aforesaid misrepresentation, the Plaintiff is entitled to rescind the Agreement.
10. Further or in the alternative, by reason of the aforesaid breaches the Defendant has repudiated the Agreement.
11. On [date] the Plaintiff rescinded the Agreement and/or accepted the Defendant's repudiation and demanded repayment of the sum of [amount].

12. Notwithstanding several demands made by and on behalf of the Plaintiff on [details of demands] the Defendant has failed and/or refused to repay the sum of S\$[amount] to the Plaintiff.
13. By reason of the aforesaid the Plaintiff has suffered loss and damage.

Particulars

- | | |
|--|-------------|
| (1) Difference between goods with
[quality 1&2] and [quality 3&4] | S\$[amount] |
| (2) [Details of other losses] | S\$[amount] |

AND the Plaintiff claims:

- (1) S\$[amount];
- (2) Damages; and
- (3) Interest at the rate of [contractual or statutory interest] from the date of this writ until final payment.

P16.53 Claim for breach of the implied condition of reasonable fitness (general)

[Rajah & Tann Singapore LLP]

1. The Plaintiff is in the business of [type of business].
2. The Defendant is in the business of [type of business].
3. By an agreement dated [date] ("the Agreement") the Plaintiff agreed to buy and the Defendant agreed to sell [description of item] for the sum of S\$[amount]. At the time of the Agreement the Defendant knew that the Plaintiff was buying the goods to use as [purpose].
4. The Agreement is evidenced by [details of agreement].
5. Pursuant to Sections 14(2), 14(2A) and 14(2B) of the Sale of Goods Act (Cap 393) the Agreement contained an implied condition that the goods would be of satisfactory quality.
6. On [date] the Plaintiff paid the Defendant S\$ [amount] and took delivery of the goods.
7. In breach of the condition of the Agreement, the goods delivered by the Defendant was not of satisfactory quality.

Particulars

- (1) [Details of the problems]
8. By reason of the aforesaid the Plaintiff is entitled to reject the goods.
9. Notwithstanding several demands made by and on behalf of the Plaintiff on [details of demands], the Defendant has failed and/or refused to take back the goods and repay the sum of S\$[amount] to the Plaintiff.
10. Further or in the alternative, by reason of the aforesaid, the Plaintiff has suffered loss and damage.

Particulars

- (1) Difference between price of goods and goods of satisfactory quality S\$[amount]
- (2) Loss of profit from not being able to use goods S\$[amount]
- (3) [Details of other losses]

AND the Plaintiff claims:

- (1) S\$[amount];
- (2) Damages; and
- (3) Interest at the rate of [contractual or statutory interest] from the date of this writ until final payment.

P16.54 Claim for breach of implied condition of reasonable fitness (specific purpose communicated to seller)

[Rajah & Tann Singapore LLP]

1. The Plaintiff is in the business of [type of business].
2. The Defendant is in the business of [type of business].
3. On [date], the Plaintiff informed the Defendant that he was interested in purchasing goods in order to:
 - (1) [Purpose 1];
 - (2) [Purpose 2].
4. By an agreement dated [date] ("the Agreement") the Plaintiff agreed to buy and the Defendant agreed to sell goods for the sum of S\$[amount].
5. On [date] the Plaintiff paid the Defendant S\$[amount] and took delivery of the goods.
6. Pursuant to Section 14(3) of the Sale of Goods Act (Cap 393) and by reason of the aforesaid, the Agreement contained an implied condition that the goods would be fit for the particular purpose made known to the Defendant.
7. Notwithstanding several demands made by and on behalf of the Plaintiff on [details of demands], the Defendant has failed and/or refused to take back the goods and repay the sum of S\$[amount] to the Plaintiff.
8. Further or in the alternative, by reason of the aforesaid, the Plaintiff has suffered loss and damage.

Particulars

- | | |
|--|-------------|
| (1) Difference between price of goods and goods fit for the particular purpose | S\$[amount] |
| (2) Alternatively, cost altering goods for the particular purpose | S\$[amount] |
| (3) [Details of other losses] | |

AND the Plaintiff claims:

- (1) S\$[amount];
- (2) Damages; and
- (3) Interest at the rate of [contractual or statutory interest] from the date of this writ until final payment.

P16.55 Claim for breach of implied condition of conformity with description (future goods)

[Rajah & Tann Singapore LLP]

1. The Plaintiff is in the business of [type of business].
2. The Defendant is in the business of [type of business].
3. By an agreement dated [date] (“the Agreement”) the Plaintiff agreed to buy and the Defendant agreed to sell goods for the sum of S\$ [amount]. The Agreement described the goods as:
 - (1) [Description 1];
 - (2) [Description 2].
4. On [date] the Plaintiff paid the Defendant S\$[amount] and took delivery of the goods. The goods did not match the description in that they had:
 - (1) [Description 3];
 - (2) [Description 4].
5. Pursuant to Section 13(1) of the Sale of Goods Act (Cap 393) there is an implied condition that the goods would correspond to the description.
6. Notwithstanding several demands made by and on behalf of the Plaintiff on [details of demands], the Defendant has failed and/or refused to take back the goods and repay the sum of S\$[amount] to the Plaintiff.
7. Further or in the alternative, by reason of the aforesaid, the Plaintiff has suffered loss and damage.

Particulars

- (1) Difference between price of goods with
[description 1] and [description 3] S\$[amount]
- (2) [Details of other losses]

AND the Plaintiff claims:

- (1) S\$[amount];
- (2) Damages; and
- (3) Interest at the rate of [contractual or statutory interest] from the date of this writ until final payment.

P16.56 Claim for breach of implied condition of conformity with sample

[Rajah & Tann Singapore LLP]

1. The Plaintiff is in the business of [type of business].
2. The Defendant is in the business of [type of business].
3. On [date] the Defendant sent the Plaintiff a sample of goods.
4. By an agreement dated [date] (“the Agreement”) the Plaintiff agreed to buy and the Defendant agreed to sell goods for the sum of S\$[amount]. The Agreement specifically stated that the goods sold would be “as per sample supplied”.
5. On [date] the Plaintiff paid the Defendant S\$[amount] and took delivery of the goods. The goods did not match the sample in that they had:
 - (1) [Discrepancy 1];
 - (2) [Discrepancy 2].
6. Pursuant to Section 15(2) of the Sale of Goods Act (Cap 393) there is an implied condition that the bulk of goods would correspond with the sample.
7. Further or in the alternative, by reason of the aforesaid, the Plaintiff has suffered loss and damage.

Particulars

- (1) Difference between price of [sample] and goods with [discrepancy 1] S\$ [amount]
- (2) [Details of other losses]

AND the Plaintiff claims:

- (1) Damages; and
- (2) Interest at the rate of [contractual or statutory interest] from the date of this writ until final payment.

P16.57 Denial of non-delivery

[Rajah & Tann Singapore LLP]

1. The Defendant admits that it entered into the Agreement dated [date] with the Plaintiff whereby the Defendant was to deliver goods to the Plaintiff on [date].
2. The Defendant admits that he did not deliver the goods to the Plaintiff.
3. The Defendant avers that the Plaintiff was to make payment upon delivery. On [date] the Defendant tendered delivery but the Plaintiff was unable and/or unwilling to make payment. As such the Defendant was entitled to refuse delivery of the goods.

P16.58 Denial of non-delivery (reliance on waiver or on buyer's breach of contract)

[Rajah & Tann Singapore LLP]

1. The Defendant admits that it entered into the Agreement dated [date] with the Plaintiff whereby the Defendant was to deliver goods to the Plaintiff on [date].
2. The Defendant admits that he did not deliver the goods to the Plaintiff.
3. The Defendant avers that the Plaintiff by way of a [describe communication] informed the Defendant that the Plaintiff no longer wanted to take delivery of the [items]. As such the Plaintiff waived delivery of the [items] and there is no basis for the Plaintiff's claim.

P16.59 Denial of late delivery

[Rajah & Tann Singapore LLP]

1. The Defendant admits that it entered into the written Agreement dated [date] with the Plaintiff whereby the Defendant was to deliver goods to the Plaintiff on [date].
2. The Defendant admits that he did not deliver the goods to the Plaintiff.
3. The Defendant avers that the Plaintiff was to make payment against the Defendants invoice prior to delivery. The Plaintiff only made payment on [date] as such the Defendant was not obliged to deliver the goods prior to [date].

P16.60 Denial of late delivery (reliance on waiver or variation of delivery date or on buyer's breach of contract)

[Rajah & Tann Singapore LLP]

1. The Defendant admits that it entered into the Agreement dated [date] with the Plaintiff whereby the Defendant was to deliver goods to the Plaintiff on [date].
2. The Defendant avers that the Agreement contained no clause specifying [date] was the date for delivery. The Defendant avers that the delivery of the goods on [date] was within a reasonable time thereby satisfying the Defendant's obligations under the Agreement; or
3. The Defendant admits that the goods were to be delivered on [date 1]. The Defendant admits that the goods were in fact delivered on [date 2]. The Defendant avers that the delivery of the goods on [date 2] was the result of the Plaintiff's failure and/or unwillingness to take delivery of the goods on [date 1]; or
4. The Defendant admits that the goods were to be delivered on [date 1]. The Defendant admits that the goods were in fact delivered on [date 2]. The Defendant avers that the Plaintiff instructed the Defendant by way of [describe communication] that the goods were to be delivered on [date 2]. As such the Plaintiff varied the delivery of the goods to [date 2]; or
5. The Defendant admits that the goods were to be delivered on [date 1]. The Defendant admits that the goods were in fact delivered on [date 2]. The Defendant avers that under the Agreement the Plaintiff was to have made payment on [date 3] prior to receiving the goods. No payment was received from the Plaintiff until [date 4]. As such the Defendant was not obliged to deliver the goods on [date 1].

P16.61 Defence relying on wrongful refusal by buyer to accept delivery with counterclaim for price or damages for non-acceptance

[Rajah & Tann Singapore LLP]

1. The Defendant admits that it entered into the Agreement dated [date] with the Plaintiff whereby the Defendant was to deliver goods to the Plaintiff on [date].
2. The Defendant avers that on [date], when the Defendant delivered the goods to the Plaintiff, it was the Plaintiff that failed and/or refused to accept the goods.

Counterclaim

3. The Defendant avers that the Plaintiff's failure and/or refusal to accept the goods is a breach of the agreement.

AND the Defendant claims:

- (1) S\$[amount] being the purchase price of the goods; and
- (2) Interest at the rate of [contractual or statutory interest] from the date of this writ until final payment.

P16.62 Defence relying on unpaid seller's lien with counterclaim for price

[Rajah & Tann Singapore LLP]

1. The Defendant admits that it entered into the Agreement dated [date] with the Plaintiff whereby the Defendant was to deliver goods to the Plaintiff on [date 1].
2. The Defendant avers that pursuant to the Agreement [describe specific term], the Plaintiff was to have made payment to the Defendant by [date 2]. To date, the Plaintiff has not paid S\$[amount 1] or any part thereof.
3. Pursuant to Section 41(1) of the Sale of Goods Act (Cap 393), the Defendant has an unpaid seller's lien over the goods.

Counterclaim

4. The Defendant avers that the Plaintiff's failure and/or refusal to accept the goods is a breach of the Agreement.
5. The Defendant avers that on [date 3] the Defendant sold the goods for S\$[amount 2] which was the market price for the goods.
6. The Defendant avers that the Plaintiff's breach of the Agreement has resulted in the Defendant suffering loss.

Particulars

- | | |
|--|-------------|
| (1) Difference between agreed price and market price | S\$[amount] |
| (2) Storage fees from [date] to [date] | S\$[amount] |
| (3) [Details of other losses] | S\$[amount] |

AND the Defendant claims:

- (1) Damages; and
- (2) Interest at the rate of [contractual or statutory interest] from the date of this writ until final payment.

P16.63 Defence relying on stoppage in transit, lien and resale of goods with counterclaim for loss on resale

[Rajah & Tann Singapore LLP]

1. The Defendant admits that it entered into the Agreement dated [date] with the Plaintiff whereby the Defendant was to deliver goods to the Plaintiff on [date 1].
2. The Defendant avers that pursuant to the Agreement [specific term], the Plaintiff was to have made payment to the Defendant by [date 2].
3. On [date 3] a petition was brought to wind up the Plaintiff.
4. Pursuant to Section 44 of the Sale of Goods Act (Cap 393), the Defendant contacted [name of carrier] on [date 4] and exercised the right to stop the goods in transit.

Counterclaim

5. The Defendant avers that on [date 3] the Defendant sold the goods for S\$[amount 2] which was the market price for the goods.
6. The Defendant avers that the Plaintiff's breach of the Agreement has resulted in the Defendant suffering loss.

Particulars

- | | |
|--|-------------|
| (1) Difference between agreed price and market price | S\$[amount] |
| (2) Storage fees from [date] to [date] | S\$[amount] |
| (3) [Details of other losses] | S\$[amount] |

AND the Defendant claims

- (1) Damages; and
- (2) Interest at the rate of [contractual or statutory interest] from the date of this writ until final payment.

P16.64 Defences of seller – denial of express condition or warranty and of misrepresentation

[Rajah & Tann Singapore LLP]

1. The Defendant admits that it entered into the Agreement dated [date] with the Plaintiff whereby the Defendant was to deliver goods to the Plaintiff on [date 1].
2. The Defendant denies that the Agreement contained the express condition alleged in paragraph [number] of the Statement of Claim.
3. The Defendant denies that there was any warranty as alleged in paragraph [number] of the Statement of Claim.
4. The Defendant denies each of the representations alleged to have been made by him.

P16.65 Defences of seller – denial of breach of implied conditions and warranties

[Rajah & Tann Singapore LLP]

1. The Defendant admits that it entered into the Agreement dated [date] with the Plaintiff whereby the Defendant was to deliver goods to the Plaintiff on [date 1].
2. The Defendant admits that pursuant to Sections 14(2), 14(2A) and 14(2B) of the Sale of Goods Act (Cap 393) the Agreement contained an implied condition that the goods would be of satisfactory quality.
3. The Defendant relies on Section 14(2C) of the Sale of Goods Act (Cap 393).
4. The Defendant avers that on [date] the Plaintiff's attention was specifically drawn to the [defect/quality in dispute]; or
5. The Defendant avers that on [date] the Plaintiff inspected the goods and the inspection by the Plaintiff would have revealed the [defect/quality in dispute]; or
6. The Defendant avers that on [date] the Defendant sent a sample to the Plaintiff and on examination of the sample it would have been apparent to the Plaintiff that the goods possessed the [defect/quality in dispute].

P16.66 Defences of seller – Denial of implied condition of reasonable fitness

[Rajah & Tann Singapore LLP]

1. The Defendant admits that it entered into the Agreement dated [date] with the Plaintiff whereby the Defendant was to deliver goods to the Plaintiff on [date].
2. The Defendant denies that the Plaintiff made known to the Defendant the particular purpose for the goods as pleaded in paragraph [number] of the Statement of Claim.
3. The Defendant avers that as no such purpose or the like was made known to the Defendant, Section 14(3) of the Sale of Goods Act (Cap 393) does not apply and there is no implied condition of reasonable fitness for the goods.

P16.67 Defences of seller – denial that sale is one by description and denial of non-conformity with description

[Rajah & Tann Singapore LLP]

1. The Defendant admits that it entered into the Agreement dated [date] with the Plaintiff whereby the Defendant was to deliver goods to the Plaintiff on [date 1].
2. The Defendant denies that the sale was a sale by description as alleged in paragraph [number] of the Statement of Claim.
3. The Defendant avers that the Plaintiff had inspected the goods on [date] and that the Agreement was reached based on this inspection.
4. The Defendant further avers that at no time did it provide the Plaintiff with a description of the goods.

P16.68 Defences of seller – denial that sale is one by sample and denial of non-conformity with sample

[Rajah & Tann Singapore LLP]

1. The Defendant admits that it entered into the Agreement dated [date] with the Plaintiff whereby the Defendant was to deliver goods to the Plaintiff on [date].
2. The Defendant denies that the sale was a sale by sample as alleged in paragraph [number] of the Statement of Claim.
3. The Defendant avers that at no time did the Defendant provide the Plaintiff with any sample of the goods; or
4. The Defendant admits that a sample was provided to the Plaintiff on [date]. However, the Defendant avers that the sample was not a sample of goods.

P16.69 Defences of seller – denial of right to reject after acceptance of goods and reliance on affirmation of contract

[Rajah & Tann Singapore LLP]

1. The Defendant admits that it entered into the Agreement dated [date] with the Plaintiff whereby the Defendant was to deliver goods to the Plaintiff on [date 1].
2. The Defendant denies that it has breached the Agreement as alleged in paragraph [number] of the Statement of Claim.
3. The Defendant avers that on [date 1] the Plaintiff accepted the goods. This is reflected in the [details of correspondence].
4. The Plaintiff has had possession of the goods since [date 1] and at no point in time prior to [date 2] has the Plaintiff indicated an intention to reject the goods.
5. The Defendant relies on Section 11(3) and Section 35 of the Sale of Goods Act (Cap 393) and avers that the Plaintiff has accepted the goods in whole or in part and is not entitled to reject them.

P16.70 Defences of seller – reliance on exemption clause where Unfair Contract Terms Act does apply

[Rajah & Tann Singapore LLP]

1. The Defendant admits that it entered into the Agreement dated [date] with the Plaintiff whereby the Defendant would deliver goods to the Plaintiff on [date].
2. The Defendant further admits that paragraph [number] of the Agreement contains an exemption clause as set out in paragraph [number] of the Statement of Claim.
3. The Defendant avers that pursuant to the Agreement the goods were to be delivered to the Plaintiff in [country].
4. By reason of the matters aforesaid, the Defendant avers that the contract comes within the meaning of Section 26 of the Unfair Contract Terms Act (Cap 396), and is an “International Supply Contract”.
5. By reason of the matters aforesaid, the Defendant avers that it is entitled to rely on Clause [number] of the Agreement exempting the Defendant from any liability as alleged in the Statement of Claim or at all.

P16.71 Defences of seller – reliance on exemption clause where Unfair Contract Terms Act does not apply

[Rajah & Tann Singapore LLP]

1. The Defendant admits that it entered into the Agreement dated [date] with the Plaintiff whereby the Defendant would deliver goods to the Plaintiff on [date].
2. The Defendant further admits that Clause [number] of the Agreement contains an exemption clause as set out in paragraph [number] of the Statement of Claim.
3. The Defendant denies that the Plaintiff can rely on the Unfair Contract Terms Act (Cap 396) as the Plaintiff did not purchase the goods as a consumer, the goods were purchased in the ordinary course of the Plaintiff's business and the goods are not of a type ordinarily supplied for private use or consumption.
4. The Defendant avers that it is reasonable for the Defendant to rely on Clause [number] of the Agreement exempting the Defendant from any liability as alleged in the Statement of Claim or at all.

Particulars

- (1) The Plaintiff could have purchased the said goods from [seller] on terms that did not contain the exemption clauses;
- (2) The goods were manufactured to the special order of the Plaintiff;
- (3) The Plaintiff was aware of Clause [number] as this had been specifically drawn to the attention of the Plaintiff [details]; and
- (4) [other particulars].

P16.72 Defence of buyer – denial of the making of a contract of sale

[Rajah & Tann Singapore LLP]

1. The Defendant denies that it entered into any agreement with the Plaintiff for the sale of any of the goods as pleaded in paragraph [number] of the Statement of Claim.

P16.73 Defence of buyer – denial of any delivery and denial of delivery on time

[Rajah & Tann Singapore LLP]

1. The Defendant admits that it entered into the Agreement dated [date] with the Plaintiff whereby the Plaintiff was to deliver goods to the Defendant on [date 1].
2. The Defendant denies that any goods were delivered whatsoever on [date 1] or any other date; or
3. The Defendant denies that the goods were delivered on [date 1]. The Defendant avers that the goods were in fact delivered on [date 2] in breach of the express terms of the Agreement. The Defendant by [describe communication] thereby rejected the goods for late delivery.

P16.74 Defence of buyer – denial of claim that buyer is unwilling to make payment

[Rajah & Tann Singapore LLP]

1. The Defendant admits that it entered into the Agreement dated [date] with the Plaintiff whereby the Plaintiff was to deliver goods to the Defendant on [date 1].
2. The Defendant denies that it is unwilling to make payment.
3. The Defendant avers that pursuant to Clause [number] of the Agreement that the purchase price of the goods is to be paid on delivery.
4. The Defendant further avers that as the Plaintiff has not delivered the goods to the Defendant, the Defendant is under not obligation to make payment.

P16.75 Defence of buyer – denial that payment of the price was due when the writ was issued (credit not expired or bill of exchange not yet matured)

[Rajah & Tann Singapore LLP]

1. The Defendant admits that it entered into the Agreement dated [date] with the Plaintiff whereby the Plaintiff was to deliver goods to the Defendant on [date 1].
2. The Defendant avers that pursuant to Clause [number] of the Agreement, payment is only due [describe when].
3. The Defendant therefore denies that payment was due when the writ was issued.

P16.76 Defence of buyer – defence of tender and refusal by seller to deliver

[Rajah & Tann Singapore LLP]

1. The Defendant admits that it entered into the Agreement dated [date] with the Plaintiff whereby the Plaintiff was to deliver goods to the Defendant on [date 1].
2. On [date] the Defendant tendered payment for the goods to the Plaintiff.
3. Notwithstanding several demands made by and on behalf of the Defendant on [details of demands] the Plaintiff has failed and/or refused to deliver the goods.
4. The Defendant avers that it is the Plaintiff who is in breach of the Agreement.

P16.77 Defence of buyer – denial that price claimed is reasonable and defences arising out of third party valuation

[Rajah & Tann Singapore LLP]

1. The Defendant admits that it entered into the Agreement dated [date] with the Plaintiff whereby the Plaintiff was to deliver goods to the Defendant on [date 1].
2. The Defendant [avers/admits] that there was no price agreed between the Defendant and the Plaintiff.
3. The Defendant avers that pursuant to Section 8(2) of the Sale of Goods Act (Cap 393) the price is to be a “reasonable price”.
4. The Defendant denies that the price reflected in paragraph [number] of the Statement of Claim is a reasonable price. The Defendant avers that a reasonable price for the goods is in fact S\$[amount] which the Defendant paid to the Plaintiff on [date]; or
5. The Defendant denies that the price reflected in paragraph [number] of the Statement of Claim is a reasonable price. The Defendant avers that it is an express term of the agreement that an independent valuation of the price will be obtained. The Defendant further avers that until such valuation has been obtained the Defendant is under no obligation to pay for the goods.

**P16.78 Defence of buyer – defence of rejection of goods
sold on approval and denial of approval of goods**

[Rajah & Tann Singapore LLP]

1. The Defendant admits that it entered into the Agreement dated [date] with the Plaintiff whereby the Plaintiff was to deliver goods to the Defendant on [date 1].
2. The Defendant denies that it accepted the goods on [date 1] when they were delivered.
3. The Defendant avers that it expressly rejected the goods on [date 1] but the Plaintiff failed and/or refused to accept the rejection and take back the goods.

**P16.79 Defence of buyer – defence of return of goods
supplied on sale or return and denial of adoption of goods**

[Rajah & Tann Singapore LLP]

1. The Defendant admits that it entered into the Agreement dated [date] with the Plaintiff whereby the Plaintiff would supply goods to the Defendant on sale or return.
2. The Defendant avers that pursuant to the Agreement, the Defendant could return goods [details from the Agreement].
3. The Defendant admits that on [date] [description of goods and quantity] were delivered to the Defendant.
4. The Defendant admits that on [date] the Defendant did sell [description of goods and quantity] thereby adopting the said goods.
5. The Defendant avers that on [date] it paid the Plaintiff for the goods that were adopted.
6. The Defendant denies that it adopted the remainder of the goods which were returned to the Plaintiff on [date] pursuant to the Agreement as pleaded above.
7. By reason of the matters aforesaid the Defendant denies that the Plaintiff is entitled to any payment for the remainder of the goods that were returned to the Plaintiff on [date].

P16.80 Defence of buyer – denial of sufficiency of documents under a cif contract

[Rajah & Tann Singapore LLP]

1. The Defendant admits that it entered into the Agreement dated [date] with the Plaintiff whereby the Plaintiff sold goods cif to the Defendant.
2. The Defendant further admits that payment for the goods was to be against documents.
3. The Defendant denies that the Plaintiff tendered the proper documents as pleaded in paragraph [number] of the Statement of Claim.
4. The Defendant avers that the documents tendered were defective.

Particulars

- (1) [Reasons documents are defective]
5. In the premises, the Defendant avers that it was entitled to reject the documents.

P16.81 Defence of buyer – denial of delivery fob

[Rajah & Tann Singapore LLP]

1. The Defendant admits that it entered into the Agreement dated [date] with the Plaintiff whereby the Plaintiff sold goods fob the vessel [details] at [location].
2. The Defendant avers that the Plaintiff failed to deliver the goods or any part of them on board the said vessel at the said port.
3. In the premises, the Defendant avers that the Plaintiff is not entitled to the payment for the goods or any part of them.

P16.82 Defence of buyer – denial of payment due under acceleration clause or minimum payment clause in conditional sale agreement

[Rajah & Tann Singapore LLP]

1. The Defendant admits that it entered into the Agreement dated [date] with the Plaintiff whereby the Plaintiff sold goods to the Defendant pursuant to a conditional sale agreement.
2. The Defendant admits that pursuant to Clause [number] of the Agreement where the Defendant fails to make payment, the Plaintiff may serve on the Defendant a notice requiring payment in arrears to be made within [number] days failing which the goods would vest in the Defendant and the Defendant would be liable for the full balance remaining under the Agreement.
3. [The Defendant denies that it has failed to make payments as alleged or at all.]
4. [The Defendant admits that while a notice was served on the Defendant under Clause [number] of the Agreement, the Defendant avers that it complied with the notice within the required time by making payment on [date].]
5. [The Defendant admits a notice was served on the Defendant under Clause [number] of the Agreement. The Defendant avers that the notice was defective as the notice was [details of defect].]
6. By reason of the matters aforesaid, the Defendant denies that the Plaintiff is entitled to any payment under Clause [number] of the agreement.
7. By reason of the matters aforesaid, the Defendant further denies that the Plaintiff is entitled to serve a notice determining the Agreement on the Defendant pursuant to Clause [number] of the Agreement.
8. Further and in the alternative, the Defendant avers that Clause [number] of the Agreement that provides for the payment of the entire balance is in the nature of a penalty and void and/or unenforceable.

P16.83 Defence of buyer – defence of rejection for breach of implied conditions

[Rajah & Tann Singapore LLP]

1. The Defendant admits that it entered into the Agreement dated [date] with the Plaintiff whereby the Plaintiff was to deliver goods to the Defendant on [date 1].
2. [The Defendant avers that pursuant to Section 13 of the Sale of Goods Act (Cap 393), there was an implied condition that the goods would correspond with the description.]
3. [The Defendant avers that pursuant to Section 14 of the Sale of Goods Act (Cap 393), there was an implied condition that the goods supplied under the contract would be of satisfactory quality.]
4. [The Defendant avers that pursuant to Section 15 of the Sale of Goods Act (Cap 393) there was an implied condition that the bulk of the goods would correspond with the sample in quality and that the goods would be free from any defect, making their quality unsatisfactory, which would not be apparent on reasonable examination of the sample.]
5. The Defendant further avers that the Plaintiff was in breach of the implied condition[s] set out above.

Particulars

[Particulars of the breaches]

6. In the premises, the Defendant avers that it was entitled to reject the goods.

P16.84 Defence of buyer – defence of set-off and counterclaim for damages for breach of implied warranties

[Rajah & Tann Singapore LLP]

1. The Defendant admits that it entered into the Agreement dated [date] with the Plaintiff whereby the Plaintiff was to deliver goods to the Defendant on [date 1].
2. [The Defendant avers that it was an express term of the agreement that the goods would have [details].]
3. [The Defendant avers that pursuant to Section 13 of the Sales of Goods Act (Cap 393) there was an implied condition that the goods would correspond with the description.]
4. [The Defendant avers that pursuant to Section 14 of the Sales of Goods Act (Cap 393) there was an implied condition that the goods supplied under the contract would be of satisfactory quality.]
5. [The Defendant avers that pursuant to Section 15 of the Sales of Goods Act (Cap 393) there was an implied condition that the bulk of the goods would correspond with the sample in quality and that the goods would be free from any defect, making their quality unsatisfactory, which would not be apparent on reasonable examination of the sample.]

Particulars

[Particulars of the breaches]

6. By reason of the matters aforesaid, the Defendant has suffered loss and damage.

Particulars

[Particulars of loss/damage]

7. The Defendant admits that while an amount of [amount] remains outstanding under the Agreement, the Defendant is entitled to set off, by way of counterclaim, such sums that are sufficient to extinguish the said amount.

Counterclaim

8. The Defendant repeats the matters pleaded aforesaid in the Defence and the Defendant counterclaims:
 - (1) Damages for breach of contract; and
 - (2) Interest at the rate of [contractual or statutory interest] from the date of this writ until final payment.

P16.85 Defence of buyer – defence of rejection for breach of express condition of quality and rescission for misrepresentation

[Rajah & Tann Singapore LLP]

1. The Defendant admits that it entered into the Agreement dated [date] with the Plaintiff whereby the Plaintiff was to deliver goods to the Defendant on [date 1].
2. The Defendant avers that during the negotiations for the Agreement, the Plaintiff had represented that the goods were:
[Details of the representations]
3. The Defendant entered into the Agreement in reliance on these representations.
4. Further and in the alternative, these representations were express conditions of the Agreement.
5. The Defendant avers that the said representations were false in that the goods were:
[Details of false representations]
6. By reason of the matters aforesaid, the Defendant was entitled to rescind the goods and did so by way [returning/rejecting] the said goods on [date].
7. By reason of the matters aforesaid, the Plaintiff is not entitled to the price of the goods or any part thereof.

P16.86 Defence of buyer – defence of set-off and counterclaim for damages for breach of express condition of quality and for misrepresentation

[Rajah & Tann Singapore LLP]

1. The Defendant admits that it entered into the Agreement dated [date] with the Plaintiff whereby the Plaintiff was to deliver goods to the Defendant on [date 1].
2. The Defendant avers that during the negotiations for the Agreement, the Plaintiff had represented that the goods were:
[Details of the representations]
3. The Defendant entered into the Agreement in reliance on these representations.
4. Further and in the alternative, these representations were express conditions of the Agreement.
5. The Defendant avers that the said representations were false in that the goods were:
[Details of false representations]
6. By reason of the matters aforesaid, the Defendant has suffered loss and damage.

Particulars

[Particulars of loss/damage]

7. The Defendant will rely on Section 2 of the Misrepresentation Act (Cap 390).
8. The Defendant admits that while an amount of S\$[amount] remains outstanding under the Agreement, the Defendant is entitled to set off, by way of counterclaim, such sums that are sufficient to extinguish the said amount.

Counterclaim

9. The Defendant repeats the matters pleaded aforesaid in the Defence and the Defendant counterclaims:
 - (1) Damages for breach of contract; and
 - (2) Interest at the rate of [contractual or statutory interest] from the date of this writ until final payment.

P16.87 Defence of buyer – defence putting exemption clause in issue

[Rajah & Tann Singapore LLP]

1. The Defendant admits that it entered into the Agreement dated [date] with the Plaintiff whereby the Plaintiff was to deliver goods to the Defendant on [date 1].
2. The Defendant further admits that Clause [number] of the Agreement contains an exemption clause as set out in paragraph [number] of the Statement of Claim.
3. The Defendant denies that the exemption clause as set out in paragraph [number] of the Statement of Claim is operative.
4. The Defendant avers that it was a consumer as defined under the Consumer Protection (Fair Trading) Act (Cap 52A) and the Unfair Contract Terms Act (Cap 396) when it entered into the Agreement, and the Plaintiff cannot exclude its obligations pursuant to Sections 13, 14 and 15 of the Sale of Goods Act (Cap 393).
5. Further and in the alternative, if the Defendant did not deal as a consumer, which is expressly denied, the Defendant avers that the Agreement was based on the Plaintiff's standard written terms of business and the Defendant will rely on Section 3 of the Unfair Contract Terms Act (Cap 396).
6. The Defendant avers that pursuant to Sections 3 and 6 of the Unfair Contract Terms Act (Cap 396), it is unreasonable for the Plaintiff to exclude or restrict its liabilities to the Defendant.

CREDIT, FINANCE AND LEASING

PRECEDENTS

P16.88 Claim for breach of hire-purchase agreement

[TSMP Law Corporation and Rajah & Tann Singapore LLP]

1. By a Hire-Purchase Agreement in writing dated [date] made between the Plaintiff and the Defendant and signed by the Defendant ("the HP Agreement"), the Plaintiff agreed to hire to the Defendant the "Goods" as defined in Clause [number] of the HP Agreement and described in Clause [number] of the Schedule to the HP Agreement.
2. Under Clause [number] of the Schedule to the Agreement, the Plaintiff agreed that the hire-purchase price of S\$[amount] would be paid by the Defendant by way of an initial deposit of S\$[amount] and that the balance hire-purchase price of S\$[amount] would be paid by way of 9 monthly instalments of S\$[amount] and one final instalment of S\$[amount], commencing on [date] and thereafter on the 1st day of each succeeding month.
3. Clauses [numbers] of the HP Agreement provide, *inter alia*, that:
 - ["(1) The Goods shall remain the absolute property of the [Plaintiff] and the [Defendant] shall be a mere bailee thereof at all times unless and until the [Defendant] acquires ownership thereof pursuant to Clause 24 hereof. ...
 - (2) The [Defendant] shall not present himself or hold himself out as the owner of the Goods nor do or suffer any act matter or thing to be done whereby the [Defendant] may be reputed as the owner of the Goods. ..."]
4. Clause [number] of the HP Agreement provides, *inter alia*, that:

["The [Defendant] shall not without the written consent of the [Plaintiff] sell, assign, sublet, pledge, mortgage, encumber or part with possession of or otherwise deal with or dispose of the Goods or any interest therein or in this Agreement or the [Defendant's] right to ownership herein contained."]
5. Clause [number] of the HP Agreement provides that, if any monthly instalment remains unpaid for 14 days after the same becomes due, the Defendant is deemed to have wrongfully repudiated the HP Agreement, and the Plaintiff may forthwith determine the Agreement, by way of a notice in writing, and

thereafter the Defendant would no longer be in possession of the Goods with the Plaintiff's consent.

6. Clause [number] of the HP Agreement provides that, upon termination under Clause [number], the Defendant should forthwith do the following:
 - (1) Deliver up the Goods and return to the Plaintiff all title documents, registration books or certificates, policies and certificates of insurance, licences and other documents relating to the Goods; and
 - (2) Pay the Plaintiff the hire-purchase price of the Goods (plus interest on overdue instalments and other sums, if any, payable by the Defendant under the Agreement) less the aggregate of all sums previously paid towards the hire-purchase price under the HP Agreement and less a discount for the acceleration of payment computed by the "rule of 78" method.
7. Clause [number] of the HP Agreement provides that the Plaintiff are entitled to late payment interest at the rate of the prime rate plus [amount] per cent per annum, and an additional administrative fee of S\$[amount] or such other amount as the Plaintiff may charge per month.
8. In breach of the HP Agreement, the Defendant failed to pay the [number] instalment of S\$[amount] (inclusive of late interest) on [date], or any other instalments due thereafter.
9. On [date], the Plaintiff sent a written Notice of Demand to the Defendant informing her that it would terminate the HP Agreement and retake possession of the Goods after the expiration of 7 days from the service of the notice.
10. Due to the Defendant's failure to respond to the Plaintiff's Notice of Demand dated [date], the HP Agreement was automatically terminated pursuant to Clause [number] of the HP Agreement and the Plaintiff sent their repossession agent on [date] to repossess the Goods. To date, the Plaintiff and/or its repossession agent, have not been able to locate the Goods or the Defendant.
11. By reason of the matters aforesaid, the Plaintiff has suffered loss and damage.

Particulars

Balance outstanding	S\$[amount]
---------------------	-------------

Less:

Interest rebate	S\$[amount]
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Balance due from the Defendant	S\$[amount]
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(As at [date])

AND the Plaintiff claims:

- (1) The sum of S\$[amount];
- (2) Interest at the agreed rates set out in paragraph 7 herein on the said sum of S\$[amount] from [date] up to the date of full payment;
- (3) Delivery up of the Goods pursuant to Clause [number] of the HP Agreement;
- (4) Costs on an indemnity basis; and
- (5) Such further or other relief as this Honourable Court deems fit.

P16.89 Claim for breach of term lease agreement

[TSMP Law Corporation and Rajah & Tann Singapore LLP]

1. By a Term Lease Agreement in writing made on or about [date] between the Plaintiffs and the Defendants (“the Agreement”), the Plaintiffs agreed to lease to the Defendants the Goods/Equipment listed at Supplement Nos [numbers] of the Agreement.
2. Under Supplement [number], the Plaintiffs agreed to lease Goods/Equipment worth a total of S\$[amount] to the Defendants for a term of [number] months, commencing on [date] and continuing until [date].
3. Pursuant to the Agreement, the Defendants were to pay monthly instalments payable on the [date] day of each month.
4. As of [date], the Defendants failed to pay the instalment(s) for the month(s) of [months], and are in arrears of their monthly instalments.
5. Clause [number] of the Agreement states, *inter alia*, as follows:

“If any amount to be paid to [the Plaintiffs] is not paid on or before its due date, [the Defendants] shall pay [the Plaintiffs] two percent (2%) of the unpaid amount for each month or part thereof from the due date until the date paid.”

Accordingly, the Plaintiffs are entitled to a contractual late payment charge of 2 per cent per month on the Defendants’ arrears of monthly instalment payments.

6. Clause [number] of the Agreement states, *inter alia*, as follows: “[the Defendants] shall be in default under this Agreement upon the occurrence of any of the following events: (a) [the Defendants] fails to pay any amount when due under this Agreement and such failure shall continue for a period of seven (7) days after the due date...”
7. Clause [number] of the Agreement states, *inter alia*, as follows:

“If [the Defendants] are in default under this Agreement, all amounts due and to become due under each Lease and Financing Transaction shall be immediately due and payable, without further notice from [the Plaintiffs] and [the Plaintiffs] shall have the right, in [the Plaintiffs’] sole discretion, to exercise any one or more of the following remedies: (a) declare any Lease or Financing Transaction entered into pursuant to this Agreement to be in default and terminate the Lease and/or Financing Transaction (b) recover from [the Defendants] any and all amounts then overdue, due and all future Rent payments for a

terminated Lease and/or Financing Transaction...(d) take possession of or render unusable an or all items of Equipment, wherever located, without demand or notice, court order or other process of law...(f) requires [the Defendants] to pay an amount equal to the current Rent, prorated on the basis of a 30-day month, for each day a terminated item is not returned, plus any associated late charges;”

8. For the above-mentioned reasons, the Plaintiffs have suffered loss and damage and are entitled as at [date] to the sum of S\$[amount] pursuant to the Agreement:

Particulars

- (1) In respect of the Goods/Equipment leased under Supplement [number]
- (a) Total monthly instalment payments in arrears from [date] to [date] S\$[amount]
 - (b) Add: late payment charges at 2 per cent per month from [date] to [date] S\$[amount]
 - (c) Total amount payable: S\$[amount]
 - (d) Continuing late payment charges at the contractual rate of 2 per cent per month under the Agreement on arrears of monthly instalment payments to date of full payment thereof.
- (2) In respect of the Goods/Equipment leased under Supplement [number]
- (a) Total monthly instalment payments in arrears from [date] to [date] S\$[amount]
 - (b) Add: late payment charges at 2 per cent per month from [date] to [date] S\$[amount]
 - (c) Add: Monthly Instalment Payments for remaining term of the lease ([date] to [date]) S\$[amount]
 - (d) Total amount payable: S\$[amount]
 - (e) Continuing late payment charges at the contractual rate of 2 per cent per month under the Agreement on arrears of monthly instalment payments to date of full payment thereof.
- (full particulars of the above are set out at [X] and [X] attached hereto)

9. Despite several demands from the Plaintiffs that the Defendants pay the sums due and owing to the Plaintiffs under the Agreement, the Defendants have to date failed, neglected and/or refused to effect payment of the sums demanded or any part thereof, which sums remain due and owing to the Plaintiffs from the Defendants.
10. Clause [number] of the Agreement further states, *inter alia*, that if the Defendants are in default under the Agreement, the Plaintiffs may: “(g) recover from [the Defendants] all attorney’s fees, collection costs and associated expenses incurred in exercising any of [the Plaintiffs’] rights with respect to an event of default....”. Accordingly, the Plaintiffs claim the costs of this action against the Defendants on an indemnity basis.
11. The Plaintiffs will rely on the full terms and effect of the Agreement at trial.

AND the Plaintiffs claim:

- (1) The sum of S\$[amount];
- (2) Continuing late payment charges on arrears of monthly instalment payments at the contractual rate of 2 per cent per month;
- (3) Delivery up of all Goods/Equipment leased pursuant to Clause [number] of the Agreement;
- (4) Costs on an indemnity basis; and
- (5) Such further or other relief as this Honourable Court deems fit.

P16.90 Claim on personal guarantees given with regard to a term lease master agreement

[TSMP Law Corporation and Rajah & Tann Singapore LLP]

1. By 4 separate but identical Personal Guarantees all dated [date] (“the Personal Guarantees”) given by the 1st, 2nd, 3rd and 4th Defendants (collectively, “the Defendants”) in favour of the Plaintiffs, the Defendants in consideration of the Plaintiffs entering into a Term Lease Master Agreement (“the Agreement”) with [hirer] dated [date], absolutely, unconditionally and irrevocably guaranteed “the full, prompt and complete payment of all sums, obligations, liabilities and indebtedness that are or may become due from, whether at the stated due date, by demand or otherwise, under the Agreement (“the Guaranteed Obligations”), without deduction or set-off for any claims or defenses of [hirer] or [the Defendants]” [or equivalent contractual wording].
2. The express terms of the Personal Guarantees executed by the Defendants are, *inter alia*, as follows:

“Paragraph 3

In the event [hirer] shall fail punctually to pay unconditionally and in full any sum due to [the Plaintiffs] under the Agreement, [the Plaintiffs] shall give written notice of demand for payment therefor by mail or hand delivery to [the Defendants] who shall become immediately liable upon receipt of said notice ... [the Defendants] agrees to pay in full all of such sums due and unpaid within 30 days after receipt of said notice. Commencing 30 days after receipt of said notice, [the Defendants] also agree to pay on demand reasonable attorneys’ fees and legal expenses incurred by [the Plaintiffs] subsequent to such date to secure payment from [the Defendants] or [hirer].

Paragraph 4

[The Defendants] expressly agrees that [the Plaintiffs] may, without notice to or consent of [the Defendants], renew, settle, waive, release, compromise or extend the Guaranteed Obligations without waiving, limiting or otherwise affecting [the Defendants]’s liability hereunder and [the Defendants] expressly waive and release any defenses or claims they may have arising from or on account of any such renewal, settlement, waiver, release, compromise or extension. [The Defendants] further expressly agree that their obligations hereunder shall not be released, discharged or otherwise affected by (i) any modification or amendment of or supplement to the Agreement, (ii) any release,

non-perfection or invalidity of any direct or indirect security for any obligation of [hirer] under the Agreement, (iii) the existence of any claim, set-off or other rights which [the Defendants] may have at any time against [hirer], [the Plaintiffs] or any other person, whether in connection herewith or any unrelated transaction, provided that nothing herein shall prevent the assertion of any such claim by separate suit or counterclaim, (iv) any invalidity or unenforceability relating to or against [hirer] for any reason of the Agreement, or any provision of applicable law or regulation purporting to prohibit the payment by [hirer] of the amounts payable by it under the Agreement or (v) any other act or omission to act or delay of any kind by [hirer], [the Plaintiffs] or any other person or any other circumstance whatsoever which might, but for the provisions of this Guarantee, constitute a legal or equitable discharge of [the Defendants]'s obligations hereunder.

Paragraph 9

[The Plaintiffs] shall not be obligated to elect remedies first whichever are available to [the Plaintiffs] in the Agreement and may secure payment first from [the Defendants]. Securing payment from [the Defendants] will not constitute a waiver of remedies against [hirer] for breach of Agreement ...

Paragraph 11

... [the Defendants] hereby irrevocably appoints [name of agent] as their agent to receive on their behalf service of copies of any summons and complaints and any other process which may be served.

Paragraph 12

In any such action, suit or proceeding, [the Defendants] agree that to the extent permitted by applicable law service of process may be made upon them by certified or registered mail to the address of [name of agent] or any method authorised by the laws of Singapore and the applicable rules of the courts of Singapore."

As such, the Defendants are jointly and severally liable for the full obligations, liabilities and indebtedness of [hirer] to the Plaintiffs. The Plaintiffs shall refer to and rely on the full terms and effect of the Personal Guarantees at trial.

3. [Hirer] failed to pay the monthly lease payments under the Agreement to the Plaintiffs for the period of [date] to [date].

4. Clause [number] of the Agreement states, *inter alia*, as follows:

“LATE PAYMENTS. If any amount to be paid to [the Plaintiffs] is not paid on or before its due date, [hirer] shall pay [the Plaintiffs] two percent (2%) of the unpaid amount for each month or part thereof from the due date until the date paid...”.

5. Clause [number] of the Agreement states, *inter alia*, as follows:

“DEFAULT. [Hirer] shall be in default under this Agreement upon the occurrence of any of the following events: (a) [hirer] fails to pay any amount when due under this Agreement and such failure shall continue for a period of seven (7) days after the due date;...
REMEDIES. If [hirer] are in default under this Agreement, all amount due and to become due ... shall be immediately due and payable, without further notice from [the Plaintiffs], and [the Plaintiffs] shall have the right, in [the Plaintiffs]’s sole discretion, to exercise any one or more of the following remedies: ... recover from [hirer] all attorney’s fees, collection costs and associated expenses incurred in exercising any of [the Plaintiffs] rights with respect to an event of default”.

As such, [hirer] are liable to pay the Plaintiffs contractual interest at [amount] per cent per month on the arrears of rental, and legal costs on an indemnity basis.

6. The arrears owed by [hirer] to the Plaintiffs as at [date] is the sum of S\$[amount] (including contractual interest thereon), which [hirer] has to date failed, neglected and/or refused to pay to the Plaintiffs. As such, pursuant to the Personal Guarantees, the Defendants are therefore liable to the Plaintiffs for these sums.
7. As such, the solicitors for the Plaintiffs, [name of solicitors] (“the Plaintiffs’ Solicitors”) wrote to the Defendants on [date], demanding payment of the aggregate sum of S\$[amount] (including legal costs of S\$[amount]). Despite this, the Defendants have to date failed, neglected and/or refused to pay the Plaintiffs the above sum or any part thereof, and have not responded to the Plaintiffs’ Solicitors or the Plaintiffs at all. As such, the said sum of S\$[amount] remains due and owing to the Plaintiffs from the Defendants.

AND the Plaintiffs claim:

- (1) The sum of S\$[amount];
- (2) Contractual interest at 2 per cent per month on the sum of S\$[amount] from [date] to date of full payment, or for such other rate or period that this Honourable Court deems fit or just;

- (3) Costs on an indemnity basis; and
- (4) Such further or other relief as this Honourable Court deems fit or just.

INDUCING BREACH OF CONTRACT

PRECEDENTS

P16.91 Claim for damages for inducing breach of contract

[Harry Elias Partnership]

1. The Plaintiff is a company incorporated in [country] and is involved in the business of [type of business or principal activity] in Singapore.
2. Pursuant to its business, the Plaintiff employed one [name] as its [designation or position] whose responsibilities include [responsibilities, job function] on the terms and conditions set out in an Employment Contract dated [date] ("the Employment Contract") which was for a period of [period].
3. The material terms of the Employment Contract which bind [name of employee] are:
 - (1) [Material terms of the contract which are being alleged to have been breached by the employee, such as notice period, non-competition clause, confidentiality clause]
 - (2) ...
4. The Defendant is a company incorporated in [country of corporation], and is also involved in the business of [type of business or principal activity] in Singapore.
5. The Defendant is and was at all material times aware that [name of employee] was employed by the Plaintiff under a fixed term employment contract and was bound by its terms.
6. On or about [date], the Defendant wrongfully induced and procured [name of employee] to forthwith leave his job before the termination date of the Employment Contract and without notice.

Particulars

[Details of how, when and by whom, the employee was induced to break his/her contract, and the dates and nature of the actual breaches]

7. In consequence of the breach of contract by [name of employee] induced by the Defendant, the Plaintiff suffered loss and damage.

Particulars

[Loss and damage occasioned by the breach of contract]

AND the plaintiff claims:

- (1) Damages;
- (2) Interest; and
- (3) Costs.

P16.92 Defence to claim for damages for inducing breach of contract (no knowledge)

[Harry Elias Partnership]

1. The Defendant denies that it has any knowledge of the alleged contract or at all between the Plaintiff and the [name of the other party] as alleged in the Statement of Claim.

P16.93 Defence to claim for damages for inducing breach of contract (no breach/inducement)

[Harry Elias Partnership]

1. The Defendant does not admit that [name of the other contracting party] was in breach of contract as alleged or at all.
2. Further or alternatively, it is denied that any alleged breach was procured or induced by the Defendant as alleged or at all.

P16.94 Defence to claim for damages for inducing breach of contract (lawful excuse)

[Harry Elias Partnership]

1. Further or alternatively, the Defendant was justified in inducing [name of contracting party] to break and to refuse to perform the said contract with the Plaintiff in that:

Particulars

[Facts, matters and circumstances being relied on to justify the inducement]

INTIMIDATION

PRECEDENTS

P16.95 Claim for damages for intimidation

[Harry Elias Partnership]

1. The Defendant is a trade union, members of whom are employed by C. C is a company engaged in the business of manufacturing spare parts for aircraft engines.
2. The Plaintiff was an employee of company C, but was not a member of the Defendant.
3. On [date] the Defendant entered into a collective agreement in writing with C whereby it was expressly agreed that members of D would not take any strike action.
4. On or about [date] the Defendant wrongfully with intent to injure the Plaintiff threatened C that unless C terminated the employment of the Plaintiff, the Defendant would cause its members to withdraw their labour and take strike action.

Particulars

- (1) On [date] at a meeting of members of D, a resolution was passed to the effect that a notice of demand be served on C to the effect that unless the employment of the Plaintiff was terminated, the members of D would take strike action.
- (2) On [date] the said threat was made in writing to C by delivery of the same to H, the Human Resource Manager of C.
5. The threat to take strike action was unlawful in that it contravened the terms of the collective agreement between the Defendant and C.
6. On [date], in response to the said threat, C terminated the employment of the Plaintiff.
7. By reason of the matters aforesaid the Plaintiff has suffered loss and damage.

Particulars

[Heads of loss and damage and full particulars of their value and extent]

AND the Plaintiff claims:

- (1) S\$[amount] or such other sum as the court finds appropriate as damages;
- (2) Interest; and
- (3) Costs.

P16.96 Claim for damages and an injunction for intimidation

[Harry Elias Partnership]

1. The Plaintiff is and was at all material times carrying on the business of manufacturing and sale of widgets.
2. The Defendant is and was at all material times carrying on the business of selling widgets in competition with the Plaintiff.
3. Between [date] to [date], the Defendant, their servants and agents wrongfully and with intent to harm the Plaintiff, by threats of physical harm intimidated the employees of the Plaintiff to coerce them to cease working for the Plaintiff, with a view of preventing the Plaintiff manufacturing widgets for sale.

Particulars

[Full particulars with dates and names of persons involved of the threats]

4. As a result of the said threats, a number of the Plaintiff's workers have stopped reporting for work or resigned their employment.

Particulars

[Particulars of employees who have stopped working]

5. By reason of the matters aforesaid, the Plaintiff has suffered loss and damage.

Particulars

[Particulars of the loss and damage alleged, including the value]

6. Further the Defendant intends unless restrained to continue to threaten and coerce the employees of the Plaintiff as described in paragraph 3 above.

AND the Plaintiff claims:

- (1) Damages;
- (2) Interest;
- (3) Costs; and
- (4) An injunction restraining the Defendant by themselves, their servants or agents or otherwise from threatening the employees of the Plaintiff and otherwise trying to coerce them to stop working for the Plaintiff.

P16.97 Defence denying intimidation

[Harry Elias Partnership]

1. The Defendant denies that he threatened C as alleged in paragraph [number] of the Statement of Claim or at all.
2. Further or in the alternative if (which is not admitted) C terminated the employment of the Plaintiff as alleged in paragraph [number] of the statement of claim, C did not do so as a result of or in consequence of any threats by the Defendant, its employees or agents.

WRONGFUL INTERFERENCE AND UNLAWFUL INTERFERENCE

PRECEDENTS

P16.98 Claim for conversion (by taking)

[TSMP Law Corporation and Rajah & Tann Singapore LLP]

1. The Plaintiff is the owner of a Toyota Camry car (Registration No [X], “the Car”).
2. On or about [date], without the consent of the Plaintiff, the Defendant unlawfully took the Car from the Plaintiff’s premises at [X] and thereafter used the Car as if it was his own.
3. The Defendant thereby converted the Car to his own use.
4. At the date of conversion, the value of the Car was S\$[X].

And the Plaintiff claims against the Defendant:

- (1) Damages of the sum of S\$[X];
- (2) Consequential damages to be assessed;
- (3) Interest;
- (4) Costs;
- (5) Such further or other relief as this Honourable Court deems fit or just.

P16.99 Claim for conversion (by transfer)

[TSMP Law Corporation and Rajah & Tann Singapore LLP]

1. The Plaintiffs are the owners of a consignment of [X] metric tons of sand (“the Consignment”).
2. On or about [date], the Plaintiffs delivered the Consignment to the Defendants’ warehouse at [X] for storage.
3. On or about [date], the Defendants wrongfully and without the consent of the Plaintiffs delivered the Consignment to a third party whose identity the Plaintiffs are unable to establish (“the 3rd Party”).
4. In delivering the Consignment to the 3rd Party, the Defendants are liable to the Plaintiffs in conversion and the Plaintiffs have suffered loss and damage.
5. The value of the Consignment at the date of the conversion was S\$[X].

And the Plaintiffs claim against the Defendants:

- (1) The sum of S\$[X];
- (2) Consequential damages for conversion to be assessed;
- (3) Interest;
- (4) Costs;
- (5) Such further or other relief as this Honourable Court deems fit or just.

P16.100 Claim for detinue

[TSMP Law Corporation and Rajah & Tann Singapore LLP]

1. The Plaintiff is the owner of a Stradivarius Violin (“the Violin”).
2. The Violin was stolen from the Plaintiff on or about [date]
3. After the theft, on a date unknown to the Plaintiff, the Violin came into the possession of the Defendant.
4. By a letter dated [date], the Plaintiff wrote to the Defendant demanding the return of the Violin, but the Defendant failed and/or refused to do so.
5. The Defendant thereby wrongfully detained the Violin.
6. By reason of the detention, the Plaintiff has suffered loss and damage.

And the Plaintiff claims against the Defendant:

- (1) An order for delivery up of the Violin;
- (2) Alternatively, damages for detention to be assessed;
- (3) Interest;
- (4) Costs;
- (5) Such further or other relief as this Honourable Court deems fit or just.

P16.101 Claim for trespass to goods

[TSMP Law Corporation and Rajah & Tann Singapore LLP]

1. The Plaintiff is the owner of an antique vase (“the Vase”).
2. On or about [date], the Defendant, with the intention of damaging the Vase, picked it up and dropped it to the ground.

Particulars

Before dropping the Vase to the ground, the Defendant exclaimed loudly to the Plaintiff: “I will smash this precious Vase of yours!”

3. The Defendant has therefore committed trespass to the Vase.
4. Arising from the Defendant’s action, there was a deep and visible crack to the right side of the Vase.
5. By reason of the trespass, the Plaintiff has suffered loss and damage.

Particulars

- (1) The cost of partial repair of the crack on the Vase was S\$[X];
- (2) The Vase in its undamaged condition was worth S\$[A]. In its present damaged condition, though partially repaired, it is worth no more than S\$[B]. The diminution in value accordingly amounts to S\$[C].

And the Plaintiff claims against the Defendant:

- (1) Damages of S\$[X + C], or in the alternative, damages for trespass to be assessed;
- (2) Interest;
- (3) Costs; and
- (4) Such further or other relief as this Honourable Court deems fit or just.

P16.102 Unlawful interference with trade or business – natural justice

[TSMP Law Corporation and Rajah & Tann Singapore LLP]

1. The Defendant is and was at all material times, a company incorporated in Singapore and carrying out life insurance business.
2. The Plaintiff was at all material times, an insurance agent employed with the Defendant.
3. The Plaintiff's scope of work included sourcing potential clients, advising potential clients on the insurance policies offered by the Defendant, and the sale of such policies. The Plaintiff was remunerated on a commission basis based on the number and value of the policies sold by him.
4. On or about [date], the Defendant wrote to the Plaintiff about a complaint raised by [name], a customer of the Defendant who was serviced by the Plaintiff. The Defendant notified the Plaintiff that he would be suspended from placing any new business for the Defendant for 3 months with immediate effect.
5. On or about [date], the Plaintiff resigned because he felt that the 3-month suspension was unjust.
6. Arising from the Plaintiff's resignation, the Defendant terminated the Plaintiff's agency on [date].
7. On [date], the Defendant's Conduct Review Committee registered an "A" code with the Life Insurance Association ("LIA") in respect of the Plaintiff's termination. An "A" code is defined by the LIA as "Any [X] directives or [X] guidelines requiring a record of penalisation (including warning, suspension, demotion, termination)". The Defendant's Conduct Review Committee had registered the "A" code on the basis of the alleged complaint which resulted in a 3-month suspension being imposed on the Plaintiff.
8. To ensure continuous service to his clients after his resignation, the Plaintiff made arrangements to assign his clients to [name], another insurance agent of the Defendant. [Name] and the Plaintiff had a common client base, and many of the Plaintiff's clients were familiar with [name]. The assignment of these policies was done with the approval of the Defendant's branch manager, [name], who was the Plaintiff's immediate supervisor.
9. On [date], after discovering that the Plaintiff had assigned his clients' policies to [name], the Defendant's Conduct Review Committee amended the "A" code to a "B" code with the LIA, which is defined as "Any LIA directives or LIA guidelines

requiring termination, followed by a bar-for-life from re-entry". The Defendant's Conduct Review Committee had amended the "A" code to the "B" code on the basis of these client assignments by the Plaintiff, together with the alleged prior misconduct for which the Plaintiff was suspended.

10. The codes registered with the LIA in respect of terminations of agents was open to inspection to all other insurance companies which are members of the LIA.
11. There was no policy by the Defendant, whether written or otherwise regarding the assignment of policies by a terminated agent to another agent.
12. By reason of the registering of the "B" code with the LIA in respect of the Plaintiff's termination, the Plaintiff was unable to obtain employment as an insurance agent.

Particulars

- (1) In or about [date], the Plaintiff applied to [name of company] for a position as an insurance agent. [Name of company] informed the Defendant that his application was rejected as he had been "blacklisted".
 - (2) Sometime in or about [date], the Plaintiff applied to [Name of Company] for a position as an insurance agent. This application was also rejected. The Plaintiff was informed that he was under a ban from working as an insurance agent.
 - (3) [Name of Company] and [Name of Company] are and were, at all material times, members of the LIA.
13. As a result, the Plaintiff was not able to obtain employment as an insurance agent or work in the insurance industry or engage in the insurance business.
 14. The Plaintiff says that the Defendant, through its representatives, namely the Conduct Review Committee, wrongfully and with intent to injure the Plaintiff, caused the Plaintiff to be banned from practicing his profession as an insurance agent, and/or working in the insurance industry and/or engaging in the insurance business, by fraudulently, and/or knowingly and/or, without belief in its truth or recklessly, amending the "A" code to the "B" code with the LIA in respect of the Plaintiff's termination.

Particulars

- (1) By amending the code from the "A" code to the "B" code, the Defendant's Conduct Review Committee represented to the

LIA that they had fresh evidence to support the amendment to a “B” code. According to the [X] “Input Form for New Terminations/Deletions,” “an insurer may amend the code it had previously entered to another code on later obtaining fresh evidence which supports such a change of code.”

- (2) The Plaintiff avers that the Defendant’s Conduct Review Committee made a false representation to the LIA as the Defendant’s Conduct Review Committee did not have the necessary evidence to justify the amendment.
 - (3) The Plaintiff says that the Defendant’s Conduct Review Committee had made the said representation fraudulently, knowingly, without belief in its truth or recklessly, thereby constituting an act by unlawful means.
 - (4) The Plaintiff further avers that the Defendant’s Conduct Review Committee amended the “A” code to the “B” code, thereby intending to and in fact imposing a life-ban on the Plaintiff from working as an insurance agent and depriving him of his livelihood.
15. The Defendant’s actions as stated above amount to an unlawful interference with the Plaintiff’s trade and profession as an insurance agent.
16. Further and/or alternatively, the Plaintiff says that the Defendant, in amending the “A” code to the “B” code with the LIA, breached natural justice.

Particulars

- (1) The Plaintiff avers that it is a rule of natural justice that the Defendant shall provide the Plaintiff with notice of any allegation of misconduct against the Plaintiff.
- (2) The Plaintiff avers that it is a rule of natural justice that the Defendant shall provide the Plaintiff with a reasonable opportunity to be heard in answer to any allegation of misconduct on the part of the Plaintiff and before taking any action which would result in the suspension or termination of the Plaintiff or the imposition of a life ban on the Plaintiff or any unfavourable code registered with the LIA.
- (3) The Plaintiff was not notified that the Defendant’s Conduct Review Committee suspected “policy manipulation” on his part and was investigating into his conduct in relation to the assignment of these policies to [X].

- (4) The Plaintiff was not, at all time, given any opportunity by the Defendant's Conduct Review Committee to explain or defend himself prior to the amendment of the "A" code to the "B" code.
17. By reason of the matters aforesaid, the Plaintiff has suffered loss and damage.

Particulars

- (1) Loss of income from [date] to [date] (inclusive), amounting to [X] (based on average annual income of [X]) or alternatively, damages.

AND the Plaintiff claims:

- (1) A declaration that the decision of the Defendant's Conduct Review Committee to amend the "B" code to the "A" code in respect of the Plaintiff's termination is unlawful and/or illegal and therefore null and void;
- (2) An order that the registration of "B" code in respect of the Plaintiff's termination be set aside;
- (3) The sum of [X];
- (4) Further or in the alternative, damages to be assessed;
- (5) Interest at the rate of 6% per annum or at such rate as this Honourable Court shall allow from the date of this Writ of Summons until payment;
- (6) Costs; and
- (7) Such further and other relief as this Honourable Court deems fit.

CHAPTER 17

INSURANCE

PRECEDENTS

- P17.01** Claim by insured against insurer for recovery of monies under contract of insurance
- P17.02** Claim for subrogated claim by insurer brought in name of insured
- P17.03** Claim for subrogated claim by insurer brought in its own name under s 18(1)(b) of WICA
- P17.04** Claim for contribution by an insurer against another co-insurer
- P17.05** Defences for misrepresentation/breach of warranty/good faith for claim by insured against insurer for breach of contract for non-payment under contract of insurance
- P17.06** Defences for claim made by insurer against another insurer for contribution

CHAPTER 17

INSURANCE

PRECEDENTS

P17.01 Claim by insured against insurer for recovery of monies under contract of insurance

[KhattarWong LLP]

1. The Plaintiff is [a company incorporated in Singapore] carrying on the business of [type of business], and having its registered office [or principal place of business] at [address].
2. The Defendant is an insurance company [incorporated in Singapore], having its registered office [or principal place of business] at [address].
3. Under a contract of insurance (“the Insurance Contract”) no [number] dated [date] entered into between the Plaintiff and Defendant, the Defendant agreed to indemnify the Plaintiff against [all losses claims, etc. arising out of fire damage, or such other damage as may be covered].
4. The following were terms of the Insurance Contract:
[Relevant terms of the contract of insurance/policy]
The Plaintiff shall rely on the Insurance Contract for its full terms and effects at the trial or earlier determination of this action.
5. Pursuant to Clause [number] of the Insurance Contract, the Defendant was liable to indemnify the Plaintiff for [loss suffered as provided under the relevant clauses under policy/contract of insurance].
6. By a letter [or claim form or otherwise as provided under the policy] dated [date], the Plaintiff gave notice of loss for which the Defendant had indemnified the Plaintiff under the Insurance Contract.
7. In breach of the Insurance Contract, the Defendant has failed neglected and/or refused to indemnify the Plaintiff and/or make payment to the Plaintiff as provided for under the Insurance Contract.
8. As a result of the Defendant’s breach, the Plaintiff has suffered loss and damage as follows:

Particulars Of Loss/Damage

[Particulars of loss and damage must set out precisely all loss suffered, after setting off any monies recovered from third parties. The amount may be liquidated or to be assessed or a combination of both]

AND the Plaintiff claims:

- (1) [The liquidated amount];
- (2) Alternatively damages to be assessed;
- (3) Interest thereon;
- (4) Costs; and
- (5) Such further and/or other relief that this Honourable Court may deem fit.

P17.02 Claim for subrogated claim by insurer brought in name of insured

[KhattarWong LLP]

[Once the insurer has indemnified the insured by paying out under the contract of insurance, the insurer can step into the shoes of the insured and exercise the same rights as the insured, including claiming from any third parties who are liable for the insured's loss. Usually, these are tortious claims which the insured will have against third parties and the statement of claim is the same as those for such tortious claims (for example negligence, breach of statutory duty, etc.). The action must be brought in the name of the insured. However, where the contract of insurance deals with the issue of subrogation and the insurer is seeking to assert its rights under that clause, the insurer should specifically plead the clause and its legal effect.]

1. The Plaintiff is [a company incorporated in Singapore] carrying on the business of [type of business], and having its registered office [or principal place of business] at [address].
2. The Defendant is [a company incorporated in Singapore] carrying on the business of [type of business], and having its registered office [or principal place of business] at [address].
3. The Plaintiff brings this claim at the instance of its insurers, AB Ltd, an insurance company [incorporated in Singapore] having its registered office [or principle place of business] at [address], who are the [Public Liability Insurers, as the case may be] of the Plaintiff under a contract of insurance no [number], entered between the Plaintiff and AB dated [date].
4. The Plaintiff brings this claim pursuant to AB's right of subrogation provided for under clause no [number], which provides:

[Relevant clause]

The Plaintiff will rely on the Insurance Contract for its full terms and effects at the trial or earlier determination of this matter.

5. On or about [date], the Defendant and/or its servants and/or agents negligently [caused and/or permitted to be caused a fire on the Defendant's premises which escaped into the Plaintiff's premises], full particulars of which the Defendant is fully aware, short particulars of which are as follows:

Particulars Of Negligence

The foregoing are the best particulars which the Plaintiff is able to provide pending discovery and/or the administration of interrogatories.

6. As a result of the Defendant's negligence, the Plaintiff has suffered loss and damage and AB has been put to expense as follows:

Particulars of loss, damage and expense

[List]

AND the Plaintiff claims:

- (1) [The sum of [amount]];
- (2) Alternatively, damages to be assessed;
- (3) Interest thereon;
- (4) Costs; and
- (5) Such further and/or other relief that this Honourable Court may deem fit.

P17.03 Claim for subrogated claim by insurer brought in its own name under s 18(1)(b) of WICA

[KhattarWong LLP]

[Section 18(1)(b) of WICA gives any party who has made payment under the WICA the right to seek compensation from the party responsible for the loss (i.e. the real tortfeasor). The statement of claim must include a reference to s 18(1)(b) and specify that the claim is made under that section as the cause of action is created by that section.]

1. The Plaintiff is an insurance company [incorporated in Singapore], having its registered office at [address].
2. The Defendants are at all material times carrying on and are in the business of [type of business].
3. [Company's name] were at all material times carrying on and are in the business of [type of business].
4. By a contract of insurance, namely, a Work Injury Compensation Policy no [number] ("the Policy"), the Plaintiff insured the [Company] against any claims payable by [Company] by virtue of the Work Injury Compensation Act (Cap 354) ("the Act").
5. By an agreement entered into on [date] between [Company] and the Defendants, the Defendants engaged [Company] to provide 12-hour security cover for their factory premises located at [registered address].
6. Pursuant to this agreement, [Company] dispatched one [name] on [date] to guard and protect the Defendants' factory premises.
7. On [date], an accident occurred on the Defendants' factory premises [registered address], when the Defendants' servant or agent, [name], whilst using a [equipment] to transfer [items], collided into [name of worker] ("the Accident").
8. The Accident was wholly caused and/or contributed to by negligence of the Defendants and/or their servants or agents, and/or by the breach of the Defendants' duty as owners of the [equipment] to take reasonable care in the management, operation and control of [equipment] in and around the [premises].

Particulars of negligence of the defendants and/or their servants or agents

- (1) Failing to have any or inadequate regard as to the safety of the employees and workers in and around the factory premises;

- (2) Failing to keep proper lookout in the circumstances;
 - (3) Failing to ensure that the [equipment] was properly and safely operated or controlled in the circumstances;
 - (4) Exposing the workers and employees in and around the factory premises to the risk of serious injury or death of which the Defendants knew or ought to have known;
 - (5) Failing to provide adequate supervision in the works being carried out in and around the factory premises.
 - (6) Failing to exercise reasonable care, skill and prudence in the operation, use and management of the [equipment]; and
 - (7) Failing to provide and maintain a safe system of work and also a safe place of work for the workers and employees in and around the factory premises.
9. [Name] subsequently made a claim against [Company] for his medical expenses and/or loss of wages and/or injuries. Pursuant to the Policy, the Plaintiff, being the insurers of [Company], is liable to and did compensate [name] in the sum of S\$[amount].
10. The Plaintiff now bring this action against the Defendants under Section 18(1)(b) of the Act for indemnity in respect of monies paid out under the Act to [name] for damages in respect of personal injuries and consequential losses suffered as a result of the Accident.
11. By reason of the Defendants' negligence and/or the negligence of their servants or agents as particularised above, the Plaintiff has been put to loss and expense.

Particulars of loss and expense

(1) Monies paid to [Name] for medical expenses and/or loss of wages and/or injuries	S\$
(2) Adjusters' fees	S\$
TOTAL	S\$

AND the Plaintiff claims:

- (1) The sum of S\$[amount];
- (2) Interest on the said sum at [amount] per cent per annum;
- (3) Costs; and
- (4) Such further or other relief as this Honourable Court may deem fit.

P17.04 Claim for contribution by an insurer against another co-insurer

[KhattarWong LLP]

[Unless there are many issues of fact, this action is most appropriately commenced by way of originating summons. The right of an insurer to claim contribution from another insurer is based on agreement between the insurers and/or the operation of the equitable principle of contribution in the event of double insurance.]

1. The Plaintiff is an insurance company [incorporated in Singapore], having its registered office [or principal place of business] at [address], and is the public liability insurer of CD Pte Ltd, a company incorporated in Singapore having its registered office/principal place of business at [address], under a Public Liability Policy No [number] entered into between the Plaintiff and CD Pte Ltd dated [date].
2. The Defendant [repeat as in paragraph 1].
3. By an agreement dated [date], entered into between the Plaintiff and the Defendant, the Defendant agreed, *inter alia*, to contribute to CD Pte Ltd's claim against the Plaintiff in [equal proportions].
4. [The following, *inter alia*, were express, alternatively, implied terms of the agreement between the Plaintiff and Defendant:]
[List]
5. Alternatively, the Plaintiff claims that CD Pte Ltd is insured by both the Plaintiff and the Defendant, giving rise to the case of double insurance and therefore the Defendant is liable in equity to contribute to CD Pte Ltd's claim against the Plaintiff.
6. In breach of the agreement, and/or the Defendant's equitable liability to contribute, the Defendant has failed neglected and/or refused to contribute to CD Pte Ltd's claim against the Plaintiff.
7. The Plaintiff has suffered loss damage and been put to expense as follows:

Particulars of loss damage and expense

[Particulars]

AND the Plaintiff claims:

- (1) A declaration that the Defendant is liable to contribute [in equal proportions] to the CD Pte Ltd's claim against the Plaintiff;

- (2) The sum of [amount], being [half] of CD Pte Ltd's claim against the Plaintiff;
- (3) Alternatively, damages to be assessed;
- (4) Interest;
- (5) Costs; and
- (6) Such further and/or other relief that this Honourable Court may deem fit.

**P17.05 Defences for misrepresentation/breach of warranty/
good faith for claim by insured against insurer for breach of
contract for non-payment under contract of insurance**

[KhattarWong LLP]

[The insurer has various defences open to him when faced with an action for breach of contract for non-payment under a contract of insurance.]

1. Paragraph [[number]], which alleges that the Defendant is liable to indemnify the Plaintiff] of the Statement of Claim, is denied.
2. Clause [number] of the Insurance Contract provides as follows:
[Quote clauses which give the Defendant insurer the right to repudiate liability under the Insurance Contract]
3. In breach of Clause [number] and/or the Insurance Contract, the Plaintiff has [failed neglected and/or refused to give full disclosure/misrepresented/breached a warranty] full particulars of which the Plaintiff is fully aware, short particulars of which are as follows:

Particulars of breach

The foregoing are the best particulars that the Defendant is able to provide pending discovery and/or the administration of interrogatories.

4. The Defendant has therefore repudiated the Insurance Contract by reason of the Plaintiff's breach thereof. By a letter dated [date], the Defendant gave the Plaintiff notice of its repudiation.
5. Thus, the Defendant denies that the Defendant is liable to indemnify the Plaintiff as alleged in the Statement of Claim or at all.

P17.06 Defences for claim made by insurer against another insurer for contribution

[KhattarWong LLP]

[The defences open to an insurer when faced with a claim for contribution by another insurer are the absence of agreement and/or estoppel which stops the operation of the equitable principle of contribution.]

1. Paragraph [[number], alleging that there was an agreement] is denied. The Defendant denies that the Defendant had entered into any agreement to contribute to CD Pte Ltd's claim against the Plaintiff as alleged in the Statement of Claim or at all.
2. Further, and/or in the alternative, the Defendant avers that the Plaintiff's conduct has been such that it would be unconscionable to allow the Plaintiff to seek contribution from the Defendant and the Plaintiff is estopped from seeking such contribution.

Particulars

[List]

3. The Defendant therefore denies that the Defendant is liable to contribute to CD Pte Ltd's claim against the Plaintiff as alleged in the Statement of Claim or at all.

CHAPTER 18

INTELLECTUAL PROPERTY

CONFIDENTIAL INFORMATION

Precedents

- P18.01** Claim for breach of confidence
- P18.02** Claim for damages and injunctive relief for breach of confidence by an ex-employee
- P18.03** Defence alleging that confidential information already in public domain
- P18.04** Defence denying that information used by ex-employee had sufficient degree of confidentiality
- P18.05** Defence denying misuse of confidential information
- P18.06** Defence denying duty of confidence
- P18.07** Defence alleging publication was in the public interest
- P18.08** Defence denying breach of confidence

COPYRIGHT AND NEIGHBOURING RIGHTS

Precedents

- P18.09** Claim for primary infringement of copyright in work
- P18.10** Claim for secondary infringement of copyright in work
- P18.11** Statement of claim in respect of copyright and trade marks
- P18.12** Defence denying authorship of copyright
- P18.13** Defence alleging licence of Plaintiff
- P18.14** Defence alleging assignment by Plaintiff
- P18.15** Defence alleging fair dealing for purposes of research or study
- P18.16** Defence alleging that work does not qualify for copyright
- P18.17** Defence denying subsistence of copyright
- P18.18** Defence alleging fair dealing for the purposes of reporting current events
- P18.19** Defence alleging fair dealing for purposes of criticism or review
- P18.20** Defence denying primary infringement of copyright in work
- P18.21** Defence denying secondary infringement of copyright in work
- P18.22** Counterclaim (or Claim) for groundless threats of copyright infringement

PASSING-OFF

Precedents

- P18.23** Claim for passing off the defendant's goods as the plaintiff's goods
- P18.24** Claim for passing off the plaintiff's get-up as the defendant's get-up
- P18.25** Claim for passing off one quality of the plaintiff's goods for the plaintiff's goods of another quality
- P18.26** Claim for passing off one's business as the business of another
- P18.27** Claim for passing off through registration and retention of an internet domain name
- P18.28** Claim for passing off by misrepresentation that celebrity has endorsed defendant's products
- P18.29** Defence denying goodwill
- P18.30** Defence denying misrepresentation
- P18.31** Defence of concurrent and antecedent right
- P18.32** Defence of acquiescence
- P18.33** Defence denying reputation or goodwill

PATENTS

Precedents

- P18.34** Claim by patentee for infringement
- P18.35** Particulars of Infringement
- P18.36** Claim by patentee and exclusive licensee for infringement
- P18.37** Claim for a declaration of non-infringement
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REGISTERED DESIGNS

Precedents

- P18.44** Claim for infringement of registered design

- P18.45** Claim (or Counterclaim) for groundless threats of registered design infringement
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REGISTERED TRADE MARKS

Precedents

- P18.49** Claim by registered proprietor for infringement of registered trade mark under section 27(1) of Trade Marks Act
- P18.50** Claim by registered proprietor for infringement of registered trade mark under section 27(1) of Trade Marks Act
- P18.51** Claim by registered proprietor for infringement of registered trade mark under section 27(2) of Trade Marks Act
- P18.52** Claim by registered proprietor for infringement of registered trade mark under section 27(2) of Trade Marks Act
- P18.53** Claim by registered proprietor for infringement of registered trade mark under section 27(3) of Trade Marks Act
- P18.54** Claim by registered proprietor for infringement of registered well-known trade mark under section 27(3) of Trade Marks Act
- P18.55** Claim by section 44 licensee for infringement of registered trade mark
- P18.56** Claim by section 44 licensee for infringement of registered trade mark
- P18.57** Claim by section 45 licensee and registered proprietor for infringement of registered trade mark
- P18.58** Claim by section 45 licensee and registered proprietor for infringement of registered trade mark
- P18.59** Claim in an action for threats
- P18.60** Claim (or Counterclaim) for groundless threats of trade mark infringement
- P18.61** Claim for an injunction under section 55 of Trade Marks Act
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- P18.65** Claim for injunction pursuant to section 56 of Trade Marks Act
- P18.66** Claim for injunction pursuant to section 56 of Trade Marks Act
- P18.67** Claim pursuant to section 59 of Trade Marks Act
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- P18.69** Claim for disclosure against person not party to proceedings
- P18.70** Claim by registered proprietor for infringement of registered trade mark by comparative advertising
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- P18.73** Defence denying infringement under section 27(2) of Trade Marks Act
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- P18.76** Defence and Counterclaim for order for revocation of registration and for declaration of invalidity of registration and for rectification of register
- P18.77** Defence and Counterclaim for order for revocation of registration and for declaration of invalidity of registration and for rectification of register
- P18.78** Defence of exhaustion of rights
- P18.79** Defence to infringement claim of registered trade mark on grounds of prior use before Plaintiff
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- P18.82** Reply to Defence of invalidity and Defence to Counterclaim for revocation
- P18.83** Reply to Defence of invalidity and Defence to Counterclaim for invalidity and revocation

CHAPTER 18

INTELLECTUAL PROPERTY

CONFIDENTIAL INFORMATION

PRECEDENTS

P18.01 Claim for breach of confidence

[Allen & Gledhill LLP and Drew & Napier LLC]

1. The Plaintiff is and was at all material times the owner of certain confidential information relating to the manufacture of a new product for preventing hair loss [or as the case may be, describing briefly the nature of the new product].

Particulars of Confidential Information

[State the facts and matters concerning the background to, and confidential nature of, the information. If the Plaintiff wishes to have limited disclosure of the information and/or have the information subject to sealing orders (or other types of confidentiality orders), he should apply to court for directions]

2. On or about [date], the Plaintiff disclosed the said confidential information to the Defendant who received the said information well knowing the same to be confidential. The disclosure was for the purpose of [purpose].

Particulars of Disclosure

[The occasion when and/or the document in which the said confidential information was disclosed to the Defendant and the purpose of the disclosure]

3. On or about [date], in breach of the obligation of confidence and without the Plaintiff's consent, the Defendant disclosed the said confidential information [or made use of the said confidential information, as the case may be] otherwise than for the purpose for which the information was disclosed to him.

Particulars of Breach

4. The Plaintiff is unable to give particulars of all the acts of the Defendant's breach of confidence until after discovery herein, but

will seek to recover damages or an account of profits in respect of each and every such act.

5. By reason of the matters aforesaid, the Plaintiff has suffered loss and damage.
6. Unless restrained by this Honourable Court, the Defendant threatens and intends to continue the acts complained of and the Plaintiff will or will continue to suffer loss and damage.

AND the Plaintiff claims:

- (1) An injunction to restrain the Defendant whether acting by himself, his servants, agents or any of them or otherwise howsoever from disclosing [or using, *as the case may be*] the confidential information aforesaid or any part thereof for any purpose other than the purpose for which it was disclosed to the Defendant;
- (2) An inquiry as to damages or, at the Plaintiff's option, an account of profits and payment of all sums found due upon the taking of such inquiry or account;
- (3) Interest;
- (4) Costs; and
- (5) Such further or other relief as this Honourable Court may deem just.

P18.02 Claim for damages and injunctive relief for breach of confidence by an ex-employee

[Rajah & Tann Singapore LLP]

1. The Plaintiffs are a company carrying on the business of research, development and manufacture of aircraft turbines.
2. On or about [date], the 1st Defendant was employed as the Plaintiffs' Chief Engineer. The 1st Defendant remained in the employ of the Plaintiffs until [date] when the 1st Defendant terminated his contract of employment upon giving the required 2 months' notice.
3. It was an implied term [or express term, as the case may be] of the contract of employment between the Plaintiffs and the 1st Defendant that:
 - (1) The 1st Defendant would not, during the subsistence of his contract of employment, misuse any of the Plaintiffs' confidential information or disclose such confidential information to any third party without the Plaintiffs' authorisation; and
 - (2) The 1st Defendant would not, after the termination of his contract of employment, misuse any of the Plaintiffs' trade secrets or highly confidential information.
4. The 1st Defendant was informed, at the time of the execution of his contract of employment, that his employment was one in which he would be given access to highly confidential information. On or about [date], the 1st Defendant signed an undertaking not to divulge or disclose the Plaintiffs' confidential information and/or trade secrets without the Plaintiffs' prior written approval.
5. During the course of his employment, the 1st Defendant was given access to confidential information belonging to the Plaintiffs. The confidential information to which the 1st Defendant was given access to included the design and engineering plans for the Plaintiffs' prototype [L turbine]. When launched, the [L turbine] would be the first turbine capable of achieving a rate of revolution exceeding [number] revolutions per minute].
6. The design and engineering plans for the prototype [L turbine] was information amounting to a trade secret or was information of such a highly confidential nature that it required protection as a trade secret. The 1st Defendant was specifically informed that the design and engineering plans were confidential in nature. Apart from the 1st Defendant, the head of the Plaintiffs' Research

and Development Division and the Plaintiffs' board of directors, none of the Plaintiffs' employees had access to the design and engineering plans for the [L turbine].

7. The 2nd Defendants are a company carrying on the business of research, development and manufacture of aircraft turbines. At all material times, the 2nd Defendants were a direct competitor of the Plaintiffs.
8. The 1st Defendant joined the 2nd Defendants on or about [date] as the 2nd Defendants' Chief Engineer.
9. Shortly after the 1st Defendant joined the 2nd Defendants, on or about [date], the 2nd Defendants launched its [N turbine]. The [N turbine] was able to achieve a rate of revolution exceeding [number] revolutions per minute. The 2nd Defendants would not have been able to launch such a turbine unless the 1st Defendant had disclosed the design and engineering plans for the Plaintiffs' [L turbine] to the 2nd Defendants.
10. The 2nd Defendants knew or ought to have known that the information communicated to them by the 1st Defendant was of a highly confidential nature and was confidential to the Plaintiffs.
11. The 2nd Defendants were under a duty of confidence to the Plaintiffs in respect of the confidential information communicated to the 2nd Defendants by the 1st Defendant. The 2nd Defendants were not entitled to use or disclose the Plaintiffs' confidential information.
12. By reason of the above matters, the 1st Defendant has acted in breach of the implied terms in his contract of employment.
13. The 2nd Defendants have acted in breach of confidence and have unlawfully utilised confidential information belonging to the Plaintiffs.

Particulars of Breach

[Particulars of breach of confidence]

14. By reason of the above matters, the Plaintiffs have suffered loss and damage.
15. Unless the 1st and 2nd Defendants are restrained, they threaten and intend to continue the acts complained of and the Plaintiffs will continue to suffer further loss and damage.

AND the Plaintiffs claim:

- (1) An injunction restraining the 1st Defendant, whether by himself or acting by his servants and/or agents, from using or disclosing the design and engineering plans for the Plaintiffs' [L turbine] or the contents thereof;
- (2) An injunction restraining the 2nd Defendants, its servants and agents from using or disclosing the design and engineering plans for the Plaintiffs' [L turbine] or the contents thereof;
- (3) An order that the 1st and 2nd Defendants deliver up to the Plaintiffs all copies of the design and engineering plans for the Plaintiffs' [L turbine] or documents containing the contents of the design and plans presently in the 1st and 2nd Defendants' possession, custody or power;
- (4) An inquiry as to damages;
- (5) Further and in the alternative, an account of the profits made by the 1st and 2nd Defendants by reason of their breaches of confidence;
- (6) Interest;
- (7) Costs; and
- (8) Such further or other relief as this Honourable Court deems fit.

P18.03 Defence alleging that confidential information already in public domain

[Rajah & Tann Singapore LLP]

The alleged confidential information was at all material times in the public domain and/or was generally accessible to the public.

Particulars of Information in Public Domain

The Defendants had, on a number of occasions, disclosed their manufacturing processes in the course of interviews conducted by writers from various trade and industry journals. The manufacturing processes were described in a number of published articles in the said trade and industry journals.

P18.04 Defence denying that information used by ex-employee had sufficient degree of confidentiality

[Rajah & Tann Singapore LLP]

1. The Defendant denies that the Plaintiffs' list of suppliers amounted to a trade secret or was information of such a highly confidential nature as to require protection as a trade secret.
2. The Defendant was not informed during the course of his employment that the Plaintiffs' list of suppliers was confidential. The Defendant further avers that the Plaintiffs' list of suppliers was made available to all levels of the Plaintiffs' staff, including the Plaintiffs' junior administrative staff. The Plaintiffs' list of suppliers is also set out at the Plaintiffs' website at www.gekko.com.

P18.05 Defence denying misuse of confidential information

[Allen & Gledhill LLP]

The Defendants admit that they were in receipt of confidential information but deny that they have used the alleged or any information supplied to them by the Plaintiff for any purpose other than for which it was supplied, whether as alleged in the Particulars of Claim or at all.

P18.06 Defence denying duty of confidence

[Allen & Gledhill LLP]

The Defendants deny that they received the alleged or any information from the plaintiffs in confidence or for the limited purpose alleged in the Statement of Claim, or that there was at any time the alleged or any relationship of confidence between the Plaintiffs and themselves or any of them as alleged in the Statement of Claim or at all.

P18.07 Defence alleging publication was in the public interest

[Allen & Gledhill LLP]

The publication by the Defendant was in the public interest that outweighed any interest which the Plaintiff might otherwise have had in maintaining confidentiality. It was in the public interest for the Defendant to publish:

[Identify those aspects of the public interest relied upon]

P18.08 Defence denying breach of confidence

[Allen & Gledhill LLP]

The Defendant denies that the alleged or any information communicated by the Plaintiff to him or any of them was confidential in character or was of a nature or of a kind as to entitle the Plaintiffs to, or to require or be capable of, the protection of the Court and/or that the information or any of them was communicated to him in confidence and/or that he has used the information or any of them for any purpose other than that for which it was communicated to him as alleged in the Statement of Claim or at all.

Particulars

[The facts and matters relied upon in full]

COPYRIGHT AND NEIGHBOURING RIGHTS

PRECEDENTS

P18.09 Claim for primary infringement of copyright in work

[Allen & Gledhill LLP]

1. The Plaintiff is the author and owner of an original work entitled [title of work] [alternatively, describe the work] (“the Work”).
2. The Plaintiff is and at all material times has been a citizen of Singapore [or has been resident in Singapore].
3. The Defendant has, prior to the issue of the writ herein, infringed the Plaintiff’s copyright in the Work by reproducing the Work in a material form or a substantial part thereof [/or as the case may be, having regard to section 26(1) of the Copyright Act (Cap 63)] without the licence of the Plaintiff.

Particulars of Infringement

[Acts of reproduction of the Work or as the case may be relied on]

4. The Plaintiff is unable to give particulars of all the acts of infringement committed by the Defendant until after discovery herein, but will seek to recover damages or an account of profits in respect of each and every such act of infringement.
5. By reason of the matters aforesaid, the Plaintiff has suffered loss and damage.
6. Unless restrained by this Honourable Court, the Defendant threatens and intends to continue the infringing acts complained of and the Plaintiff will or will continue to suffer loss and damage.

AND the Plaintiff claims:

- (1) An injunction to restrain the Defendant whether acting by himself, his servants, agents or any of them or otherwise howsoever from infringing the Plaintiff’s copyright in the Work;
- (2) An order for the delivery up or destruction upon oath of all infringing copies of the Work;
- (3) An inquiry as to damages or, at the Plaintiff’s option, an account of profits and payment of all sums found due upon the taking of such inquiry or account;

- (4) Interest;
- (5) Costs; and
- (6) Such further or other relief as this Honourable Court may deem just.

P18.10 Claim for secondary infringement of copyright in work

[Allen & Gledhill LLP]

1. The Plaintiff is the author and owner of an original work entitled [title of work] [alternatively, describe the work] (“the Work”).
2. The Plaintiff is and at all material times has been a citizen of Singapore [or has been resident in Singapore].
3. The Defendant has, prior to the issue of the writ herein, infringed the Plaintiff’s copyright in the Work by importing an article into Singapore for the purpose of selling or exposing for sale the article [or as the case may be, following one or more of the acts of infringement set out in sections 32 and 33 of the Copyright Act (Cap 63)] without the licence of the Plaintiff when he knows or ought reasonably to know that the making of the article was carried out without the Plaintiff’s consent.

Particulars of Infringement

[Acts of importation or as the case may be relied on]

Particulars of Knowledge

[Facts and matters evidencing the knowledge]

4. By reason of the matters aforesaid, the Plaintiff has suffered loss and damage.
5. Unless restrained by this Honourable Court, the Defendant threatens and intends to continue the infringing acts complained of and the Plaintiff will or will continue to suffer loss and damage.

AND the Plaintiff claims:

- (1) An injunction to restrain the Defendant whether acting by himself, his servants, agents or any of them or otherwise howsoever from infringing the Plaintiff’s copyright in the Work;
- (2) An order for the delivery up or destruction upon oath of all infringing copies of the Work;
- (3) An inquiry as to damages or, at the Plaintiff’s option, an account of profits and payment of all sums found due upon the taking of such inquiry or account;
- (4) Interest;
- (5) Costs; and

- (6) Such further or other relief as this Honourable Court may deem just.

P18.11 Statement of claim in respect of copyright and trade marks

[Lee & Lee]

1. The 1st Plaintiff is a company incorporated under the laws of [country] and having its place of business at [address].
2. The 2nd and 3rd Plaintiffs are companies respectively incorporated under the laws of the [country] and each having their place of business at [address]. The 1st, 2nd and 3rd Plaintiffs are film production companies and are subsidiaries or affiliates of [XYZ company].
3. The 1st Plaintiff owns the copyright in the cinematograph film [V film] (the “Film”) in Singapore and around the world.
4. Copyright subsists in Singapore in the aforesaid Film by virtue, *inter alia*, of the following:
 - (1) the makers of the Film are “qualified persons” within the meaning of the Copyright Act (Cap 63) (1999 Rev Ed) read with the Copyright (International Protection) Regulations 1987 (2002) Rev Ed) for the whole or a substantial part of the period during which the Film was made and at the date of first publication; and/or
 - (2) the Film was made in [country]; and
 - (3) the Film was made after 10 April 1987 [relevant date for purposes of Regulations].
5. The 2nd Plaintiff is the proprietor of various trade marks registered in Singapore, including, *inter alia*:
 - (1) in Class [] in respect of “Entertainment services in the nature of the production, distribution and presentation of motion picture films and television programs, prerecorded video cassettes, video discs and laser discs, pre recorded audio tapes, discs and cassettes, digital, analog and microchip based storage and/or retrieval devices, and interactive video entertainment, all included in Class []”, a representation of which is set forth below:

...
 - (2) in Class [] in respect of “Motion picture film; prerecorded video cassettes, video discs and laser discs; prerecorded audio tapes, discs and cassettes; and digital, analog and microchip based storage and/or retrieval devices”, a representation of which is set forth below:

...

6. The 3rd Plaintiff is the proprietor of various trade marks registered in Singapore, including, *inter alia*:

- (1) in Class [] in respect of "Motion picture film; pre-recorded video cassettes; video discs; laser discs; pre-recorded audio tapes, discs and cassettes; all included in Class []", a representation of which is set forth below:

...

- (2) in Class [] in respect of "Production, distribution and presentation of motion picture films, television programs, prerecorded video cassettes, video discs, laser discs, prerecorded audio tapes and audio-video discs and cassettes; production and distribution of digital, analog and microchip based storage/retrieval apparatus and interactive video entertainment equipment; provision of interactive video entertainment; all being entertainment services; all included in Class []", a representation of which is set forth below:

...

7. The 2nd and 3rd Plaintiffs are also the respective proprietors of various corresponding trade marks registered in [country] including, *inter alia*:

- (1) in Class [], registered in the name of the 2nd Plaintiff, in respect of "Motion picture film; prerecorded video cassettes, video discs and laser discs; prerecorded audio tapes, discs and cassettes; and digital, analog and microchip based storage and/or retrieval devices", a representation of which is set forth below:

...

- (2) in Class [], registered in the name of the 3rd Plaintiff, in respect of "Motion picture film; prerecorded video cassettes, video discs and laser discs; prerecorded audio tapes, discs and cassettes and digital, analog and microchip based storage and/or retrieval devices", a representation of which is set for the below:

...

8. The aforesaid registered trade marks are and at all material times have been valid and subsisting.
9. The 4th Plaintiff is the exclusive licensee in respect of, *inter alia*, the replication and sale of the Film in video compact disc ("Video-

CD”) format in Singapore. By virtue of section 123 of the Copyright Act, the 4th Plaintiff enjoys all rights and remedies in Singapore in respect of the Film as if it were the copyright owner.

10. The 1st Defendant is a company incorporated and existing under the laws of Singapore. It is engaged in the business of importing and distribution wholesale cinematograph film in various video formats, including VHS video, DVD and Video-CD. The 4th Defendant was at all material times a [officer] of the 1st Defendant.
11. The 2nd and 3rd Defendant are companies incorporated and existing under the laws of Singapore. They are engaged in the business of retail distribution and sale of cinematograph films in video format including DVD and Video-CDs and carry on business under the name and style.

Copyright Infringement

12. The 1st Defendant has at least at the times stated hereunder imported into Singapore copies of the cinematograph film [V film] in Video-CD format for the purposes of sale, which copies were purportedly manufactured by or on behalf of [X company, a company incorporated somewhere in the region].
13. The 1st Plaintiff has not at any time authorised the manufacture of the said Video CDs by [X company]. [X company] has not at any time acquired any rights to reproduce the said Video-CDs.
14. The Video-CDs of the Film purportedly manufactured by or on behalf of therefore constitute infringing copies thereof made without licence or consent of the 1st Plaintiffs as the copyright proprietor thereof (“the Infringing VCDs”). The 1st Defendants had imported the Infringing VCDs into Singapore for the purpose of (a) selling or by way of trade offering or exposing for sale the said discs; (b) distributing the said discs in public, and have by virtue thereof infringed the 1st Plaintiff’s copyright. Pending discovery and/or the administering of interrogatories, the best particulars available to the Plaintiffs are as follows:

Particulars

- (1) In or about [date], the 1st Defendant imported or caused to be imported multiple copies of the Infringing VCDs, purportedly manufactured by and sold and/or offered the same for sale to video distributors and retailers in Singapore.
- (2) The Infringing VCDs had not at any time been manufactured by or on behalf of [X company], nor did at any time release the

same in [country of incorporated of X company] or anywhere else in the world.

- (3) Further and/or in the alternative, [X company] had not, up to the time of the 1st Defendant's importation of the Infringing VCDs, nor until the date of this Writ, at any time obtained any license or consent of the 1st Plaintiff to reproduce the Film.
 - (4) The Infringing VCDs had accordingly not been made by or with the consent of the 1st Plaintiff as the copyright proprietor thereof, and as such, are infringing copies within the meaning of the Copyright Act.
 - (5) The Plaintiffs are unable to particularise all the acts of infringement by the 1st Defendants in respect of the Film until discovery or interrogatories, but shall rely on and seek relief in respect of each and every infringement of the 1st Defendants.
15. The 1st Defendant at all time knew or ought reasonably to have known that the making of the Infringing VCDs was carried out without the consent of the 1st Plaintiff.

Particulars

- (1) By way of [Plaintiffs' Solicitors] letter of [date] to the 1st Defendant's then solicitors, which letter was also copied to the 1st Defendant, the 1st Defendant was informed that [X company] had not at any time entered into any arrangements to manufacture or distribute Video-CDs of cinematograph films owned or distributed by member studios of the [D Association] and their subsidiaries, including in particular [P company]. A statutory declaration of the [officer] of [X company] to this effect was enclosed with the said letter.
- (2) By way of a letter dated [date], the 1st Defendant was again notified that the Infringing VCDs were infringing copies of the Film, that the copyright proprietor of the Film had not at any time authorised the manufacture of the Infringing VCDs by [X company], and that [X company] had not at any time acquired any rights to reproduce the said Video-CDs. The Plaintiffs further demanded therein that the 1st Defendant cease and desist all further sale and distribution of the Infringing VCDs.
- (3) Further and/or in the alternative, the circumstances surrounding the supply of the infringing VCDs, and the Infringing VCDs themselves were obviously of discrepant quality, such that any video-retailer would have been put on

notice that the Infringing VCDs were infringing. Examples of this include, *inter alia*:

- (a) Printing quality on the disc artwork is poor, and is only in black-and-white;
 - (b) The Infringing VCDs lack SID and IFPI codes;
 - (c) The copies of the Infringing VCDs were not obtained from any of the authorised distributors of the copyright proprietors.
16. In spite of the matters referred to in paragraph 15 hereof, the 1st Defendant has to date persisted in its sale and/or dealings in the Infringing VCDs, and has refused to comply with the Plaintiffs' requests set forth in letter of [date], including in particular, to cease all importation, sale and distribution of the Infringing VCDs. By virtue of the matters set forth above, the 1st Defendant has infringed the copyright in the Film in accordance with sections 104 and 105 of the Copyright Act.
17. By way of letters issued by [Plaintiffs' solicitors] on [date] to the 2nd and 3rd Defendants, these defendants were similarly notified that the member studios of the [D Association] had not at any time directly or indirectly granted any licence to or otherwise authorized [X company] to replicate or distribute any of its cinematograph films in Video-CD format in [X's country of incorporation] or anywhere else in the world, and that such Video-CD replicated by [X company] would necessarily be an infringing copy.
18. Notwithstanding the aforesaid notice, the defendants identified hereunder persisted in their dealings in the Infringing VCDs. Pending discovery and/or the administering of interrogatories, the best particulars available to the Plaintiffs are as follows:

Particulars

- (1) On or about [date], the 2nd Defendant at its retail premises located at [address] offered the Infringing VCDs for sale and did indeed sell the same.
- (2) On or about [date], the 3rd Defendant at its retail premises located at [address] offered the Infringing VCDs for sale and did indeed sell the same.
- (3) The Plaintiffs are unable to particularize all the acts of infringement by the defendants herein in respect of the aforesaid Film until discovery or interrogatories, but shall rely

on and claim relief in respect of each and every infringement by each defendant.

19. By way of letters issued by [Plaintiffs' solicitors] on [date], the 2nd and 3rd Defendants were again notified that [X company] had not been granted any rights to reproduce the Film in Video-CD format, and that any such copies purportedly released by them were infringing,
20. Notwithstanding the letters referred to in paragraph 19 hereof, the Defendants identified hereunder persisted in their dealings in the Infringing VCDs. Pending discovery and/or the administering of interrogatories, the best particulars available to the Plaintiffs are as follows:

Particulars

- (1) On or about [date] the 2nd Defendant at its retail premises located at [address] offered the Infringing VCDs for sale and did indeed sell the same.
 - (2) On or about [date] and [date], the 3rd Defendant at its retail premises located at [address] offered the Infringing VCDs for sale and did indeed sell the same.
 - (3) The Plaintiffs are unable to particularise all the acts of infringement by the defendants herein in respect of the aforesaid Film until discovery or interrogatories, but shall rely on and claim relief in respect of each and every infringement by each defendant.
21. By virtue of the matters set forth in paragraphs 15(3), 17 and 19 hereof, the 2nd and 3rd Defendants at all times knew or ought reasonably to have known that the making of the Infringing VCDs was carried out without the consent of the 1st Plaintiff, and by their offering for sale and sale of the same in spite thereof in the manner set forth above, infringed the copyright in the Film in accordance with section 105 of the Copyright Act.

Trade Mark infringement

22. Each Infringing VCD also bore various signs identical or similar to Singapore registered marks as herein particularised:

Particulars

- (1) On the package art inlays (both front and rear), signs identical or similar to Singapore Trade Mark Nos. [] and respectively have been applied;

- (2) Upon the presentation or playback of the Infringing VCD, signs identical or similar to Singapore Trade Mark Nos. [] respectively appear at the beginning of the Film;
 - (3) Upon presentation or playback of the Infringing VCD, signs identical or similar to Singapore Trade Mark Nos. [] respectively appear at the end of the Film;
 - (4) On the label side of each of the VCDs comprised in each set of the Infringing VCDs, signs identical or similar to Singapore Trade Mark Nos [] and [] respectively have been applied.
23. At no time did the 2nd Plaintiff and 3rd Plaintiffs as proprietors of the respective trade marks referred to in paragraph 22 hereof agree to the application of the said trade marks to the said discs, nor did they as proprietors of the corresponding [country of incorporation of X company] trade marks, consent to the application of the said trade marks to the Infringing VCDs in [country of incorporation of X company].
24. The 1st Defendant has by virtue of its offering or exposing the Infringing VCDs for sale, and putting them on the market and/or stocking them for those purposes under the aforesaid signs, used in the course of trade and without the consent of the 2nd and 3rd Plaintiff respectively, signs which are identical with or similar (and such that there exists a likelihood of confusion therewith on the part of the public) to the 2nd and 3rd Plaintiff's respective registered trade marks, and in relation to goods or services which are identical with or similar (and such there exists a likelihood of confusion therewith on the part of the public) to those for which the respective marks are registered, and thereby committed an infringement of the said trade marks in accordance with section 27 of the Trade Marks Act.

Particulars

Paragraphs 12 to 16 hereof are repeated.

25. The defendants identified hereunder have by virtue of their offering or exposing the Video-CDs referred to in paragraphs 22 and 23 hereof for sale, and putting them on the market and/or stocking them for those purposes under the aforesaid signs, used in the course of trade and without the consent of the 2nd Plaintiff and 3rd Plaintiff respectively, signs which are identical with or similar (and such that there exists a likelihood of confusion therewith on the part of the public) to the 2nd and 3rd Plaintiffs' respective registered trade marks, and in relation to goods or

services which are identical with or similar (and such that there exists a likelihood of confusion therewith on the part of the public) to those for which the respective marks are registered, and thereby committed an infringement of the said trade marks in accordance with section 27 of the Trade Marks Act.

Particulars

Paragraphs 18 and 20 hereof are repeated.

Breach of Undertaking

26. By a Deed of Undertaking made on [date] by the 1st Defendant and given to amongst others, the 2nd and 3rd Plaintiffs hereunder, the 1st Defendant undertook that it would, *inter alia*:
 - (1) By paragraph 1 thereof, cease and refrain from importing for sale, or offering for sale or hire any copy of any cinematograph film not being a copy made or on behalf of or with the consent of the owner of the copyright in the respective film, and in respect of which any of the parties named in the First Schedule thereto has been granted the right under any licence or agreement to distribute or sell such cinematograph film;
 - (2) By paragraph 2 thereof, prior to importing copies of cinematograph films in video format into Singapore, check with the [D Association] in writing to ascertain if the said films have been released anywhere in the world;
 - (3) By paragraph 3 thereof, provide a representative sample copy of such film within 3 days of any demand made by the Motion Picture Association.
27. By a Deed of Undertaking made on [date] by the 4th Defendant and given to, amongst others, the 2nd and 3rd Plaintiffs hereunder, the 4th Defendant undertook that he would, *inter alia*:
 - (1) By paragraph 1 thereof, cease and refrain (whether acting by his servants, agents or anyone over whom he exercises power or control or any of them or otherwise howsoever) from importing for sale, or offering for sale or hire any copy of any cinematograph film not being a copy made by or on behalf of or with the consent of the owner of the copyright in the respective film, and in respect of which any of the parties named in the First Schedule thereto has been granted the right under any licence or agreement to distribute or sell such cinematograph film;

- (2) By paragraph 2 thereof, prior to importing copies of cinematograph films in video format into Singapore, check with the [D Association] in writing to ascertain if the said films have been released anywhere in the world;
 - (3) By paragraph 3 thereof, provide a representative sample copy of such film within 3 days of any demand made by the [D Association].
28. In breach of the Deed of Undertaking referred to in paragraph 26 hereof, the 1st Defendant has imported copies of the Film which copies had not at any time been made by or with the consent of the respective copyright proprietors thereof, and at no time did the 1st Defendant check with the [D Association] in writing to ascertain if the Film had been released anywhere in the world, thereby committing a breach of the said Deed of Undertaking:

Particulars

- (1) Paragraphs 1 to 4 and 12 to 16 hereof are repeated.
 - (2) [P company] has rights to, *inter alia*, distribute the Film and is a party named in the First Schedule to the subject Deed of Undertaking.) [P2 company (an affiliate of P company)] was also designated on the Infringing VCDs, albeit incorrectly, as the copyright proprietor of the Film.
 - (3) By way of letter of [Plaintiff's solicitors] dated [date], the said Defendant was specifically informed that dealings in the Infringing VCDs constituted a breach of the subject Deed of Undertaking, and that they should cease and desist all dealings in the same.
 - (4) By its reply thereto of [date] written by the 4th Defendant, the 1st Defendant refused to comply with such request, and has persisted in their dealings in respect of the Infringing VCDs.
29. At all material times, the 4th Defendant was the [officer] of the 1st Defendant and exercised control and management in respect of the affairs of the 1st Defendant. The 4th Defendant would have consented to and/or connived in the infringement of the copyright in the aforesaid Film, and conspired with or assisted the 1st Defendant in such infringement, and as such, has acted in breach of his Deed of Undertaking referred to in paragraph 27.

Particulars

The particulars in paragraph 28 hereof are repeated.

30. By reason of the matters aforesaid, the Plaintiffs have suffered and will suffer loss and damage. The aforesaid Defendants have infringed and/or threaten to infringe the copyright in the Film and the aforesaid trade marks unless restrained by the Court.
31. In the premises, the 1st and 4th Plaintiff claim an injunction restraining the Defendants and all other entities trading under the name and style of the [S group] [group of companies which the 3rd Defendant belongs] (whether acting by their respective directors, their servants, agents or anyone over whom they exercise power or control any of them or otherwise howsoever) from doing or authorising the doing of the following acts or any of them, that is to say, making, manufacturing, reproducing, or causing to be made, manufacturing, reproducing, or causing to be made, manufactured or reproduced, selling or offering for sale, letting for hire, importing or any way dealt with or distribution for the purpose of trade, or for any other purpose to an extent that it will affect prejudicially the said Plaintiffs any of the following, namely:
- (1) any copy or copies (whether in the form of Video-CDs, DVDs or other videograms) of the Film and any other cinematograph film the copyright in which or the distribution rights therein is vested in the said Plaintiffs or any of the entities set out in the attached schedule, not being a copy or copies made by or on behalf of or with the consent of the respective copyright proprietors thereof or any of them;
 - (2) any labels, covers, sleeves, jackets or other printed or written matter which is for use with any item mentioned in (1) above;
 - (3) any plates, tapes, duplicating or reproduction machines or other equipment or material used or intended to be used for making any item mentioned in (1) or (2) above.
32. The 2nd Plaintiff claims an injunction restraining the Defendants and all other entities trading under the name and style of the [S Group] [group of companies which the 3rd Defendant belongs to] (whether acting by their respective director, their servants, agents or anyone over whom they exercise power or control or any of them or otherwise howsoever) from doing or authorizing the doing of the following acts or any of them, that is to say infringing Singapore Registered Trade Mark Nos. []. The 3rd Plaintiff claims an injunction restraining the Defendants and all other entities trading under the name and style of the [S Group][group of companies which the 3rd Defendant belongs] (whether acting by their respective directors, their servants, agents or anyone over whom they exercise power or control or any of them or otherwise

howsoever) from doing or authorizing the doing of the following acts or any of them, that is to say infringing Singapore Registered Trade Mark Nos. [].

33. The 2nd and 3rd Plaintiffs claim an injunction restraining the 1st Defendant (whether acting by their directors, their servants, agents or anyone over whom they exercise power or control or any of them or otherwise howsoever) from doing or authorising the doing of the following acts or any of them, that is to say, breaching their Deed of Undertaking of [date].
34. The 2nd and 3rd Plaintiffs claim an injunction restraining the 4th Defendant (whether acting by his servants, agents or anyone over whom he exercises power or control or any of them, that is to say) breaching his Deed of Undertaking of [date].

The Plaintiffs also claim:

- (1) a declaration that the Infringing VCDs have not been made by or with the consent of the 1st Plaintiffs as the copyright proprietor of the Film, and are as such infringing copies within the meaning of the Copyright Act, and that the Defendants have by their sale or dealings in respect of the Infringing VCDs infringed Singapore Registered Trade Mark Nos. [];
- (2) a declaration that the Defendants have by their sale or dealings in respect of the Infringing VCDs infringed Singapore Registered Trade Mark Nos. [];
- (3) a declaration that the 1st Defendant has by its sale or dealings in respect of the Infringing VCDs committed a breach of its Deed of Undertaking of [date], and that the 4th Defendant has by virtue thereof breached his Deed of Undertaking of [date];
- (4) An order for delivery up of any infringing copies of the Film that are in or may come into the possession, power, custody or control of the Defendants;
- (5) Damages and/or account of profits;
- (6) An inquiry as to damages or at the Plaintiffs' option, and as an alternative thereto, an account of profits;
- (7) An order for payment of all sums found due upon taking such inquiry or account with interest thereon;
- (8) Costs; and
- (9) Further or other relief.

The Schedule

The entities referred to in paragraph 34 of the Statement of Claim are as follows:

....

P18.12 Defence denying authorship of copyright

[Allen & Gledhill LLP and Drew & Napier LLC]

The Defendant denies that the Plaintiff is the author in the work referred to in the Statement of Claim as alleged therein or at all.

[Give reasons, e.g; that another person is author of the copyright in the work]

P18.13 Defence alleging licence of Plaintiff

[Allen & Gledhill LLP]

1. The Defendant admits the Plaintiff is the owner of the copyright in the work referred to in the Particulars of Claim. The Defendant denies that the acts complained of were done by him without the licence of the Plaintiff as alleged therein or at all.
2. By a written licence dated [date], the Plaintiff licensed and authorised the Defendant to reproduce the work in a material form. A copy of the licence is attached hereto.

P18.14 Defence alleging assignment by Plaintiff

[Allen & Gledhill LLP]

By an assignment in writing dated [date], the Plaintiff assigned his copyright in the work referred to in the Particulars of Claim to the Defendant. A copy of the said assignment is attached hereto. In the premises it is denied that the Plaintiff is the owner of the copyright in the said work. To the contrary, the Defendant is the owner thereof.

P18.15 Defence alleging fair dealing for purposes of research or study

[Allen & Gledhill LLP]

The acts complained of constituted fair dealing with the work referred to in the Statement of Claim for the purposes of [research or study] on which the Defendant was at all material times, and is, engaged. The research consists of [full details of the research or study relied on].

P18.16 Defence alleging that work does not qualify for copyright

[Allen & Gledhill LLP]

1. The Defendant denies that copyright subsists in the work referred to in the Particulars of Claim.
2. The work was written by the Plaintiff who at the time the work was made [or in the case of the published work, at the time when the work was first published] was not a citizen of Singapore.

P18.17 Defence denying subsistence of copyright

[Allen & Gledhill LLP]

1. The Defendant denies that copyright subsists in the work referred to in the Particulars of Claim.
2. The work is a copy of an earlier work or alternatively the skill and labour involved in creating the work was insubstantial.

P18.18 Defence alleging fair dealing for the purposes of reporting current events

[Allen & Gledhill LLP]

1. The Defendant admits that he reproduced or caused to be reproduced the work in a material form or a substantial part thereof as referred to in the Statement of Claim. Save as aforesaid the Defendant denies that he did or authorised any of the acts alleged in the Statement of Claim.
2. The Defendant denies that he committed the alleged or any acts of infringement of copyright. The use which the Defendant made of the Plaintiff's work was solely for the purposes of reporting current events. This report was accompanied by a sufficient acknowledgment of the Plaintiff's work.
3. In the premises, such use constituted a fair dealing with the Plaintiff's work and did not constitute an infringement of the copyright therein.

P18.19 Defence alleging fair dealing for purposes of criticism or review

[Allen & Gledhill LLP]

1. The Defendant admits that he reproduced or caused to be reproduced the work in a material form or a substantial part thereof as referred to in the Statement of Claim. Save as aforesaid the Defendant denies that he did or authorised any of the acts alleged in the Statement of Claim.
2. The Defendant denies that he committed the alleged or any acts of infringement of copyright. The use which the Defendant made of the Plaintiff's work was solely for the purposes of criticism or review of the work. The criticism or review was accompanied by a sufficient acknowledgment of the Plaintiff's work.
3. In the premises, such use constituted a fair dealing with the Plaintiff's work and did not constitute an infringement of the copyright therein.

P18.20 Defence denying primary infringement of copyright in work

[Allen & Gledhill LLP]

1. The Defendant denies that he has infringed the alleged or any copyright of the Plaintiff by reproducing the work in a material form or a substantial part thereof [or any other act set out by the Plaintiff, having regard to section 26(1) of the Copyright Act (Cap 63)] as alleged in the Particulars of Infringement or at all.

Or

2. The Defendant admits that [act(s) set out in the Particulars of Infringement] relating to the work referred to in the Particulars of Infringement but denies that he has thereby infringed the copyright as alleged therein or at all.

P18.21 Defence denying secondary infringement of copyright in work

[Allen & Gledhill LLP]

1. The Defendant admits that he imported an article into Singapore for the purpose of selling or exposing for sale the article [or any other act set out by the Plaintiff, having regard to sections 32 and 33 of the Copyright Act (Cap 63)] as alleged in the Particulars of Infringement but denies that he has thereby infringed the copyright as alleged therein or at all.

Or

2. The Defendant admits the acts referred to in the Particulars of Infringement but says that the acts were done by him with the licence of the Plaintiff.

Particulars

[Facts and matters evidencing the licence of the Plaintiff]

P18.22 Counterclaim (or Claim) for groundless threats of copyright infringement

[Drew & Napier LLC]

[In a claim for groundless threats, substitute 'Plaintiff' for 'Defendant' and vice versa and make the appropriate modifications]

1. The Defendant repeats paragraphs [...] above.
2. By way of a letter dated [state date], the Plaintiff wrote to the Defendant stating, *inter alia*, as follows:

[reproduce the relevant portions of the letter]

3. The said letter contained a groundless threat of proceedings for copyright infringement and the Defendant is thereby aggrieved.
4. By reason of the acts of the Plaintiff as aforesaid, the Defendant has suffered loss and damage. Unless restrained, the Plaintiff threatens and intends to continue such acts, whereby the Defendant will suffer further loss and damage.

AND the Defendant claims:

- (1) A declaration that the threats made by the Plaintiff in its letter of [state date] are unjustifiable;
- (2) An injunction to restrain the Plaintiff from continuing to make the same or similar threats;
- (3) An inquiry as to damages and an order for payment of all sums found due upon taking such inquiry;
- (4) Interest;
- (4) Costs; and
- (5) Such further or other relief as this Honourable Court may deem just.

PASSING-OFF

PRECEDENTS

P18.23 Claim for passing off the defendant's goods as the plaintiff's goods

[Rajah & Tann Singapore LLP and Drew & Napier LLC]

1. The Plaintiff is and was at all material times a company carrying on the business of [nature of the Plaintiff's business].
2. The Plaintiff has manufactured, marketed and sold toothpaste in Singapore under and by reference to the trade mark 'MINTY'.

Particulars

[State details, e.g. date of first use of MINTY trade mark; annual sales figures; advertising figures; types of advertising in Singapore (e.g. radio, television, newspapers, internet, promotional tie-ups)...]

3. By reason of the above, 'MINTY' is distinctive of the toothpaste manufactured, marketed and sold by the Plaintiff and no other trader.
4. By reason of the above, the Plaintiff has acquired goodwill in the name 'MINTY' in relation to toothpaste.
5. The Defendant is and was at all material times a company carrying on the business of [nature of the Defendant's business].
6. Sometime in [month and year], the Defendant commenced selling toothpaste, not being the toothpaste manufactured by the Plaintiff, by reference to or the use of the name 'MINTIE' to the members of the public.

Particulars

[State particulars relating to the Defendant's Use and Sale of MINTIE Toothpaste, e.g.]

- (1) The words 'MINTY' and 'MINTIE' are both visually and phonetically similar;
- (2) Since [month and year], the Defendant had commenced advertising, marketing and selling and are still selling their toothpastes by reference to or the use of the name 'MINTIE' to the members of the public.

- (3) On [dates], advertisements of the Defendant's MINTIE toothpaste were widely publicised in the following magazines and newspaper:

[Details of advertisements]

- (4) The Defendant's use of the word 'MINTIE' is a misrepresentation to members of the public in particular consumers of toothpaste that the Defendant's toothpaste is that of the Plaintiff and/or commercially connected to or associated with the Plaintiff.
7. The Plaintiff is at present unable to give particulars of each and every act of passing-off, but will seek to do so in respect of each such act and rely on the same at the hearing date.
8. The Defendant's conduct aforesaid conduct was calculated to deceive or likely to deceive and/or lead members of the public to believe that the Defendant's toothpaste is that of the Plaintiff and/or otherwise connected to or associated with the Plaintiff.

[Details of actual deception, if any]

9. In the premises, the Defendant had passed off the MINTIE toothpaste as being the Plaintiff's MINTY toothpaste.
10. By reason of the aforesaid, the Plaintiff has suffered loss and damage. Further, unless restrained, the Defendant threatens and intends to continue the acts complained of, whereby the Plaintiff will suffer further loss and damage.

AND the Plaintiff claims:

- (1) An injunction to restrain the Defendant, whether by himself or by his agents or servants or any of them or otherwise howsoever from:
- (a) passing off by manufacturing, advertising, marketing, selling, offering for sale, supplying, importing, exporting, distributing toothpaste by reference to or the use of the word 'MINTIE', not being the toothpaste of the Plaintiff, as for the toothpaste of the Plaintiff or as being connected to or associated with the Plaintiff;
 - (b) enabling, assisting, causing, procuring or authorising others to do any of the acts aforesaid; and
 - (c) making any representation that MINTIE toothpaste sold by or on behalf of the Defendant is in any way associated with or connected to the Plaintiff;

- (2) An order for delivery up to the Plaintiff or its solicitors for destruction all articles bearing the word 'MINTIE' that are in the possession, custody or control of the Defendant, its servants or agents or any of them, the continued retention and/or intended use of which would be a breach of the injunction;
- (3) An inquiry as to damages, alternatively an order that the Defendant do account to the Plaintiff for profits made by the Defendant from all the acts of passing-off and payment by the Defendant to the Plaintiff of all sums found due upon the taking of such inquiry or account;
- (4) Interest;
- (5) Costs; and
- (6) Such further and/or other relief as this Honourable Court deems fit and just.

P18.24 Claim for passing off the plaintiff's get-up as the defendant's get-up

[Rajah & Tann Singapore LLP]

1. The Plaintiff is and was at all material times a company carrying on the business of [nature of the Plaintiff's business].
2. Since [year], the Plaintiff has been manufacturing and selling MINTY toothpaste. MINTY toothpaste was sold and is being sold in the get-up comprising [describe the get-up] and the get-up is distinctive of the MINTY toothpaste.

Particulars of the Plaintiff's Get-up

[Details of the get-up]

3. The MINTY toothpaste had been widely advertised, offered and/or displayed for sale in Singapore for the past four years.

Particulars of Advertisement and Promotion

[Details]

Particulars of the Plaintiff's Sales in Singapore and Overseas

[Details]

4. By reasons of the aforesaid, the Plaintiff enjoys goodwill in its business conducted in relation to the MINTY toothpaste get-up.
5. The Defendant is and was at all material times a company carrying on the business of [nature of the Defendant's business].
6. Some time in [month and year], the Defendant commenced selling toothpaste, not being the toothpaste manufactured by the Plaintiff, in a get-up similar to the Plaintiff's MINTY toothpaste get-up.

Particulars of the Defendant's Passing-Off

- (1) The Defendant has been selling the MINTIE toothpaste in a get-up similar to the MINTY toothpaste in Singapore since [month and year];
 - (2) [Details of the Defendant's get-up];
 - (3) The Defendant had misrepresented to members of the public including the retailers and purchasers of MINTIE toothpaste that the Defendant's toothpaste is that of the Plaintiff and/or connected to or associated with the Plaintiff.
7. [Details of actual deception, if any]

8. The Defendant's conduct aforesaid was calculated to deceive or likely to deceive and/or lead members of the public to believe that the Defendant's toothpaste is that of the Plaintiff and/or otherwise connected to or associated with the Plaintiff.
9. In the premises, the Defendant had passed off the MINTIE toothpaste as being the Plaintiff's MINTY toothpaste.
10. By reason of the aforesaid, the Plaintiff has suffered loss and damage.

AND the Plaintiff claims:

- (1) An injunction to restrain the Defendant, whether by himself or by his agents or servants or any of them or otherwise howsoever from:
 - (a) passing off by advertising, marketing, selling, offering for sale or causing to sell, supplying, importing, exporting, distributing MINTIE toothpaste in the get-up, not being the toothpaste of the Plaintiff, as for the toothpaste of the Plaintiff or as being connected to or associated with the Plaintiff;
 - (b) enabling, assisting, causing, procuring or authorising others to do any of the acts aforesaid; and
 - (c) making any representation that MINTIE toothpaste sold by or on behalf of the Defendant is in any way associated with or connected to the Plaintiff;
- (2) An order for delivery up to the Plaintiff or its solicitors for destruction all articles comprising the MINTIE toothpaste get-up that are in the possession, custody or control of the Defendant, its servants or agents or any of them, the continued retention and/or intended use of which would be a breach of the injunction;
- (3) An inquiry as to damages, alternatively an order that the Defendant do account to the Plaintiff for profits made by the Defendant from all the acts of passing-off and payment by the Defendant to the Plaintiff of all sums found due upon the taking of such inquiry or account;
- (4) Interest;
- (5) Costs; and
- (6) Such further and / or other relief as this Honourable Court deems fit and just.

P18.25 Claim for passing off one quality of the plaintiff's goods for the plaintiff's goods of another quality

[Rajah & Tann Singapore LLP]

1. The Plaintiff is and was at all material times a company carrying on the business of [nature of the Plaintiff's business].
2. The Plaintiff has been manufacturing, marketing and selling toothpaste by reference to or the use of the name MINTY internationally for the past 10 years.

**Particulars of the Plaintiff's Use and Sales of
MINTY Toothpastes**

[Details]

3. The Plaintiff has over 10 branches located in Europe and the ASEAN countries. In addition to the 20 branches, the Plaintiff has set up a factory in Germany for the purposes of conducting research, development and manufacturing of the MINTY toothpaste. The MINTY toothpaste contains ingredients of the highest quality and duly certified by the international assessment bodies. As part of the process of ensuring the highest quality of the Plaintiff's products, each tube of MINTY toothpaste has a maximum life span of 12 months from the date of manufacturing, the packaging for which bears the respective expiry dates in addition to the word 'MINTY'.
4. The Plaintiff's MINTY toothpaste that was and is being advertised, marketed and sold in Europe and the ASEAN countries are of different quality. The MINTY toothpaste which is being advertised, marketed and sold in the ASEAN countries contains two additional ingredients, namely X² and Y² that are suitable for use and storage in the ASEAN region.
5. The name 'MINTY' has become distinctive of the toothpaste manufactured and sold by the Plaintiff. At all material times, members of the public had associated the name 'MINTY' with the toothpaste manufactured and sold by the Plaintiff. Furthermore, the MINTY toothpaste that is being sold in the ASEAN region is distinctly different from that being sold in Europe.
6. By reason of the aforesaid, the Plaintiff has acquired goodwill in the name 'MINTY' when used in relation to toothpaste and further possesses a substantial reputation in the MINTY toothpaste.
7. The Defendant is and was at all material times a company carrying on the business of [nature of the Defendant's business].

8. Some time in [month and year], the Defendant commenced selling MINTY toothpaste, being the MINTY toothpaste manufactured by the Plaintiff, which products were only meant for the Europe region and have passed their respective expiry dates, to the members of the public.

Particulars of the Defendant's Use and Sale of MINTIE Toothpastes

- (1) Since [month and year], the Defendant had commenced advertising, marketing and selling and are still selling the MINTY toothpaste by reference to or the use of the name 'MINTY' to the members of the public;

[Details of sales]

[Details of advertisements, if any]
 - (2) The MINTY toothpaste advertised, marketed, sold and being sold by the Defendant does not contain the X² and Y² and has exceeded the maximum life span of 12 months from the date of manufacturing.
 - (3) The Defendant had advertised, marketed, offered for sale and sold to member of the public, the expired MINTY toothpaste.
 - (4) The Defendant's sale of the MINTY toothpaste without the X² and Y² and the expired MINTY toothpaste is a misrepresentation to members of the public in particular consumers of toothpaste that the MINTY toothpaste sold by the Defendant which are different and inferior in quality as for the Plaintiff's MINTY toothpaste manufactured for the ASEAN region and the unexpired MINTY toothpaste.
9. The Plaintiff is at present unable to give particulars of each and every act of passing-off, but will seek to do so in respect of each such act and rely to the same at the hearing date.
 10. The Defendant's conduct aforesaid conduct was calculated to deceive or likely to deceive and/or lead members of the public to believe that the MINTY toothpaste sold by the Defendant is of the highest quality and the same as the MINTY toothpaste containing the X² and Y².

[Details of actual deception, if any]
 11. In the premises, the Defendant had passed off the MINTY toothpaste without the X² and Y² and expired MINTY toothpaste as the same quality as the Plaintiff's MINTY toothpaste containing the X² and Y² and the unexpired MINTY toothpaste.

12. By reasons of the aforesaid, the Plaintiff has suffered loss and damage. Further, unless restrained, the Defendant threatens and intends to continue the acts complained of, whereby the Plaintiff will suffer further loss and damage.

AND the Plaintiff claims:

- (1) An injunction to restrain the Defendant, whether by himself or by his agents or servants or any of them or otherwise howsoever from:
 - (a) passing off by advertising, marketing, selling, offering for sale, supplying, importing, exporting, distributing MINTY toothpaste without the X² and Y² and the expired MINTY toothpaste, being the toothpaste of the Plaintiff, as for the same quality of the MINTY toothpaste;
 - (b) enabling, assisting, causing, procuring or authorising others to do any of the acts aforesaid; and
 - (c) making any representation that MINTY toothpaste sold by or on behalf of the Defendant is of the same quality of the MINTY toothpaste containing the X² and Y² and the unexpired MINTY toothpaste;
- (2) An order for delivery up to the Plaintiff or its solicitors for destruction all articles bearing the word 'MINTY' that are in the possession, custody or control of the Defendant, its servants or agents or any of them, the continued retention and/or intended use of which would be a breach of the injunction;
- (3) An inquiry as to damages, alternatively an order that the Defendant do account to the Plaintiff for profits made by the Defendant from all the acts of passing off and payment by the Defendant to the Plaintiff of all sums found due upon the taking of such inquiry or account;
- (4) Interest;
- (5) Costs; and
- (6) Such further and/or other relief as this Honourable Court deems fit and just.

P18.26 Claim for passing off one's business as the business of another

[Drew & Napier LLC]

1. The Plaintiff has for many years advertised and operated its restaurant under and by reference to its company name "Squiffo Pte Ltd".

Particulars of Use

The annual turnover of the Plaintiff in the last five years have been as follows: [details].

2. Further, the Plaintiff has widely advertised and promoted its restaurant under and by reference to the mark "Squiffo".

Particulars of Advertisement and Promotion

[Details]

3. The Plaintiff, by virtue of the extensive use and promotion of the name/mark "Squiffo", has caused the public to identify the name/mark "Squiffo" with the Plaintiff and none other. The Plaintiff therefore claims substantial goodwill and reputation in the Plaintiff's business under the name/mark "Squiffo" for, *inter alia*, restaurant services.
4. Upon a date unknown to the Plaintiff but shortly before issue of the Writ herein, the Defendant registered a business by the name of "Squiffo Delights" whose principle activities was the provision and restaurant and catering services.

Particulars of Defendant's Use

Pending disclosure and/or further information, the Plaintiff will rely upon the following acts of the Defendant.

- (1) A newspaper interview of the proprietor of "Squiffo Delights" stating that he intended the "Squiffo Delights" to be the best food catering business in Singapore;
- (2) The advertisements published in the The Straits Times on various types of food sold by the Defendant on [dates].
5. The aforesaid acts of the Defendant were calculated to lead and are likely to lead members of the public to believe, contrary to the fact, that the Defendant's company "Squiffo Delights" is an extension of or otherwise connected with the Plaintiff.

6. At trial, the Plaintiff will rely on all instances of actual deception that have come to light including the following instances of which the Plaintiff is currently aware:

[Details]

7. The Plaintiff is unable to give particulars of all the Defendant's acts of passing off but will claim to recover in respect of all such acts.
8. By reason of the matters aforesaid, the Plaintiff has suffered loss and damage. Further, unless restrained, the Defendant threatens and intends to continue the acts complained of, whereby the Plaintiff will suffer further loss and damage.
9. The Plaintiff is entitled to and claims interest on all sums due to it from the Defendant, pursuant to Section 12 of the Civil Law Act (Cap 43) and/or the equitable jurisdiction of the Court.

AND the Plaintiff claims:

- (1) An injunction to restrain the Defendant (whether acting by himself, his servants, agents or otherwise howsoever) from doing any of the following acts, that is to say:
 - (a) passing off its business as and for the Plaintiff's business by the use of the mark "SQUIFFO DELIGHTS" or any other colourable imitation of the mark "SQUIFFO", or otherwise howsoever; or
 - (b) enabling, assisting, causing, procuring or authorising others to do any of the acts aforesaid;
- (2) An order that the Defendant whether by himself, servants or agents or any of them or otherwise to forthwith take all the necessary steps as lie within his power to change or facilitate the change of the business from "SQUIFFO DELIGHTS" to some other name which is not identical or confusingly similar to the Plaintiff's name "SQUIFFO";
- (3) Alternatively, if the Defendant whether by himself, servants or agents or any of them fails to comply with the above (2) within 14 days of this order, an order that the Registrar of the Accounting and Corporate Regulatory Authority of Singapore be required to remove the Defendant's business registration under the name "SQUIFFO DELIGHTS" from the Register;
- (4) An inquiry as to damages or at the Plaintiff's option an account of profits; and an order for payment of all sums found due together with interest as aforesaid;
- (5) Costs; and
- (6) Such further or other relief as this Honourable Court deems just.

P18.27 Claim for passing off through registration and retention of an internet domain name

[Drew & Napier LLC]

1. For many years the Plaintiff has used the mark “Squiffo” for its water pistols.

Particulars

[Details]

2. By reason of the aforesaid use, the mark “Squiffo” has come to mean to the trade and public the Plaintiff’s water pistols.
3. By reason of the aforesaid matters, the Plaintiff has built up and owns a valuable goodwill in the name “Squiffo” when used in relation to water pistols. Further, the Plaintiff’s mark “Squiffo” has become so well-known to members of the public as being the name of the Plaintiff’s water pistols, that when members of the public see the word “Squiffo”, they take that to be a reference to the Plaintiff’s water pistols and nothing else.
4. The Defendant has registered the domain names www.squiffo.com and www.squiffo.com.sg.
5. Unless owned or controlled by the Plaintiff, the domain names www.squiffo.com and www.squiffo.com.sg and each of them constitute instruments of deception. Hereunder the Plaintiff relies on the following facts and matters.
 - (1) The Defendant has made a practice of registering domain names which comprise well-known names or brands which belong to others. Such domain names include the following: *[details]*.
 - (2) On *[date]* the Defendant offered the domain name www.squiffo.com for sale to the Plaintiff for the sum of \$200,000, and accompanied such offer with a threat to sell the domain name to a third party if that offer was not accepted within 7 days. The Plaintiff will say that such conduct was attempted extortion by the Defendant.
 - (3) Members of the public would believe that any Internet website having the domain name www.squiffo.com or www.squiffo.com.sg was the domain name of the manufacturer of “Squiffo” water pistols. Accordingly, any realistic use of the domain name would amount to passing-off.

6. Further, the registration of each of the said domain names exists in a publicly accessible register. Thereby the Defendant falsely represents himself to be the Plaintiff or connected or associated with the Plaintiff in the way of trade.
7. In the premises, the Defendant has passed himself off as being the Plaintiff or connected or associated with the Plaintiff in the way of trade. Further, the Defendant threatens and intends to pass off and/or enable others to pass off:
 - (1) a website having the domain name www.squiffo.com or www.squiffo.com.sg as and for the website of the Plaintiff; and/or
 - (2) goods or services offered through such a website, as and for the goods or services of the Plaintiff.
8. By reason of the aforesaid, the Plaintiff has suffered loss and damage. Further, unless restrained, the Defendant threatens and intends to continue the acts complained of, whereby the Plaintiff will suffer further loss and damage.
9. The Plaintiff is entitled to and claims interest on all sums due to it from the Defendant, pursuant to Section 12 of the Civil Law Act (Cap 43) and/or the equitable jurisdiction of the Court.

AND the Plaintiff claims:

- (1) An order that the Defendant do at once take all such steps as may be necessary to effect a transfer to the Plaintiff of the registration of the internet domain names www.squiffo.com and www.squiffo.com.sg and each of them, and of any other domain name containing the word "Squiffo" or a word colourably similar thereto registered in his name;
- (2) An injunction to restrain the Defendant (whether acting by himself, his servants, agents or otherwise howsoever) from doing any of the following acts, that is to say:
 - (a) using the internet domain names www.squiffo.com or www.squiffo.com.sg, or any other domain name containing the word "Squiffo" or a word colourably similar thereto;
 - (b) establishing a website at any such domain name;
 - (c) registering, offering for sale, selling or transferring to any person other than the Plaintiff any such domain name;
 - (d) passing off goods or services, not being goods or services of the Plaintiff, as and for the same, whether by the use of the word "Squiffo" or a word colourably similar thereto or otherwise howsoever; or

- (e) enabling, assisting, causing, procuring or authorising any person other than the Plaintiff to do any of the acts aforesaid;
- (3) An inquiry as to damages or at the Plaintiff's option an account of profits; and an order for payment of all sums found due together with interest thereon pursuant to Section 12 of the Civil Law Act (Cap 43) and/or the equitable jurisdiction of the Court;
- (4) Costs; and
- (5) Such further or other relief as this Honourable Court deems just.

P18.28 Claim for passing off by misrepresentation that celebrity has endorsed defendant's products

[Drew & Napier LLC]

1. The 1st Plaintiff is a famous footballer and leading goal-scorer for [Football Club]. The 2nd Plaintiff is the 1st Plaintiff's management company through which he conducts his business of endorsements as set out below.
2. The 1st Plaintiff and his image are very well-known in this country as a result of extensive coverage of football in the media.

Particulars

[Details, for example, of television and newspaper coverage of the 1st Plaintiff]

3. Further, the 1st Plaintiff markets and exploits his name and image in this country and elsewhere through the 2nd Plaintiff by means of licensing, merchandising, endorsement and sponsorship deals.

Particulars

[Details]

4. Yet further, there is a widespread practice whereby famous footballers such as the 1st Plaintiff will license the use of their name and/or image to third parties for the purpose of advertising or promotion, for reward. Members of the public are aware of this practice in a general way.
5. In the premises, the 1st and/or 2nd Plaintiff have built up and own a substantial goodwill and reputation in their business giving the 1st Plaintiff's endorsement to the products of others and otherwise licensing, merchandising and sponsoring the products of others.
6. The Defendant is an importer and distributor of tea.
7. From a date unknown to the Plaintiffs but prior to the issue of the Writ herein, the Defendant has, without permission of the Plaintiffs, used the 1st Plaintiff's image in connection with the advertising and promotion of its tea.

Particulars

Pending disclosure and/or further information, the Plaintiffs will rely upon an advertisement placed by the Defendant in [newspaper], which appears to show the 1st Plaintiff drinking a cup of the Defendant's tea and smiling contentedly. A copy of the said advertisement is served herewith.

8. The aforesaid acts of the Defendant were calculated to lead and are likely to lead members of the public to believe, contrary to the fact, that the 1st Plaintiff has endorsed and/or recommended and/or approved or otherwise been involved in some commercial arrangement concerning the Defendant's tea.
9. The Plaintiffs will rely on the following instances of actual deception at trial: [details].
10. In the premises, the Defendant has passed off and/or attempted to pass off and/or enabled, assisted, caused or procured others to pass off its tea as being endorsed and/or recommended and/or approved by the 1st Plaintiff or otherwise involved in some commercial arrangement involving the Plaintiffs.
11. By reason of the matters complained of above, the Plaintiffs have suffered loss and damage. Further, unless restrained, the Defendant threatens and intends to continue the acts complained of, whereby the Plaintiffs will suffer further loss and damage.
12. The Plaintiffs are entitled to and claim interest on all sums due to them from the Defendant, pursuant to Section 12 of the Civil Law Act (Cap 43) and/or the equitable jurisdiction of the court.

AND the Plaintiffs claim:

- (1) An injunction to restrain the Defendant (whether acting by himself, his servants, agents or otherwise howsoever) from passing off tea, not being endorsed and/or recommended and/or approved by the 1st Plaintiff or otherwise involved in some commercial arrangement involving the Plaintiffs, as and for such tea;
- (2) An order for the delivery up or destruction upon oath of all articles in the possession custody or control of the Defendant, the use of which would be a breach of the foregoing injunction;
- (3) An inquiry as to damages or at the Plaintiffs' option an account of profits; and an order for payment of all sums found due together with interest as aforesaid;
- (4) Costs; and
- (5) Such further or other relief as this Honourable Court deems just.

P18.29 Defence denying goodwill

[Drew & Napier LLC]

1. The Defendant denies that the Plaintiff has extensively advertised or promoted the goods [or services] as alleged in the Statement of Claim or that the mark “Kadok” has become known to the trade or the public in Singapore as signifying the Plaintiff’s goods [or services] or that the Plaintiff has acquired reputation or goodwill in the mark in relation to the goods [or services] as alleged or at all.

P18.30 Defence denying misrepresentation

[Rajah & Tann Singapore LLP and Drew & Napier LLC]

1. The Defendant denies that the Defendant had committed any act calculated to deceive or likely to deceive any members of the public for the sale of MINTIE toothpaste as alleged.
2. The Plaintiff's alleged claim that the Defendant had passed off the MINTIE toothpaste as the Plaintiff's MINTY toothpaste is denied on the following grounds:
 - (1) The word 'MINTY' is of a generic or descriptive nature and not distinctive of or peculiar to the Plaintiff's toothpaste;
 - (2) The word 'MINTY' does not acquire any secondary meaning which has become distinctive of the Plaintiff's toothpaste;
 - (3) The Defendant's MINTIE toothpaste and the Plaintiff's MINTY toothpaste is not sufficiently similar to be likely to deceive and/or to deceive any members of the public;
 - (4) The Plaintiff's MINTY toothpaste get-up is common to the trade and other get-ups similar to the Plaintiff's had been in use by other trades in the industry.
3. The Defendant's sale and/or supply of the MINTIE toothpaste was widely publicised in the local newspaper and magazines on [dates].

Particulars of the Defendant's Use and Sale of MINTIE Toothpaste

[Details of advertisements and sales]

4. By reasons of the aforesaid, the Defendant has acquired goodwill in the name 'MINTIE' when used in relation to toothpaste.
5. The Defendant's MINTIE toothpaste is of a different quality from the Plaintiff's MINTY toothpaste in that MINTIE toothpaste contains X²X which is a powder form of natural herb extracted from fresh leaves at Mount XiXi, China.
6. Furthermore, the Defendant's MINTIE toothpaste is sold to a distinctive section of the members of the public, namely customers who have and have not given up smoking.
7. In the premises, the Defendant denies any conduct of misrepresentation as alleged and put the Plaintiff in strict proof thereof.

8. The Defendant further denies that the Plaintiff has suffered loss and damage as alleged and that the Plaintiff is not entitled to any relief.

P18.31 Defence of concurrent and antecedent right

[Rajah & Tann Singapore LLP]

1. The Defendant is and was at all material times a company carrying on the business of [nature of the Defendant's business].
2. The Defendant was duly incorporated in Singapore on [date] and has been engaged in the selling and/or supplying of toothpastes by reference to or the use of the name MINTIE since [month and year].
3. The Defendant's sale and/or supply of the MINTIE toothpaste was widely publicised in the local newspaper and magazines on [dates].

Particulars of the Defendant's Use and Sale of MINTIE Toothpaste

[Details of advertisements and sales]

4. Furthermore, the word 'MINTIE' has become distinctive of the Defendant's MINTIE toothpaste in that the MINTIE toothpaste contains X²X which is a powder form of natural herb extracted from fresh leaves at Mount XiXi, China.
5. By reasons of the aforesaid, the Defendant has acquired goodwill in the word 'MINTIE' when used in relation to toothpaste and that there had been honest concurrent use by the Defendant of the name 'MINTIE' in relation to the toothpaste sold and/or supplied by the Defendant.
6. In the premises, the Defendant denies any alleged passing-off as alleged.
7. The Defendant further denies that the Plaintiff has suffered loss and damage as alleged. The Plaintiff is not entitled to any relief and the Defendant put the Plaintiff in strict proof thereof.

P18.32 Defence of acquiescence

[Rajah & Tann Singapore LLP]

1. The Defendant is and was at all material times a company carrying on the business of [nature of the Defendant's business].
2. The Defendant was duly incorporated in Singapore on [date] and has been engaged in the selling and/or supplying of toothpaste by reference to or the use of the name MINTIE since [month and year].
3. The Defendant's sale and/or supply of the MINTIE toothpaste was widely publicised in the local newspaper and magazines on [dates] without any objection from the Plaintiff.

Particulars of the Defendant's Use and Sale of MINTIE Toothpastes

[Details of advertisements and sales]

4. At all material times, the Plaintiff is aware and has knowledge that the Defendant has been selling and/or supplying MINTIE toothpaste for the past two years. By the Plaintiff's conduct, the Defendant was led to believe that the Plaintiff had consented to the Defendant's sale and/or supply of the MINTIE toothpaste to the members of the public.
5. The Defendant avers that the Plaintiff is further estopped from alleging passing-off on the part of the Defendant.
6. In the premises, the Defendant denies any alleged passing-off as alleged.
7. The Defendant further denies that the Plaintiff has suffered loss and damage as alleged. The Plaintiff is not entitled to any relief and the Defendant put the Plaintiff in strict proof thereof.

P18.33 Defence denying reputation or goodwill

[Allen & Gledhill LLP]

1. The Defendant denies that the Plaintiff has extensively advertised or promoted the goods [or services] as alleged in the Statement of Claim or that the mark “Kadok” has become known to the trade or the public in Singapore as signifying the Plaintiff’s goods [or services] or that the Plaintiff has acquired reputation or goodwill in the mark in relation to the goods [or services] as alleged or at all.

PATENTS

PRECEDENTS

P18.34 Claim by patentee for infringement

[Rajah & Tann Singapore LLP]

1. The Plaintiff is and was at all material times the registered proprietor of Singapore Patent No. [number].
2. The patent is and was at all material times valid and subsisting.
3. The Defendant has carried out the acts specified in paragraph 2 of the Particulars of Infringement served herewith and has thereby infringed the patent in the manner as set out in the Particulars of Infringement.¹
4. Due to the Defendant's acts of infringement of the patent, the Plaintiff has suffered loss and damage.
5. Unless the Defendant is restrained, the Defendant threatens and intends to continue to infringe the patent.

AND the Plaintiff claims:

- (1) An injunction to restrain the Defendant whether acting by its directors, officers, employees, servants or agents, or any of them or otherwise howsoever from infringing Singapore Patent No. [number];
- (2) An order for the delivery up or destruction upon oath of all infringing articles or any article in which that product is inextricably comprised, in the Defendant's possession, power, custody or control;
- (3) An inquiry as to damages or alternatively, at the Plaintiff's option, an account of profits and an order for payment of all sums due;
- (4) Interest pursuant to Section 12 of the Civil Law Act (Cap 43) or under the equitable jurisdiction of the Court;
- (5) Costs; and
- (6) Such further and/or other relief as this Honourable Court deems fit and just.

¹ See P18.35.

P18.35 Particulars of Infringement

[Rajah & Tann Singapore LLP]

Served pursuant to the Rules of Court, Order 87A rule 2(2).

1. The following are the particulars of infringement of Singapore Patent No. [number] referred to in the Statement of Claim.
2. Subsequent to the publication of the specification of Singapore Patent No. [number] and prior to the issue of the Writ of Summons in this action, the Defendant has infringed the patent by the making, disposing of, use and import of pappynocks, [or as the case may be, following one or more of the forms of infringement in Section 66 of the Act] made in accordance with [or as the case may be, relating to] the invention described in the specification and claimed in claims 1, 3, and 6 [as the case may be] thereof.
3. In particular, the Plaintiff relies upon the following acts:
 - (1) The manufacture for the purpose of sale of 10,000 units of pappynocks at a production facility owned by the Defendant, which address is located at [address].
 - (2) The sale of 200 units of pappynocks to A Ltd by the Defendant on [date] at the total sale price of S\$[amount]. The sale of the 200 units of pappynocks was pursuant to a purchase order no. [number] dated [date] issued by A Ltd and the Defendant subsequently issued invoice no. [number] dated [date] in respect of the sale.
4. The Plaintiff is unable to give full particulars of all the acts of infringement of the patent by the Defendant until after discovery and/or interrogatories but will claim damages or an account of profits in respect of each and every such infringement.

P18.36 Claim by patentee and exclusive licensee for infringement

[Rajah & Tann Singapore LLP]

1. The 1st Plaintiff is and was at all material times the registered proprietor of Singapore Patent No. [number]. The 2nd Plaintiff is and was at all material times the exclusive licensee under the patent, the exclusive licence having been duly registered at the Registry of Patents, Intellectual Property Office of Singapore with effect from [date].
2. [Continue as in 'Claim by patentee for infringement']

P18.37 Claim for a declaration of non-infringement

[Rajah & Tann Singapore LLP]

1. The Plaintiff is and was at all material times a manufacturer of pappynocks, which are manufactured at a production facility owned by the Plaintiff, which address is located at [address].
2. A photograph and descriptive text of a unit of a pappynock is served herewith. A sample of a unit of pappynock is available for inspection by prior appointment at the offices of the Plaintiff's solicitors.
3. The Defendant is and was at all material times the registered proprietor of Singapore Patent No. [number] which is subsisting and which is entitled 'Apparatus Relating To Provisions of Pappynock Warmers'.
4. The Plaintiff claims that the pappynocks it manufactures do not infringe any of the claims of Singapore Patent No. [number].
5. By way of a letter dated [date], the Plaintiff applied to the Defendant for a written acknowledgment to the effect that the pappynocks manufactured by the Plaintiff do not infringe any claims of Singapore Patent No. [number]. The Plaintiff provided full particulars of the pappynocks in its letter.
6. The Defendant has failed to give the acknowledgment sought by the Plaintiff or any acknowledgment with similar effect. The Plaintiff will also rely on a letter from the Defendant's solicitors dated [date] which the Plaintiff avers constitutes an actual refusal to provide such an acknowledgment.

AND the Plaintiff claims:

- (1) A declaration that the pappynock manufactured by the Plaintiff does not infringe any of the claims of Singapore Patent No. [number];
- (2) Costs; and
- (3) Such further and/or other relief as this Honourable Court deems fit and just.

P18.38 Claim in an action for threats

[Rajah & Tann Singapore LLP]

1. The Plaintiff is and was at all material times a manufacturer for sale of pappynocks that are manufactured at a production facility owned by the Plaintiff, which address is located at [address].
2. The Defendant is and was at all material times a vendor of garden tools, having its registered business address at [address].
3. The Defendant has threatened and intends to continue to threaten, unless restrained by this Honourable Court, the Plaintiff with an action for infringement of Singapore Patent No. [number] in respect of the manufacture by the Plaintiff of pappynocks.

Particulars

- (1) By way of a notice published in the trade magazine entitled “Gardening Times” dated [date], the Defendant asserted that it is the proprietor of Singapore Patent No. [number] entitled “Apparatus Relating To Provisions of Pappynock Warmers” and that it would not hesitate to commence legal action of patent infringement if any manufacturer or dealer produced, sold or offered for sale pappynocks without first obtaining a licence or its consent.
- (2) On or about [date], the Defendant’s managing director, Mr A placed a telephone call to the Plaintiff’s Chief Marketing Executive, MsB, demanding that the Plaintiff immediately cease production of the pappynocks, failing which the Defendant would instruct its solicitors to commence legal proceedings against the Plaintiff for the infringement of Singapore Patent No [number]. This threat by the Defendant was also contained in an email transmission entitled “Infringement of Patent” sent by Mr A to the Plaintiff’s Managing Director, Mr C on [date].
4. By reason of the matters stated above, the Plaintiff has suffered and will continue to suffer loss and damage.
5. By way of the Defendant’s actions, the Plaintiff is a person aggrieved within the definition set out in Section 77 of the Patents Act 1994 (Cap 221).

AND the Plaintiff claims:

- (1) A declaration that the threats made by the Defendant are not justified;

- (2) An injunction to restrain the Defendant, whether acting by its directors, officers, employees, servants, agents or otherwise howsoever from continuing whether by letters, notices, circulars, advertisements or otherwise howsoever to threaten the Plaintiff, its customers, directors, officers, employees, servants or agents, with any legal proceedings for infringement of Singapore Patent No. [number];
- (3) An inquiry as to damages and an order for payment of all sums due;
- (4) Interest pursuant to Section 12 of the Civil Law Act (Cap 43) or under the equitable jurisdiction of the Court;
- (5) Costs; and
- (6) Such further and/or other relief as this Honourable Court deems fit and just.

P18.39 Claim under Section 12A of the Medicines Act

[Drew & Napier LLC]

1. The Plaintiff is and was, at all material times, the proprietor of Singapore Patent No. [number].
2. On or about [date], the Defendant filed Application No. [number] with the Singapore Health Sciences Authority for the grant of a product licence relating to the Defendant's product [name and other details of product].
3. On or about [date], pursuant to Section 12A(3)(a) of the Medicines Act (Cap. 176), the Defendant served on the Plaintiff a notice dated [date], in respect of the Defendant's product licence application for its product [name].
4. The Notice to the Plaintiff stated that Singapore Patent No. [number] was relevant to the Defendant's Product.
5. In the Notice to the Plaintiff, the Defendant declared as follows:

“In my opinion and to the best of my belief, the above-mentioned patent will not be infringed by the doing of the act for which the licence is sought. The basis of my opinion is
...”
6. If the Defendant is granted the product licence, the Defendant threatens to commit [acts of infringement] in Singapore, without the Plaintiff's consent.
7. Further and/or alternatively, the Defendant threatens to commit [acts of infringement] in Singapore, when the Defendant knows, and/or it is obvious to a reasonable person in the circumstances, that its use without the Plaintiffs' consent would be an infringement of the Plaintiff's patent.
8. Further and/or alternatively, the Defendant threatens to commit [acts of infringement] of the Defendant's product obtained directly by means of the said process or keep any such product whether for disposal or otherwise.

AND the Plaintiff claims:

- (1) A declaration that Singapore Patent No. [number] will be infringed by the Defendant's intended acts of infringement;
- (2) An injunction to restrain the Defendant from committing the intended acts of infringement in Singapore;
- (3) Damages or an account of profits;

- (4) Costs; and
- (5) Such further and/or other relief as this Honourable Court deems fit and just.

P18.40 Defence to deny infringement and Counterclaim for revocation

[Rajah & Tann Singapore LLP]

1. The Defendant admits that the Plaintiff is the registered proprietor of Singapore Patent No. [number].
2. The Defendant admits to the acts stated in the Particulars of Infringement but denies that such acts have infringed claims 1, 3 and 6 of the specification ('Specification') of Singapore Patent No [number] as alleged by the Plaintiff.

Particulars

- (1) The pappynocks manufactured by the Defendant do not contain the two-pronged insertions at the passageways as set out in claims 1 and 3 of the Specification.
- (2) The pappynocks manufactured by the Defendant do not interlock at the hinged ends and contain a flexible retractable arm. Such features differ materially from claim 6 of the Specification.
3. Further or in the alternative, the Defendant avers that Singapore Patent No. [number] is and has always been invalid by reasons of the matters set out in the particulars of objections served herewith.²
4. The Defendant denies that the Plaintiff has suffered any loss or damage. The Plaintiff is not entitled to the relief claimed or to any relief.

Counterclaim

5. Singapore Patent No. [number] has always been invalid for the reasons appearing in the Particulars of Objection served herewith.

AND the Defendant claims:

- (1) An order that Singapore Patent No [number] be revoked;
- (2) Costs; and
- (3) Such further and/or other relief as this Honourable Court deems fit and just.

² See P18.41.

P18.41 Particulars of objections

[Rajah & Tann Singapore LLP]

Served pursuant to the Rules of Court, Order 87A rule 3(2).

1. The following are the Particulars of Objections to Singapore Patent No. [number] upon which the Defendant relies.
2. The alleged invention, which is the subject of the patent in suit, is not a patentable invention in that:
 - (1) The alleged invention lacks novelty; and

Particulars

The alleged invention formed part of the state of the art in that before the priority date of the alleged invention, the following matters have been disclosed to the public, that is to say:

- (a) The alleged invention was exhibited in a trade fair at the Piper Knowledge Institute on [date] [or as the case may be, the following documents [all the documents relied on which may be documents published anywhere in the world showing in the case of all documents not on their face published to the world, how they are alleged to have been made available to the public]].
 - (b) The mechanical details and accompanying diagrams of the alleged invention were published in the magazine “Gardening World” on [date].
 - (c) [By the following users [all users relied on, showing in each case that the same is not secret and showing how it made the alleged invention or any part of it available to the public].]
 - (d) [By the following oral descriptions [all oral descriptions relied on once again showing how the same made the information therein available to the public].]
 - (e) [By the following patents published on or before the priority day of the alleged invention [all such patents relied on, which must be such that the allegation following is completely unjustified].]
- (2) The alleged invention involves no inventive step.

Particulars

The alleged invention involved no inventive step that it was obvious to a person skilled in the art, having regard to the matter

which formed part of the state of the art before the priority date of the alleged invention. The Defendant shall rely on:

- (a) All the matter set out in paragraphs (a), (b) and (c) under the Particulars of (1);
- (b) The cover articles in the engineering journals, such as “Engineering Times” and “Progressive Components” dated [date] and [date] respectively, wherein mechanical and materials engineers had stated that there is no qualitative difference between the alleged invention and the prior art [or as the case may be, the following documents [documents]]; and
- (c) [The following further users [users]]; and
- (d) [The following oral descriptions [descriptions]].

P18.42 Defence alleging consent to do acts complained of

[Allen & Gledhill LLP]

1. The Defendant denies that he has infringed the Patent as alleged or at all.
2. Further or in the alternative, at all material times, the acts complained of in the Particulars of Infringement were committed with the consent of the Plaintiff.

Particulars

[Facts and matters evidencing the consent of the Plaintiff]

3. In the premises, the Plaintiff is not entitled to the relief claimed or to any relief.

P18.43 Reply and Defence to Counterclaim in patent infringement claim

[ATMD Bird & Bird LLP]

Reply

1. The Plaintiff joins issue with the Defendant upon its Defence save insofar as the same consists of admissions.

Defence to Counterclaim

2. Paragraph [number] of the Counterclaim and paragraph [number] of the Particulars of Objections are denied. Singapore Patent No. [number] (“the Patent”) is not and has never been invalid for the reasons appearing in the Particulars of Objections or at all.

[Novelty]

3. The Plaintiff says that the inventions comprised in the Patent do not form part of the state of the art. The carrying out of the alleged prior art’s directions will not result in an infringement of Claims [1] and/or [2] of the Patent.

Particulars

[Passages in the specification relied on in answer and set forth what a man skilled in the art would do as aforesaid]

[Inventive step]

4. Without prejudice to the general denial that the patent is invalid on the grounds of obviousness alleged or at all, the Plaintiff will rely upon the commercial success of the invention the subject matter of the patent, [both in Singapore and abroad].

Particulars

- (1) The Plaintiff’s [products bearing the product codes or process used to manufacture [product]] since [date] were made in accordance with the claims of the Patent.
- (2) A summary of [the sales of each such product or the annual revenues received by the Plaintiff from the use of the process] is set out in the Schedule [A] annexed hereto for each year since [date].
- (3) A summary of sales for the [equivalent product marketed before the patented products or prior equivalent process used by the Plaintiff to manufacture [product]] is set out in Schedule [B] annexed hereto.

- (4) A summary of the Plaintiff's expenditure which supported the [marketing of the products or process] mentioned is contained in Schedule [C] annexed hereto.
- (5) The defects in the existing art were [particulars]. These defects were overcome by the Patent by [particulars].
- (6) As to the existence of long felt want, the Plaintiff will rely upon [particulars].

[Invention/Industrial Application]

5. The Plaintiff says that the inventions comprised in the Patent are patentable subject matter and are capable of industrial application.

Particulars

[Examples of industrial application]

[Insufficiency]

6. Insofar as the aforesaid denial includes a denial that the specification is insufficient for the reasons alleged by the Defendant, the Plaintiff says that the same contains a sufficient and fair description of each part of the invention and of the method by which it is to be performed, having regard to what a man skilled in the art would do in respect of that part of the invention with a view to making a product in accordance with the invention.

[Discrepancy in matter disclosed]

7. The Plaintiff says that the matter disclosed in the specifications of the Patent is the same or substantially the same as that disclosed in the application for the Patent.

[Amendments]

8. The Plaintiff says that the amendments made to the specification of the Patent are valid and denies that the scope of protection has been extended by virtue of the amendments.
9. Save insofar as expressly admitted herein, the Plaintiff also denies each and every allegation in the Counterclaim and Particulars of Objection as if the same were set forth seriatim and specifically traversed.

REGISTERED DESIGNS

PRECEDENTS

P18.44 Claim for infringement of registered design

[Rajah & Tann Singapore LLP]

1. The Plaintiff is the registered proprietor of Registered Design No. [number] in respect of [subject of the design] ('Registered Design'). The said design was registered as of the [date], by a certificate of registration issued on the [date]. The novelty of the Registered Design resides in its [particulars of novelty].
2. The said registration is, and has at all material times been, valid and subsisting.
3. The Defendant has by itself, its agents, employees or servants, since the date on which the said certificate of registration was issued and before the issue of the writ herein, infringed the Plaintiff's right in the said Registered Design by making or importing for sale or for use for the purposes of trade or business or sold, hired or offered for sale [or as the case may be, having regard to the relevant version of Section 30 of the Registered Designs Act] certain [subject of the design], to which the Registered Design or a design not substantially different from the said Registered Design has been applied ('Infringing Items').

Particulars

[Particular acts of making or importing for sale or for use for the purposes of trade or business or sold, hired or offered for sale or as the case may be relied on]

The Plaintiff is unable before discovery herein to give particulars of all the Defendant's infringement but will seek to recover in respect of all such infringements.

4. In the premises, the Plaintiff has suffered loss and damage.
5. Unless restrained by this Honourable Court the Defendant threatens and intends to continue and repeat the acts of infringement complained of, whereby the Plaintiff will suffer further loss and damage.

AND the Plaintiff claims:

- (1) A declaration that the Defendant, whether acting by themselves or by their servants, employees or agents, or otherwise, have

infringed the Plaintiff's Registered Design by making and/or importing into Singapore for sale and/or selling and/or using for the purpose of trade or business and/or offering for sale or hire in Singapore the Infringing Items.

- (2) An injunction to restrain the Defendant, whether acting by themselves or by their servants, employees or agents, or otherwise howsoever, from infringing the Plaintiff's Registered Design No. [number];
- (3) Delivery up or destruction upon oath of all articles in the Defendant's possession, custody or control which infringe the Plaintiff's Registered Design;
- (4) An inquiry as to what damages the Plaintiff has suffered, or at the Plaintiff's option, an account of profits made by the Defendant, by reason of the infringement of the Plaintiff's Registered Design by the Defendant and the payment of all sums found due upon the taking of such inquiry or account, together with interest thereon;
- (5) Costs; and
- (6) Such further or other relief as this Honourable Court deems fit.

P18.45 Claim (or Counterclaim) for groundless threats of registered design infringement

[Drew & Napier LLC]

[If counterclaiming for groundless threats, substitute 'Plaintiff' for 'Defendant' and vice versa]

1. The Defendant repeats paragraphs [...] above.
2. By way of a letter dated [state date], the Plaintiff wrote to the Defendant stating, *inter alia*, as follows:

[reproduce the relevant portions of the letter]

3. The said letter contained a groundless threat of proceedings for registered design infringement and the Defendant is thereby aggrieved.
4. By reason of the acts of the Plaintiff as aforesaid, the Defendant has suffered loss and damage. Unless restrained, the Plaintiff threatens and intends to continue such acts, whereby the Defendant will suffer further loss and damage.

AND the Defendant claims:

- (1) A declaration that the threats made by the Plaintiff in its letter of [state date] are unjustifiable;
- (2) An injunction to restrain the Plaintiff from continuing to make the same or similar threats;
- (3) An inquiry as to damages and an order for payment of all sums found due upon taking such inquiry;
- (4) Interest;
- (4) Costs; and
- (5) Such further or other relief as this Honourable Court may deem just.

P18.46 Defence denying infringement of registered design

[Rajah & Tann Singapore LLP]

1. The Defendant admits that the Plaintiff is the registered owner of the Registered Design No. [number] and that the same is valid and subsisting.
2. The Defendant further admits that he has made or imported for sale or for use for the purposes of trade or business or sold, hired or offered for sale [subject of the design] of the kind referred to in paragraph [number] of the Statement of Claim, but he denies that the said acts or any of them constitute any infringement of any of the Plaintiff's rights in the said Registered Designs as alleged in the Statement of Claim or at all.

Particulars

[Particulars in support of denial, for example, those features of the Registered Design which are alleged to be absent in the alleged infringement]

3. In the premises, the Plaintiff is not entitled to the relief claimed or any relief.

P18.47 Defence denying validity of registered design and Counterclaim for rectification of register

[Rajah & Tann Singapore LLP]

1. The Defendant admits that the Plaintiff is the registered owner of the Registered Design No. [number] and that the same is subsisting. Save as aforesaid, paragraph [number] of the Statement of Claim is denied.
2. The Defendant denies that he has infringed the said Registered Design [in respects alleged or any respect] as alleged in the Statement of Claim.

Particulars

[Particulars in support of denial, for example, those features of the Registered Design which are alleged to be absent in the alleged infringement]

3. Further or in the alternative, Registered Design No. [number] is and always has been invalid.

Particulars

- (1) The said Registered Design was at the date of the registration thereof not new having regard to the provisions of Section 5(2) of the Registered Designs Act (Cap 266) and the matters particularised below.
 - (a) The registration of Singapore Registered Design No. [number], registered as of [date].
 - (b) The publication by sale and open exposure for sale of [object of the design] by ABC of [company] from [date] to [date]. A [...] similar in all material aspects to such [...] may be inspected at the office of the Defendant's solicitors.
 - (c) The publication of the issue of [date] of the journal/magazine/leaflet [name of publication]. The Defendant will refer in particular to pages [numbers] of the said issue.
 - (d) Common general knowledge [if any particular documents are relied on, they should be identified].
- (2) The said Registered Design does not comply with Section 2(1) of the Registered Designs Act (Cap 266). Without prejudice to the generality of the foregoing, the said Registered Design is for a method or principle of construction, or is for features of shape or configuration of an article which are dictated

solely by the function which the article has to perform, or are dependant upon the appearance of another article of which the article is intended by the designer to form an integral part or enable the article to be connected to, or placed in, around or against, another article so that either article may perform its function.

- (3) If (which is denied) the design as registered has any features of novelty, the Defendant will say that the same are purely matters of pattern or ornament and not of shape or configuration and the Defendant will rely upon the fact that the statement of novelty limits the design to the shape or configuration of the said article.
4. In the premises, the Plaintiff is not entitled to the relief claimed or any relief.

Counterclaim

5. The Defendant repeats paragraph 3 above.

AND the Defendant counterclaims:

- (1) For an order that the Register of Designs may be rectified by the cancellation therefrom of Registered Design No. [number];
- (2) For such further or other order as to this Honourable Court may seem fit; and
- (3) Costs.

P18.48 Defence denying infringement and validity of registered design and Counterclaiming for revocation

[Allen & Gledhill LLP]

1. The Defendant admits that the Plaintiff is the registered proprietor of the Registered Design No. [number].
2. The Defendant denies that he has infringed the said Registered Design as alleged in the Statement of Claim or at all.
3. Further or alternatively, the Defendant says that the said Registered Design is and has been invalid on the ground that at the date of its registration, it was not new and/or already published in Singapore in respect of the same or, alternatively, some other article and/or differs from such a design only in immaterial details or in features which are variants commonly used in the trade.

Particulars

[Acts of publication (for example sale or offer for sale) of articles bearing the design or a design which differs only in immaterial details or in features which are variants commonly used in the trade]

4. In the premises, the Plaintiff is not entitled to the relief claimed or any other relief.

Counterclaim

5. The Defendant repeats paragraph 3 above.

AND the Defendant counterclaims:

- (1) An order for revocation of the registration of the said Registered Design;
- (2) Costs; and
- (3) Such further or other relief as this Honourable Court may deem just.

REGISTERED TRADE MARKS

PRECEDENTS

P18.49 Claim by registered proprietor for infringement of registered trade mark under section 27(1) of Trade Marks Act

[Rajah & Tann Singapore LLP]

1. The Plaintiff is a company registered in Singapore on [insert Date]. At all material times, the Plaintiff was and is engaged in the business of [insert details].
2. The Plaintiff is and at all material times was the registered proprietor of the registered trade mark [Mark] registered under no [number] in Class [number] in respect of [goods].
3. The Defendant was and is a [insert company structure] trading in the name and style of [insert company name], which was registered in Singapore on [date]. At all material times, [company name] was and is engaged in the business of [insert business].
4. At all material times the registered trade mark has been subsisting. A copy of the registration certificate is annexed.
5. Prior to the commencement of the proceedings herein, and subsequent to the date of registration, the Defendant has infringed the registered trade mark by the use in the course of trade of a sign which is identical to the registered trade mark in relation to goods or services which are identical to those for which the trade mark is registered.

Particulars of Infringement

[Full particulars of the acts complained of, for example: The Defendant has since a date unknown to the Plaintiff sold the goods to retail outlets bearing the mark [Mark]. In particular, the Plaintiff relies on the fact that such goods were exposed for sale in such a retail outlet, namely [outlet], on [date].]

6. The Plaintiff is unable to give particulars of each such act of infringement but will seek a remedy in respect of each such act at trial.
7. By reason of the acts of the Defendant as aforesaid, the Plaintiff has suffered loss and damage. Unless the Defendant is restrained, he threatens and intends to continue such acts, whereby the Plaintiff will suffer further loss and damage.

AND the Plaintiff claims:

- (1) An injunction to restrain the Defendant from infringing registered trade mark no. [number];
- (2) Erasure, removal or obliteration from all infringing goods, material, articles or websites in the possession, custody or control of the Defendant of the offending sign or the destruction of the infringing goods, material or articles;
- (3) Delivery up to the Plaintiff of all infringing goods, material, articles, websites or documents in the possession, custody or power of the Defendant of the unauthorised mark, the use of which by the Defendant in the course of trade would be a breach of the foregoing injunction, for destruction or forfeiture;
- (4) An inquiry as to damages, or at the election of the Plaintiff, an account of profits, for infringement of the registered trade mark, together with an order for payment for all sums found due to the Plaintiff with interest thereon;
- (5) Costs; and
- (6) Such further or other relief as this Honourable Court may deem fit and just.

P18.50 Claim by registered proprietor for infringement of registered trade mark under section 27(1) of Trade Marks Act

[Drew & Napier LLC]

1. The Plaintiff is (and at all material times was) the registered proprietor of the registered trade mark [reproduce the mark] registered under no [state TM No.] in Class [state Class number] in respect of [state goods] (the “Registered Mark”).
2. The Registered Mark is (and at all material times was) valid and subsisting.
3. Prior to the issue of the Writ of Summons herein [and subsequent to the date of registration of the Registered Mark], the Defendant has infringed the Registered Mark by using, in the course of trade, a sign which is identical to the registered trade mark in relation to goods which are identical to those for which the trade mark is registered.

Particulars

[State full particulars of the acts complained of: -

E.g. The Defendant has since a date presently unknown to the Plaintiff but prior to the issue of the Writ of Summons herein, imported, put on the market, offered or exposed for sale [state the allegedly infringing goods] bearing the mark [state the allegedly infringing mark]. In particular, the Plaintiff relies on the fact that such goods were imported, put on the market, offered or exposed for sale [state relevant details such as locations, dates, quantity of infringing goods, etc.]]

4. The Plaintiff is unable before discovery and/or interrogatories to give particulars of each such act of infringement committed by the Defendant but will seek a remedy in respect of each such act at trial.
5. By reason of the acts of the Defendant as aforesaid, the Plaintiff has suffered loss and damage. Unless the Defendant is restrained, the Plaintiff is likely to continue to suffer further loss and damage.

AND the Plaintiff claims:

- (1) An injunction to restrain the Defendant, whether acting by its directors, officers, employees, agents or any of them or otherwise howsoever from infringing the Registered Mark;
- (2) An order for delivery up and/or destruction upon oath of all products, printed or written matter, packaging and all other

articles in the power, possessing, custody and/or control of the Defendant, the use of which would be in breach of the foregoing injunction;

- (3) An inquiry as to damages suffered by the Plaintiff, or at the Plaintiff's option, an account of profits;
- (4) An order for payment to the Plaintiff of all sums found due upon taking such inquiry or account;
- (5) Interest;
- (6) Costs; and
- (7) Such further or other relief as this Honourable Court may deem just.

P18.51 Claim by registered proprietor for infringement of registered trade mark under section 27(2) of Trade Marks Act

[Rajah & Tann Singapore LLP]

1. [As in paragraphs 1, 2, 3 and 4 of P18.49 above:]
5. Prior to the commencement of the proceedings herein, and subsequent to the date of registration, the Defendant has infringed the registered trade mark by the use in the course of trade of a sign where, because the sign is similar to the registered trade mark and is used in relation goods or services similar to those for which the registered trade mark is registered, there exists a likelihood of confusion on the part of the public.

Particulars of Infringement

[Full particulars of the acts complained of, for example: The Defendant has since a date unknown to the Plaintiff sold goods to retail outlets bearing the mark [Mark]. In particular, the Plaintiff relies on the fact that such goods were exposed for sale in such a retail outlet, namely [outlet], on [date].]

Particulars of Confusion or Its Likelihood

Confusion in the minds of the public is likely to arise by reason, *inter alia*, of:-

[If actual instances of confusion have come to light, they should be pleaded. Alternatively, if particular matters give rise to a likelihood of confusion, they should be set out.]

P18.52 Claim by registered proprietor for infringement of registered trade mark under section 27(2) of Trade Marks Act

[Drew & Napier LLC]

1. [Use paragraph 1 of P18.50 above]
2. [Use paragraph 2 of P18.50 above]
3. Prior to the issue of the Writ of Summons herein [and subsequent to the date of registration of the Registered Mark], the Defendant has infringed the Registered Mark by using, in the course of trade, a sign where, because the sign is identical with or similar to the registered trade mark in relation to goods which are identical with or similar to those for which the Registered Mark is registered, there exists a likelihood of confusion on the part of the public.

Particulars

[State full particulars of the acts complained of: -

E.g. The Defendant has since a date presently unknown to the Plaintiff but prior to the issue of the Writ of Summons herein, imported, put on the market, offered or exposed for sale [state the allegedly infringing goods] bearing the mark [state the allegedly infringing mark]. In particular, the Plaintiff relies on the fact that such goods were imported, put on the market, offered or exposed for sale [state relevant details such as locations, dates, quantity of infringing goods, etc.]]

[If actual instances of confusion have come to light, they should be pleaded. Alternatively, if particular matters give rise to a likelihood of confusion, they should be set out.]

4. [Use paragraph 4 of P18.50 above]
5. [Use paragraph 5 of P18.50 above]

P18.53 Claim by registered proprietor for infringement of registered trade mark under section 27(3) of Trade Marks Act

[Rajah & Tann Singapore LLP]

1. [As in paragraphs 1, 2, 3 and 4 of P18.49 above.]
5. Prior to the commencement of the proceedings herein, and subsequent to the date of registration, the Defendant has infringed the registered trade mark by the use in the course of trade of a sign which is identical to the registered trade mark in relation to goods and services which are not similar to those for which the trade mark is registered, where such use would indicate a connection between those goods or services and the Plaintiff, there exists a likelihood of confusion on the part of the public due to such use, and the interests of the Plaintiff are likely to be damaged by such use.

Particulars of Infringement

[Full particulars of the acts complained of, for example: The Defendant has since a date unknown to the Plaintiff sold goods to retail outlets bearing the mark [Mark]. In particular, the Plaintiff relies on the fact that such goods were exposed for sale in such a retail outlet, namely, [outlet], on [date].]

[Continue as in para 64 *et seq* of P18.49 above.]

P18.54 Claim by registered proprietor for infringement of registered well-known trade mark under section 27(3) of Trade Marks Act

[Drew & Napier LLC]

1. [Use paragraph 1 of P18.50 above]
2. [Use paragraph 2 of P18.50 above]
3. The Registered Mark is well-known in Singapore.

Particulars

- (a) [If claim is that the Registered Mark is well-known to a particular sector of the public in Singapore, identify the said sector and state reasons for claiming that the mark is well known to that sector]
- (b) [Particularise, to the extent possible, relevant details relating to the factors listed under section 2(7) of the Trade Marks Act.]
4. Prior to the issue of the Writ of Summons herein [and subsequent to the date of registration of the Registered Mark], the Defendant has infringed the Registered Mark by using, in the course of trade, a sign which is identical with [or similar to] the Registered Mark in relation to goods which are not similar to those for which the Registered Mark is registered, where the use of the sign in relation to those goods would indicate a connection between those goods and the Plaintiff, there exists a likelihood of confusion on the part of the public because of such use, and the interests of the Plaintiff are likely to be damaged by such use.

Particulars

[State full particulars of the acts complained of: -

E.g. The Defendant has since a date presently unknown to the Plaintiff but prior to the issue of the Writ of Summons herein, imported, put on the market, offered or exposed for sale [state the allegedly infringing goods] bearing the mark [state the allegedly infringing mark]. In particular, the Plaintiff relies on the fact that such goods were imported, put on the market, offered or exposed for sale [state relevant details such as locations, dates, quantity of infringing goods, etc.]

[If actual instances of confusion have come to light, they should be pleaded. Alternatively, if particular matters give rise to a likelihood of confusion, they should be set out.]

6. [Use paragraph 4 of P18.50 above]

7. [Use paragraph 5 of P18.50 above]

P18.55 Claim by section 44 licensee for infringement of registered trade mark

[Rajah & Tann Singapore LLP]

1. The 2nd Defendant is and at all material times was the registered proprietor of the registered trade mark [Mark] registered under no [number] in Class [number] in respect of goods.
2. At all material times the registered trade mark has been subsisting. A copy of the registration certificate is annexed.
3. The Plaintiff has at all material times had a licence from the Second Defendant to use the registered trade mark in the Singapore/worldwide. A copy of the said licence is annexed.
4. On [date] the Plaintiff called upon the 2nd Defendant to bring infringement proceedings against the 1st Defendant in respect of the acts of infringement complained of herein, by letter dated [date] (a copy of which is annexed). The 2nd Defendant has refused and failed to take such proceedings.
5. [Continue as in para 3 *et seq* of P18.49 above.]

P18.56 Claim by section 44 licensee for infringement of registered trade mark

[Drew & Napier LLC]

1. The 2nd Defendant is (and at all material times was) the registered proprietor of the registered trade mark [reproduce the mark] registered under no [state TM No.] in Class [state Class number] in respect of [state goods] (the “Registered Mark”).
2. The Registered Mark is (and at all material times was) valid and subsisting.
3. The 1st Plaintiff has at all material times had a licence from the 2nd Defendant to use the Registered Mark in Singapore.
4. By way of a letter dated [date], the Plaintiff called upon the 2nd Defendant to bring infringement proceedings against the 1st Defendant in respect of the acts of infringement complained of herein. The 2nd Defendant has refused and failed to take such proceedings.
5. [Continue with the relevant paragraphs from P18.50, P18.52 or P18.54 above, as the case may be, with the appropriate modifications]

P18.57 Claim by section 45 licensee and registered proprietor for infringement of registered trade mark

[Rajah & Tann Singapore LLP]

1. The 1st Plaintiff is and at all material times has been the registered proprietor of registered trade mark [Mark] registered under no [number] in Class [number] in respect of goods.
2. At all material times the registered trade mark has been subsisting. A copy of the registration certificate is annexed.
3. At all material times the 2nd Plaintiff has held an exclusive licence from the 1st Plaintiff to use the registered trade mark in the Singapore. The said licence provided that the 2nd Plaintiff was to have the same rights and remedies in respect of matters occurring after the grant of the licence as if the licence has been an assignment. A copy of the said licence is annexed.
4. [Continue as in P18.49, P18.51 and P18.53 above, including both Plaintiffs. If one of the Plaintiffs has suffered particular damage, provide particulars.]

P18.58 Claim by section 45 licensee and registered proprietor for infringement of registered trade mark

[Drew & Napier LLC]

1. The 1st Plaintiff is (and at all material times was) the registered proprietor of registered trade mark [reproduce the mark] registered under no [state TM No.] in Class [state Class number] in respect of [state goods] (the “Registered Mark”).
2. The Registered Mark is (and at all material times was) valid and subsisting.
8. The 2nd Plaintiff has at all material times had a licence from the 1st Plaintiff to use the Registered Mark in Singapore. The said licence provided that the 2nd Plaintiff was to have the same rights and remedies in respect of matters occurring after the grant of the licence as if the licence has been an assignment.

Particulars

[State the relevant clauses in the licence]

9. [Continue with the relevant paragraphs from P18.50, P18.52 or P18.54 above, as the case may be, with the appropriate modifications]

P18.59 Claim in an action for threats

[Rajah & Tann Singapore LLP]

1. The Plaintiff carries on business supplying goods under and by reference to the mark [Mark].
2. The Plaintiff's customers and/or distributors include (but are not limited to) the following retail outlets: [outlets].
3. By letter dated [date] to the persons named in paragraph 2 above, the Defendant threatened those persons with proceedings for infringement of registered trade mark no [number] in respect of the sale and offering for sale of the Plaintiff's goods. A copy of the said letter is annexed.
4. Since the date of the aforementioned letter, [outlet name] has not placed any further orders for the supply of goods from the Plaintiff.
5. The letter does not amount to a mere notification that a trade mark is registered but is or contains a threat of proceedings for infringement of a registered trade mark by the supply or otherwise dealing in goods.
6. Further, it is inferred and averred that the Defendant has made such threats to all of the Plaintiff's customers and to other persons who are potential customers of the Plaintiff. The Plaintiff is unable to give particulars of the making of each threat but shall seek a remedy in respect of each threat at trial.
7. By reason of the acts of the Defendant as aforesaid, the Plaintiff has suffered loss and damage. Unless restrained, the Defendant threatens and intends to continue such acts, whereby the Plaintiff will suffer further loss and damage.

AND the Plaintiff claims:

- (1) A declaration that the threats made by the Defendant in its letter of [date] are unjustifiable;
- (2) An injunction to restrain the Defendant from continuing to make the same or similar threats;
- (3) An inquiry as to damages, or at the election of the Plaintiff, an account of profits, for infringement of registered trade mark, together with an order for payment of all sums found due to the Plaintiff with interest thereon;
- (4) Costs; and
- (5) Such further or other relief as this Honourable Court may deem fit and just.

P18.60 Claim (or Counterclaim) for groundless threats of trade mark infringement

[Drew & Napier LLC]

[If counterclaiming for groundless threats, substitute 'Plaintiff' for 'Defendant' and vice versa]

1. The Plaintiff carries on business supplying goods under and by reference to the mark [state Mark].
2. The Plaintiff's customers and/or distributors include (but are not limited to) the following: [state details].
3. By way of letters dated [state date] to the persons named in paragraph 2 above, the Defendant threatened those persons with proceedings for infringement of registered trade mark no [state number] in respect of the sale and offering for sale of the Plaintiff's goods.
4. Since the date of the aforementioned letter, [state person or persons] has not placed any further orders for the supply of goods from the Plaintiff.
5. The letter does not amount to a mere notification that a trade mark is registered but is or contains a threat of proceedings for infringement of a registered trade mark by the supply or otherwise dealing in goods.
6. Further, it is inferred and averred that the Defendant has made such threats to all of the Plaintiff's customers and to other persons who are potential customers of the Plaintiff. The Plaintiff is unable before discovery and/or interrogatories to give particulars of the making of each threat but shall seek a remedy in respect of each threat at trial.
7. By reason of the acts of the Defendant as aforesaid, the Plaintiff has suffered loss and damage. Unless restrained, the Defendant threatens and intends to continue such acts, whereby the Plaintiff will suffer further loss and damage.

AND the Plaintiff claims:

- (1) A declaration that the threats made by the Defendant in its letters of [state date] are unjustifiable;
- (2) An injunction to restrain the Defendant from continuing to make the same or similar threats;
- (3) An inquiry as to damages and an order for payment of all sums found due upon taking such inquiry;

- (4) Interest;
- (5) Costs; and
- (6) Such further or other relief as this Honourable Court may deem just.

P18.61 Claim for an injunction under section 55 of Trade Marks Act

[Rajah & Tann Singapore LLP]

1. The Plaintiff is a company incorporated under the laws of the United Kingdom, which country is a party to the Paris Convention for the Protection of Industrial Property. It is the proprietor of the trade mark [Mark], which it uses in relation to its goods.
2. The mark [Mark] is well known in Singapore as being the mark of the Plaintiff. In particular, the Plaintiff relies on the following:
 - (1) The Plaintiff's goods are very well-known in the United Kingdom such that the mark [Mark] is a household name. Many residents of the Singapore visit the United Kingdom every year and the Plaintiff's goods would have come to the attention of very many of those persons.
 - (2) The Plaintiff's goods has been featured in many films shown in the Singapore and television and cable programmes broadcast in the Singapore, for example: [specify].
 - (3) The Plaintiff has extensively advertised its goods in the following publications that are circulated in the Singapore: [publications].
3. The Defendant has use a trade mark which is identical to the Plaintiff's mark in relation to identical goods, where such use is likely to cause confusion.

Particulars of Infringement

[Full particulars of the acts complained of, for example: The Defendant has since a date unknown to the Plaintiff sold goods bearing the mark [Mark]. In particular, the Plaintiff relies on the fact that such goods were exposed for sale in such a retail outlet, namely [outlet], on [date].]

4. The Plaintiff is unable to give particulars of each such act but shall seek a remedy in respect of each such act at trial.
5. Unless the Defendant is restrained, he threatens and intends to continue the aforesaid acts.

AND the Plaintiff claims:

- (1) An injunction to restrain the Defendant from the use in the course of trade of the mark [Mark] (or any make colourably similar thereto) in relation to the goods;

- (2) Delivery up to the Plaintiff of all articles and documents the use of which by the Defendants in the course of trade would be a breach of the foregoing injunction;
- (3) Costs; and
- (4) Such further or other relief as this Honourable Court may deem fit and just.

P18.62 Claim for an injunction under section 55(2) of Trade Marks Act

[Drew & Napier LLC]

1. The Plaintiff is a company incorporated under the laws of [state country], which country is [a party to the Paris Convention and/or member of the World Trade Organisation]. It is the proprietor of the trade mark [state mark and provide details], which it uses in relation to [state goods and/or services] (the “Plaintiff’s Mark”).
2. The Plaintiff’s Mark is well-known in Singapore.

Particulars

- (1) [If claim is that the Plaintiff’s Mark is well known to a particular sector of the public in Singapore, identify the said sector and state reasons for claiming that the mark is well known to that sector]
- (2) [Particularise, to the extent possible, relevant details relating to the factors listed under section 2(7) of the Trade Marks Act]
3. Prior to the issue of the Writ of Summons herein, the Defendant has used, in the course of trade, a trade mark which, or an essential part of which, is identical with or similar to the Plaintiff’s Mark, in relation to identical or similar goods or services, where the use is likely to cause confusion.

Particulars

[State full particulars of the acts complained of: -

E.g. The Defendant has since a date presently unknown to the Plaintiff but prior to the issue of the Writ of Summons herein, imported, put on the market, offered or exposed for sale [state the allegedly infringing goods] bearing the mark [state the allegedly infringing mark]. In particular, the Plaintiff relies on the fact that such goods were imported, put on the market, offered or exposed for sale [state relevant details such as locations, dates, quantity of infringing goods, etc.]]

[If actual instances of confusion have come to light, they should be pleaded. Alternatively, if particular matters give rise to a likelihood of confusion, they should be set out.]

4. The Plaintiff is unable before discovery and/or interrogatories to give particulars of each such act committed by the Defendant but will seek a remedy in respect of each such act at trial.

5. Unless the Defendant is restrained, he threatens and intends to continue the aforesaid acts.

AND the Plaintiff claims:

- (1) An injunction to restrain the Defendant, whether acting by its directors, officers, employees, agents or any of them or otherwise howsoever from using in the course of trade [state Defendant's mark to which the Plaintiff takes objection] and/or any other mark that is identical with or similar to the Plaintiff's Mark;
- (2) Costs; and
- (3) Such further or other relief as this Honourable Court may deem just.

P18.63 Claim for an injunction under section 55(3)(a) of Trade Marks Act

[Drew & Napier LLC]

1. [Use paragraph 1 of P18.62 above]
2. [Use paragraph 2 of P18.62 above]
3. Prior to the issue of the Writ of Summons herein, the Defendant has used, in the course of trade, a trade mark which, or an essential part of which, is identical with or similar to the Plaintiff's Mark, in relation to [state goods or services], where the use of the trade mark in relation to those goods would indicate a connection between those goods or services and the Plaintiff, and the interests of the Plaintiff are likely to be damaged by such use.

Particulars

[State full particulars of the acts complained of: -

E.g. The Defendant has since a date presently unknown to the Plaintiff but prior to the issue of the Writ of Summons herein, imported, put on the market, offered or exposed for sale [state the allegedly infringing goods] bearing the mark [state the allegedly infringing mark]. In particular, the Plaintiff relies on the fact that such goods were imported, put on the market, offered or exposed for sale [state relevant details such as locations, dates, quantity of infringing goods, etc.]]

[If actual instances of confusion have come to light, they should be pleaded. Alternatively, if particular matters give rise to a likelihood of confusion, they should be set out.]

4. [Use paragraph 4 of P18.62 above]
5. [Use paragraph 5 of P18.62 above]

P18.64 Claim for an injunction under section 55(3)(b) of Trade Marks Act

[Drew & Napier LLC]

1. [Use paragraph 1 of P18.62 above]
2. The Plaintiff's Mark is well-known to the public at large in Singapore.

Particulars

[Particularise, to the extent possible, relevant details relating to the factors listed under section 2(7) of the Trade Marks Act.]

3. Prior to the issue of the Writ of Summons herein, the Defendant has used, in the course of trade, a trade mark which, or an essential part of which, is identical with or similar to the Plaintiff's Mark, in relation to [state goods or services], where the use of the trade mark in relation to those goods would cause dilution in an unfair manner of the distinctive character of the Plaintiff's Mark and/or take advantage of the distinctive character of the Plaintiff's Mark.

Particulars

[State full particulars of the acts complained of:

E.g. The Defendant has since a date presently unknown to the Plaintiff but prior to the issue of the Writ of Summons herein, imported, put on the market, offered or exposed for sale [state the allegedly infringing goods] bearing the mark [state the allegedly infringing mark]. In particular, the Plaintiff relies on the fact that such goods were imported, put on the market, offered or exposed for sale [state relevant details such as locations, dates, quantity of infringing goods, etc.]]

4. [Use paragraph 4 of P18.62 above]
5. [Use paragraph 5 of P18.62 above]

P18.65 Claim for injunction pursuant to section 56 of Trade Marks Act

[Rajah & Tann Singapore LLP]

1. The Plaintiff is the Attorney-General of the United States of America, which country is a party to the Paris Convention for the Protection of Industrial Property. He is the competent authority of the United States of America within the meaning of Section 56 of the Trade Marks Act 1999.
2. The national emblem of the United States of America is the device appearing at Annex 1 to these Particulars of Claim and is referred to herein as the US emblem.
3. The Defendant has used a trade mark which is identical to the US emblem.

Particulars of Infringement

[Full particulars of the acts complained of, for example: The Defendant has since a date unknown to the Plaintiff sold goods bearing the US emblem. In particular, the Plaintiff relies on the fact that such goods were exposed for sale in such a retail outlet, namely [outlet], on [date].]

4. The Plaintiff is unable to give particulars of each such act of infringement but shall seek a remedy in respect of each such act at trial.
5. Unless the Defendant is restrained, he threatens and intends to continue the aforesaid acts.

AND the Plaintiff claims:

- (1) An injunction to restrain the Defendant from the use in the course of trade of the US emblem (or any mark colourably similar thereto);
- (2) Delivery up to the Plaintiff of all articles and documents the use of which by the Defendants in the course of trade would be a breach of the foregoing injunction;
- (3) Costs; and
- (4) Such further or other relief as this Honourable Court may deem fit and just.

P18.66 Claim for injunction pursuant to section 56 of Trade Marks Act

[Drew & Napier LLC]

1. The Plaintiff is the Attorney-General of the United States of America, which country is a party to the Paris Convention for the Protection of Industrial Property. He is the competent authority of the United States of America within the meaning of Section 56 of the Trade Marks Act.
2. The national emblem of the United States of America is the device appearing at Annex 1 to these Particulars of claim and is referred to herein as the US emblem.
3. The Defendant has used a trade mark which is identical to the US emblem.

Particulars of Infringement

[Full particulars of the acts complained of, for example: The Defendant has since a date unknown to the Plaintiff sold goods bearing the US emblem. In particular, the Plaintiff relies on the fact that such goods were exposed for sale in such a retail outlet, namely [outlet], on [date].]

4. The Plaintiff is unable before discovery and/or interrogatories to give particulars of each such act committed by the Defendant but will seek a remedy in respect of each such act at trial.
5. Unless the Defendant is restrained, he threatens and intends to continue the aforesaid acts.

AND the Plaintiff claims:

- (1) An injunction to restrain the Defendant, whether acting by its directors, officers, employees, agents or any of them or otherwise howsoever from using in the course of trade [state Defendant's mark to which the Plaintiff takes objection] and/or any other mark that is identical with or similar to the Plaintiff's Mark;
- (2) Costs; and
- (3) Such further or other relief as this Honourable Court may deem just.

P18.67 Claim pursuant to section 59 of Trade Marks Act

[Rajah & Tann Singapore LLP]

1. The Plaintiff is the proprietor of the mark [Mark] for goods in a country that is a party to the Paris Convention for the Protection of Industrial Property, namely the United States of America.
2. The Defendant has since [date] been the representative of the Plaintiff in the Singapore for the purposes of the Plaintiff's trade in its goods.
3. The Defendant has registered in the Singapore the trade mark [Mark] under no [number] in Class [number] in respect of [goods].
4. Further, the Defendant has used the mark [Mark] in relation to such goods, not being goods of the Plaintiff.

Particulars of Infringement

[Full particulars of the acts complained of, for example: The Defendant has since a date unknown to the Plaintiff sold goods to retail outlets bearing the mark [Mark]. In particular, the Plaintiff relies on the fact that such goods were exposed for sale in such a retail outlet, namely [outlet], on [date].]

5. The Plaintiff is unable to give particulars of each such act but shall seek a remedy in respect of each such act at trial.
6. Unless the Defendant is restrained, he threatens and intends to continue such acts.

AND the Plaintiff claims:

- (1) An order for rectification of the register of trade marks to substitute the name of the Plaintiff as the proprietor of registered trade mark no [number];
- (2) An injunction to restrain the Defendant from the use in the course of trade of the mark [Mark] in relation to the goods or services; or otherwise infringing registered trade mark no [number];
- (3) Delivery up to the Plaintiff of all articles and documents the use of which by the Defendants in the course of trade would be a breach of the foregoing injunction;
- (4) An inquiry as to damages, or at the election of the Plaintiff, an account of profits, for infringement of registered trade mark, together with an order for payment of all sums found due to the Plaintiff with interest thereon;

- (5) Costs; and
- (6) Such further or other relief as this Honourable Court may deem fit and just.

P18.68 Claim pursuant to section 59 of Trade Marks Act

[Drew & Napier LLC]

1. The Plaintiff is the proprietor of the mark [state mark] for goods in a country that is a party to the Paris Convention for the Protection of Industrial Property, namely the United States of America.
2. The Defendant has since [date] been the representative of the Plaintiff in Singapore for the purposes of the Plaintiff's trade in its goods.
3. The Defendant has registered in Singapore the trade mark [Mark] under no [number] in Class 1 in respect of [goods].
4. Further, the Defendant has used the mark [Mark] in relation to such goods, not being goods of the Plaintiff.

Particulars of Infringement

[Full particulars of the acts complained of, for example: The Defendant has since a date unknown to the Plaintiff sold goods to retail outlets bearing the mark [Mark]. In particular, the Plaintiff relies on the fact that such goods were exposed for sale in such a retail outlet, namely [outlet], on [date].]

5. The Plaintiff is unable before discovery and/or interrogatories to give particulars of each such act committed by the Defendant but will seek a remedy in respect of each such act at trial.
6. Unless the Defendant is restrained, he threatens and intends to continue the aforesaid acts.

AND the Plaintiff claims:

- (1) An order for rectification of the register of trade marks to substitute the name of the Plaintiff as the proprietor of registered trade mark no [number];
- (2) An injunction to restrain the Defendant, whether acting by its directors, officers, employees, agents or any of them or otherwise howsoever from using in the course of trade [state Defendant's mark to which the Plaintiff takes objection] and/or any other mark that is identical with or similar to the Plaintiff's Mark;
- (3) Costs; and
- (4) Such further or other relief as this Honourable Court may deem just.

P18.69 Claim for disclosure against person not party to proceedings

[Rajah & Tann Singapore LLP]

[As in the relevant precedent above except for:]

AND the Plaintiff claims:

- (1) Disclosure by affidavit of the names and addresses of all persons or companies who have infringed registered trade mark no [number] or International Trade Mark (Singapore) No. [number] of the Plaintiff.

P18.70 Claim by registered proprietor for infringement of registered trade mark by comparative advertising

[Rajah & Tann Singapore LLP]

1. The Plaintiff is and at all material times was the registered proprietor of the registered trade mark [Mark] registered under no. [number] in Class [number] in respect of [goods].
2. At all material times the registered trade mark has been subsisting. A copy of the registration certificate is annexed.
3. The Defendant is a competitor of the Plaintiff.
4. The Defendant has since the date of registration of the trade mark and before the commencement of this action infringed the Plaintiff's registered trade mark by using it in the Singapore in order to identify the Plaintiff's goods as such in comparative advertising material, otherwise than in accordance with honest practices in industrial or commercial matters.

Particulars of Infringement

[Full particulars of the acts complained of, for example: The Defendant has produced and distributed a leaflet drawing a comparison between the Plaintiff's [goods] and the Defendant's [goods], and the Plaintiff's goods are identified by the use of the trade mark. The comparison drawn is unfair and inaccurate, in that it is falsely stated therein that ... while the Plaintiff's ... whereas in fact ... reason of its unfairness and inaccuracy the said comparison was not in accordance with honest practices in industrial or commercial matters.]

5. The Plaintiff is unable to give particulars of each such act of infringement but will seek a remedy in respect of each such act at trial.
6. By reason of the acts of the Defendant as aforesaid, the Plaintiff has suffered loss and damage. Unless the Defendant is restrained, he threatens and intends to continue such acts, whereby the Plaintiff will suffer further loss and damage.

AND the Plaintiff claims:

- (1) An injunction to restrain the Defendant from infringing registered trade mark no. [number];
- (2) Erasure, removal or obliteration from all infringing goods, material or articles in the possession custody or control of the Defendant

of the offending sign or the destruction of the infringing goods, material or articles;

- (3) Delivery up to the Plaintiff of all infringing goods, material, articles, websites or documents in the possession, custody or power of the Defendant of the Unauthorised mark, the use of which by the Defendant in the course of trade would be a breach of the foregoing injunction, for destruction or forfeiture;
- (4) An inquiry as to damages, or at the election of the Plaintiff, an account of profits, for infringement of registered trade mark, together with an order for payment of all sums found due to the Plaintiff with interest thereon;
- (5) Costs; and
- (6) Such further or other relief as this Honourable Court may deem fit and just.

P18.71 Claim by registered proprietor for infringement of registered trade mark by comparative advertising

[Drew & Napier LLC]

1. [Use paragraph 1 of P18.50 above]
2. [Use paragraph 2 of P18.50 above]
3. The Defendant is a competitor of the Plaintiff. Prior to the issue of the Writ of Summons herein, the Defendant has used, in the course of trade, the Plaintiff's Registered Mark in Singapore in order to identify the Plaintiff's goods as such in comparative advertising material, otherwise than in accordance with honest practices in industrial or commercial matters.

Particulars of Infringement

[Full particulars of the acts complained of, for example: The Defendant has produced and distributed a leaflet drawing a comparison between the Plaintiff's [goods] and the Defendant's [goods], and the Plaintiff's goods are identified by the use of the trade mark. The comparison drawn is unfair and inaccurate, in that ... whereas in fact ... and by reason of its unfairness and inaccuracy the said comparison was not in accordance with honest practices in industrial or commercial matters.]

4. [Use paragraph 4 of P18.50 above]
5. [Use paragraph 5 of P18.50 above]

P18.72 Claim by registered proprietor for infringement of registered trade mark and use of deceptive internet domain name

[Rajah & Tann Singapore LLP]

[As in P18.49, P18.51 or P18.53 above where appropriate except for:]

1. The Defendant has registered the internet domain name *www.[mark].com.sg* without the licence or consent of the Plaintiff.
2. Prior to the commencement of the present proceedings and since a date which is unknown to the Plaintiff, the Defendant has in the course of its business been operating a website using the said domain name *www.[mark].com.sg* without the licence or consent of the Plaintiff.

Particulars of Infringement

[Full particulars of the acts complained of, for example: The Defendant has been selling his goods online at the domain name *www.[mark].com.sg* bearing the registered trade mark. Where it is known that the Defendant has registered trading names without consent, state in full the domain names and the basis for such claims. If the Defendant has offered to sell the domain name *www.[mark].com.sg* to the Plaintiff, exhibit such correspondence.]

3. By reason of the Defendant's acts as set out above in relation to the domain name *www.[mark].com.sg*, the Plaintiff has suffered or is likely to suffer loss and damage. In particular, the use and/or registration of the domain name *www.[mark].com.sg* has led or is likely to lead to the erosion of the Plaintiff's goodwill in Singapore.
4. The Plaintiff will only be adequately protected by an order that the Defendant does forthwith assign the registration of the domain name *www.[mark].com.sg* to the Plaintiff.

Particulars of Confusion or Its Likelihood

[If actual instances of confusion have come to light, they should be pleaded. Alternatively, if particular matters give rise to a likelihood of confusion, they should be set out. For example: The Defendant's use of the name '[Mark]' as aforesaid has caused and is likely to cause confusion in that members of the public will be caused to believe that the said website and the goods supplied by the Defendant are those of or connected in the course of trade with the Plaintiff, or that the Defendant's business is a business of or

otherwise connected in the course of trade with the Plaintiff when it is in fact not the case.]

AND the Plaintiff claims:

[As in P18.49, P18.51 or P18.53 above and:]

- (1) An order that the Defendant take all such steps including but not limited to the completion and execution of documents, and the paying of fees as are within its power or control and as may be necessary to effect, promote and/or facilitate the assignment of the registration of the internet domain name `www.[mark].com.sg` and all and any other domain name or names colourably similar thereto which is or has been registered to the Plaintiff;
- (2) An order that the Defendant be restrained from doing the following acts:
 - (a) using the internet domain name `www.[mark].com.sg`;
 - (b) establishing or operating a website at `www.[mark].com.sg`;
 - (c) offering for sale or assignment or transfer or assigning or transferring the registration of the internet domain name `www.[mark].com.sg` to any other entity than the Plaintiff;
 - (d) relinquishing the registration for the internet domain name `www.[mark].com.sg` without first having given 7 days notice in writing to the Plaintiff's solicitors of intention so to do; and
 - (e) registering any internet domain name which includes the word '[Mark]' or any word confusingly similar thereto or any combination of words that are similar thereto;
- (3) An order that the Defendant serve on the Plaintiff's solicitor an affidavit disclosing the Defendant's other internet domain names registered which include the word "[Mark]" and any other words colourably similar thereto, if any;
- (4) Delivery up to the Plaintiff of all articles, websites and documents the use of which by the Defendants in the course of trade would be a breach of the foregoing injunctions or any of them;
- (5) An inquiry as to damages, or at the election of the Plaintiff, an account of profits, for infringement of registered trade mark, together with an order for payment of all sums found due to the Plaintiff with interest thereon;
- (6) An order for payment to the Plaintiff of all sums found to be due to it from the taking of such inquiry or account, together with interest;

- (7) Costs; and
- (8) Such further or other relief as this Honourable Court may deem fit and just.

P18.73 Defence denying infringement under section 27(2) of Trade Marks Act

[Rajah & Tann Singapore LLP]

1. The Defendant admits that the registered trade mark is registered in the name of the Plaintiff and is subsisting.
2. The sign used by the Defendant is neither identical nor similar to the Plaintiff's registered trade mark in that [particulars of any differences].
3. Further, the goods in relation to which the Defendant uses the sign complained of are neither identical nor similar to the goods which the Plaintiff's trade mark is registered for which are [goods].
4. The Defendant admits that it has performed the acts set out under the Particulars of Infringement, but denies that such acts amount to an infringement of the registered trade mark as alleged or at all. In particular, the Defendant will say as follows:
 - (1) It is admitted that the registered trade mark [Mark] is similar to the mark used by the Defendant.
 - (2) It is denied that the goods sold by the Defendant are similar to the goods for which the registered trade mark is registered.
 - (3) It is denied in any event that there exists a likelihood of confusion by reason of the acts complained of or at all.
5. In the premises the Plaintiff is not entitled to the remedies claimed or to any remedy at all.

P18.74 Defence denying infringement under section 27(2) of Trade Marks Act

[Drew & Napier LLC]

1. The Defendant admits that the registered trade mark is registered in the name of the Plaintiff and is subsisting.
2. The Defendant's sign is not identical with or similar to the Plaintiff's registered trade mark. The marks are [visually, aurally conceptually] different in that [state particulars of any differences].
3. Further, the goods (in relation to which the Defendant's sign has been used) are dissimilar to the goods which the Plaintiff's Registered Mark is registered [state particulars of any differences].
4. The Defendant denies that there exists a likelihood of confusion by reason of the acts complained of or at all.
5. In the premises the Plaintiff is not entitled to the remedies claimed or any remedy whatsoever.

P18.75 Defence denying infringement under section 27(3) of Trade Marks Act

[Rajah & Tann Singapore LLP]

1. The Defendant admits that it has performed the acts set out under the Particulars of Infringement, but denies that such acts amount to an infringement of the registered trade mark as alleged or at all. In particular, the Defendant will say as follows:
 - (1) It is admitted that the registered trade mark has a reputation.
 - (2) It is denied that the Defendant's use of the sign [Mark] on goods would indicate a connection between those goods and the Plaintiff and that there exists a likelihood of confusion on the part of the public because of such use.
 - (3) It is denied that the interests of the proprietor are likely to be damaged by such use.

P18.76 Defence and Counterclaim for order for revocation of registration and for declaration of invalidity of registration and for rectification of register

[Rajah & Tann Singapore LLP]

1. The Defendant admits the acts complained of in the Particulars of Claim.
2. The registration of the registered trade mark is and always has been invalid for the reasons set out in the Particulars of Objections annexed.
3. Further, the registered trade mark is liable to be revoked on the grounds set out in the Particulars of Objections annexed.
4. In the premises the Plaintiff is not entitled to the remedies claimed or any remedy.

Counterclaim

5. The Defendant repeats paragraphs 2 and 3 above.

AND the Defendant claims:

- (1) A declaration that registered trade mark no [number] is invalid;
- (2) An order for the rectification of the register of trade marks to remove the entry relating to registration no. [number];
- (3) An order for the revocation of registered trade mark no. [number];
- (4) Costs; and
- (5) Such further or other relief as this Honourable Court may deem fit and just.

Particulars of Objection

[a separate document]

The following are the Particulars of Objection referred to in the Defence and Counterclaim to the validity of registered trade mark no [number] containing the grounds upon which registered trade mark no [number] should be revoked.

[Full details of the grounds relied upon]

[For a revocation counterclaim:

6. Up to the date of service of the Defence and Counterclaim herein, the Plaintiff had not put the registered trade mark to genuine use in the Singapore in relation to the goods for which it is registered for a period of 5 years or more. Alternatively, if there has been any

such use, that use occurred within the 3 months before the service of the said Defence and Counterclaim and is to be disregarded.

7. In consequence of the use made of the registered trade mark by the Plaintiff and with his consent in relation to the goods for which it is registered, it is liable to mislead the public, in particular as to the nature or quality of those goods.]

P18.77 Defence and Counterclaim for order for revocation of registration and for declaration of invalidity of registration and for rectification of register

[Drew & Napier LLC]

Defence

1. The Defendant [admits or denies, as the case may be] the acts referred to in paragraphs [state relevant paragraphs] of the Statement of Claim.
2. The Plaintiff's Registered Mark is and was at all material times invalid for the reasons set out in the Particulars of Objection served herewith.
3. Further and/or alternatively, the Plaintiff's Registered Mark is liable to be revoked for the reasons set out set out in the Particulars of Objections served herewith.
4. In the premises the Plaintiff is not entitled to the remedies claimed or any remedy whatsoever.

Counterclaim

5. The Defendant repeats paragraphs 2 and 3 above.

AND the Defendant claims:

- (1) A declaration that the Plaintiff's Registered Mark no [state number] is invalid;
- (2) An order for the rectification of the register of trade marks to remove the entry relating to registration no [state number];
- (3) An order for the revocation of registered trade mark no [state number];
- (4) Costs; and
- (5) Such further or other relief as this Honourable Court may deem just.

Particulars of Objection

[a separate document]

1. The following are the Particulars of Objection referred to in the Defence and Counterclaim to the validity of registered trade mark no. [state number] containing the grounds upon which registered trade mark no [state number] should be revoked.

[E.g. for an invalidity counterclaim:]

- (1) The Registered Mark is invalid because it was registered in breach of Section 7(1)(b) of the Trade Marks Act in that it is devoid of any distinctive character.

[E.g. for a non-use revocation counterclaim:]

- (2) Up to the date of service of the Defence and Counterclaim and Particulars of Objection herein, the Plaintiff had not put the Registered Mark to genuine use in Singapore in relation to the goods for which the Registered Mark is registered for a period of 5 years or more. Alternatively, if there has been any such use, that use occurred within the 3 months before the service of the said Defence and Counterclaim and Particulars of Objection herein and is to be disregarded.
- (3) Further and in the alternative, where grounds for revocation exist in respect of only some of the services for which the Plaintiff's Registered Mark is registered, an Order for revocation should be made in relation to those services.
- (4) Further and in the alternative, where grounds for revocation existed at an alternative date, an Order for revocation for the Plaintiff's Registered Mark should be made as of that date.

P18.78 Defence of exhaustion of rights

[Rajah & Tann Singapore LLP]

The goods sold by the Defendant were goods which had been previously put on the market with the consent of the Plaintiff, by the Plaintiff's subsidiary in [state name and country], under the registered trade mark in [country].

P18.79 Defence to infringement claim of registered trade mark on grounds of prior use before Plaintiff

[Rajah & Tann Singapore LLP]

1. Save that it is admitted that registered trade mark no. [number] is registered in respect of the [Mark] for [goods] from [date of registration] and that the registration is valid and subsisting, the Defendant makes no admissions as to paragraph 1 of the Particulars of Claim.
2. The Defendant denies that it has infringed the registered trade mark whether as alleged or at all.
3. The Defendant carries on the business of the sale of goods under and by reference to the trade mark or sign “[Mark]” as the successor in title of [name of parent/predecessor company] which had carried on such business at [address], since about [date].

Particulars of Objection

[Details as to how the Defendant came to carry on the business as the successor in title from its parent/predecessor company.]

4. The Defendant subsequently took over the goodwill, business and other assets of [parent/predecessor company] which include the goodwill in the trade mark or sign “[Mark]” This is evidenced by the company report printout as annexed.
5. The [parent/predecessor company] has been using the trade mark or sign “[Mark]” since [date] and has since used and sold the goods bearing the [Mark] continuously from [date], prior to the date of the Plaintiff’s registration [and prior to the date of the first use by the Plaintiff or any predecessor in title of the Plaintiff of the registered trade mark].
6. The Defendant’s use of its mark or sign “[Mark]” is protected by the law of passing off in that use by another would amount to passing off by that other of his goods as and for the Defendant’s goods.
7. In the premises the Defendant’s acts complained of herein are the use in the course of trade of an “earlier right”. And the Plaintiff is not entitled to the relief claimed or to any relief.

P18.80 Defence to infringement claim of registered trade mark on grounds of prior use

[Drew & Napier LLC]

1. Save that it is admitted that registered trade mark no. [number] is registered in respect of the [Mark] for [goods] from [date of registration] and that the registration is valid and subsisting, the Defendant makes no admissions as to paragraph 1 of the Statement of Claim.
2. The Defendant denies that it has infringed the registered trade mark whether as alleged or at all.
3. The Defendant carries on the business of the sale of goods under and by reference to the trade mark or sign “[Mark]” as the successor in title of [name of parent/predecessor company] which had carried on such business at [address], since about [date].

Particulars

[Details as to how the Defendant came to carry on the business as the successor in title from its parent/predecessor company.]

4. The Defendant subsequently took over the goodwill, business and other assets of [parent/predecessor company] which include the goodwill in relation to the business conducted under the trade mark or sign “[Mark]”.
5. The [parent/predecessor company] has been using the trade mark or sign “[Mark]” since [date] and has since used and sold the goods bearing the [Mark] continuously from [date], prior to the date of the Plaintiff’s registration [and prior to the date of the first use by the Plaintiff or any predecessor in title of the Plaintiff of the registered trade mark].
6. In the premises, the Defendant’s acts complained of herein are the use in the course of trade of an “earlier right”, and the Plaintiff is not entitled to the relief claimed or to any relief.

P18.81 Reply and Defence to Counterclaim for invalidity in action for infringement of registered trade mark

[Rajah & Tann Singapore LLP]

1. The Plaintiff joins issue with the Defendant upon the Defence save insofar as the same consists of admissions.

Defence to Counterclaim

2. Registered trade mark no [number] is not and has not at any material time been invalid whether for the reason set out in paragraph 1 of the Defence and Counterclaim, and the Particulars of Objection or at all and the Defendant is not entitled to the relief sought or to any relief.
3. If, which is denied, the registered trade mark was registered in breach of the Trade Marks Act (Cap 332), it has since acquired a distinctive character in relation to the goods for which it is registered in consequence of the Plaintiff's use of it.

Particulars

4. The Plaintiff began making preparations for the [commencement or resumption] of use of its registered trade mark before becoming aware that such an application for revocation might be made and had used the mark prior to the date of the making of such application.
5. In the premises, the Plaintiff joins issue with the Defendant on each and every allegation made in its Defence and Counterclaim.

P18.82 Reply to Defence of invalidity and Defence to Counterclaim for revocation

[ATMD Bird & Bird LLP]

1. The Plaintiff joins issue with the Defendant save insofar as the same consist of admissions.

Defence to Counterclaim

2. Paragraphs 7 and 8 of the Counterclaim are denied.
3. The Plaintiff denies the alleged grounds for invalidity in paragraphs 1 to 5 of the Particulars of Objection.

Particulars

- (1) The Trade Mark is capable of distinguishing the Plaintiff's goods and [Particulars].
 - (2) The Trade Mark is distinctive of the Plaintiff's goods and members of the public and the [type of industry] industry recognise the Plaintiff's goods by their Trade Mark.
 - (3) The Trade Mark is an invented word. It does not consist exclusively of signs or indications that serve in trade to designate the kind, quality, quantity, intended purpose, value, geographical origin, the time of production of goods or of rendering of services, or other characteristics of goods or services.
 - (4) The Trade Mark does not contain signs or indications which have become customary in the current language or in the bona fide and established practices of trade.
4. Paragraph 6 of the Particulars of Objection is denied. The Defendant says that Section 23(3)(a)(i) of the Trade Marks Act does not apply.

Particulars

[Reasons for saying that Section 23(3)(a)(i) does not apply]

5. Paragraph 7 of the Particulars of Objection is denied. The Defendant says that Section 23(3)(a)(ii) of the Trade Marks Act does not apply.

Particulars

[Reasons for saying that Section 23(3)(a)(ii) does not apply]

6. Paragraph 8 of the Particulars of Objection is denied. The Defendant says that Section 23(3)(a)(iii) of the Trade Marks Act does not apply.

Particulars

[Reasons for saying that Section 23(3)(a)(iii) does not apply]

7. Paragraph 9 of the Particulars of Objection is denied and the Defendant is put to strict proof.
8. Paragraphs 10 and 11 of the Particulars of Objection are denied. The Plaintiff has put to genuine commercial use in Singapore in relation to goods for which the Trade Mark was registered in the form in which the registration was granted.

Particulars

[Particulars of genuine use and time/period of use]

9. Paragraphs 12 and 13 of the Particulars of Objection are denied.
10. Paragraphs 9 and 10 of the Counterclaim are denied.
11. Save insofar as herein expressly admitted, the Plaintiff denies each and every allegation contained in the Counterclaim and Particulars of Objections as if the same were set out seriatim and specifically traversed.

P18.83 Reply to Defence of invalidity and Defence to Counterclaim for invalidity and revocation

[Drew & Napier LLC]

Reply

1. The Plaintiff joins issue with the Defendant save insofar as the same consist of admissions.

Defence to Counterclaim

2. Paragraphs [such and such] of the Counterclaim are denied.
3. The Plaintiff denies the alleged grounds for invalidity and revocation in paragraphs [state relevant paragraphs] of the Particulars of Objection.

[E.g. for an invalidity counterclaim:]

- (1) The Plaintiff's Registered Mark is an invented word. It does not consist exclusively of signs or indications which serve in trade to designate the kind, quality, quantity, intended purpose, value, geographical origin, the time of production of goods or of rendering of services, or other characteristics of goods or services.
- (2) The Plaintiff's Registered Mark has, through long user, acquired distinctiveness as a badge of origin denoting the Plaintiff's goods [and state reasons].

[E.g. for a non-use revocation counterclaim]

- (3) Paragraphs 10 and 11 of the Particulars of Objection are denied. The Plaintiff has put to genuine commercial use in Singapore in relation to goods for which the Trade Mark was registered in the form in which the registration was granted.

Particulars

[Particulars of genuine use and time/period of use]

CHAPTER 19

LAND DISPUTES

LANDLORD AND TENANT

Precedents

- P19.01** Claim for specific performance of agreement for lease
- P19.02** Claim for specific performance of agreement for lease
- P19.03** Claim for specific performance on exercise of option to renew
- P19.04** Claim for forfeiture, arrears of rent and mesne profits
- P19.05** Claim for arrears and re-entry
- P19.06** Claim for relief against forfeiture
- P19.07** Claim for double rent
- P19.08** Claim for double value
- P19.09** Claim for declaration that tenant has right to assign lease
- P19.10** Claim for derogation from grant
- P19.11** Claim for forfeiture, mesne profits and breach of covenant to repair
- P19.12** Defence denying agreement
- P19.13** Defence that agreement not complete or 'subject to contract'
- P19.14** Defence denying part performance
- P19.15** Defence that no written memorandum, or note in writing
- P19.16** Defence of uncertainty
- P19.17** Defence of hardship
- P19.18** Defence of delay
- P19.19** Defence of fraud or misrepresentation
- P19.20** Defence that lease agreement rescinded
- P19.21** Defence of impossibility
- P19.22** Defence as to option to renew
- P19.23** Defence that rent already paid to plaintiff landlord
- P19.24** Defence that rent due from assignee/new tenant
- P19.25** Defence that rent due to assignee/new landlord
- P19.26** Defence, set-off and counterclaim for breach of covenant
- P19.27** Defence that goods seized under writ of distress
- P19.28** Defence that goods seized and sold under writ of distress
- P19.29** Defence that tenancy terminated

- P19.30** Defence that consent to assignment reasonably withheld
- P19.31** Defence denying breach of covenant to maintain/repair
- P19.32** Defence denying breach of covenant on usage of premises
- P19.33** Defence of waiver of right to forfeit
- P19.34** Defence that breach remedied or to be remedied – no entitlement to forfeiture

DISTRESS AND REPLEVIN

Incidental documents

- P19.35** Authority to distrain
- P19.36** Originating summons application for writ of distress (Form 5 of ROC)
- P19.37** Application for release of goods
- P19.38** Request for attendance of Sheriff/Bailiff
- P19.39** Request for date to be appointed for execution

EASEMENT

Precedents

- P19.40** Claim for declaration of right of drainage and damages for obstruction
- P19.41** Defence denying plaintiff's possession of premises in respect of which easement claimed
- P19.42** Defence denying obstruction of easement
- P19.43** Defence denying obstruction to easement caused by defendant
- P19.44** Defence denying title to right of way and alleging user was not of right

NUISANCE

Precedents

- P19.45** Claim for injunction and damages for nuisance caused by neighbouring work site or factory
- P19.46** Claim for damages for nuisance caused by plants
- P19.47** Claim for damages for nuisance caused by encroaching tree
- P19.48** Claim for injunction and damages for nuisance caused by persistent telephone calls, SMS and emails

- P19.49** Claim for injunction and damages for nuisance caused by dust, noise and vibration
- P19.50** General defence to claim in nuisance
- P19.51** Defence that independent contractor hired
- P19.52** Defence of *volenti non fit injuria*
- P19.53** Defence denying nuisance
- P19.54** Defence denying that loss and damage caused by alleged nuisance
- P19.55** Defence to claim for injunction and damages for nuisance caused by dust, noise and vibration

REVERSION

Precedents

- P19.56** Claim for injury to plaintiff's reversion in land
- P19.57** Defence denying acts complained of
- P19.58** Defence denying that reversionary interest vests in plaintiff

RYLANDS V FLETCHER

Precedents

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- P19.60** Claim for injunction and damages under *Rylands v Fletcher*, nuisance and negligence for escape of dangerous substance
- P19.61** Defence to claim for damage caused by landslide
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MORTGAGES

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- P19.65** Proceedings by mortgagee – Notice pursuant to s 75(2) of LTA
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Precedents

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P19.86 Defence to claim for trespass (lease/licence to occupy)

CHAPTER 19

LAND DISPUTES

LANDLORD AND TENANT

PRECEDENTS

P19.01 Claim for specific performance of agreement for lease¹

[Tan Kok Quan Partnership]

1. On or about [date], the Plaintiff orally agreed with the Defendant that the Defendant would grant and the Plaintiff would take a lease of the Defendant's premises at [address] to run a [type of business] business.
2. The term was to be for [number] years from [date] to [date] at the rental of S\$[amount] per month.
3. The Plaintiff took possession of the premises on [date] and renovated the premises for the purposes of running the said intended business. Further, the Defendant has run the said business from [date] and has paid rent to the Defendant for the period [date] to [date] which rent has been accepted by the Defendant.
4. The Plaintiff is and has at all material times been ready, willing and able to take a lease of the said premises and sent to the Defendant a draft lease in writing.
5. However, in breach of the agreement for lease, the Defendant has failed, refused and/or neglected to sign any lease in writing and has demanded that the Plaintiff vacate the said premises.

AND the Plaintiff claims:

- (1) Specific performance of the agreement for lease;
- (2) An order that the Defendant do execute a lease in writing in terms of the draft sent by the Plaintiff, or as directed by the court;
- (3) Costs; and

¹ Also see P19.02.

(4) Such other orders or relief as this Honourable Court deems fit.

P19.02 Claim for specific performance of agreement for lease²

[Tan Kok Quan Partnership]

1. By an agreement in writing dated [date], the Plaintiff agreed to grant and the Defendant agreed to take a lease of a shop in unit #[number] in a building being constructed at [address].
2. Clause [number] of the said agreement provided that the lease should be for a term of [number] years at the initial rental of S\$[amount] per annum upon the terms of a draft attached to the agreement.
3. Clause [number] of the said agreement provided that the term should commence on the expiration of [time] from the date of the certificate of practical completion for the said building.
4. The Plaintiff's architect issued his certificate of practical completion on [date], a copy of which was given to the Defendant on [date].
5. The Defendant has taken no steps to fit out the unit as a shop notwithstanding numerous written requests by the Plaintiff that the Defendant should commence work.
6. In breach of the said agreement, the Defendant has ignored requests that he sign the lease in writing.
7. The Plaintiff is now and has at all times been ready and willing to complete his part of the agreement.

AND the Plaintiff claims:

- (1) Specific performance of the agreement for lease;
- (2) An order that the Defendant do execute a lease in writing;
- (3) Damages;
- (4) Interest;
- (5) Costs; and
- (6) Such other orders or relief as this Honourable Court deems fit.

² Also see P19.01.

P19.03 Claim for specific performance on exercise of option to renew

[Tan Kok Quan Partnership]

1. By a lease dated [date], the Defendant rented to the Plaintiff the premises known as [address] at the yearly rent of S\$[amount] for the period of [term of lease].
2. By clause [number] of the said lease it was provided as follows:
[set out the terms of the option to renew].
3. The Plaintiff duly performed his obligations under the lease and by notice in writing dated [date] exercised the option to renew pursuant to the aforesaid clause [number] referred to in paragraph 2 above.
4. However, in breach of the said clause [number], the Defendant has failed, refused and/or neglected to grant to the Plaintiff a new 2-year lease of the said premises for the period of [period].

AND the Plaintiff claims:

- (1) Specific performance of the agreement for option to renew the lease for a 2-year period of [time];
- (2) An order that the Defendant do execute a lease for the said 2-year period of [period];
- (3) Damages;
- (4) Costs; and
- (5) Such other orders or relief as this Honourable Court deems fit.

P19.04 Claim for forfeiture, arrears of rent and mesne profits

[Tan Kok Quan Partnership]

1. By a lease dated [date] made between the Plaintiff and the Defendant, the Plaintiff let to the Defendant the premises at [address] for a term of [number of years] at the monthly rent of S\$[amount].
2. Clause [number] of the said lease provided that the Plaintiff was entitled to immediate forfeiture of lease in the event any rent remained unpaid for at least [number] days after falling due whether formally demanded or not.
3. In breach of the lease, the Defendant failed, refused and/or neglected to pay the rent due for the months [months], and the said rent remains unpaid. Pursuant to clause [number] referred to in paragraph 2 above, the lease became forfeited to the Plaintiff by reason of the Defendant's failure to pay the rent. The Plaintiff wrote to the Defendant on [date] to demand that possession of the premises be returned by [date].
4. However, the Defendant has failed, refused and/or neglected to return possession of the premises to the Plaintiff.
5. By reason of the matters aforesaid, the Plaintiff has suffered loss and damage.

AND the Plaintiff claims:

- (1) Possession of the said premises;
- (2) Rent of S\$[amount];
- (3) Mesne profits at the rate of [amount] per annum from [date] until possession is returned to the Plaintiff;
- (4) Costs; and
- (5) Such other orders or relief as this Honourable Court deems fit.

P19.05 Claim for arrears and re-entry

[Tan Rajah & Cheah]

1. The Plaintiff is the owner entitled to possession of the property known as [address] ("the Premises").
2. By a tenancy agreement in writing dated [date] ("the Tenancy Agreement"), the Plaintiff let to the Defendant the Premises for a term of [number] years commencing [date] at a monthly rent of S\$[amount] payable in advance on the first day of each calendar month.
3. By clause [number] of the Tenancy Agreement, the Defendant covenanted with the Plaintiff to pay the monthly rent in the manner referred to in paragraph 2 above.
4. By clause [number] of the Tenancy Agreement, the Defendant covenanted with the Plaintiff to pay the monthly rent without any set-off, demand or deduction whatsoever.
5. Clause [number] of the Tenancy Agreement provided, *inter alia*, that if the rent remained unpaid for [number] days after becoming payable, whether formally demanded or not, the Plaintiff was entitled to re-enter the Premises and the Tenancy Agreement.
6. In breach of the Tenancy Agreement, the Defendant failed to pay rent of S\$[amount] on [date(s)] for the rental period [months(s)] and interest accrued thereon.
7. By a letter dated [date] from the Plaintiff to the Defendant, the Plaintiff demanded payment of all rent in arrears within 7 days.
8. However, despite the demand referred to in paragraph 7 hereinabove, the Defendant failed, refused and/or neglected to pay the Plaintiff the rent in arrears or any part thereof within 7 days or at all.
9. Accordingly, the Plaintiff is, under Clause [number] of the Tenancy Agreement, entitled to re-enter the Premises and forfeit the Tenancy Agreement.
10. By a letter dated [date] from the Plaintiff to the Defendant, the Plaintiff gave notice of his intention to re-enter the Premises under clause [number] of the Tenancy Agreement.
11. However, the Defendant has, to date, refused to deliver up possession of the Premises and remains wrongfully in possession of the same.

[12. Pursuant to s 28(4) of the Civil Law Act (Cap 43), the Plaintiff is entitled to and claims against the Defendant double rent at the rate of [amount] per month commencing from [date of notice of re-entry and forfeiture of Tenancy Agreement] in addition to the arrears in rent [and interest accruing thereon].]

AND the Plaintiff claims:

- (1) Possession of the Premises;
- (2) The sum of S\$[amount] as referred to in paragraph 6 above;
- (3) [Mesne profits at the rate of S\$[amount] a day from the date of the notice referred to in paragraph 10 above until possession is given up]; *[or if double rent is sought instead – Double rent at the rate of \$[amount] per month from the [date referred to in paragraph 12] until delivery up of possession];*
- (4) Interest;
- (5) Costs;
- (6) Such other orders or relief as this Honourable Court deems fit.

P19.06 Claim for relief against forfeiture

[Tan Kok Quan Partnership]

1. By a lease dated [date] between the Defendant and the Plaintiff, the Defendant let to the Plaintiff premises at [address] for the period [term] at the monthly rent of S\$[amount]. The Plaintiff will refer to the said lease at the trial of this action for the full terms and effects thereof.
2. Clause [number] of the lease provided that in the event of any rent being in arrears for at least [number] days whether formally demanded or not, the Defendant shall have the right to re-enter upon the premises and terminate the lease.
3. Since the commencement of the lease, the Plaintiff has promptly paid rent to the Defendant as and when due save that the Plaintiff overlooked the rent due for the month of [month].
4. On or about [date], the Defendant forcibly took back possession of the premises in exercise of the right of re-entry on the basis of the rent due for the month of [month] amounting to S\$[amount]. The Plaintiff is ready, willing and able to pay to the Defendant the said rent due of S\$[amount] forthwith or as the Court may direct.
5. The Plaintiff claims relief against forfeiture of the lease upon such terms as the Court may direct and to have possession of the premises.

AND the Plaintiff claims:

- (1) Possession of the said premises;
- (2) Relief from forfeiture of the said lease;
- (3) Costs; and
- (4) Such other orders or relief as this Honourable Court deems fit.

P19.07 Claim for double rent

[Tan Kok Quan Partnership]

1. By an agreement in writing dated [date] the Plaintiff let to the Defendant premises at [address] on [a monthly tenancy determinable by 1 month's notice in writing].
2. By a notice in writing dated [date] the Defendant gave to the Plaintiff due notice of his intention to quit the said premises by [date].
3. The Defendant failed to deliver up possession of the premises on or before [date] but continued in possession thereof until [date]. Pursuant to Section 28(4) of the Civil Law Act (Cap 43), the Defendant is liable to pay to the Plaintiff double rent at the rate of S\$[amount] for the period [period] which amounts to S\$[amount].

AND the Plaintiff claims:

- (1) Double rent of S\$[amount];
- (2) Interest;
- (3) Costs; and
- (4) Such other orders or relief as this Honourable Court deems fit.

P19.08 Claim for double value

[Tan Kok Quan Partnership]

1. By a lease dated [date] the Plaintiff rented to the Defendant premises at [address] for a term of [number] years at the monthly rent of S\$[amount]. The said term expired on [date].
2. After the said expiry of the term, the Defendant failed, refused and/or neglected to deliver up possession of the premises to the Plaintiff and wilfully held over the premises and kept the Plaintiff out of possession for the period [date] to [date]. Pursuant to Section 28(4) of the Civil Law Act (Cap 43), the Defendant is liable to pay to the Plaintiff double value of the said premises at the rate of S\$[amount] for the said period when the Defendant wrongfully held over.

AND the Plaintiff claims:

- (1) Double value of S\$[amount];
- (2) Interest;
- (3) Costs; and
- (4) Such other orders or relief as this Honourable Court deems fit.

P19.09 Claim for declaration that tenant has right to assign lease

[Tan Kok Quan Partnership]

1. By a lease dated [date] and made between the Plaintiff and the Defendant the Plaintiff became lessee of premises at [address] for a term of [number] years at a monthly rent of S\$[amount]. The said lease contained, *inter alia*, a covenant by the Plaintiff that he would not without the consent in writing of the Defendant assign, sublet possession of the premises but that such consent should not be unreasonably withheld.
2. By a letter to the Defendant dated [date] the Plaintiff applied to the Defendant for consent to assign the interest in the remaining term of the lease to [X].
3. [X] is a respectable and responsible person and the Plaintiff enclosed in the said letter of application references to that effect.
4. By a letter to the Plaintiff dated [date], the Defendant refused to grant the consent.
5. The said refusal is unreasonable and arbitrary, and is in breach of the covenant referred to in paragraph 1 above.
6. By reason of the said refusal, the Plaintiff has suffered loss and damage.

Particulars of Loss and Damage

[Particulars]

AND the Plaintiff claims:

- (1) A declaration that the Defendant has unreasonably withheld his consent to the intended assignment;
- (2) A declaration that the Plaintiff is entitled to assign the lease to [X];
- (3) Damages;
- (4) Interest;
- (5) Costs; and
- (6) Such other orders or relief as this Honourable Court deems fit.

P19.10 Claim for derogation from grant

[Tan Kok Quan Partnership and Central Chambers Law Corporation]

1. By a lease dated [date] and made between the Defendant and the Plaintiff the Defendant rented to the Plaintiff the premises known as [address] (“the Premises”) for [number] years at a monthly rent of S\$[amount]. The said lease contained a covenant by the Defendant that the Plaintiff may peaceably and quietly hold the premises during the said term without any claim or demand to the contrary by the Defendant.
2. At all material times, the Defendant knew the premises were old and in bad repair and in particular the walls were in bad condition.
3. At all material times, the Defendant occupied premises adjoining the premises rented to the Plaintiff (“the Adjoining Premises”).
4. On or about [date], the Defendant caused or allowed work to be carried out on the Adjoining Premises, knowing that such work would weaken the foundations and structure of the Premises. As the foundations and structure of the Premises were weakened, the Premises were in a dangerous condition and the Plaintiff and his family had to vacate the Premises.
5. By reason of the aforesaid matters, the Defendant has derogated from his grant to the Plaintiff and is in breach of the covenant for quiet enjoyment. Further, the Plaintiff has suffered loss and damage.

Particulars of Loss and Damage

[Particulars]

AND the Plaintiff claims:

- (1) Damages;
- (2) Interest;
- (3) Costs; and
- (4) Such other orders or relief as this Honourable Court deems fit.

P19.11 Claim for forfeiture, mesne profits and breach of covenant to repair

[Tan Kok Quan Partnership]

1. By a lease dated [date] between the Plaintiff and the Defendant, the Plaintiff rented to the Defendant the premises at [address] for S\$[amount] per month.
2. Under clause [number] of the lease, the Defendant covenanted as follows [covenant].
3. Clause [number] of the lease sets out a proviso for re-entry in case of any breach or non-observance of, *inter alia*, any of the covenants in the lease.
4. In breach of the covenant referred to in paragraph 2 above, the Defendant failed to [covenant].
5. On [date], the Plaintiff served on the Defendant a notice in writing specifying the breach of the covenant and requiring him to remedy them and to pay compensation. The Defendant failed within a reasonable time or at all to remedy the breaches or to pay compensation to the Plaintiff. Hence, the lease has become forfeited to the Plaintiff.
6. However, notwithstanding demands, the Defendant refuses to vacate the premises and he retains possession of the same.
7. By reason of the matters aforesaid, the Plaintiff has suffered loss and damage.

AND the Plaintiff claims:

- (1) Possession of the premises;
- (2) Mesne profits;
- (3) Damages;
- (4) Interest;
- (5) Costs; and
- (6) Such other orders or relief as this Honourable Court deems fit.

P19.12 Defence denying agreement

[Tan Kok Quan Partnership]

The Defendant did not enter into the agreement alleged in paragraph [number] of the Statement of Claim or any agreement for the lease of the premises.

P19.13 Defence that agreement not complete or ‘subject to contract’

[Tan Kok Quan Partnership]

The Defendant admits there were negotiations with the Plaintiff over the period [period] but the negotiations were not concluded in that the Plaintiff and the Defendant were to meet at a later date to negotiate the following terms:

- (1) the date of commencement of the lease;
- (2) the approved business for the premises;
- (3) [etc].

Further, it was expressly agreed that all matters negotiated were ‘subject to contract’.

P19.14 Defence denying part performance

[Tan Kok Quan Partnership]

The Defendant did not take possession of the premises as alleged in paragraph [number] of the Statement of Claim. The Defendant was given the keys merely to view the premises with the interior designer he would engage in the event the Defendant took the lease of the premises.

P19.15 Defence that no written memorandum, or note in writing

[Tan Kok Quan Partnership]

The Defendant avers that there is no memorandum or note in writing as required under Section 6(d) of the Civil Law Act (Cap 43). If, which is denied, the letter referred to in paragraph [number] of the Statement of Claim constitutes a memorandum or note in writing, the Defendant avers that it does not contain all the material terms agreed upon, in particular [terms].

P19.16 Defence of uncertainty

[Tan Kok Quan Partnership]

The agreement alleged in the Statement of Claim is uncertain in that there is no method to determine when the lease is to commence.

P19.17 Defence of hardship

[Tan Kok Quan Partnership]

Even if, which is denied, the Defendant is in breach, the agreement alleged is unfair in that [details of unfairness], and the Defendant avers that to enforce the said agreement against him would cause hardship. Hence, the Plaintiff should not be entitled to specific performance in any event.

P19.18 Defence of delay

[Tan Kok Quan Partnership]

The Plaintiff has been guilty of delay in that [details of delay]. Prior to the legal action, the Defendant already granted a lease of the same premises to another party. Hence, the Plaintiff should not be entitled to specific performance in any event.

P19.19 Defence of fraud or misrepresentation

[Tan Kok Quan Partnership]

The Plaintiff misrepresented to the Defendant that [details of misrepresentations]. The said misrepresentation was relied upon by the Defendant, and induced the Defendant to enter into the alleged agreement for lease.

P19.20 Defence that lease agreement rescinded

[Tan Kok Quan Partnership]

The lease agreement was rescinded under clause [number] thereof or by mutual agreement [particulars].

P19.21 Defence of impossibility

[Tan Kok Quan Partnership]

It was an implied term of the agreement referred to in paragraph [number] of the Statement of Claim that the premises should be ready for occupation at the time when the agreement should have been performed. However, the Certificate of Fitness for occupation was not issued until [date].

P19.22 Defence as to option to renew

[Tan Kok Quan Partnership]

The condition precedent to exercising the option had not been fulfilled as at the date when the Plaintiff served the notice upon the Defendant, as the Plaintiff was in breach of his obligation under clause [number] of the lease in that [particulars].

P19.23 Defence that rent already paid to plaintiff landlord

[Tan Kok Quan Partnership]

The Defendant denies that he is indebted to the Plaintiff as alleged in the Statement of Claim or at all. On or about [date], he paid to the Plaintiff sum of S\$[amount] in respect of the rent for the said premises for the periods mentioned in the Statement of Claim.

P19.24 Defence that rent due from assignee/new tenant

[Tan Kok Quan Partnership]

Prior to the rent claimed in this action being due, on or about [date], the Defendant assigned the premises to [X] who was accepted by the Plaintiff as the new tenant. Hence, the said rent claimed is due from [X], and not the Defendant.

P19.25 Defence that rent due to assignee/new landlord

[Tan Kok Quan Partnership]

Prior to the rent claimed in this action being due on or about [date], the Plaintiff assigned his reversion to the premises to [X] and the Defendant received notice of the said assignment. Hence, the said rent claimed is payable to [X] and not the Plaintiff.

P19.26 Defence, set-off and counterclaim for breach of covenant

[Tan Kok Quan Partnership and Central Chambers Law Corporation]

Defence

1. The Defendant admits the lease dated [date] referred to in paragraph [number] of the Statement of Claim. Subject to the defence and counterclaim hereinafter referred to, the Defendant admits that he owed rent to the Plaintiff for the period [period].
2. Under clause [number] of the said lease the Plaintiff covenanted to keep, *inter alia*, the roof and the windows in good and proper repair.
3. In breach of the said covenant, the roof leaked whenever it rained. Despite repeated requests made by the Defendant to the Plaintiff, the Plaintiff failed, refused and/or neglected to carry out any repairs.
4. Consequently, the carpet in the living room became damp. Accordingly, the Defendant instructed a contractor to carry out the necessary repairs to the roof and to dry out the carpet in the living room. The total costs of such repairs and drying out amount to S\$[amount] which the Defendant is entitled to set off against the rent claimed in the Statement of Claim.
5. The Defendant relies on the set-off herein in extinguishment or diminution of the Plaintiff's claim.
6. Save as hereinbefore expressly admitted, the Defendant denies each and every allegation in the Statement of Claim as if the same were set out herein and specifically traversed.

Counterclaim

7. The Defendant repeats paragraphs 1 to 6 above.
- AND the Defendant counterclaims:
- (1) Damages for breach of covenant referred to in paragraph 3 above;
 - (2) The sum of S\$[amount] under paragraph 4 above;
 - (3) Interest;
 - (4) Costs; and
 - (5) Such other orders or relief as this Honourable Court deems just.

P19.27 Defence that goods seized under writ of distress

[Tan Kok Quan Partnership and Central Chambers Law Corporation]

On or about [date], the Plaintiff distrained goods of the Defendant upon the said premises for the rent claimed in this action and still holds the goods as a distress for the rent. Hence, the Plaintiff is not entitled to the reliefs claimed or any relief.

Particulars

[List of goods seized]

P19.28 Defence that goods seized and sold under writ of distress

[Tan Kok Quan Partnership and Central Chambers Law Corporation]

On or about [date], the Plaintiff distrained goods of the Defendant upon the premises for the rent claimed in this action. On [date], the said goods were sold under that distress and the sale proceeds were sufficient to fully pay the rent due. Hence, the Plaintiff is not entitled to the reliefs claimed or any relief.

Particulars

[List of goods seized and the proceeds of sale]

P19.29 Defence that tenancy terminated

[Tan Kok Quan Partnership and Central Chambers Law Corporation]

On or about [date] and before any part of the said rent became due, the Defendant's tenancy of the said premises was terminated pursuant to a one-month notice to quit dated [date] issued by the Defendant to the Plaintiff. Hence, the tenancy was terminated with effect from [date], and the Defendant quit the premises on the expiration of the said notice on [date].

P19.30 Defence that consent to assignment reasonably withheld

[Tan Kok Quan Partnership and Central Chambers Law Corporation]

1. Paragraph [number] of the Statement of Claim is admitted.
2. Save that it is denied that [X] is a respectable and responsible party, paragraph [number] of the Statement of Claim is admitted.
3. The Defendant admits that he refused his consent to the said assignment, but denies that the said refusal was unreasonable. The Defendant's consent to the assignment sought was refused on the ground that [X] wished to run a business from the said premises which is contrary to clause [number] of the said lease under which the Plaintiff had covenanted not to carry on or permit the carrying on of a business at the said premises [*or the references of [X] were not satisfactory or [X] is a limited company of no substance*].

P19.31 Defence denying breach of covenant to maintain/repair

[Tan Kok Quan Partnership and Central Chambers Law Corporation]

1. The Defendant admits paragraphs [numbers] of the Statement of Claim but denies that he is in breach of the covenant as alleged or at all.
2. If, which is denied, the premises were in the condition alleged, the Defendant avers that the condition was due to an inherent defect in the premises, namely [particulars].
3. Further or in the alternative, the Plaintiff has not suffered any loss and damage to his reversion. The Plaintiff has demolished the premises, and would have done so upon the termination of the Defendant's lease regardless of the condition of the premises.

P19.32 Defence denying breach of covenant on usage of premises

[Tan Kok Quan Partnership and Central Chambers Law Corporation]

1. The Defendant denies that he is in breach of covenant as alleged or at all.
2. The Defendant denies that he is carrying on at the premises the business of [X] as alleged or at all. The Defendant conducts and at all material times has conducted on the premises a [Y] business as agreed under the lease. The Defendant admits that he sells [X] products but avers that such sales are only an incidental part of the [Y] business and are not carried on in the nature of a separate business.

P19.33 Defence of waiver of right to forfeit

[Tan Kok Quan Partnership and Central Chambers Law Corporation]

On [date], the Plaintiff with knowledge at the material time of the alleged breach of covenant on the part of the Defendant demanded from the Defendant the payment of rent due on [date]. On [date] the Defendant paid the said rent to the Plaintiff, who accepted it. In the premises, the alleged forfeiture was waived by the Plaintiff before the commencement of this action.

P19.34 Defence that breach remedied or to be remedied – no entitlement to forfeiture

[Tan Kok Quan Partnership and Central Chambers Law Corporation]

1. The Defendant admits the breaches of covenant alleged in the notice referred to in paragraph [number] of the Statement of Claim, but avers that they were all remedied by him as required by the notice *[or denies that the notice was a valid notice because (specify any defect relied on)]*.
2. The time which elapsed between the service of the notice requiring remedial action and the issue of the Writ herein was not reasonably sufficient for remedying the alleged breaches. Further or in the alternative, the Defendant already took steps towards remedial action and the breaches should be remedied by [date].

Particulars

[List remedial steps taken or to be taken]

3. If, which is denied, the Defendant's lease of the said premises is liable for forfeiture, the Defendant seeks to be relieved from the forfeiture on such terms as the court shall think fit.

DISTRESS AND REPLEVIN

INCIDENTAL DOCUMENTS

P19.35 Authority to distrain

[Donaldson & Burkinshaw and Central Chambers Law Corporation]

We [*or I*], [landlord's name], of [state landlord's address], hereby authorise [name of landlord's authorised agent] to apply on our [*or my*] behalf under the Distress Act (Cap 84) for a writ of distress for all the arrears of rent [, service charge, GST, legal costs and interest thereon, as the case may be] now due to us [*or me*] on the property known as [address of rented property], to which we are [*or I am*] entitled to distrain as (owner, lessee, trustee, guardian or as may be) (or together with [other party with interest in the rented property]).

P19.36 Originating summons application for writ of distress (Form 5 of ROC)

[Donaldson & Burkinshaw]

Ex parte Originating Summons

Let all parties concerned attend before the Judge/Registrar on [date] at [time] am/pm on the hearing of an application by the Applicants, AB, that:

1. A writ of distress be issued, pursuant to Section 5 of the Distress Act (Cap 84), against the Respondent for rent [, service charge, GST, legal costs and interest thereon, *as the case may be*], amounting to S\$[amount] being arrears for the rent [, service charge, GST, legal costs and interest thereon, *as the case may be*] of the premises known as [address of rented property] for [length of period in arrears], for the rental period from [date] to [date] at the rate of S\$[amount] per month under a tenancy agreement dated [date] entered into between the Applicants and the Respondents (“the Tenancy Agreement”); and
2. The Respondent pay to the Applicant the costs of this application [on an indemnity basis pursuant to clause [number] of the Tenancy Agreement, *as the case may be*].

Dated [date]

The grounds in support of this application are set out in the affidavit of [state name of deponent] filed herein. [see Form 198 of ROC for sample affidavit]

This summons is taken out by [state name and address of the Applicant, or Applicant’s solicitors, *as the case may be*]

P19.37 Application for release of goods

[Donaldson & Burkinshaw]

Summons

Let all parties concerned attend before the Judge/Registrar on [date] at [time] am/pm on the hearing of an application pursuant to section 10 [or, 16] of the Distress Act by [name of party applying] that:

1. The writ of distress issued on [date] be discharged or suspended;
2. The goods distrained under the said writ be released to [name of party applying] [in the case of an undertenant, upon payment of the rent in arrears and upon an undertaking by [name of undertenant] to pay future rents owing by CD to AB];
3. The costs of this application be paid by the Applicants to [name the party applying] *[as the case may be]*.

Dated [date]

The grounds in support of this application are set out in the affidavit of [name of deponent] filed herein.

This summons is taken out by [name and address of party applying, or of his solicitors, *as the case may be*].

P19.38 Request for attendance of Sheriff/Bailiff

[Central Chambers Law Corporation]

I, [name of party making the request], being the employee (or solicitor) of [Applicant], hereby request that the Sheriff (or Bailiff) do attend at [address of rented property] on [the desired date and time of attendance] for the purpose of executing the Writ of Distress dated [date].

I undertake to pay the fees prescribed by Appendix B to the Rules of Court in respect of the attendance requested above.

Dated [date]

P19.39 Request for date to be appointed for execution

[Central Chambers Law Corporation]

To the Registrar,

Please direct the Sheriff/Bailiff to appoint a date for the execution of Writ of Distress No. [writ of distress number]. A copy of the Writ of Distress is attached.

Name of Applicant: [name]

Address of Applicant: [address]

Their solicitors: [name and address]

Dated [date]

EASEMENT

PRECEDENTS

P19.40 Claim for declaration of right of drainage and damages for obstruction

[Donaldson & Burkinshaw and Central Chambers Law Corporation]

1. The plaintiff is the registered proprietor and occupier of a terrace house known as [address].
2. The defendant is the registered proprietor and occupier of a terrace house known as [address], adjoining the plaintiff's terrace house.
3. Both terrace houses have been registered under the Land Titles Act (Cap 157) since [date of registration].
4. At all material times, foul drainage ran from the plaintiff's house through the defendant's terrace house to the manhole. The existence of the pipe is known to the defendant and drainage through it was necessary for the use and enjoyment of the plaintiff's terrace house as a residence.
5. Further, the right of drainage is implied by Section 98 of the Land Titles Act (Cap 157).
6. Since about [date], the defendant has wrongfully obstructed the right of drainage from the plaintiff's terrace house to the manhole.
7. As a result of such obstruction, the plaintiff is unable to drain foul drainage from his terrace house to the manhole. In consequence, the plaintiff has been greatly disturbed in the enjoyment of his right of drainage and has suffered loss and damage. [Particulars of loss and damage]

AND the Plaintiff claims:

- (1) A declaration that the plaintiff has a right of drainage through the pipe running through the defendant's terrace house to the manhole;
- (2) Alternatively, an order that an easement be created through the defendant's terrace house to the manhole pursuant to Section 97A of the Land Titles Act (Cap. 157);
- (3) An order that the defendant remove the obstruction to such right of drainage;
- (4) Damages;

- (5) Interest;
- (6) Costs; and
- (7) Such further or other relief as this Honourable Court deems just.

**P19.41 Defence denying plaintiff's possession of premises
in respect of which easement claimed**

[Donaldson & Burkinshaw]

The defendant does not admit that the plaintiff was the owner or occupier [*or, lessee or occupier*] of the said premises at the time of the alleged grievances as stated in the Statement of Claim.

P19.42 Defence denying obstruction of easement

[Donaldson & Burkinshaw]

The defendant denies that there is any obstruction to the right of drainage from the plaintiff's terrace house to the manhole as alleged in the Statement of Claim or at all.

P19.43 Defence denying obstruction to easement caused by defendant

[Donaldson & Burkinshaw]

If, which is denied, the alleged obstruction to the right of drainage from the plaintiff's terrace house to the manhole exists, the defendant denies that such obstruction had been caused by him.

P19.44 Defence denying title to right of way and alleging user was not of right

[Donaldson & Burkinshaw]

1. The plaintiff was not [and is not] entitled to the right of way alleged in the Statement of Claim.
2. The plaintiff and his predecessors in title have not enjoyed the said right of way for a period of at least 20 years preceding the commencement of this action.
3. If, which is denied, the plaintiff and his predecessors had enjoyed the said right of way, such enjoyment has not been as of right but has been a secret enjoyment without the knowledge of the defendant, who is the owner of the said premises.

NUISANCE

PRECEDENTS

P19.45 Claim for injunction and damages for nuisance caused by neighbouring work site or factory

[Tan Kok Quan Partnership]

1. At all material times, the Plaintiffs are and were carrying on the business of [type of business] at the premises known as [address] (“the Plaintiffs’ premises”).
2. At all material times, the Defendants were the [contractors at/ owners of] the neighbouring [work site/factory] situated at the premises known as [address] (“the Defendants’ premises”).
3. Since on or about [date], the Defendants have wrongfully caused [noxious smells, gases, fumes, filth, excessive noise, vibration, etc] to [spread to/affect] the Plaintiffs’ premises.
4. Consequently, the business at the Plaintiffs’ premises has [been adversely affected, interrupted, come to a halt, etc in that [particulars of damage]].
5. By reason of the matters aforesaid, the Plaintiffs have incurred expense and suffered loss of profit.

Particulars

[Quantification of loss]

6. On or about [date], the Plaintiffs wrote to the Defendants to ask that the aforesaid nuisance be abated. However, the Defendants have failed, refused and/or neglected to do so.
7. The Defendants intend, unless restrained by this Honourable Court, to continue to commit the said nuisance.

AND the Plaintiffs claim:

- (1) An injunction to restrain the Defendants, by themselves, their servants or agents or otherwise from repeating or continuing the said nuisance or similar whether directly or indirectly;
- (2) Damages;
- (3) Costs; and
- (4) Such further relief as this Honourable Court deems just.

P19.46 Claim for damages for nuisance caused by plants

[Tan Kok Quan Partnership]

1. The Plaintiff is and was the owner and occupier of the premises known as [address] (“the Plaintiff’s premises”) and the Defendant is and was the owner and occupier of the neighbouring premises known as [address] (“the Defendant’s premises”).
2. At all material times, there were [number/type] trees growing at the back of the Defendant’s premises within about [amount] [cm/m] of the boundary between the Plaintiff’s premises and the Defendant’s premises.
3. The roots from the said trees have penetrated the Plaintiff’s premises thereby causing:
 - (1) Subsidence of the house on the Plaintiff’s premises;
 - (2) Damage to the flowers growing at the back of the Plaintiff’s premises;
 - (3) [Etc].
4. By reason of the matters aforesaid, the Plaintiff has suffered [loss, damage, distress, inconvenience, discomfort and disturbance]. The best particulars the Plaintiff can furnish to date are:
 - (1) Costs of making good and repairing the house amounting to S\$[amount].
 - (2) Costs of replanting the flowers affected by the nuisance amounting to S\$[amount].
 - (3) Costs of relocating to alternative premises for [number] days/ weeks pending the works to make good and repair the house amounting to S\$[amount].
 - (4) [Etc].

AND the Plaintiff claims:

- (1) Damages;
- (2) Interest;
- (3) Costs; and
- (4) Such further relief as this Honourable Court deems just.

P19.47 Claim for damages for nuisance caused by encroaching tree

[Donaldson & Burkinshaw]

1. Since or about [date], the Plaintiff has been and remains the owner and occupier of land known as [Plaintiff's address].
2. The Defendant is and was the owner and occupier of land known as [Defendant's address], adjoining the Plaintiff's property.
3. At all material times, there was and still is growing on the defendant's land, along the fence that divides the Plaintiff's and Defendant's lands, a mango tree.
4. The roots from the mango tree have penetrated into and encroached on the Plaintiff's land where the Plaintiff's car is normally parked. From about [date], the roots of the mango tree have caused cracks on the tiled ground on the Plaintiff's land.
5. Furthermore the tree has also encroached on the Plaintiff's land with its overhanging branches and leaves. Leaves and branches would fall onto the Plaintiff's land on a daily basis while the mango flowers and fruits would fall onto the Plaintiff's land when they are in season. These cause irremovable stains on the tiles on the Plaintiff's land and the Plaintiff's car.
6. As a result, the Plaintiff is obliged to carry out repair works to replace the tiles on the Plaintiff's land and apply a new coat of paint on his car. Further, the Plaintiff was obliged to rent a car while his car was in the mechanic's workshop. The Plaintiff and his family have suffered discomfort and inconvenience.
7. The Plaintiff therefore claims loss and damage as follows:

Particulars

[Full particulars of loss and damages –

Cost to replace tiles –

Cost to apply new coat of pain on car –

Loss of use of car (2 days), etc.]

AND the Plaintiff claims:

- (1) Damages;
- (2) Interest;
- (3) Costs; and
- (4) Such further or other relief as this Honourable Court deems just

P19.48 Claim for injunction and damages for nuisance caused by persistent telephone calls, SMS and emails

[Donaldson & Burkinshaw]

1. Since or about [date], the 1st Plaintiff has been and remains the owner and occupier of a semi-detached house at [1st Plaintiff's address]. The 1st Plaintiff occupies the house with his mother and sister, who are respectively the 2nd and 3rd Plaintiffs.
2. The 1st Plaintiff and the Defendant were in a relationship from [date] to [date].
3. Following the breakup of the relationship on [date], the Defendant has wrongfully interfered with the Plaintiffs' use and quiet enjoyment of the house and continues to do so, thereby causing a nuisance at law.

Particulars

[Full particulars of interfering acts:

- (1) Between the [date] and [date], the Defendant made 35 telephone calls to the house.
- (2) Of the 35 telephone calls, 12 were made between the hours of 11.00 pm and 3.00 am.
- (3) Between [date] and [date], the Defendant sent 87 SMS messages via mobile phone to the 1st Plaintiff, received at the 1st Plaintiff's house and elsewhere.
- (4) Of the 87 SMS messages, 42 were sent between the hours of 12.00 midnight and 6.00 am, etc.]
4. The Defendant's actions have caused the Plaintiffs loss of sleep, emotional distress and worry. As a result, the 1st and 3rd Plaintiffs have not been able to focus at work and have had to take time off work on numerous occasions. The 2nd Plaintiff had fallen ill on several occasions.

Particulars

[Full particulars of effects:

The 1st Plaintiff took time off from work on [dates]

The 2nd Plaintiff fell ill on [dates] and incurred medical expenses of [amount], etc.]

5. In consequence, the Plaintiffs incurred loss and damage as follows:

Particulars

[Full particulars of loss and damages:

Cost to change telephone number –

Cost to change the 1st Plaintiff's mobile phone number

Medical fees, etc.]

6. On or about [date], the 1st Plaintiff had requested that the Defendant stop her acts, but the Defendant continues to commit such nuisances.
7. The Defendant intends, unless restrained by this Court, to continue to commit these nuisances.

AND the Plaintiffs claim:

- (1) An injunction to restrain the defendant from repeating or continuing the said nuisance or any nuisance of a like kind;
- (2) Damages;
- (3) Interest;
- (4) Costs; and
- (5) Such further or other relief as this Honourable Court deems just.

P19.49 Claim for injunction and damages for nuisance caused by dust, noise and vibration³

[Tan Rajah & Cheah]

1. The Plaintiff is and was at all material times [the owner or lessee] and occupier of the residential property at [address] ("the Plaintiff's Property").
2. The Defendants are building contractors. The Defendants are and have been at all material times the occupiers of the construction site at [address] adjoining the Plaintiff's Property. The Defendants have since on or around [date – month and year] been carrying on building and construction works ("the Building Works") on the said construction site.
3. As part of the Building Works, the Defendants have, by [type of work, for example, excavation and pile-driving], wrongfully caused excessive dust, noise and vibration to come from the construction site to the Plaintiff's Property.

Particulars

[Particulars of the dust, noise and vibration including the times during which the Building Works are carried out]

4. Further, on 3 occasions in [month and year], the Plaintiff complained to the Defendants about the said excessive dust, noise and vibration caused by the Building Works and coming to the Plaintiff's Property but such complaints were ignored by the Defendants.
5. By reason of the matters aforesaid, the Plaintiff and his family have been and are being caused nuisance and annoyance and have thereby suffered damage.
6. The Defendants continue and intend to continue to cause excessive dust, noise, and vibration as set out above unless restrained by injunction.

AND the Plaintiffs claim:

- (1) An injunction prohibiting or restraining the Defendants (whether by themselves, their servants, agents, officers or employees or any of them or otherwise howsoever) from repeating or continuing the said nuisance or any nuisance of a like kind;
- (2) Damages;

³ Also see P19.55.

- (3) Interest;
- (4) Costs; and
- (5) Such further or other relief as this Honourable Court may deem just and equitable.

P19.50 General defence to claim in nuisance

[Tan Rajah & Cheah]

1. The Defendants deny that they are the [tenants/occupiers/etc] of [or contractors working at] the said premises.
2. The Defendants deny that they caused or permitted [name] to [enter/affect/etc] the Plaintiff's premises and that the alleged loss was caused by the alleged nuisance.
3. No admission is made as to the alleged loss.
4. [General traverse]

P19.51 Defence that independent contractor hired

[Tan Kok Quan Partnership]

1. [General denials]
2. Further or in the alternative, the Defendant avers that he is not liable as alleged or at all, as he took reasonable care to hire [name], an independent contractor, to ensure a proper system of work that would not cause a nuisance to the Plaintiff and neighbours.

P19.52 Defence of *volenti non fit injuria*

[Tan Kok Quan Partnership]

1. [General denials]
2. Further or in the alternative, the Defendant relies on the defence of *volenti non fit injuria*. [Particularise the facts to show that the Plaintiff agreed to take the risk]

P19.53 Defence denying nuisance

[Tan Kok Quan Partnership]

The Defendant denies that the roots from his mango tree have encroached onto the Plaintiff's premises as alleged or at all. The Defendant further avers that the cracks on the Plaintiff's land occurred when the Plaintiff received delivery of furniture by a heavy lorry on or about [date].

P19.54 Defence denying that loss and damage caused by alleged nuisance

[Tan Kok Quan Partnership]

If, which is denied, the roots from the Defendant's mango tree have encroached onto the Plaintiff's premises, the Defendant denies that that any loss or damage as particularised in the Statement of Claim was caused by such encroachment and puts the Plaintiff to strict proof thereof.

P19.55 Defence to claim for injunction and damages for nuisance caused by dust, noise and vibration⁴

[Tan Rajah & Cheah]

1. The Defendants do not admit paragraph 1 of the Statement of Claim.
2. Save that the Defendants are building contractors and have been carrying out the building and construction works at the construction site since [month] [year], paragraph 2 of the Statement of Claim is denied.
3. The Defendants are subcontractors to a company known as [name] whose registered address is at [address] (“the Main Contractors”).
4. Paragraph 3 of the Statement of Claim is denied. The Defendants are responsible only for excavation works (“the Excavation Works”) and not for [any pile driving works] as claimed by the Plaintiff in paragraph 3 of the Statement of Claim.
5. The Defendants admit that the Excavation Works have caused some noise. However, the Defendants deny that they have wrongfully or at all caused excessive dust, noise and vibration to come from the construction site to the Plaintiff’s Property and to affect the same as claimed by the Plaintiff or at all.
6. At all material times, the Defendants have carried out the Excavation Works pursuant to and in accordance with the Methodology of Works submitted by the Defendants to and approved by the Main Contractors prior to the commencement of any Excavation Works at the construction site. The Defendants will rely on Annex “A” attached hereto, which is a diary log of events at the construction site recording the events relating to the Excavation Works.
7. Further and in any event, at all material times, the noise caused and/or emitted by the Excavation Works complied with and is within the limits prescribed and/or permitted by statutory regulations.
8. Paragraph 4 of the Statement of Claim is denied. The Defendants have no knowledge of the complaints referred to therein.
9. The Defendants make no admission of the alleged damaged suffered by the Plaintiff as pleaded in paragraph 5 of the Statement of Claim.

⁴ Also see P19.49.

10. Save that the Defendants intend to continue to carry out the Excavation Works in a lawful and proper manner at the construction site, as they have done so at all material times, paragraph 6 of the Statement of Claim is denied.
11. Further and in any event, the Defendants are scheduled to complete the Excavation Works by [date].
12. For the reasons set out above, it is denied that the Plaintiff is entitled to the relief sought.
13. Save as hereinbefore specifically admitted, the Defendants deny each and every allegation contained in the Statement of Claim as though the same were set out herein seriatim and specifically denied.

REVERSION

PRECEDENTS

P19.56 Claim for injury to plaintiff's reversion in land

[Donaldson & Burkinshaw]

1. At all material times, the Plaintiff was the freehold owner of the property known as [Plaintiff's address].
2. By a lease dated [date], the Plaintiff leased the said property to AB for a period of [length of lease].
3. The 1st Defendant is the owner of the property known as [Defendant's address], which adjoins the Plaintiff's said property. The 2nd Defendant is the building contractor engaged by the 1st Defendant for renovation works on the 1st Defendant's property.
4. On or about [date], the 1st Defendant instructed the 2nd Defendant to commence excavation works on the 1st Defendant's property and the 2nd Defendant commenced such excavation works.
5. As a result of the excavation works, soil subsidence occurred on the Plaintiff's said property and structural cracks have appeared throughout the house on the Plaintiff's said property.
6. As a consequence of the above, the Plaintiff has suffered loss and damage and the value of the Plaintiff's reversion has been diminished. [Particulars of loss and damage and diminution of value of reversion]

AND the Plaintiff claims:

- (1) Damages;
- (2) Interest;
- (3) Costs; and
- (4) Such further or other relief as this Honourable Court deems just.

P19.57 Defence denying acts complained of

[Donaldson & Burkinshaw]

1. The Defendants deny that excavation works had been carried out on the 1st Defendant's premises.
2. If, which is denied, excavation works were carried out on the 1st Defendant's premises, the Defendants deny that such excavation works caused the soil subsidence in the Plaintiff's property as alleged in the Statement of Claim or at all.
3. Further, if, which is also denied, such excavation works caused the soil subsidence in the Plaintiff's property as alleged in the Statement of Claim, the Defendants deny that the Plaintiff's reversionary interest (if any) has been, or will be, injured or damaged in any way by reason of any of the acts complained of.

P19.58 Defence denying that reversionary interest vests in plaintiff

[Donaldson & Burkinshaw]

The Defendant denies that reversion of the property belonged to and/or was vested in the Plaintiff as alleged or at all. At all material times the said reversion belongs to and vested in CD. [Particulars of facts relied on to show that CD owned the reversionary interest]

RYLANDS v FLETCHER

PRECEDENTS

P19.59 Claim for damages for damage caused by landslide, nuisance, negligence and *Rylands v Fletcher*⁵

[Tan Rajah & Cheah and Central Chambers Law Corporation]

1. The Plaintiff is and was at all material times the owner and occupier of the residential property at [address] (“the Plaintiff’s Property”).
2. The Defendant is and was at all material times the owner and occupier of the residential land at [address] (“the Defendant’s Land”) which is adjacent to the Property. Attached hereto marked “Annex A” is a topographical plan of the Plaintiff’s Property and the Defendant’s Land showing their respective boundaries.
3. The Plaintiff’s Property is on lower ground and the boundary between the Plaintiff’s Property and the Defendant’s land lies part way up the said slope. The upper part and the top of the slope form part of the Defendant’s Land.
4. Sometime in or around [date], the Defendant, his servants and/or agents began tipping large quantities of soil, rubble, building material and/or debris on the top of the slope.
5. On or about [date], the Plaintiff went to the Defendant’s Land and warned a foreman/supervisor that there was a danger that the top surface of the slope may slide down/collapse onto the Plaintiff’s Property. Such warning was ignored.
6. By reason of the matters referred to hereinabove, on or about [date], the upper part of the slope slipped and/or collapsed onto the Plaintiff’s Property thereby causing damage.
7. The said tipping of large quantities of soil, rubble, building material and/or debris on the Defendant’s Land constituted a non-natural user of the Defendant’s Land.
8. The Defendant failed to prevent the escape of earth, soil, rubble, building material and/or debris from the Defendant’s Land to the Plaintiff’s Property.

⁵ Also see P19.61.

9. Further and/or alternatively, the matters complained of hereinabove constituted a nuisance caused by the Defendant, his servants and/or agents.
10. Further and/or alternatively, the Defendant breached his duty of care not to cause damage to the Plaintiff's Property.

Particulars of negligence

- (1) By tipping large quantities of soil, rubble, building material and/or debris on the top of the slope, the Defendant, his servants and/or agents knew or ought to have known that it would or would be likely to cause a landslide which would damage the Plaintiff's Property;
 - (2) The Defendant failed to heed the warning given to him by the Plaintiff on [date] of the danger of the top surface of the slope slipping/collapsing under the weight of the soil, rubble, building material and/or debris;
 - (3) The Defendant failed to take sufficient steps to prevent the slope from slipping/collapsing onto the Plaintiff's Property.
11. By reason of the aforesaid, the Plaintiff has suffered loss and damage.

AND the Plaintiff claims:

- (1) Damages;
- (2) Interest;
- (3) Costs; and
- (4) Such further or other relief as this Honourable Court may deem just and equitable.

P19.60 Claim for injunction and damages under *Rylands v Fletcher*, nuisance and negligence for escape of dangerous substance

[Donaldson & Burkinshaw]

1. The Plaintiff is the owner of a fish farm known as [name of business] at [address] of which the Plaintiff has been a lessor since about [date] ("the Plaintiff's property").
2. The Defendant is the owner and operator of an industrial site at the property known as [address] ("the Defendant's property"), which adjoins the Plaintiff's property.
3. For the purposes of his operations, the Defendant stores and uses large volumes of up to [volume] of [a highly hazardous and corrosive substance known as [name of substance]], the said storage of which constitutes a non-natural user of land. The said substance is a dangerous thing and the storage thereof in such large quantities is likely to cause damage if the said substance escaped from the Defendant's property.
4. [Attached at appendix 1 is a map showing the respective locations of the Plaintiff's property and the Defendant's property.]
5. On or about [date], there was an explosion at the Defendant's property resulting in an escape of large quantities of [the substance] transported through the air and landing on both the Defendant's property and the Plaintiff's property.
6. [The substance] which had escaped from the containers on the Defendant's property seeped into the land under and surrounding both the Defendant's property and the Plaintiff's property and entered the aquifer lying thereunder. As a result, [the substance] mixed with the groundwater under the Plaintiff's property and the Defendant's property resulting in [acid, or, as the case may be] which flowed into the fish ponds on the Plaintiff's property.
7. As a result of the [acid, or, as the case may be] flowing into the fish ponds on the Plaintiff's property, all of the fish in the farm on the Plaintiff's property have died and the Plaintiff has suffered loss and damage.
[Particulars of loss and damages]
8. Further or in the alternative, the explosion causing the escape of [the substance] from the Defendant's property was caused by the negligence of the Defendant and/or his servants or agents.
[Particulars of negligence]

9. On or about [date], the Plaintiff wrote to the Defendant pointing out the adverse effects the Plaintiff had suffered as a result of the escape of [the substance] from the Defendant's property. The Plaintiff requested that the Defendant cease and desist storing [the substance] on the Defendant's property or take such steps as required to prevent any future escape of [the substance] from the Defendant's property.
10. The Defendant has failed, neglected and/or refused to reply to any of these letters. The Defendant intends, unless restrained by the court, to continue to store [the substance] on the premises and without taking any steps to prevent the future escape of [the substance] from the Defendant's property.

AND the Plaintiff claims:

- (1) An injunction to restrain the defendant by himself, his servants or agents or otherwise from storing [the substance] on the Defendant's property without taking such steps as the Court may order to prevent the future escape of [the substance] from the Defendant's property;
- (2) Damages;
- (3) Interest;
- (4) Costs; and
- (5) Such further or other relief as this Honourable deems just.

P19.61 Defence to claim for damage caused by landslide⁶

[Tan Rajah & Cheah and Central Chambers Law Corporation]

1. The Defendant admits paragraphs 1 to 3 of the Statement of Claim.
2. Paragraph 4 of the Statement of Claim is denied. On or about [date], the Defendant engaged a company known as [name] and having its registered office at [address] (“the Building Contractors”) to carry out, *inter alia*, renovation works on the Defendant’s house and garden landscaping works. In carrying out such works, some soil, rubble and building material were deposited at the top of the slope.
3. The Defendant has no knowledge of the matters referred to in paragraph 5 of the Statement of Claim and thereby denies the same.
4. Save that there was a landslide on [date], paragraphs 6 to 8 of the Statement of Claim are denied. In particular, the Defendant denies that the cause of the landslide was as alleged by the Plaintiff. The landslide was caused by sudden and exceptionally heavy rain on [date] which was unseasonal and could not reasonably have been expected.
5. Further and/or in the alternative, the Plaintiff had excavated soil along the bottom of the slope on the Plaintiff’s Property. Such excavation works was the caused the surface soil of the slope to slip onto the Plaintiff’s Property.
6. The Plaintiff knew or ought to have known that such excavation works would or would be likely to cause the soil on the slope to slip/collapse.
7. Paragraphs 9 and 10 of the Statement of Claim are denied. The quantities of soil, rubble and building material were not large or excessive.
8. There had never been any slipping of the surface soil on the slope whether at the top or anywhere else within the Defendant’s Land in the past.
9. Further, similar works had been carried out on the Defendant’s Land and in a similar way in the past without any slipping of the surface of the slope.
10. The Defendant denies that he is guilty of the alleged negligence or any negligence at all.

⁶ Also see P19.59.

11. The Defendant makes no admission of the loss and damage suffered by the Plaintiff as alleged in paragraph 11 of the Statement of Claim.
12. Save as hereinbefore specifically admitted, the Defendant denies each and every allegation contained in the Statement of Claim as though the same were set out herein seriatim and specifically denied.

P19.62 Defence denying that item stored was dangerous and that storage thereof was a non-natural user of land

[Donaldson & Burkinshaw]

1. The Defendant denies that [the substance] stored by him on his premises are of a highly hazardous and corrosive nature as alleged in the Statement of Claim, and puts the Plaintiff to strict proof thereof. The Defendant further avers that [the substance] is an organic fertiliser that is commonly used on vegetable farms.
2. The Defendant denies that the storage of organic fertiliser is dangerous or that it constitutes an unreasonable or non-natural user of the Defendant's land as a vegetable farm.

P19.63 Defence alleging act of trespasser

[Donaldson & Burkinshaw]

1. The Defendant admits that there was an explosion on the Defendant's property some time during the night on or about [date].
2. The Defendant avers that the perimeter fence of the Defendant's property and the two sets of doors to the area where [the substance] was stored were broken down and the locks destroyed by trespassers. The alarm system for the Defendant's property was also destroyed.
3. The trespassers stole money from the Defendant's offices, and lit a fire there, which fire spread to the area where [the substance] was stored and ignited the materials in the area so giving rise to the explosion in question.
4. For the reasons set out above, the Defendant is not responsible to the Plaintiff in respect of the fact of the said explosion, or for any consequences arising therefrom on the Plaintiff's property or goods, or for any loss or damage arising therefrom.
5. For the reasons set out above, it is denied that the Plaintiff is entitled to any relief claimed against the Defendant as alleged or otherwise.

P19.64 General defence

[Tan Kok Quan Partnership]

1. The Defendant denies that [he is in occupation of the land from which the escape allegedly emanated] and/or [the alleged escape emanated from the Defendant's premises] and/or [[use] is a non-natural use of the Defendant's premises] and/or [the alleged damage was caused by the alleged escape].
2. Further or in the alternative, if which is denied the [...], the Defendant avers that the Plaintiff consented to the alleged use of the Defendant's premises in that [particulars of the consent, or the Plaintiff's knowledge or acknowledgement of the use; where appropriate, to aver that the alleged use was for the common benefit of the Plaintiff, the Defendant and others *as the case may be*].
3. [General traverse]

MORTGAGES

INCIDENTAL DOCUMENTS

P19.65 Proceedings by mortgagee – Notice pursuant to s 75(2) of LTA

[Tan Kok Quan Partnership]

Mr XYZ

BY HAND

(Address)

Dear Sir

CLAIM BY XYZ BANK

MORTGAGE OF 2 ABC LANE SINGAPORE

("the Property")

NOTICE PURSUANT TO SECTION 75(2) LAND TITLES ACT (CAP 157)

As you are aware, we act for XYZ Bank.

We refer to the above matter and are instructed by our clients that despite their requests for payment of the outstanding amount, you have failed, neglected and/or refused to settle the same. Our clients have therefore recalled the facilities granted to you.

On behalf of our clients, XYZ Bank, we do hereby give you NOTICE pursuant to Section 75(2) of the Land Titles Act (Cap 157) of our clients' intention to exercise the power of entry into possession of the above Property conferred upon them under the above Mortgage upon the expiration of 1 month from the date of the service of this notice to you.

You are accordingly required to deliver possession of the above Property to our clients by then. If vacant possession of the above Property is not given to our clients, our clients shall commence legal proceedings against you for the recovery of the same.

Meanwhile, please let us know by return whether there is any person or party other than yourself occupying the above Property. If so, kindly let us know the basis upon which he/they came into occupation of the same giving particulars and documents of the following:

1. date of occupation;
2. name and identities of the person(s) or parties occupying the above Property;

3. identify the Tenancy Agreement, if any, or other documents relating thereto;
4. state the rental, if any, and/or fees payable by the person or party in occupation; and
5. state the term or duration of such occupancy.

For the avoidance of doubt, nothing in this letter shall be taken to constitute an acceptance or recognition by our clients of any tenancy of the Mortgaged Property to you.

All our clients' rights are hereby expressly reserved.

Dated this day of [year]

P19.66 Proceedings by mortgagee (originating summons in Form 4)

[Tan Kok Quan Partnership]

By this Summons, the Plaintiffs claim against the Defendant the following reliefs:

1. An Order that the Defendant do deliver to the Plaintiffs possession of the mortgaged property more particularly described in the Schedule hereto;
2. An Order that the Defendant do pay the Plaintiffs the following:
 - (a) The sum of S\$[amount] together with interest on the outstanding principal sum at the rate of [amount] per cent per annum with monthly rests from [date] to [date]; at the rate of [amount] per cent per annum with monthly rests from [date] to [date]; and at the Plaintiffs' prevailing [...] Rate with monthly rests from [date] to the date of full payment. Upon realisation of the mortgaged property, the interest shall be revised to [amount] per cent per annum above the Plaintiffs' prevailing Prime Lending Rate calculated with monthly rests on the outstanding shortfall (if any) till the date of full payment in respect of Term Loan Account No [number].
 - (b) Further late charge at S\$[amount] per month on each overdue instalment.
 - (c) The sum of S\$[amount] together with interest at the rate of [amount] per cent per annum above the Plaintiffs' prevailing Prime Lending Rate from [date] till the date of full payment.
3. Costs of this application including all costs on a full indemnity basis to be taxed and paid by the Defendant to the Plaintiffs.
4. An Order that in the event there are furniture or chattels remaining in the said mortgaged properties after the Plaintiffs shall have taken possession of the same, the Plaintiffs shall give the Defendant not less than 14 days notice to remove the furniture and chattels and in default of the Defendant's failure to comply with such notice, the Plaintiffs shall be at liberty to remove and dispose of such furniture and chattels at its discretion.

The Schedule above referred to

The whole of Lot No. [number] as shown in the Lease No. [number] together with the premises erected thereon and known as Block [number] Singapore.

Dated this

ASSISTANT REGISTRAR

THIS SUMMONS is taken out by _____ of
_____ whose registered office is at _____ Singapore.

NOTE:

This Summons may not be served more than six (6) calendar months after the above date unless renewed by order of the Court.

P19.67 Affidavit – credit facilities

[Tan Kok Quan Partnership]

I, [Name] (NRIC No [number]) care of [address] do affirm and say as follows:

1. I am the [designation] of the abovenamed Plaintiffs and am duly authorised to make this Affidavit on their behalf.

The Mortgage

2. By an Instrument of Mortgage dated [date] registered as No. [number] at the Singapore Land Registry (“the Mortgage”), and made between the Defendant of the one part and the Plaintiffs of the other part for all monies due and owing from the Defendant to the Plaintiffs, in consideration of the Plaintiffs agreeing to extend to the Defendant loans credit and/or banking facilities, the Defendant mortgaged to the Plaintiffs all their registered rights title and interest in the property known as [address], more particularly described in the Schedule of the Originating Summons hereto (“the Mortgaged Property”). A copy of the Mortgage is annexed hereto and marked “A-1”.

The Mortgage Loans and Facilities

3. The loans, credit and/or banking facilities extended by the Plaintiffs to the Defendant were granted pursuant to the Plaintiffs’ Letter of Offer dated [date] which was duly accepted by the Defendant and secured by the Mortgage and they comprise, *inter alia*, a term loan of S\$[amount] (“the Term Loan”) repayable in accordance with the terms and conditions of the Letter of Offer dated [date].

Full particulars of the nature and type of the said facilities and interests payable thereon are set out in the Letter of Offer. A copy of the Letter of Offer is annexed hereto and marked “B-2”.

The Mortgage Terms

4. The Plaintiffs’ Memorandum of Mortgage filed in the Singapore Land Registry and numbered as [number] (“the Memorandum”) was incorporated into the Mortgage. A copy of the Memorandum is annexed hereto and marked “C-3”.
5. The Letter of Offer, Mortgage and Memorandum further provides that:
 - (1) In respect of the Term Loan, in the event the Defendant shall make default in payment of any sum due or payable on the due date therefore, the whole of the moneys outstanding and

unpaid together with interest thereon and all other sums of money due to the Plaintiffs shall immediately become due and payable by the Defendant without any demand or notice.

- (2) In the event the Defendant shall make default in payment of any sum due or payable on demand, the Plaintiffs shall be entitled to exercise its power of sale after 14 days previous notice requiring payment has been given.
- (3) All costs and disbursements incurred by the Plaintiffs on a solicitor and client basis in the demanding and enforcing payment of moneys due and in the realisation or enforcement of the Mortgage shall be paid by the Defendant.
- (4) Service of any writ of summons or other originating process or sealed copy thereof pleadings or other documents may be effected on the Defendant by way of leaving the same at the place of business or abode or the address in Singapore of the Defendant last known and if the last known address of the Defendant shall be a postal box number or other hold mail address then personal service may be effected by posting the same to such address or addresses. Any writ of summons or other originating process or sealed copy thereof pleadings or other documents so left at or sent or despatch to the Defendant shall be effective and deemed to be received by the Defendant.

The Default

6. Pursuant to the Mortgage, the Plaintiffs extended the Term Loan to the Defendant.
7. In breach of the Mortgage, the Defendant defaulted in the payment of the sums owed in respect of the Term Loan owing under the Mortgage.
8. In spite of the Plaintiffs' repeated requests, the Defendant has failed, neglected and/or refused to settle the outstanding arrears in monthly instalments in respect of the Term Loan due under the Mortgage and/or to make any payment satisfactory to the Plaintiffs in reduction of the same.
9. Accordingly, by a letter dated [date] and hand delivered to the Defendant, the Plaintiffs through their solicitors, wrote to the Defendant demanding payment of the then outstanding sum of S\$[amount] (as at [date]) due and owing under the Term Loan within 14 days from the date of receipt thereof, failing which, the Plaintiffs shall at the expiration thereof commence proceedings against him to recover the same. The Plaintiffs also reserved their

rights to sell the Mortgaged Property. A copy of the said letter is annexed hereto and marked "D-4".

10. The Defendant failed to make any arrangements satisfactory to the Plaintiffs to settle the outstanding sum.

The Notice of Re-Entry

11. By a further letter dated [date] sent by AR Registered and Certificate of Posting to the Defendant, the Plaintiffs through their solicitors, gave the Defendant notice of the Plaintiffs' intention to exercise the power of entry into possession of the Mortgaged Property conferred upon them under the Mortgage upon the expiration of the 1 month from the date of service thereof pursuant to Section 75(2) of the Land Titles Act (Cap 157) and duly requested the Defendant to deliver possession of the Mortgaged Property to the Plaintiffs upon the expiration of the said notice. A copy of the said letter is annexed hereto and marked "E-5".

The Occupiers

12. The Plaintiffs believe that the Defendant is himself in occupation of the Mortgaged Property and the Plaintiffs are not aware if the Defendant has let out the Mortgaged Property. Even if he has, the Plaintiffs say that they are not bound by the same as the Defendant has never at any time or at all obtained the Plaintiffs' consent to the creation of the same (if any) which consent of the Plaintiffs is required under the terms of the Mortgage.
13. The said notice to the Defendant to deliver vacant possession of the Mortgaged Property to the Plaintiffs expired on [date]. Possession has to date still not been given to the Plaintiffs who are accordingly compelled to institute these proceedings for recovery of possession of the same.

Chattels

14. In several instances experienced by the Plaintiffs who had to commence legal proceedings against mortgagors for recovery of possession of properties mortgaged to the Plaintiffs, the Plaintiffs encountered difficulties in obtaining vacant possession from the mortgagors: the mortgagors would be compelled to vacate the property under a Writ of Possession but the Plaintiffs will invariably find chattels and belongings left behind in the premises. It is often difficult to establish whether these have been abandoned by the mortgagors/occupiers.

15. These chattels/belongings left in the premises made it difficult for the Plaintiffs to deal with the mortgaged property and considerable time and effort are often expended to have the mortgagors remove them. Even then, most of such mortgagors are not co-operative.
16. In the circumstances, the Plaintiffs pray that they be at liberty to remove and dispose of any belongings and chattels found in the Mortgaged Property in the event the Defendant fails to do so.

The Mortgage Debt

17. As at [date], the outstanding sum due and payable by the Defendant to the Plaintiffs under the Mortgage together with interest is set out in the particulars hereunder:

Particulars

Term Loan Account No _____

Amount of Advance S\$

Principal + Interest Repaid S\$

Total instalments & interest in arrears S\$

([month and year] to [month and year]) i.e. 11 instalments
in arrears

Total amount remaining under the Mortgage in respect of
the Term Loan as at [date] S\$

The amount of a day's interest is S\$[amount] as at [date].

Together with interest on the outstanding principal sum at the rate of [amount] per cent per annum with monthly rests from [date] to [date]; at the rate of [amount] per cent per annum with monthly rests from [date] to [date]; and at the Plaintiffs' prevailing Concessionary Rate with monthly rests from [date] to the date of full payment. Upon realisation of the mortgaged property, the interest shall be revised to [amount] per cent per annum above the Plaintiffs' prevailing Prime Lending Rate calculated on a daily basis with monthly rests on the outstanding shortfall (if any) till the date of full payment.

Further late charge at S\$[amount] per month on each overdue instalment.

Current Account No. [number]

18. The Plaintiffs also claim against the Defendant the sum of S\$[amount] together with interest at the rate of [amount] per cent

per annum above the Plaintiffs' prevailing Prime Lending Rate from [date] till the date of full payment.

19. Particulars of the total outstanding under the Mortgage, Term Loan Facility and the Current Account specified above are contained in the Plaintiffs' Certificate of Indebtedness. A copy of which is annexed hereto and marked "F-6".
20. The outstanding sums payable by the Defendant under the Mortgage, Term Loan Facility and Current Account still remain unsatisfied and in the premises, the Plaintiffs crave for an order in terms of the Plaintiffs' application.

P19.68 Affidavit – housing loan

[*Tan Kok Quan Partnership*]

I, [name] care of [address], Singapore affirm and say as follows:

1. I am the [designation] of the abovenamed Plaintiffs and am duly authorised to make this Affidavit on their behalf.

The Mortgage

2. By an Instrument of Mortgage dated [date] registered as No [number] at the Singapore Land Registry (“the Mortgage”), and made between the Defendant of the one part and the Plaintiffs of the other part for all monies due and owing from the Defendant to the Plaintiffs, in consideration of the Plaintiffs agreeing to extend to the Defendant loans credit and/or banking facilities, the Defendant mortgaged to the Plaintiffs all his registered rights title and interest in the Property known as [address] Singapore, more particularly described in the Schedule of the Originating Summons hereto (“the Mortgaged Property”). A copy of the Mortgage is annexed hereto and marked “A-1”.

The Mortgage Loans and Facilities

3. The loans, credit and/or banking facilities extended by the Plaintiffs to the Defendant were granted pursuant to the Plaintiffs’ Letter of Offer dated [date] which was duly accepted by the Defendant and secured by the Mortgage and they comprise, *inter alia*, a housing loan of S\$[amount] (“the Housing Loan”) repayable in accordance with the terms and conditions of the Letter of Offer dated [date].

Full particulars of the nature and type of the said facilities and interests payable thereon are set out in the Letter of Offer. A copy of the Letter of Offer is annexed hereto and marked “B-2”.

The Mortgage Terms

4. The Plaintiffs’ Memorandum of Mortgage filed in the Singapore Land Registry and numbered as [number] were incorporated into the Mortgage. A copy of the Memorandum is annexed hereto and collectively marked “C-3”.

The Letters of Offer, Mortgage and Memorandum further provide that:

- (1) in respect of the Housing Loan, in the event the Defendant shall make default in payment of any sum due or payable on the due date therefore, the whole of the moneys outstanding and unpaid together with interest thereon and all other sums

- of money due to the Plaintiffs shall immediately become due and payable by the Defendant without any demand or notice;
- (2) in the event the Defendant shall make default in payment of any sum due or payable on demand, the Plaintiffs shall be entitled to exercise its power of sale after 14 days previous notice requiring payment has been given;
 - (3) all costs and disbursements incurred by the Plaintiffs on a solicitor and client basis in the demanding and enforcing payment of moneys due and in the realization or enforcement of the Mortgage shall be paid by the Defendant;
 - (4) service of any writ of summons or other originating process or sealed copy thereof pleadings or other documents may be effected on the Defendant by way of leaving the same at the place of business or abode or the address in Singapore of the Defendant last known and if the last known address of the Defendant shall be a postal box number or other hold mail address then personal service may be effected by posting the same to such address or addresses. Any writ of summons or other originating process or sealed copy thereof pleadings or other documents so left at or sent or despatch to the Defendant shall be deemed to be specifically served on and received by the Defendant.

The Default

5. Pursuant to the Mortgage, the Plaintiffs extended the Housing Loan to the Defendant.
6. In breach of the Mortgage, the Defendant defaulted in the payment of the sums owed in respect of the Housing Loan owing under the Mortgage.
7. In spite of the Plaintiffs' repeated requests, the Defendant has failed, neglected and/or refused to settle the outstanding arrears in monthly instalments in respect of the Housing Loan due under the Mortgage and/or to make any payment satisfactory to the Plaintiffs in reduction of the same.
8. Accordingly, by a letter dated [date] sent by AR Registered & Certificate of Posting to the Defendant, the Plaintiffs through their solicitors, wrote to the Defendant demanding payment of the then outstanding sum of S\$[amount] (as at [date]) due and owing under the Housing Loan within 14 days from the date of receipt thereof, failing which, the Plaintiffs shall at the expiration thereof commence proceedings against him to recover the same. The

Plaintiffs also reserved their rights to sell the Mortgaged Property. A copy of the said letter is annexed hereto and marked "D-4".

9. The Defendant failed to make any arrangements satisfactory to the Plaintiffs to settle the outstanding sum.

The Notice of Re-Entry

10. By a further letter dated [date] sent by AR Registered and Certificate of Posting to the Defendant, the Plaintiffs through their solicitors, gave the Defendant notice of the Plaintiffs' intention to exercise the power of entry into possession of the Mortgaged Property conferred upon them under the Mortgage upon the expiration of the 1 month from the date of service thereof pursuant to Section 75(2) of the Land Titles Act (Cap 157) and duly requested the Defendant to deliver possession of the Mortgaged Property to the Plaintiffs upon the expiration of the said notice. A copy of the said letter is annexed hereto and marked "E-5".

The Occupiers

11. The Plaintiffs believe that the Defendant is himself in occupation of the Mortgaged Property and the Plaintiffs are not aware if the Defendant has let out the Mortgaged Property. Even if he has, the Plaintiffs say that they are not bound by the same as the Defendant have never at any time or at all obtained the Plaintiffs' consent to the creation of the same (if any) which consent of the Plaintiffs is required under the terms of the Mortgaged.
12. The said notice to the Defendant to deliver vacant possession of the Mortgaged Property to the Plaintiffs expired on [date]. Possession has to date still not been given to the Plaintiffs who are accordingly compelled to institute these proceedings for recovery of possession of the same.

Chattels

13. In several instances experienced by the Plaintiffs who had to commence legal proceedings against mortgagors for recovery of possession of properties mortgaged to the Plaintiffs, the Plaintiffs encountered difficulties in obtaining vacant possession from the mortgagors: the mortgagors would be compelled to vacate the property under a Writ of Possession but the Plaintiffs will invariably find chattels and belongings left behind in the premises. It is often difficult to establish whether these have been abandoned by the mortgagors/occupiers.

14. These chattels/belongings left in the premises made it difficult for the Plaintiffs to deal with the mortgaged property and considerable time and effort are often expended to have the mortgagors remove them. Even then, most of such mortgagors are not cooperative.
15. In the circumstances, the Plaintiffs pray that they be at liberty to remove and dispose of any belongings and chattels found in the Mortgaged Property in the event the Defendant fails to do so.

The Mortgage Debt

16. As at [date], the outstanding sum due and payable by the Defendant to the Plaintiffs under the Mortgage together with interest is set out in the particulars hereunder:

Particulars

Housing Loan Account No [number]

Amount of Advance	S\$
-------------------	-----

Principal + Interest Repaid	S\$
-----------------------------	-----

Total instalments & interest in arrears	S\$
---	-----

i.e. x instalments in arrears

Total amount remaining under the Mortgage

in respect of the Housing Loan as at _____ S\$

The amount of a day's interest is [amount] as at [date].

Together with interest on the outstanding principal sum at the rate of [amount] per cent per annum below the Plaintiffs' prevailing [...] Rate with monthly rests from [date] to date of full payment, further interest at the rate of [amount] per cent per annum above the Plaintiffs' prevailing [...] Rate on each overdue monthly instalment as and when the same falls due till the date of full payment and thereafter further interest at the rate of [amount] per cent per annum above the Plaintiffs' prevailing Prime Lending Rate calculated on a daily basis with monthly rests on the outstanding shortfall (if any) till the date of full payment.

17. Particulars of the total outstanding under the Housing Loan specified above are contained in the Plaintiffs' Certificate of Indebtedness, a copy of which is annexed hereto and marked "F-6".
18. The outstanding sums payable by the Defendant under the Mortgage still remain unsatisfied and in the premises, the Plaintiffs crave for an order in terms of the Plaintiffs' application.

P19.69 Certificate pursuant to Ord 83 r 2(5) of ROC

[Tan Kok Quan Partnership]

We hereby certify that the Notice of Appointment to hear Originating Summons dated [date] was served on the Defendant under cover of the Plaintiffs' solicitors' letter dated [date] (a copy whereof is annexed), more than 4 clear days before the return date on [date].

P19.70 Notice of appointment to hear originating summons

[Tan Kok Quan Partnership]

TAKE NOTICE that the Originating Summons filed herein on [date] will be heard by the Registrar on [date] at [time].

You may attend in person or by your Counsel. If you fail to attend, such order will be made as the Court may think just and expedient.

P19.71 Writ of possession

[*Tan Kok Quan Partnership*]

To the Sheriff,

Whereas lately, by an Order of Court bearing the [...], it was *inter alia* ordered that vacant possession be given to the Execution Creditors by the Execution Debtor and all others in occupation over the whole of Lot No. [number] and known as [address] Singapore.

You are directed that you enter the said immovable property and cause the Plaintiffs to have possession of it. And in what manner you have executed this writ make appear to this Court immediately after the execution thereof. And have there then this Writ.

P19.72 Request for writ of execution

[Tan Kok Quan Partnership]

Name of person entitled to execution ("Execution Creditors"):

[name]

Address of Execution Creditors:

[address]

Name of Solicitor for Execution Creditors:

[name of solicitor]

Address of the Solicitor for Execution Creditors:

[address of solicitor]

Hereby request the Registrar to issue a:

Writ of Possession against the Execution Debtor, [name] of [address], Singapore to deliver possession thereon pursuant to the Order of Court obtained by the Execution Creditors and which the Execution Debtor has failed to comply with.

Undertaking and declaration

1. I hereby undertake to pay all your charges. Please appoint a suitable date to execute the Writ of Possession.
2. I hereby declare that as at the date of this request, the property the bailiff is requested to seize under this Writ of Possession is not the subject-matter of a seizure or attachment under any execution or order issued by the State Courts or the High Court.

NAME OF DECLARANT: [name of solicitor]

Proceedings by mortgagor

Prayers:

1. [Account and inquiries] An account of amounts due under the mortgage dated [date] between the Plaintiffs and the Defendants and an order for payment of any net amount due to the Plaintiffs;
2. [Redemption] An order that the property be redeemed and that possession be returned to the Defendant;
3. [Sale] An order that the property be sold and the sale proceeds be applied in satisfaction of the amount due.

SUPPORT OF LAND

PRECEDENTS

P19.73 Claim for damages from and injunction to prevent loss of support

[Donaldson & Burkinshaw]

1. The Plaintiff is the owner an eight storey commercial building at the premises known as [address].
2. The Defendant is owner of a plot of land known as [mukim or lot number], which is adjacent to the Plaintiff's building.
3. On or about [date], the Defendant began excavation works on his plot of land with a view to erecting a ten storey commercial building.
4. The Plaintiff discovered cracks in his commercial building on the external wall and on the surface car park nearest to the defendant's plot of land the day after the Defendant had commenced excavation works.
5. Shortly after, on or about [date], water pipes under the Plaintiff's surface car park burst, interrupting the supply of water to the Plaintiff's commercial building.
6. The Plaintiff's engaged a surveyor, [name of surveyor], on or about [date] to ascertain the cracks were caused by the excavation works on the Defendant's plot of land.
7. The surveyor completed his report on or about [date] and confirmed that the cracks in the Plaintiff's commercial building had been caused by the excavation works on the Defendant's plot of land.
8. The Plaintiff wrote to the Defendant on or about [date] to put the Defendant on notice of the damage caused by the excavation works to the Plaintiff's commercial building, and demanding that the defendant cease and desist the excavation works on his plot of land and to engage a geotechnical engineer to advise on how to continue the works without causing further damage to the Plaintiff's commercial building. The Defendant ignored the Plaintiff's said letter and continued with the excavation works without consulting a geotechnical engineer.

9. Despite numerous written reminders from the Plaintiff and or his solicitors, the Defendant has failed, neglected and/or refused to cease and desist the excavation works on his plot of land or to consult a geotechnical engineer on the proper manner to carry out the excavation works so as not cause further damage to the Plaintiff's commercial building.
10. By reason of the Defendant's excavation works, the Plaintiff has suffered loss and damage.

[Particulars of loss and damage]

AND the Plaintiff claims:

- (1) An injunction to restrain the Defendant, by himself or by his contractors, servants or workmen, or otherwise howsoever, from continuing the said excavation works until a geotechnical engineer has been engaged by the Defendant to advise on how the excavation works may be continued without causing damage to the Plaintiff's commercial building and such advise is followed;
- (2) Damages;
- (3) Interest;
- (4) Costs; and
- (5) Such further or other relief as this Honourable Court deems just.

P19.74 Defence denying removal of support and alleging that sufficient alternative support erected

[Donaldson & Burkinshaw]

1. The Defendant admits that he had carried out excavation works on his plot of land with a view to erecting a ten storey commercial building thereon but makes no admission as to the nature or extent of such excavation and makes no admission as to any subsidence of any land.
2. The Defendant further denies that any excavation of his was carried out without proper or sufficient alternative means of support in place or that such excavation caused any diminution of support of the Plaintiff's land.

[Particulars of alternative means of support erected]

TRESPASS

PRECEDENTS

P19.75 Claim for damages for trespass and damage to land

[Tan Kok Quan Partnership]

1. The Plaintiff is and was at all material times the [owner or tenant] in possession of land known as [address].
2. On or about [date] the Defendant [by XY his servant or agent] wrongfully entered the Plaintiff's said land and broke two gates and damaged a fence whereby the Plaintiff has suffered loss and damage.

Particulars of special damage

[for example, cost of repair]

P19.76 Claim for possession of land and mesne profits against trespasser

[Tan Kok Quan Partnership]

1. The Plaintiff is and was at all material times the owner of and in possession of land known as [address].
2. On or about [date] the Defendant wrongfully entered and took possession of the said land and has thereafter wrongfully remained in possession thereof.
3. By reason of the matters aforesaid the Plaintiff has been deprived of the use and enjoyment of the said land and has thereby suffered damage. A reasonable sum for the use and enjoyment of the said land is S\$[amount] a month.

AND the Plaintiff claims:

- (1) Possession of the said land;
- (2) Mesne profits at the rate of S\$[amount] a month until possession is delivered up;
- (3) Interest;
- (4) Costs; and
- (5) Such further relief as this Honourable Court deems just.

P19.77 Claim for declaration, injunction and damages to restrain defendant crossing plaintiff's land

[Tan Kok Quan Partnership]

1. The Plaintiff is and was at all material times the [owner or tenant] in possession of land known as [address].
2. Since about [date] the Defendant [by himself and his servants or agents] have on divers dates wrongfully entered and crossed the Plaintiff's said land.
3. The Plaintiff has thereby suffered loss and damage.
4. The Defendant threatens and intends unless restrained by this Honourable Court to repeat the acts complained of.

AND the Plaintiff claims:

- (1) A declaration that the Defendant is not entitled to enter or cross the Plaintiff's said land;
- (2) An injunction to restrain the Defendant [whether by himself or by his servants or agents or otherwise howsoever] from entering or crossing the Plaintiff's said land;
- (3) Damages;
- (4) Interest;
- (5) Costs; and
- (6) Such further relief as this Honourable Court deems just.

P19.78 Claim for injunction and damages to restrain defendant licensee remaining on plaintiff's premises after termination of licence

[Tan Kok Quan Partnership]

1. The Plaintiff is and was at all material times the [owner or tenant] in possession of land and premises known as [address].
2. [By an agreement in writing dated [date] and made between the Plaintiff of the one part and the Defendant of the other part the Plaintiff *or* On or about [date] at [address], the Plaintiff orally] granted to the Defendant a licence to use a [...] on the said land on payment of S\$[amount] a week.

Either:

3. It was an express term of the said licence that it may be terminated by either party giving to the other one month's notice in writing

Or:

4. It was an implied term of the said licence that it may be terminated upon reasonable written notice being given. The Defendant avers that one month is reasonable.
5. By a letter to the Defendant dated [date] the Plaintiff terminated the said licence with effect from [date].
6. Thereafter the Defendant wrongfully continued to use the [...] on the said land and wrongfully continues to use the same.
7. By reason of the matters aforesaid the Plaintiff has been deprived of the use of the said land and has thereby suffered loss and damage.

AND the Plaintiff claims:

- (1) A declaration that the licence was terminated with effect from [date];
- (2) Damages for trespass;
- (3) An injunction to restrain the Defendant whether by himself, his servants or agents or otherwise howsoever from using the [...] on the said or entering the said land;
- (4) Interest;
- (5) Costs; and
- (6) Such further relief as this Honourable Court deems just.

P19.79 Claim for mandatory order to remove wall and for damages

[Tan Kok Quan Partnership]

1. The Plaintiff is and was at all material times the [owner or tenant] in possession of land and premises known as [address]. The Defendant is and was at all material times the occupier of adjoining land and premises known as [address].
2. On or about [date] the Defendant his servants or agents wrongfully built a wall on the Plaintiff's said land about [number] feet from the boundary.
3. By reason of the matters aforesaid the Plaintiff has suffered loss and damage.

Particulars of special damage

4. By letter from the Plaintiff's Solicitors dated [date] the Plaintiff by his Solicitors requested the Defendant to remove the said wall but the Defendant has failed or refused to do so.

AND the Plaintiff claims:

- (1) An order that the Defendant do forthwith pull down and remove the said wall;
- (2) Damages;
- (3) Interest;
- (4) Costs; and
- (5) Such further relief as this Honourable Court deems just.

P19.80 Claim for trespass *ab initio*

[Tan Kok Quan Partnership]

1. The Plaintiff is and was at all material times the [owner or tenant] in possession of land and premises known as [address].
2. On [date] the Defendant, who is and was at all material times a police officer, entered the Plaintiff's said land purporting to act under the authority of a warrant for the Plaintiff's arrest.
3. However, after entering the said land, the Defendant wrongfully broke down a door therein and wrongfully remained thereon for [number] hours, which is excessive and unnecessary for the purposes of the said arrest. By reason of the said matters the Defendant became and remained a trespasser on the said land from the time he entered the said land.
4. By reason of the matters aforesaid the Plaintiff has suffered loss and damage.

AND the Plaintiff claims:

- (1) Damages;
- (2) Interest;
- (3) Costs; and
- (4) Such further relief as this Honourable Court deems just.

P19.81 Claim for injunction and damages for trespass

[Tan Rajah & Cheah]

1. The Plaintiff is the tenant and occupier of a commercial property known as [address] ("the Plaintiff's Premises"). The Plaintiff is in the business of [constructing, installing and repairing remote controlled gates].
2. The Defendant is the occupier of a commercial property known as [address] ("the Defendant's Premises") which is located immediately next to the Plaintiff's Premises. The Defendant is in the business of repairing and/or servicing cars.
3. There is a concrete driveway leading from the road to the Plaintiff's Premises and the Defendant's Premises. The driveway is divided into 2 halves by a painted line. The Plaintiff and the Defendant are entitled to the occupation and use of their respective half of the said driveway.
4. Since around [date], the Defendant has on many occasions trespassed on the Plaintiff's driveway by parking cars under repair/service on the said driveway.
5. The cars parked on the Plaintiff's driveway impede access to the Plaintiff's Premises and take up space which the Plaintiff requires for his business.
6. By reason of the matters referred to in paragraphs 4 and 5 hereinabove, the Plaintiff has suffered loss and damage.

Particulars

[Full particulars, for example, the Plaintiff cannot take delivery of materials, etc.]

7. Despite repeated requests by the Plaintiff not to park cars on the Plaintiff's driveway, the Defendant has to date ignored the same and continues to do so.
8. The Defendant threatens and intends unless restrained by the Court to continue parking cars on the Plaintiff's driveway.

AND the Plaintiff claims:

- (1) An injunction restraining the Defendant whether by himself or by his servants or agents from entering, using or parking any motor vehicle on the driveway in front of [address];
- (2) Damages for trespass;
- (3) Interest;

- (4) Costs; and
- (5) Such further or other relief as this Honourable Court may deem just and equitable.

P19.82 Defence: general denial

[Tan Kok Quan Partnership]

1. The Defendant denies that the Plaintiff is and was at any material time [in possession of *or* the owner of *or* entitled to the alleged or any reversion in] the land or premises referred to in the Statement of Claim as alleged or at all.
2. The Defendant denies that he entered the said land as alleged or at all or that he damaged [...]. Each and every allegation contained in paragraph [number] of the Statement of Claim is denied.
3. No admission is made as to the alleged or any loss or damage.

P19.83 Defence of setting up licence

[Tan Kok Quan Partnership]

1. Paragraph [number] of the Statement of Claim is admitted.
2. [By an agreement in writing dated [date] *or* By an oral agreement made between the parties at [address] on or about [date] in consideration of the payment of S\$[amount] a month, the Plaintiff granted to the Defendant a licence to [use the Plaintiff's land for [use]].
3. Pursuant to the said agreement, the Defendant has been paying the Plaintiff the said sum of S\$[amount] a month.
4. The Defendant admits that he did the acts complained of in paragraph [number] of the Statement of Claim but denies that any of the same were wrongful. The Defendant avers that the said acts were within the scope of the aforesaid licence granted by the Defendant to the Plaintiff.
5. No admission is made as to the alleged or any loss or damage.

P19.84 Defence: entry to recover goods taken by plaintiff

[Tan Kok Quan Partnership]

1. Paragraph [number] of the Statement of Claim is admitted.
2. The Defendant admits that on the date mentioned in the Statement of Claim he entered the Plaintiff's land and removed goods. The Defendant is and was at all material times the owner of the said goods. On or about [date], the Plaintiff wrongfully took the said goods to his said land and thereafter wrongfully detained the same. The Defendant entered the Plaintiff's said land to recover the said goods and not otherwise and did no unnecessary damage in recovering the same.
3. No admission is made as to the alleged or any loss or damage.

P19.85 Defence: return of plaintiff's goods wrongfully left on defendant's land

[Tan Kok Quan Partnership]

1. Paragraph [number] of the Statement of Claim is admitted.
2. The Defendant admits that on the date mentioned in the Statement of Claim he entered the Plaintiff's land therein mentioned and left thereon a [bicycle]. The said [bicycle] is and was at all material times the Plaintiff's property and on or about [date] the Plaintiff wrongfully deposited the said [bicycle] on the Defendant's land at [address]. The Defendant entered the Plaintiff's said land to return the said [bicycle] and not otherwise and did no damage in returning the same. Save as aforesaid, paragraph [number] of the Statement of Claim is denied.
3. No admission is made as to the alleged or any loss or damage.

P19.86 Defence to claim for trespass (lease/licence to occupy)

[Tan Rajah & Cheah]

1. Save that the Defendant is the owner of the Property, paragraph [number] of the Statement of Claim is denied.
2. For the reasons referred to below, the Plaintiff is not entitled to possession of the Property.
3. The Defendant denies paragraphs [numbers] of the Statement of Claim.
4. By an oral agreement entered into between the Plaintiff and the Defendant on or about [date], it was agreed that the Defendant could occupy the Property for 12 months commencing [date] for a monthly rent of S\$[amount] payable on the 1st day of each calendar month.
5. Pursuant to the said tenancy created, the Defendant entered the Property on [date] and has made payment of the said sum of S\$[amount] on the 1st day of each calendar month.
6. The tenancy has not expired and/or come to an end.
7. Alternatively, the said oral agreement referred to in paragraph 4 hereinabove created a licence between the Plaintiff and the Defendant which licence has not come to an end.
8. By reason of the aforesaid, the Defendant was to and remains entitled to enter and occupy the Property.
9. The Plaintiff is not entitled to possession of the Property and to damages as alleged or at all.
10. Save as hereinbefore expressly admitted each and every allegation contained in the Statement of Claim is denied by the Defendants as though the same were set out herein and specifically traversed.

CHAPTER 20

MISREPRESENTATION

PRECEDENTS

- P20.01** Claim for rescission and damages for fraud, misrepresentation and breach of warranty
- P20.02** Claim for rescission of contract and damages for fraudulent misrepresentation or misrepresentation under the Misrepresentation Act
- P20.03** Claim for fraudulent misrepresentation as to credit
- P20.04** Defence denying representations
- P20.05** Defence denying intention to induce
- P20.06** Defence denying that plaintiff induced by representation
- P20.07** Defence denying falsity of representation
- P20.08** Defence asserting honest belief in representation
- P20.09** Defence asserting reasonable ground of belief under s 2(1) of Misrepresentation Act
- P20.10** Defence denying damage (alternative 1)
- P20.11** Defence denying damage (alternative 2)
- P20.12** Defence of exclusion of liability for misrepresentation
- P20.13** Defence of contributory negligence
- P20.14** Defence and counterclaim alleging that contract procured by fraud and claiming rescission and damages
- P20.15** Reply to defence of fraud to claim on a contract: remedy of rescission lost through delay/affirmation

CHAPTER 20

MISREPRESENTATION

PRECEDENTS

P20.01 Claim for rescission and damages for fraud, misrepresentation and breach of warranty

[Donaldson & Burkinshaw]

1. By a written contract dated [date], the Plaintiff agreed to purchase and the Defendant agreed to sell 200 units of ABC print cartridge at the price of S\$[amount] (“the Contract”).
2. The Defendant represented to the Plaintiff [and in consideration of his doing so warranted] that:
 - (1) The 200 units of ABC print cartridges were new goods; and
 - (2) The 200 units of ABC print cartridges were original goods and were packed at ABC’s factory.
3. The said representations [and warranties] were made by and are to be inferred from:
 - (1) A letter dated [date] sent by the Defendant to the Plaintiff; and
 - (2) Oral statements made by the Defendant [or the Defendant’s agent Mr XYZ], to the Plaintiff on [date].
4. In reliance on the truth of the representations [and/or warranties] and induced thereby, the Plaintiff paid to the Defendant the said price of S\$[amount] on [date].
5. After receipt of the 200 units of ABC print cartridges, the Plaintiff discovered that each of the representations was untrue [and the said warranties broken] in that:
 - (1) Each and every one of the said 200 units of ABC print cartridges was a used cartridge that had been refilled with ink; and
 - (2) Each and every one of the said 200 units of ABC print cartridges was not an original good in that it was refilled by a third party and packed into paper carton boxes affixed with the registered trade mark ABC, without the authority of the trade mark proprietor.
6. The Defendant made the said representations fraudulently and either well knowing that they were false and untrue or recklessly not caring whether they were true or false.

7. Further or in the alternative, if the said representations were not made fraudulently, the Plaintiff will rely upon the provisions of Section 2 of the Misrepresentation Act (Cap 390) entitling him in the circumstances to the relief claimed therein.
8. Upon discovering that the said representations were untrue, the Plaintiff by his letter to the Defendant dated [date] rescinded the Contract. In the premises, the consideration for the payment of the said sum of S\$[amount] has wholly failed, and the said sum of S\$[amount] became repayable to the Plaintiff by the Defendant.
9. By reason of the matters aforesaid, the said 200 units of ABC print cartridges are worthless or worth far less than the said sum of S\$[amount] and the Plaintiff has incurred freight and storage expenses, and the Plaintiff has thereby suffered loss and damage.

Particulars

[Full details of the nature and extent of the loss and damage claimed]

AND the Plaintiff claims:

- (1) A declaration that the Contract has been validly rescinded;
- (2) Alternatively, rescission of the Contract;
- (3) Return of the said sum of S\$[amount];
- (4) Damages;
- (5) Alternatively, damages for misrepresentation pursuant to Section 2 of the Misrepresentation Act (Cap 390);
- (6) Interest;
- (7) Costs; and
- (8) Such further or other relief as this Honourable Court deems just.

P20.02 Claim for rescission of contract and damages for fraudulent misrepresentation or misrepresentation under the Misrepresentation Act

[Donaldson & Burkinshaw]

1. The Defendant was at all material times the owner of a furniture-selling business, which he carried on from freehold premises at [address] (“the Premises”).
2. On or about [date], the Defendant advertised for sale the Premises together with the fixtures and fittings, the goodwill of his furniture-selling business, and the stock in hand at the date of the sale (collectively “the Business”).
3. On [date], the Plaintiff entered into negotiations with the defendant, with a view to purchasing the Premises and the Business.
4. By a contract in writing dated [date] (“the Contract”), the Plaintiff agreed to purchase from the Defendant and the Defendant agreed to sell to the Plaintiff the Premises and the Business, for the total sum of S\$[amount], of which the sum of S\$[amount] was attributed as the value of the Business.
5. The Contract was completed on [date] when the Plaintiff paid to the Defendant the said sum of S\$[amount].
6. During their negotiations, in order to induce the Plaintiff to enter into the Contract, the Defendant made the following representations to the Plaintiff:
 - (1) in a document entitled “Property and Business for sale at [address]” compiled by the Defendant and provided to the Plaintiff by the Defendant’s selling agents, XY, on or about [date], that the turnover of the Business for the year ending the 31st day of December [year] was S\$[amount];
 - (2) in a conversation between the Defendant [*or* the Defendant’s agent, XY] and the Plaintiff at the Premises on or about [date], that the Business had made a net profit of S\$[amount] in the year ending the 31st day of December [year]; and
 - (3) in the same conversation, that that net profit of S\$[amount] represented a 20 per cent increase in net profit from that of the previous year.
7. Induced by and acting in reliance upon each of the representations, the Plaintiff entered into the Contract and paid the sum of S\$[amount] to the Defendant.

8. In fact each of the representations was false in that:
 - (1) the turnover of the Business for the year ending the 31st day of December [year] was not S\$[amount], but was S\$[amount];
 - (2) the Business had not made a net profit of S\$[amount] in the year ending the 31st day of December [year], but had instead made a loss of S\$[amount];
 - (3) the net profit for the year ending the 31st day of December [year] did not represent a 20 per cent increase in net profit from that of the previous year, but a decrease of [amount] per cent.
9. The Defendant made the representations fraudulently in that he knew they were false or was reckless, not caring whether they were true or false.
10. As early as [date], the Defendant had in his possession the audited accounts relating to the Business prepared by [name of auditors], Certified Public Accountants, in respect of the year ending the 31st day of December [year]. The said audited accounts showed that:
 - (1) the turnover of the Business was S\$[amount];
 - (2) the Business made a loss of S\$[amount];
 - (3) there was a [amount] per cent decrease in net profit from that of the previous year.
11. Further, the Defendant was well aware of the losses sustained by the Business as he had stopped receiving income therefrom since [date].
12. Further or in the alternative, if, which is not admitted, each or any of the representations was not made fraudulently, the Plaintiff will rely upon the provisions of Section 2 of the Misrepresentation Act (Cap 390) entitling him in the circumstances to the relief claimed.
13. The Plaintiff discovered that each of the representations was false when [details of how the misrepresentations were discovered]. As soon as he discovered the true facts, the plaintiff, by his letter to the defendant dated [date] rescinded the Contract.
14. As a result of the matters set out above, the Plaintiff has suffered loss and damage.

Particulars

[Full details of the nature and extent of the loss and damage claimed]

AND the Plaintiff claims:

- (1) A declaration that the Contract has been validly rescinded;
- (2) Alternatively, rescission of the Contract;
- (3) Return of the sum S\$[amount];
- (4) Damages;
- (5) Alternatively, damages for misrepresentation pursuant to Section 2 of the Misrepresentation Act (Cap 390);
- (6) Interest;
- (7) Costs; and
- (8) Such further or other relief as this Honourable Court deems just.

P20.03 Claim for fraudulent misrepresentation as to credit

[Donaldson & Burkinshaw]

1. The Plaintiff is a bank incorporated in Singapore and having its registered office address at [address]. The Defendant is a bank incorporated in Singapore and having its registered office address at [address].
2. On or about [date], AB (“the Borrower”) applied to the Plaintiff for a loan facility of S\$20 million in order to construct a 5-storey condominium at [address] pursuant to a contract dated [date] (“the Project”) entered into with CD (“the Purchaser”), which banked with the Defendant at the material time. The contract sum payable by the Purchaser to the Borrower for the Project was S\$[amount].
3. On or about [date], in order to decide whether to grant the loan facility to the Borrower, Mr XY, a manager at the Plaintiff’s [name] branch, telephoned the Defendant’s [name] branch to request a credit reference in respect of the Purchaser. Mr XY spoke to Ms VW, the relevant account manager at the defendant’s said branch, and asked whether the Purchaser was good for S\$[amount].
4. In order to induce the Plaintiff to grant the loan facility to the Borrower, the Defendant, by a letter signed by Ms VW faxed to the Plaintiff’s Mr XY on [date], represented to the Plaintiff that the Purchaser was profitable with an annual turnover well in excess of S\$[amount] and was therefore a good risk in respect of the said sum of S\$[amount].
5. In fact, the representation was false because the Purchaser was not good for the sum of S\$[amount] but was insolvent or almost insolvent at that time.
6. In truth and in fact, the Defendant well knew that the representations were false when the said letter was written as the Purchaser had, at the time, already been in default of its mortgage payments to the Defendant for six months and the Defendant’s credit control department had already instructed solicitors to commence proceedings against the Purchaser.
7. Induced by and acting in reliance on the Defendant’s representation, the Plaintiff agreed to loan to the Borrower S\$[amount]. The loan facility was drawn down by the Borrower on [date].
8. The Borrower used the S\$[amount] to carry out works on the Project pursuant to the contract with the Purchaser and completed works thereon on or about [date].

9. The Purchaser has to-date failed, neglected and/or refused to pay to the Borrower the contract sum of S\$[amount] due under the Project, or any part thereof. In consequence, the Borrower has defaulted on the repayment of principal and interest due under the loan facility. The sum of S\$[amount] remains outstanding and unpaid by the Borrower to the Plaintiff.
10. As a result of the matters set out above, the Plaintiff has suffered loss and damage.

Particulars

[Full details of the nature and extent of the loss and damage claimed]

AND the Plaintiff claims:

- (1) Damages;
- (2) Interest;
- (3) Costs; and
- (4) Such further or other relief as this Honourable Court deems just.

P20.04 Defence denying representations

[KhattarWong LLP]

The Defendant denies that he, or anyone on his behalf, made the representation alleged or made any representation in the nature of or equivalent to the representation alleged, to the Plaintiff as alleged in paragraph [number] of the Statement of Claim or at all.

P20.05 Defence denying intention to induce

[Donaldson & Burkinshaw]

[If, which is denied, the Defendant made the alleged or any representation to the Plaintiff,] the Defendant denies that the alleged representation [or any representation in the nature of or equivalent to the representation alleged] was made with any intention of inducing the Plaintiff to enter into the said contract [*or to grant the said loan, or to purchase the said property, or as the case may be*].

P20.06 Defence denying that plaintiff induced by representation

[Donaldson & Burkinshaw]

[If, which is denied, the Defendant made the alleged or any representation to the Plaintiff,] the Defendant denies that the Plaintiff was induced by the alleged representation [or any other representation made by the Defendant] to enter into the said Contract [*or to grant the said loan, or to purchase the said property, or as the case may be*]. The Plaintiff had sought independent legal advice and carried out his own due diligence checks [*or engaged a surveyor to assess the value of the property, or commissioned a credit report, or as the case may be*] before entering into the said Contract. The Plaintiff entered into the said Contract in reliance upon such independent legal advice and upon his own inquiries, and not upon any statement or representations which may have been by the Defendant.

P20.07 Defence denying falsity of representation

[Donaldson & Burkinshaw]

The Defendant admits that he had made the representation referred to in paragraph [number] of the Statement of Claim but denies that said representation was false. The said representation was true in substance and in fact. The turnover of the Business for the year ending the 31st day of December [year] was S\$[amount] as represented.

P20.08 Defence asserting honest belief in representation

[Donaldson & Burkinshaw]

The Defendant admits that he made the representation referred to in paragraph [number] of the Statement of Claim but denies that he made such representation fraudulently or with any intention to defraud or deceive. At the time that he made the said representation, the Defendant honestly believed the same to be true *[or the Defendant had no knowledge of the facts alleged in paragraph [number] of the Statement of Claim and honestly believed his representation to be true]*.

P20.09 Defence asserting reasonable ground of belief under s 2(1) of Misrepresentation Act

[Donaldson & Burkinshaw]

1. The Defendant admits that he made the representation referred to in paragraph [number] of the Statement of Claim but denies that he is liable to the Plaintiff in respect of the said representations under Section 2 of the Misrepresentation Act (Cap 390). At the time that he made the said representation, the Defendant had reasonable ground to believe and he did believe up to the time the Contract was entered into that the representation was true.

Particulars

[Particulars of the reasonable grounds relied on]

2. For the reasons stated above, the Defendant avers that he is not liable by virtue of Section 2(1) of the Misrepresentation Act (Cap 390).

P20.10 Defence denying damage (alternative 1)

[Donaldson & Burkinshaw]

1. [If, which is denied, the Defendant made the alleged or any representation to the Plaintiff,] the Defendant denies that Plaintiff suffered the damage alleged at paragraph [number] of the Statement of Claim or any damage at all.
2. If, which is denied, the Plaintiff suffered the alleged damage, the Defendant denies that such damage was caused by or arose from the alleged representation [or any representation made by the Defendant].
3. [It is further denied that the Plaintiff had taken all reasonable steps to mitigate his alleged loss. On or about [date] the Plaintiff received an offer to purchase the Premises and the Business for the sum of S\$[amount], which the Plaintiff should have accepted, but did not.]

P20.11 Defence denying damage (alternative 2)

[KhattarWong LLP]

1. The Defendant denies that he is liable to the Plaintiff for damages, and puts the Plaintiff to strict proof that the alleged damage or loss was in fact incurred. If (which is not admitted), the Plaintiff did suffer any damage or loss, the said damage or loss was not the result of any alleged misrepresentation by the Defendant.
2. Further and in the alternative, if, which is denied, the alleged misrepresentations had caused any damage or loss to the Plaintiff, the Defendant avers that the damage or loss suffered by the Plaintiff was not reasonably foreseeable in all the circumstances and is too remote and the Defendant is therefore not liable for the same.
3. Further and in the alternative, without prejudice to the Defendant's denial that the Plaintiff is not entitled to damages, the Defendant avers that the Plaintiff had failed to take reasonable steps to mitigate his damage or loss in that [set out particulars of failure to mitigate].

P20.12 Defence of exclusion of liability for misrepresentation

[KhattarWong LLP]

If, which is denied, the Defendant did make any and/or all of the representations listed in paragraph [number] of the Statement of Claim, the Defendant avers that it is not liable to the Plaintiff under the provisions of the following clause in the Contract which excludes the Defendant from any liability to the Plaintiff: [exclusion clause].¹

1 Under s 3 of MA, whether an exclusion clause excluding liability for misrepresentation is valid will depend on whether the clause satisfies the requirement of reasonableness as stated in s 11(1) of the Unfair Contract Terms Act (Cap 396) (UCTA). It is also for the party claiming that the clause satisfies the requirement of reasonableness to show that it does.

P20.13 Defence of contributory negligence²

[KhattarWong LLP]

The Defendant avers that the Plaintiff himself was negligent in that [set out particulars of negligence]. The Defendant avers that the Plaintiff's lack of care as aforesaid caused and/or contributed to the Plaintiff's loss and/or damage if any.

2 This defence is only available in a situation of negligent misrepresentation and not fraudulent misrepresentation. However, it is suggested that if the level of contributory negligence is high, this strikes right at the chord of the requirement of inducement for a misrepresentation action to succeed and may, therefore, be pleaded in a manner such as to deny inducement instead of to aver contributory negligence.

P20.14 Defence and counterclaim alleging that contract procured by fraud and claiming rescission and damages

[Donaldson & Burkinshaw]

1. The Plaintiff's claim is denied. In order to induce the Defendant to enter into the alleged Contract [*or to purchase the said property, or to grant the said loan, or as the case may be*], the Plaintiff, on [date], represented to the Defendant in writing that [representations alleged to have been made].
2. Acting on the faith and truth of the said representations and induced thereby, the Defendant entered into the alleged Contract [*or as the case may be*].
3. In truth and in fact, each of the said representations were false and untrue in that [state exactly how each representation is false and untrue].
4. The Plaintiff made the said representation fraudulently well knowing the same to be false and untrue, or recklessly and not caring whether they were true or false.
5. As soon as he discovered the true facts, the Defendant, by his letter to the Plaintiff dated [date] rescinded the said Contract.
6. For the reasons stated above, the Plaintiff is not entitled to rely on or enforce the said Contract.
7. Save as hereinbefore expressly admitted, the defendant denies each and every allegation complained of in the Statement of Claim as though the same were set out herein and traversed seriatim.

Counterclaim

8. The Defendant repeats his defence.
9. For the reasons stated above, the Defendant has suffered loss and damage.

Particulars

[Full details of the nature and extent of the loss and damage claimed]

10. Further or in the alternative, if, which is not admitted, each or any of the representations was not made fraudulently, the Defendant will rely upon the provisions of Section 2 of the Misrepresentation Act (Cap 390) entitling him in the circumstances to the relief claimed.

AND the Defendant counterclaims:

- (1) A declaration that the said contract has been validly rescinded;
- (2) Alternatively, rescission of the said contract;
- (3) Damages;
- (4) Alternatively, damages for misrepresentation pursuant to Section 2 of the Misrepresentation Act (Cap 390);
- (5) Interest;
- (6) Costs; and
- (7) Such further or other relief as this Honourable Court deems just.

**P20.15 Reply to defence of fraud to claim on a contract:
remedy of rescission lost through delay/affirmation**

[Donaldson & Burkinshaw]

In a telephone conversation on [date], [more than 12 months] prior to the date of the Defendant's letter purporting to rescind the Contract, the Defendant told the Plaintiff that he had discovered the matters complained of and stated that, notwithstanding such discovery, he did not intend to seek rescission of the Contract. As the Defendant had affirmed the contract, it is denied that the Defendant was entitled to rescind or has validly rescinded the contract [*or* In the premises, the Defendant has lost the right to rescind through delay].

CHAPTER 21

MONEY AND RESTITUTION

PRECEDENTS

- P21.01** Claim for the recovery of a payment made under mistake
- P21.02** Claim for the recovery of a payment made pursuant to a contract which has been discharged as a result of a total failure of consideration
- P21.03** Claim for the recovery of a payment made pursuant to a contract which has been discharged by frustration
- P21.04** Claim for recovery of a payment made as a result of undue influence and/or unconscionability
- P21.05** Claim for recovery of a payment made pursuant to a contract which is void on the grounds of illegality and/or public policy
- P21.06** Claim for contribution by one guarantor against another
- P21.07** Claim for recoupment pursuant to a counter-indemnity
- P21.08** Claim for monies had and received
- P21.09** Claim for monies had and received arising from the tort of conversion
- P21.10** Claim for monies received through a secret or unauthorised profit
- P21.11** Defence of estoppel
- P21.12** Defence of change of position
- P21.13** Defence under s 2(2) of Frustrated Contracts Act
- P21.14** Defence under the Limitation Act (Cap 163)
- P21.15** Defence to claim of unjust enrichment on the ground that the Plaintiff intended the Defendant to have the benefit of the enrichment

CHAPTER 21

MONEY AND RESTITUTION

PRECEDENTS

P21.01 Claim for the recovery of a payment made under mistake¹

[KhattarWong LLP]

1. The Plaintiff's claim against the Defendant is for the sum of S\$[amount] paid by the Plaintiff to the Defendant on or about [date].
2. The said sum of S\$[amount]² was paid by the Plaintiff to the Defendant as a result of a mistake,³ the particulars of which are as follows:

[Particulars of the mistake]
3. Despite repeated requests by the Plaintiff for repayment of the said sum of S\$[amount], the Defendant has to date failed, refused and/or neglected to pay the said sum of [amount] or any part thereof.

AND the Plaintiff claims:

- (1) The aforesaid sum of S\$[amount];
- (2) Interest;

1 In the past, in order for a payment made under a mistake to be recoverable, such a payment had to firstly be made under a mistake of fact, not law, and secondly, the mistake of fact had to be a mistake as to a liability to make the payment in question. Both of these requirements have since been abrogated by case law developments. In particular, see the Court of Appeal decision of *Management Corporation Strata Title Plan No 473 v De Beers Jewellery Pte Ltd* [2002] 1 SLR(R) 418 which abrogated the rule in Singapore that payments made under a mistake of law are not recoverable.

2 In appropriate cases, the court may impose a remedial constructive trust on monies paid under a mistake. In order for a remedial constructive trust to arise, the payee's conscience must be affected and the monies must still remain with him. If the payee only learns of the mistake after the monies have been mixed with other funds or have been dissipated, no constructive trust can arise because there would no longer be an identifiable fund for the trust to bite. (See the Court of Appeal decision of *Ching Mun Fong (executrix of the estate of Tan Geok Tee, deceased) v Liu Cho Chit* [2001] 1 SLR(R) 856 at [36] and the High Court decision of *Wee Chaw Sek Anna v Ng Li-Ann Genevieve* [2013] 3 SLR 801 at [119] and [120].)

3 It should be noted that the mistake whether of fact or law that resulted in the payment must not be a mistake as to the future. See *Info-communications Development Authority of Singapore v Singapore Telecommunications Authority Ltd* [2002] 2 SLR(R) 136.

- (3) Costs; and
- (4) Such further and/or other relief as this Honourable Court may deem fit.

P21.02 Claim for the recovery of a payment made pursuant to a contract which has been discharged as a result of a total⁴ failure of consideration

[KhattarWong LLP]

1. At all material times, the Plaintiffs were in the business of operating a bookstore in a shopping complex while the Defendants were in the business of supplying children's story books.
2. By a contract in writing dated [date] ("the Contract"), the Plaintiffs and the Defendants agreed as follows:
 - (1) The Plaintiffs were to pay the Defendants the sum of S\$[amount] by [date] in consideration of the Defendants supplying the Plaintiffs with a shipment of 500 children's story books entitled [title].
 - (2) The Defendants were to deliver the 500 children's story books entitled [title] to the Plaintiffs' bookstore by [date].
3. Pursuant to the Contract, the Plaintiffs paid the sum of S\$[amount] to the Defendants on [date].
4. By a letter dated [date] from the Defendants to the Plaintiffs, the Defendants informed the Plaintiffs that they would be unable to deliver the 500 children's story books entitled [title] to the Plaintiffs

4 The traditional position is that in order for restitution to be available as a remedy, the failure of consideration must be total. (See the House of Lords decision of *Fibrosa Spolka Akcyjna v Fairbairn Lawson Combe Barbour Ltd* [1943] AC 32.) This means there must be a *complete* failure on the part of the payee or the promisor to carry out the promise. The party relying on a total failure of consideration must not have received any part of the benefit bargained for under the contract. (See *Rover International Ltd v Cannon Film Sales Ltd* (No 3) [1989] 1 WLR 912 at 923G). That total failure of consideration is also required under Singapore law is affirmed in the Court of Appeal decision of *Ooi Ching Ling Shirley v Just Gems Inc* (No 2) [2003] 1 SLR(R) 14 at [43] and [44]. (See also the High Court decision of *Max Media FZ LLC v Nimbus Media Pte Ltd* [2010] 2 SLR 677 where it was held at [24] that "where money has been paid out under a contract that is or becomes ineffective, the payer may recover the money if the consideration for the payment has totally failed; but this right of recovery only arises where there is *no* express or implied term in the contract making the payment irrecoverable...") There has, however, been academic opinion suggesting that a partial failure of consideration should also be open to the remedy of restitution. (See Burrows, *The Law of Restitution* (3rd Ed) (Oxford University Press, 2011) at pp 324-325 & 330-334). In particular, where the consideration is clearly severable, partial failure has been held to entitle a plaintiff to recovery of part of the monies paid. (See *Goss v Chilcott* [1996] AC 788 at 797H-798E.) The High Court has affirmed the principle that *partial* failure of consideration would normally bar an unjust enrichment claim, unless the contract is divisible and that the court will not divide or apportion unless it is clear that the parties intended it to be so. (See *Max Media FX LLC v Nimbus Media Pte Ltd* [2010] 2 SLR 677 at [24].)

as the Defendants' printers have informed them that they will no longer be printing any copies of [title].

5. In the premises, the consideration for the Contract had wholly failed and the Plaintiffs are therefore entitled to a return of the sum of S\$[amount] paid to the Defendants on [date].

AND the Plaintiffs claim:

- (1) The sum of S\$[amount];
- (2) Interest;
- (3) Costs; and
- (4) Such further and/or other relief as this Honourable Court may deem fit.

P21.03 Claim for the recovery of a payment made pursuant to a contract which has been discharged by frustration⁵

[KhattarWong LLP]

1. At all material times, the Plaintiffs were in the business of operating a bookstore in a shopping complex while the Defendants were in the business of supplying children's story books.
2. By a contract in writing dated [date] ("the Contract"), the Plaintiffs and the Defendants agreed as follows:
 - (1) The Plaintiffs were to pay the Defendants the sum of S\$[amount] by [date] in consideration of the Defendants supplying the Plaintiffs with a shipment of 500 children's story books entitled [title] to be written by renowned author [author's name] and to be due for release in [month and year].
 - (2) The Defendants were to deliver the 500 children's story books entitled [title] to the Plaintiffs' bookstore by [date].
3. Pursuant to the Contract, the Plaintiffs paid the sum of S\$[amount] to the Defendants on [date].
4. Unfortunately, [author's name] was taken ill shortly after [date] and had subsequently passed away in [month and year].
5. By reason of the matters aforesaid, the Contract became impossible to perform and was therefore accordingly discharged by frustration.
6. In the premises, pursuant to Section 2(2) of the Frustrated Contracts Act (Cap 115),⁶ the Plaintiffs are entitled to recover the sum of S\$[amount] which they have paid to the Defendants on [date] pursuant to the Contract.

5 Under the old position at common law, any loss arising from a contract discharged by frustration would lie where it had fallen. This means that if monies which were payable before a contract was discharged by frustration were so paid, these monies are not recoverable after the contract has been discharged by frustration. Such a position had led to injustice as demonstrated in the English decision of *Chandler v Webster* [1904] 1 KB 493. Such an injustice has largely been diminished by the House of Lords decision of *Fibrosa Spolka Akcyjna v Fairbairn Lawson Combe Barbour Ltd* [1943] AC 32 where recovery of payments made under a contract discharged by frustration is permitted provided there has been a total failure of consideration.

6 Whilst the House of Lords decision of *Fibrosa Spolka Akcyjna v Fairbairn Lawson Combe Barbour Ltd* [1943] AC 32 mitigated the harshness of the old common law position of letting the loss lie where it had fallen in the case of a frustrated contract, it did not address the position of a contract which had been discharged solely by frustration but only considered the position where the contract was discharged by frustration and the consideration thereof had wholly failed. Section 2(2) of the Frustrated Contracts Act (Cap 115) (FCA) has, however, dealt with the lacuna left by the *Fibrosa* decision.

AND the Plaintiffs claim:

- (1) The sum of S\$[amount];
- (2) Interest;
- (3) Costs; and
- (4) Such further and/or other relief as this Honourable Court may deem fit.

P21.04 Claim for recovery of a payment made as a result of undue influence⁷ and/or unconscionability⁸

[KhattarWong LLP]

1. The Plaintiffs are the executors of the estate of one [name of deceased], deceased and the Defendant is the sister of the deceased.
2. In or around [date], the deceased was injured in an accident and had as a result of the same become paralysed and bedridden. The Defendant then became involved in the sole management of all the financial affairs of the deceased from then on and was in full control of the deceased's will and mind, the particulars of which are as follows:

[Particulars of how the Defendant assumed full control over the will and mind of the deceased.]

3. In or around [date], which was about 3 months before the deceased passed away, the Defendant persuaded the deceased to transfer the sum of S\$[amount] which was then in the deceased's bank account to the Defendant's bank account.

7 A presumption of undue influence may be raised against a party who stands in the position of a fiduciary to another party. (See *Cheong Kim Hock v Lin Securities (Pte)* [1992] 1 SLR(R) 497 at [27]). In *Phang, The Law of Contract in Singapore* (Academy Publishing, 2012) at p 827, [12.096], the learned author opined that "[s]ome relationships have already been established in law whereas other relationships have to be established based on the particular facts of the case concerned". Undue influence is the unconscientious use of one's power or authority over another to acquire a benefit or to achieve a purpose (see *Lim Geok Hian v Lim Guan Chin* [1993] 3 SLR(R) 183 at [36]). Undue influence is concerned with the impairment of the plaintiff's will as well as the defendant's improper or unconscientious conduct. (See *Phang, The Law of Contract in Singapore* (Academy Publishing, 2012) at p 830, [12.102]). There are two categories of undue influence, namely presumed or actual undue influence. In the case of presumed undue influence, the plaintiff has to show: (a) the existence of a particular relationship which enabled one party to it to influence the decisions of the other; (b) that the resulting transaction was manifestly disadvantageous to the person subject to the influence. Once the plaintiff manages to establish the above elements, the burden shifts to the defendant to show that no undue influence had been exercised. In the case of actual undue influence, the plaintiff must show: (a) that the other party to the transaction (or someone who induced the transaction for his own benefit) had the capacity to influence the complainant; (b) that the influence is exercised; (c) that its exercise was undue; and (d) that its exercise brought about the transaction. See the Singapore High Court decision of *Rajabali Jumabhoy & Ors v Ameerali R Jumabhoy & Ors* [1997] 2 SLR(R) 296.

8 For a claim based on fault, recovery of the enrichment is on the basis that 'the recipient's conscience has been affected and he should be required to account for the loss suffered by the claimant or the gain that he has received from the commission of his wrong' (See *Wee Chiaw Sek Anna v Ng Li-Ann Genevieve* (sole executrix of the estate of Ng Hock Seng, deceased) & Anor) [2013] 3 SLR 801 at [108]). The notion of unconscionability involves unfairness. While all unconscionable conduct will contain some degree of unfairness, not all unfair conduct is unconscionable. (See *Eltraco International Pte Ltd v CGH Development Pte Ltd* [2000] 3 SLR(R) 198 at [30].)

4. The said transfer of S\$[amount] was procured by the Defendant from the deceased as a result of the undue influence⁹ and/or unconscionability of the Defendant, the particulars of which are as follows:

[Particulars of the undue influence and/or unconscionability]

5. In the premises, the Plaintiffs, as executors of the estate of the deceased, are entitled to recover the sum of S\$[amount] which was paid by the deceased to the Defendant.

AND the Plaintiffs claim:

- (1) The sum of S\$[2 million];
- (2) Interest;
- (3) Costs; and
- (4) Such further and/or other relief as this Honourable Court may deem fit.

⁹ The general legal position in Singapore is that in the case of presumed undue influence, there is a requirement of 'manifest disadvantage' which needs to be established. However, commentators have argued that such a requirement is not necessary and not least because there is at least one Singapore High Court case which suggests that the requirement of 'manifest disadvantage' is not necessary for both actual and presumed undue influence. (See Phang, *The Law of Contract in Singapore* (Academy Publishing, 2012) at pp 856-858, [12.162]-[12.167] and the Singapore High Court decision of *Khushvinder Singh Chopra v Mookka Pillai Rajagopal & Ors* [1996] 1 SLR(R) 367.)

P21.05 Claim for recovery of a payment made pursuant to a contract which is void on the grounds of illegality¹⁰ and/or public policy

[KhattarWong LLP]

1. At all material times, the Plaintiffs were a company in the business of finding marriage partners for their customers.
2. At all material times, the Defendants were in the business of providing a myriad of insurance policies to their customers.
3. In or around [date], the Defendants invited the Plaintiffs to subscribe for a new insurance policy whereby the Defendants would agree to insure the Plaintiffs in a situation where the Plaintiffs fail to fulfil their warranty to a customer that he/she would be married with a partner found by the Plaintiffs within 2 years of signing a contract with the Plaintiffs (the “Policy”).
4. At the same time, the Defendants had also assured the Plaintiffs that such an insurance policy was not in contravention of any law.
5. Based on the foregoing, the Plaintiffs started, in or around [date], to provide a warranty to their customers that he/she would be married with a partner found by the Plaintiffs within 2 years of signing a contract with the Plaintiffs.
6. At the same time, the Plaintiffs also agreed to subscribe for the Policy from the Defendants and had, pursuant to the Policy, paid the Defendants the sum of S\$[amount] being the upfront premium payable upon the subscription of the Policy.

10 Save for certain exceptions, the general rule is that payments made under a contract which is void on the grounds of illegality are irrecoverable as the plaintiff would not be able to come to the court with clean hands. In the Singapore High Court decision of *ANC Holdings Pte Ltd v Bina Puri Holdings Bhd* [2013] 3 SLR 666 at [84], it was held that a court is entitled to take cognisance of illegality which emerges from the evidence even if it does not emerge from the pleadings. However, there is authority to the effect that if the illegal purpose or intention had been merely incipient and not executed, a plaintiff could still recover the monies paid out and genuine repentance is not required. (See the Singapore High Court decision of *Colombo Dockyard Ltd v Athula Anthony Jayasinghe* [2003] 1 SLR(R) 869.) A party can recover monies from illegal transactions if they were entered into by virtue of a mistake. (See the Singapore Court of Appeal decision of *Aqua Art Pte Ltd v Goodman Development (S) Pte Ltd* [2011] 2 SLR 865 at [23] and [24].)

7. In fact, unaware to the Plaintiffs, the Policy was in contravention of [legislation]¹¹ and the Defendants were fully aware of the same but had nevertheless induced the Plaintiffs to subscribe for the Policy, the particulars of which are as follows:

[Particulars of how Defendants were aware of contravention of law but had nevertheless induced the Plaintiffs to subscribe for the Policy]

The Policy was therefore void for being in contravention of [legislation].

Or

The Policy was, however, in contravention of public policy and was accordingly void for being in contravention of the same.¹²

8. In the premises, the Plaintiffs are entitled to recover the sum of S\$[amount] being the upfront premium paid to the Defendants upon the subscription of the Policy which is void as a result of being in contravention of the law and/or public policy.

AND the Plaintiffs claim:

- (1) The sum of S\$[amount];
- (2) Interest;

11 One exception to the ban on recoverability of monies paid under an illegal contract is when the parties to the contract are non *in pari delicto*. This may occur when a plaintiff has effected an insurance which is illegal but which the insurer had fraudulently represented to the plaintiff as lawful. (See the English decision of *Hughes v Liverpool Victoria Legal Friendly Society* [1916] 2 KB 482.) However, see the Singapore High Court decision of *Ken Glass Design Associate Pte Ltd v Wind-Power Construction Pte Ltd* [2003] 1 SLR(R) 34 where the court exercised its discretion and allowed a restitutionary claim on the defendant's counterclaim even though the court found the parties to be *in pari delicto*.

12 The Singapore Court of Appeal in *Sim Tony v Lim Ah Ghee (trading as Phil Real Estate & Building Services)* [1995] 1 SLR(R) 886 at [28] approved the statement in *Halsbury's Laws of England* (Butterworths, 4th Ed) at para 392 that: 'Any agreement which tends to be injurious to the public or against the public good is invalidated on the grounds of public policy. The question whether a particular agreement is contrary to public policy is a question of law, to be determined like any other by the proper application of prior decisions. It has been indicated that new heads of public policy will not be invented by the courts for the following reasons: (1) judges are more to be trusted as interpreters of the law than as expounders of public policy; and (2) it is important that the doctrine should only be invoked in clear cases in which the harm to the public is substantially incontestable. However, the application of any particular ground of public policy may well vary from time to time and the courts will not shrink from properly applying the principle of an existing ground to any new case that may arise.'

- (3) Costs; and
- (4) Such further and/or other relief as this Honourable Court may deem fit.

P21.06 Claim for contribution¹³ by one guarantor against another

[KhattarWong LLP]

1. By an agreement between P G bank and Mr A dated [date] (“the Loan Agreement”), P G bank agreed to lend the sum of S\$[amount] to Mr A.
2. It was a condition of the Loan Agreement that the said sum of S\$[amount] including any accrued interest is repayable on demand by P G bank.
3. In consideration of P G bank entering into the Loan Agreement with Mr A, the Plaintiff and the Defendant entered into a joint and several guarantee dated [date] with P G bank to guarantee, *inter alia*, the repayment of the aforesaid sum of S\$[amount] including interest by Mr A to P G bank (“the Guarantee”).
4. On or about [date] P G bank made a demand on Mr A demanding the repayment of the principal sum of S\$[amount] including accrued interest of S\$[amount]. Mr A, however, did not respond to the said demand made by P G bank.
5. Subsequently, on or about [date], P G bank made a demand on the Plaintiff as a guarantor under the Guarantee for payment of the outstanding sum of S\$[amount] owing by Mr A to P G bank.
6. Accordingly, on or about [date], the Plaintiff paid the sum of S\$[amount] to P G bank in full and final settlement of the demand made on him by P G bank under the Guarantee.
7. In the premises, the Plaintiff is entitled to a contribution from the Defendant in the sum of S\$[amount] being 50 per cent of the sum of S\$[amount] paid by the Plaintiff to P G bank.

13 The right to contribution by one guarantor from another for a debt that was discharged is found under the common law. Unlike contributions in respect of debts that are discharged by one guarantor, the common law did not recognise the right of one tortfeasor to claim a contribution from another tortfeasor based on the common law defence of *ex turpi causa non oritur actio*. The effect of this common law doctrine has, however, been largely diminished with the provisions of ss 15 and 16 of the Civil Law Act (Cap 43) (CLA). In *Naganthavee Teriya v Ang Yee Lim Lawrence* [2003] 2 SLR(R) 361 (*Naganthavee*), the High Court in considering the predecessor to the current ss 15 and 16 of CLA opined that a tortfeasor had a statutory right of contribution against other tortfeasors so long as he/she could establish that they were all joint tortfeasors and the damage was suffered by the plaintiff as a result of the tort, even if the tort was also a crime. The court was of the opinion that in enacting the former s 11 of CLA (1994 Rev Ed), Parliament must have intended to override the common law defence of *ex turpi causa non oritur actio* (See especially [9]–[18] of *Naganthavee*).

AND the Plaintiff claims:

- (1) The sum of S\$[amount];
- (2) Interest;
- (3) Costs; and
- (4) Such further and/or other relief as this Honourable Court may deem fit.

P21.07 Claim for recoupment pursuant to a counter-indemnity

[KhattarWong LLP]

1. On or about [date], KS bank granted a loan of S\$[amount] to the Defendant which was repayable in equal monthly instalments over 2 years and with interest at the rate of [interest rate] (“the Loan”).
2. In consideration of KS bank granting the Defendant the Loan, the Plaintiffs, on or about [date], granted KS bank a guarantee to guarantee the due compliance with the terms of the Loan by the Defendant (“the Guarantee”).
3. Further, in consideration of the Plaintiffs granting the Guarantee to KS bank, the Defendant, on or about [date], executed a counter-indemnity in favour of the Plaintiffs to indemnify the Plaintiffs from any liability they may suffer as a result of the Guarantee (“the Counter-Indemnity”).
4. The Defendant failed to pay any of the monthly instalments to KS bank when the instalments became due and payable and as a result of the Defendant’s default under the Loan, the Plaintiffs had, on or about [date], pursuant to the terms of the Guarantee, paid the sum of S\$[amount] to KS bank, being the sum including interest owing by the Defendant to KS bank as at [date].
5. In the premises, pursuant to the terms of the Counter-Indemnity, the Plaintiffs are entitled to recover from the Defendant the sum of S\$[amount] which the Plaintiffs paid KS bank on or about [date] with interest thereon at the rate of [interest rate] as stipulated in clause [number] of the Counter-Indemnity.

AND the Plaintiffs claim:

- (1) The sum of S\$[amount];
- (2) Interest;
- (3) Costs; and
- (4) Such further and/or other relief as this Honourable Court may deem fit.

P21.08 Claim for monies had and received¹⁴

[KhattarWong LLP]

1. The Plaintiffs are in the business of running and operating a supermarket while the Defendant is the husband of one Mrs A, a cashier in the employ of the Plaintiffs.
2. On or about [date], without the Plaintiffs knowledge and/or consent, the said Mrs A removed from the cash register at the Plaintiffs' supermarket the sum of S\$[amount].
3. Subsequently, the said Mrs A deposited this sum of S\$[amount] into the bank account of her husband, the Defendant,¹⁵ on or about [date].
4. The Defendant had received the aforesaid sum of S\$[amount] from his wife fully aware that she had taken the said sum from the cash register at the Plaintiff's supermarket without the knowledge and/or consent of the Plaintiffs, the particulars of which are as follows:

[Particulars of the knowledge of the Defendant]
5. By reason of the foregoing, the Plaintiffs are entitled to be repaid the sum of S\$[amount] being monies had and received by the Defendant.

AND the Plaintiffs claim:

- (1) The sum of S\$[amount];
- (2) Interest;

14 In *Seagate Technology Pte Ltd & Anor v Goh Han Kim* [1994] 3 SLR(R) 836, the Singapore Court of Appeal held at [23] that '[t]he action for money had and received will lie where the defendant has received money of the plaintiff under such circumstances that he is obliged by the ties of natural justice and equity to refund it: he is regarded in law as having received the money to the use of the plaintiff and the law imposes an obligation upon him to repay it to the plaintiff on the principle that he has unjustly benefitted: see Vol 27 of Atkin's Court Forms (1991 Issue) at p 208'. In an action for monies had and received, there is no requirement at law to prove ownership of the monies in question. (See *Chia Kin Tuck v Leong Choon Kum & Anor* [2005] SGHC 1.)

15 The liability of a payee for monies had and received only arises if the payment was received by the payee as a principal and not merely as an agent or intermediary for someone else. (See the *Australian High Court decision of Australia and New Zealand Banking Group v Westpac Banking Corp* (1988) 78 ALR 157 referred to in the Singapore Court of Appeal decision of *Seagate Technology Pte Ltd & Anor v Goh Han Kim* [1994] 3 SLR(R) 836.) Where an agent receives payment on behalf of a principal and refuses to pay it over to the principal, the principal may bring an action for money had and received against the agent. (See *Subtle Senses Pte Ltd (in creditor's voluntary liquidation) v Healthtrends Medical Investments Pte Ltd* [2012] SGHC 148 at [34].)

- (3) Costs; and
- (4) Such further and/or other relief as this Honourable Court may deem fit.

P21.09 Claim for monies had and received arising from the tort of conversion¹⁶

[KhattarWong LLP]

1. The Plaintiff is, and was at all material times, a company in the business of building and construction.
2. At all material times, the Defendant was an employee of the Plaintiff.
3. On or about [date], the Plaintiff issued three cash cheques totaling S\$[amount] and the cheques were passed to its general manager for him to pay certain general expenses of the Plaintiff. The general manager, on the same day, in turn handed these cash cheques to the Defendant for temporary safekeeping.
4. Subsequently, unknown to the general manager or anyone else in the Plaintiff, the Defendant wrongfully encashed the three cheques on or about [date(s)] and kept the proceeds from the same.

[Particulars]

5. It is averred that the Defendant has wrongfully received and applied to his own use the proceeds from the said three cheques.
6. By reason of the above facts and matters, the Plaintiff claims the sum of S\$[amount] as money had and received¹⁷ by the Defendant to his own use.
7. In the alternative, by reason of the aforesaid facts and matters, the Defendant wrongfully deprived the Plaintiff of the use and possession of the said three cheques and has converted¹⁸ the same to his own use.

16 A claimant may bring an action based on the tort of conversion, or he may choose a restitutionary remedy and in the alternative the usual compensatory remedy. (See the decision of the Singapore High Court *Chip Hup Hup Kee Construction Pte Ltd v Yeow Chern Lean* [2010] 3 SLR 213 at [9].)

17 The claim for moneys had and received is contingent on the Plaintiff proving his claim in conversion and will fail if the Plaintiff is unable to prove the existence of the tort. (See the decision of the Singapore Court of Appeal in *Yeow Chern Lean v Neo Kok Eng & Anor* [2009] 3 SLR(R) 1131 at [52].)

18 The difference between the claim for moneys had and received and an action for conversion lies only in the remedy sought, i.e. restitution in the former case and damages in the latter. Accordingly, the limitation period of six years for tortious claims applies. The Singapore High Court in *Chip Hup Hup Kee Construction Pte Ltd v Yeow Chern Lean* [2010] 3 SLR 213 held at [26] that s 6(1)(a) of the Limitation Act (Cap 163) is 'sufficiently broad to encompass' claims for moneys had and received arising from conversion.

AND the Plaintiff claims:

- (1) The aforesaid sum of S\$[amount];
- (2) Alternatively, damages for conversion;
- (3) Interest;
- (4) Costs; and
- (5) Such further and/or other relief as this Honourable Court may deem fit.

P21.10 Claim for monies received through a secret or unauthorised profit¹⁹

[KhattarWong LLP]

1. At all material times, the Plaintiffs were a company in the business of distribution of computer monitors for a number of international brands.
2. At all material times, the Defendants were the directors of the Plaintiffs and were involved in the business operations of the Plaintiffs.
3. On or about [date], the Defendants entered into negotiations with “S Ltd” on behalf of the Plaintiffs for the purpose of entering into a distribution agreement with “S Ltd” for the distribution of “S” monitors in Singapore.
4. Through the course of negotiations, “S Ltd” found that the Plaintiffs were also distributing monitors for “H Ltd”, their main competitor and as a result, “S Ltd” decided not to proceed with the distribution agreement with the Plaintiffs.
5. Subsequently, in breach of their fiduciary duties to the Plaintiffs, the Defendants set up a partnership, and the partnership entered into a distribution agreement with “S Ltd” for the distribution of “S” monitors in Singapore.
6. In the premises, any secret profits²⁰ made by the Defendants through their said partnership as a result of the distribution agreement with “S Ltd” are held on a constructive trust²¹ for the Plaintiffs.

19 The duty to account for secret or unauthorised profits is a strict one and it is no defence for the fiduciary to say that he was acting bona fide in the best interests of the company. See the House of Lords decision of *Regal (Hastings) Ltd v Gulliver* [1967] 2 AC 134.

20 Although fiduciaries are required to account for the secret and unauthorised profits they receive, they may be given credit for their work and skill. See the House of Lords decision of *Boardman v Phipps* [1967] 2 AC 46.

21 The importance of the constructive trust terminology is that it affords priority to the company in the event the fiduciary becomes insolvent. See the House of Lords decision of *Boardman v Phipps* [1967] 2 AC 46 and Burrows, *The Law of Restitution* (3rd Ed) (Oxford University Press, 2011) at p 683. There was a period of time under English law that whilst the remedy of a constructive trust was available in unauthorised profit cases, it was unavailable when it came to cases involving bribes. (See the English Court of Appeal decision of *Lister & Co v Stubbs* (1890) 45 Ch D 1.) Such a position was highly anomalous and the Singapore High Court in *Sumitomo Bank Ltd v Kartika Ratna Thahir & Ors* [1992] 3 SLR(R) 638 at [241]-[243] has expressly refused to follow the holding in *Lister & Co v Stubbs*. See also, the Singapore Court of Appeal decision of *Thahir Kartika Ratna v PT Pertamina Minyak dan Gas Bumi Negara (Pertamina)* [1994] 3 SLR(R) 312 at [56] and [57].

AND the Plaintiffs claim:

- (1) An account of all such secret and/or unauthorised profits received by the Defendants;
- (2) Interest;
- (3) Costs; and
- (4) Such further and/or other relief as this Honourable Court may deem fit.

P21.11 Defence of estoppel²²

[KhattarWong LLP]

1. The Plaintiffs are a travel agency while the Defendant was a customer who had on or about [date] paid the Plaintiffs a deposit in the sum of S\$[amount] for a premium travel package to [country].
2. Subsequently, on or about [date], just 2 weeks before the Defendant was due to depart for the travel package he had signed up with the Plaintiffs, the Defendant found a cheaper travel package from another travel agency and enquired with the Plaintiffs whether or not there would be cancellation charges if the Defendant were to cancel the premium travel package he had signed up with the Plaintiffs.
3. The Plaintiffs informed the Defendant that as the travel package the Defendant had signed up for was a premium travel package and as there was still another 2 weeks before the Defendant was due to embark on the said package, there would be no applicable cancellation charges if the Defendant were to cancel the travel package.
4. As a result, the Defendant proceeded to cancel the premium travel package he had signed with the Plaintiffs on or about [date] and the Plaintiffs accordingly refunded him the deposit of S\$[amount].

22 The defence of estoppel is a defence to payments made under a mistake. It is extremely rare for such a defence to be used outside the context of mistaken payments. One reason is that for payments made under undue influence, unconscionability or illegality for instance, a defendant cannot be afforded the defence of estoppel since such a defendant cannot satisfy the requirement of coming to the court with 'clean hands'. However, for other restitutionary claims (for example, total failure of consideration), there is academic opinion that the defence of estoppel can be used with respect to such claims. See Burrows, *The Law of Restitution* (3rd Ed) (Oxford University Press, 2011) at p 551. In order to establish a defence of estoppel, the following conditions must be satisfied: (a) the plaintiff must generally have made a representation of fact which led the defendant to believe that he was entitled to treat the money as his own; (b) the defendant must have, bona fide and without notice of the plaintiff's claim, consequently changed his position; and (c) the payment must not have been primarily caused by the fault of the defendant. (See the English Court of Appeal decision of *Avon County Council v Howlett* [1983] 1 WLR 605 wherein Slade LJ cited the above conditions by referring to Goff and Jones, *The Law of Restitution* (2nd Ed) (Sweet & Maxwell, 1978).) In *Management Corporation Strata Title No 473 v De Beers Jewellery Pte Ltd* [2002] 1 SLR(R) 418 at [52], the Singapore Court of Appeal held that it is unlikely that promissory estoppel will be accepted as a defence to a restitutionary claim given that change of position had been specifically recognised as a defence in the House of Lords decision of *Kleinwort Benson Ltd v Lincoln City Council* [1998] 4 All ER 513.

5. Even though under the Plaintiffs' company policy, the Plaintiffs were entitled to forfeit the deposit of S\$[amount] paid by the Defendant and therefore, the Plaintiffs had refunded the Defendant the sum of S\$[amount] by mistake, the Defendant avers as follows:
- (1) The Plaintiffs had made an unequivocal representation to the Defendant on or about [date] that there would be no cancellation charges if the Defendant were to cancel the premium travel package he had signed with the Plaintiffs on or about [date].
 - (2) The Defendant had relied²³ upon the aforesaid representation made by the Plaintiffs to his detriment by [particulars of the Defendants' reliance].
6. In the premises, the Defendant avers that it is inequitable for the Plaintiffs to go back on their representation and seek recovery of the sum of S\$[amount]²⁴ which they had refunded to the Defendant.

23 The detrimental reliance must have been incurred in good faith. See the defence of change of position and the English decision of *United Overseas Bank v Jivani* [1976] 1 WLR 964.

24 Estoppel, unlike the defence of change of position, is essentially an 'all or nothing' defence. However, it appears that case law developments in England have eroded the 'completeness' of estoppel as a defence. This may occur where the facts of the case are such that a defendant is relying on estoppel to achieve an unconscionable result by, for instance, gaining a windfall as a result. (See, generally, the English Court of Appeal decision of *National Westminster Bank plc v Somer International (UK) Ltd* [2002] QB 1286.)

P21.12 Defence of change of position²⁵

[KhattarWong LLP]

1. As a result of and in reliance on the payment received from the Plaintiff, the Defendant has bona fide changed his position,²⁶ the particulars²⁷ of which are as follows:

[Particulars of the Defendant's change of position]

2. In the premises, the Plaintiff is not entitled to recovery of the following sums:

[Particulars of the sums the Plaintiff is precluded from claiming as the change of position defence is a *pro tanto* defence and not a complete defence]

25 Unlike the defence of estoppel, the defence of change of position does not require the defendant to establish any representation on the part of the plaintiff. It is enough for the defendant to show that he has bona fide changed his position as a result of the payment he received from the plaintiff. The change of position defence is also a general defence to restitutionary claims. See the House of Lords decision of *Lipkin Gorman (a firm) v Karpnale Ltd* [1991] 2 AC 548; the Singapore Court of Appeal decisions of *Seagate Technology Pte Ltd & Anor v Goh Han Kim* [1994] 3 SLR(R) 836 and *Parkway Properties Pte Ltd v United Artists Theatres Pte Ltd* [2003] 2 SLR(R) 103; and the Singapore High Court decision of *Neo Kok Eng v Yeow Chern Lean* [2008] SGHC 151. In order to establish a defence of change of position, the following conditions must be satisfied: (a) the plaintiff has changed his position; (b) the change was bona fide; and (c) it would in all the circumstances be inequitable to require the plaintiff to make restitution or restitution in full.

26 The change of position may also be anticipatory. See the case of *Dextra Bank & Trust Co Ltd v Bank of Jamaica* [2002] 1 All ER (Comm) 193. That anticipatory reliance can constitute a change of position has been accepted as the legal position in Singapore as well in the Court of Appeal decision of *Parkway Properties Pte Ltd v United Artists Theatres Pte Ltd* [2003] 2 SLR(R) 103. In addition, the Singapore Court of Appeal in *Skandinaviska Enskilda Banken AB (Publ), Singapore Branch v Asia Pacific Breweries (Singapore) Pte Ltd* [2011] 3 SLR 540 ('*Skandinaviska*') at [141]-[147] has clarified that the anticipatory change of position need not be imminent. On the facts of the case, the court found that imminence of the anticipated payment or other benefit from the plaintiff was not essential. The critical element is 'the causal link between the change of position by the defendant and his reliance on the receipt of an anticipated payment (or other benefit) from the plaintiff. It is a question of fact in each case whether this causal link is present'. (See *Skandinaviska* at [147]).

27 As it is necessary to show a causal link between the receipt of the monies and the change of position (see *Info-communications Development Authority of Singapore v Singapore Telecommunications Authority Ltd* [2002] 2 SLR(R) 136), it would be important that the particulars of the change of position bear a nexus to the receipt of the monies.

P21.13 Defence under s 2(2)²⁸ of Frustrated Contracts Act

[KhattarWong LLP]

If, which is denied, the contract has been discharged by frustration, the Defendant avers that he is entitled to recover and/or retain the sum of S\$[amount] being the sum the Defendant has incurred for the performance of the terms of the contract prior to the contract being discharged by frustration.

28 FCA, s 2(2) seeks to strike some sort of balance with respect to the fairness to a defendant. It allows the defendant to be given a credit for the expenses he had incurred prior to the discharge of a contract by frustration. Whether and how much a defendant is entitled to recover and/or retain with respect to the expenses he has incurred lies within the discretion of the court having regard to all the circumstances of the case. Whilst the court has discretion to decide how much credit a defendant ought to be given, the wording of s 2(2) clearly states that the court cannot award a defendant a sum in excess of the expenses incurred.

P21.14 Defence under the Limitation Act (Cap 163)²⁹

[KhattarWong LLP]

1. Further or alternatively, the matters alleged and pleaded by the Plaintiff occurred, if at all (which is denied), more than six years before the issue of the Statement of Claim herein. In the premises, the Plaintiff's claims are barred by virtue of section 6(1) of the Limitation Act (Cap. 163).

29 In *OMG Holdings Pte Ltd v Pos Ad Sdn Bhd* [2012] 4 SLR 231, the Court of Appeal *inter alia* held at [41] that a claim in restitution based on unjust enrichment may come within the ambit of s 6(1)(a) of the Limitation Act (Cap 163) if such a claim is a claim in contract or tort. In *Management Corporation Strata Title Plan No 473 v De Beers Jewellery Pte Ltd* [2002] 1 SLR(R) 418, the Court of Appeal held at [32] that '[a] perusal of the Limitation Act showed that a claim for unjust enrichment which was neither grounded in contract nor tort, and in which equitable relief was not sought, did not fall within the scope of the Act'. In *Ching Mun Fong (executrix of the estate of Tan Geok Tee, deceased) v Liu Cho Chit (No. 2)* [2000] 3 SLR(R) 304, the High Court held at [73] that the words 'founded on a contract' under s 6(1) of the Limitation Act are 'wide enough to cover claims for the recovery of moneys paid pursuant to a contract where the underlying subject matter of the agreement did not exist or did not materialise'. In *Chip Hup Hup Kee Construction Pte Ltd v Yeow Chern Lean* [2010] 3 SLR 213, the High Court held *inter alia* at [22] that the claim would be time-barred (under s 6(1)(a) of the Limitation Act) if it could be shown that there was a contract between the parties or if the claim was one founded on tort. The court further held at [22] that since 'the foundation of [the] restitutionary claim therefore lay in the conversion of the Two Cheques. It would therefore be time-barred by virtue of s 6(1)(a) of the [Limitation] Act'.

P21.15 Defence to claim of unjust enrichment on the ground that the Plaintiff intended the Defendant to have the benefit of the enrichment³⁰

[KhattarWong LLP]

1. At all material times, the Plaintiff was a company in the business of providing advertising media services.
2. The Defendant is, and was at all material times, a company in the business of providing in-store advertising programs and products.
3. By a master licence agreement dated [date] between the Defendant and [Master Licensor] (the “Master Licence Agreement”), the Defendant acquired the exclusive right to use the [Licensed System].
4. By a sub-licence agreement dated [date] between the Plaintiff and the Defendant (the “Sub-licence Agreement”), the Defendant sublicensed the right to use the [Licensed System] to the Plaintiff.
5. The Master License Agreement was terminated on [date] and the Sub-licence Agreement was consequently terminated with effect from the same date.
6. Notwithstanding the terminations of the Master License Agreement and the Sub-licence Agreement as aforesaid, the Plaintiff continued to use the Licensed System for a period of one (1) month from the date of termination, and during this one month period, the Plaintiff paid the Defendant an amount equivalent to the sub-licence fees which would have been payable under the Sub-licence Agreement for that period had the Sub-licence Agreement not been terminated.
7. The Defendant avers that during the aforesaid one month period, the Plaintiff paid the aforementioned equivalent amount of the sub-licence fees to the Defendant despite being *fully aware* that the Master Licence Agreement and the Sub-licence Agreement had been terminated and that the Defendant did not have any right to sublicense the right to use the [Licensed System] to the Plaintiff.
8. Even if the Defendant was enriched by the aforesaid payment of the equivalent amount of sub-licence fees by the Plaintiff to the Defendant during the said one month period (which the

30 See the Singapore Court of Appeal decision of *OMG Holdings Pte Ltd v Pos Ad Sdn Bhd* [2012] 4 SLR 231.

Defendant denies), the Defendant avers that such enrichment of the Defendant (if any) was not unjust.

Particulars

- (a) The Plaintiff received a notice from [Master Licensor] on [date] which stated that the Master Licence Agreement between the Defendant and [Master Licensor] would terminate on [date];
 - (b) The Plaintiff was also notified in writing by the Defendant on [date] that the Sub-licence Agreement would be terminated on [date] by reason of the aforesaid termination of the Master Licence Agreement;
 - (c) In all the circumstances, the Plaintiff had full knowledge that the Defendant would not have any right to charge the Plaintiff any amount equivalent to the sub-licence fees stated in the Sub-licence Agreement during the aforesaid one month period;
 - (d) Despite such knowledge as aforesaid, the Plaintiff had its own motive to pay the said equivalent amount to the Defendant during the said one month period;
 - (e) [other material particulars].
9. In the premises, the Defendant avers that the Plaintiff intended the Defendant to have the benefit of the enrichment (if any) in any event.

CHAPTER 22

PARTICULAR PLEAS

CONDITIONS PRECEDENT

Precedents

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- P22.02** Claim where performance of condition precedent is prevented by breach of contract by other party
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LACHES

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- P22.31** Defence of laches

LEAVE AND LICENCE

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P22.32 Defence of leave and licence of plaintiff

LIMITATION

Precedents

P22.33 Defence of Limitation Act to action on simple contract debt

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MISTAKE

Precedents

P22.38 Defence alleging mistake in entering into agreement

P22.39 Defence of mistake, with counterclaim for rectification

SET-OFF

Precedents

P22.40 Defence admitting plaintiff's claim subject to set-off

P22.41 Defence alleging set-off against insolvent plaintiff

STATE AND DIPLOMATIC IMMUNITY

Precedents

P22.42 Defence relying on State immunity

P22.43 Defence relying on diplomatic immunity

UNDUE INFLUENCE

Precedents

P22.44 Claim for rescission of contract or return of property procured by actual undue influence

- P22.45** Claim for rescission of security on ground of presumed undue influence
- P22.46** Claim for rescission of security on ground of undue influence by third party
- P22.47** Defence of undue influence

WAIVER

Precedents

- P22.48** Reply alleging waiver of condition making time of delivery or completion of the essence of the contract

CHAPTER 22

PARTICULAR PLEAS

CONDITIONS PRECEDENT

PRECEDENTS

P22.01 Averment of an excuse for the non-performance of a condition precedent in statement of claim

[Donaldson & Burkinshaw]

[After stating the facts on which the claim is based:] It was a term of the agreement between the Plaintiff and the Defendant that strengthening works on the ceiling of the premises be completed before the Defendant sign the lease renewal. However, the Defendant refused to vacate the premises for such strengthening works to be carried out and immediately returned the duly signed lease renewal to the Plaintiff. The Defendant by such conduct excused and discharged the Plaintiff from completing the strengthening works on the ceiling of the premises.

P22.02 Claim where performance of condition precedent is prevented by breach of contract by other party

[Donaldson & Burkinshaw]

The Plaintiff was prevented from performing the [condition precedent] by the Defendant's breach of the said agreement by [details of the Defendant's breach and how this prevented the performance of the condition precedent].

P22.03 Claim where other party disables himself from performing contract

[Donaldson & Burkinshaw]

The Defendant absolutely disabled himself from performing the said contract on his part and thereby waived and excused the performance by the Plaintiff of all conditions precedent on his part to be performed. [Particulars of the Defendant's conduct causing disability]

P22.04 Defence that condition precedent was not performed

[Donaldson & Burkinshaw]

1. With regard to the contract referred to in the Statement of Claim, it was a condition precedent to any payment due thereunder that [condition precedent].
2. The said condition precedent was not fulfilled [*or*, the plaintiff failed to perform the condition precedent] as [how the condition was not fulfilled or performed].
3. As the condition precedent was not fulfilled, no payment is due under the contract.

P22.05 Defence where ruling received not satisfactory

[TSMP Law Corporation]

1. It was a condition precedent to the completion of the purchase of the shares that the company receives a ruling from the Securities Industry Council ("SIC") in relation to the concert parties issue in a form satisfactory to the defendant.
2. The ruling received by the company from the SIC was not satisfactory in that [reasons why it was not satisfactory].
3. As such, the condition precedent set out in clause [number] of the sale and purchase agreement has not been fulfilled and the defendants were not obliged to complete the sale and purchase on the completion date.

DURESS

PRECEDENTS

P22.06 Defence alleging contract made under duress

[Harry Elias Partnership]

1. [The Defendant to admit, not admit or deny the facts alleged in the Statement of Claim.]
2. The Defendant avers that he was forced to enter into the alleged contract [*or as the case may be*] by duress on the part of the Plaintiff.

Particulars

- (1) On [date] at [address], the Plaintiff forcibly detained the Defendant in a room. The Plaintiff told the Defendant that he would not be allowed to leave the room until he had signed the contract.
- (2) The Defendant was detained in the said room for over 10 hours and no sustenance or rest was accorded to him.
- (3) Consequently, in exhaustion and fear of his personal safety, the Defendant signed the contract.
3. By reason of the above, the Defendant denies that he is bound by the alleged contract as set out in the Statement of Claim or at all.

ESTOPPEL

PRECEDENTS

P22.07 Defence alleging estoppel by record/issue estoppel

[Donaldson & Burkinshaw]

The Defendant says that the Plaintiff is estopped from raising the issue [matter objected to] because in Suit No [number], which was commenced in the High Court of the Republic of Singapore on [date] (“the Prior Suit”), before the current suit was instituted the Plaintiff brought an action against the same Defendant for [summary of the cause of action in the earlier suit], and the Defendant pleaded in his Defence in the Prior Suit that [summary of the defences relevant to the estoppel].

P22.08 Defence alleging estoppel by conduct

[Donaldson & Burkinshaw]

The Defendant says that the Plaintiff is estopped and precluded from saying that the equipment delivered to the Plaintiff's premises was defective. The said equipment was delivered to the Plaintiff's premises on or about [date] at [time] pm when the Plaintiff was present at the premises. Upon delivery of the said equipment, the Defendant invited the Plaintiff to immediately inspect and test the equipment to ensure that it was in proper working order. The Plaintiff proceeded to test the equipment for a full hour before agreeing to accept delivery of the equipment. The Plaintiff by his acceptance of delivery of the equipment after testing permitted and induced the Defendant to believe that the equipment was defect-free and working to the Plaintiff's satisfaction.

P22.09 Defence alleging promissory estoppel

[Donaldson & Burkinshaw]

1. The Defendant admits that he had, by clause [number] of the tenancy agreement dated [date] entered into in writing between the Plaintiff and the Defendant, agreed to pay to the Plaintiff a monthly rental of S\$[amount] payable in advance on the 1st day of each calendar month.
2. The Defendant denies that he is in arrears of rental for the months of [month and year] to [month and year] or at all.
3. Further or alternatively, the Defendant says that the Plaintiff is estopped from claiming such sum by reason of an express representation and/or promise of the Plaintiff, made to the Defendant, with the intention that the Defendant should act on such representation and/or promise, which the Defendant did in fact do.

Particulars

[Full particulars of the Plaintiff's words or conduct relied on and also all acts of 'reliance' by the Defendant relied on in support of the pleas of estoppel]

P22.10 Defence alleging estoppel by convention

[Donaldson & Burkinshaw]

1. The Plaintiff is estopped from denying that the delivery date under the scaffolding rental contract was extended from [date] to [date]. Both the Plaintiff and the Defendant mistakenly assumed that the Defendant would be unable to deliver the scaffolding to the work site at [address of work site] under the contract because of a notice from the main contractor that no works would be carried out at the work site from [date] to [date], which both the Plaintiff and the Defendant mistakenly believed prevented the Defendant from delivering the scaffolding to the work site.
2. Pursuant to this common mistaken assumption, the Defendant took the following action:

Particulars

[Particulars of steps taken by Defendant]

3. It would not be just to allow the Plaintiff to deny the mistaken common assumption made by the parties as pleaded above because [particulars of why it would be unjust to allow the plaintiff to go back on the assumption made].

EXECUTION OF FOREIGN JUDGMENTS

PRECEDENTS

P22.11 Claim for judgment sum in foreign judgment

[Donaldson & Burkinshaw]

1. The Plaintiff was the Plaintiff and the Defendant was the Defendant in Civil Action Case No [number] filed in the Circuit Court for the Thirteenth Judicial Circuit, Hillsborough County, United States of America.
2. The Plaintiff obtained a judgment against the Defendant in Civil Action Case No [number] on or about [date] for the sum of US\$[amount] and statutory interest thereon at the rate of 10 per cent per annum.
3. Despite numerous requests made by the Plaintiff and/or his solicitors, the Defendant has to date failed, neglected and/or refused to pay the said sum of US\$[amount] or any part thereof.

AND the Plaintiff claims:

- (1) The outstanding sum of US\$[amount] due under the judgment dated [date];
- (2) Interest on the said sum of US\$[amount] at the rate of 10 per cent per annum pursuant to the terms of the judgment dated [date];
- (3) Alternatively, interest at the rate of 6 per cent per annum on the said sum of US\$[amount] from the date of the issuance of the writ of summons to the date of judgment pursuant to Section 12 of the Civil Law Act (Cap 43); and
- (4) Further or other reliefs.

FRUSTRATION

PRECEDENTS

P22.12 Claim for recovery of payment made pursuant to contract discharged by frustration¹

[Donaldson & Burkinshaw]

1. By way of a written agreement dated [date] entered into between the Plaintiff and the Defendant, the Defendant agreed to clean the Plaintiff's premises at [address] ("the Premises") for the sum of S\$[amount], which the Plaintiff agreed to pay.
2. On or about [date], the Plaintiff paid to the Defendant the said sum of S\$[amount] pursuant to of the said agreement.
3. On or about [date], the Premises were wholly destroyed by fire.
4. By reason of the matters aforesaid, the contract became impossible to perform and was frustrated.
5. In the premises, the Plaintiff is entitled to recover the said sum of S\$[amount] from the Defendant pursuant to Section 2(2) of the Frustrated Contracts Act (Cap 115).
6. Despite numerous requests made by the Plaintiff to the Defendant, the Defendant has failed, neglected and/or refused to repay to the Plaintiff the said sum of S\$[amount] or any part thereof.

AND the Plaintiff claims:

- (1) The said sum of S\$[amount];
- (2) Interest on the said sum of S\$[amount];
- (3) Costs; and
- (4) Such further or other relief as this Honourable Court deems just.

¹ Also see P22.14.

P22.13 Defence alleging frustration of contract

[Donaldson & Burkinshaw]

The performance of the contract referred to in the Statement of Claim became impossible for performance without any fault on the part of the Defendant and the contract was thereby frustrated. In the premises, the Defendant was discharged from [further] performance of the said contract.

Particulars

[Facts or circumstances relating to the frustrating event]

P22.14 Defence alleging that frustration was induced by plaintiff²

[Donaldson & Burkinshaw]

If, which is denied, the agreement referred to in the Statement of Claim was frustrated by the Premises being wholly destroyed by fire, the Defendant avers that the Plaintiff is not entitled to rely on the doctrine of frustration by reason that the fire which destroyed the Premises was caused by the act, omission and/or negligence of the Plaintiff.

Particulars

[Particulars of Plaintiff's act, omission and/or negligence]

² Also see P22.12.

P22.15 Reply alleging that frustrating event was excluded by force majeure clause

[Central Chambers Law Corporation]

The Defendant is not entitled to rely on the non-availability of sand from Vietnam as a frustrating event as the parties had anticipated the risk of such an event occurring and had expressly stipulated at Clause [number] of the Contract that such an event would be an event of force majeure not amounting to frustration discharging the Defendant from his obligations under the Contract unless such non-availability continues for a period of at least three (3) months. In breach of Clause [number], the Defendant had sent a written notice to the Plaintiff after only two (2) weeks purporting to terminate the Contract for frustration.

ILLEGALITY

PRECEDENTS

P22.16 Defence alleging illegality – intention to deceive or defraud and absence of approval

[Harry Elias Partnership]

The Defendant avers that the sale agreement of the industrial property at [address] between the Plaintiff as vendor and the Defendant as purchaser is not enforceable as it was conditional upon the approval of Jurong Town Corporation (“JTC”), which had been obtained by the Plaintiff through deception. This is illegal and against public policy. Further and in the alternative, had JTC known of the true nature of the agreement, they would not have approved of the transfer, and this would have rendered the sale agreement null and void according to its terms.

Particulars

[All facts and particulars being relied on]

P22.17 Defence of illegality – intention to deceive or defraud the Inland Revenue Authority of Singapore or other authorities

[Harry Elias Partnership]

1. The Defendant avers that the agreement referred to in the Statement of Claim is void for illegality and that its enforcement would be contrary to public policy.
2. The Defendant avers that the documents or agreement were obtained, prepared or used by the Plaintiff for the purpose of defrauding the Inland Revenue Authority of Singapore (the “Authority”):
 - (1) by deceiving the Authority as to the true value of the said goods sold and delivered;
 - (2) for inducing the Authority to believe that the sum received by the Plaintiff in respect of the sale and delivery these goods was S\$[amount]; and
 - (3) for concealing the true value of the goods sold and delivered from the Authority.

P22.18 Defence of illegality – intention to flout currency controls

[Harry Elias Partnership]

The Defendant avers that the agreement was in reality designed to flout currency controls in Indonesia/Malaysia and that the Plaintiff had also entered into the agreement for the purpose of tax evasion and money laundering. The Defendant was effectively smuggling the Plaintiff's rupiahs/ringgits without a permit out of Indonesia/Malaysia by courier contrary to the exchange control legislation of that country.

Particulars

[All facts and particulars being relied on]

P22.19 Defence alleging illegal restraint of trade

[Harry Elias Partnership]

The Defendant avers that the contract is an unreasonable restraint of the Defendant's trade, and is contrary to public policy and illegal.

Particulars

[All facts and particulars being relied on]

**P22.20 Defence of illegality – absence of statutory licence/
permit**

[Donaldson & Burkinshaw]

1. The sale and purchase agreement referred to in the Statement of Claim was a contract for the sale of goods CIF Umm Qsar, Iraq.
2. The export from Singapore of the goods specified in the said sale and purchase agreement is prohibited by [Act or regulation] unless an [export permit *or as the case may be*] is obtained from the [regulatory authority] by the exporter, who is the Plaintiff.
3. The Plaintiff failed or refused to obtain such an [export permit *or as the case may be*].
4. In the premises, the said sale and purchase agreement was and is illegal and unenforceable as against the Defendant.

P22.21 Defence of illegality – supply of goods which is illegal

[TSMP Law Corporation]

1. The agreement referred to at paragraph [number] of the Statement of Claim is void for illegality and unenforceable against the Defendant, in that it was an agreement to supply [goods or services], the supply of which is illegal unless the supplier is specifically licensed to do so under the [Act or regulation].
2. The Plaintiff was not a licensed supplier of the [goods/services] for the purpose of the [relevant Act or regulation].

INDEMNITY

PRECEDENTS

P22.22 Claim for indemnity in respect of unpaid debts

[Donaldson & Burkinshaw]

1. By a contract of indemnity dated [date] made between the Plaintiff and the Defendant (“the Contract”), in consideration of the Plaintiff entering into an agreement with AB to carry out the work specified in the agreement, the Defendant agreed to pay the Plaintiff upon demand such sum or sums of money as may at any time or from time to time become payable by AB to the Plaintiff but be unpaid by him.
2. The Plaintiff entered into the agreement with AB and carried out the works specified therein, and there is now due and payable by AB to the Plaintiff the sum of S\$[amount]. That sum remains unpaid.
3. By way of letter dated [date], the Plaintiff demanded payment of the sum of S\$[amount] from the Defendant. In breach of the Contract and wrongfully, the Defendant failed or refused to pay the same or any part of it.

AND the Plaintiff claims:

- (1) Payment of the said sum of S\$[amount], or alternatively damages;
- (2) Interest;
- (3) Costs; and
- (4) Such further or other relief as this Honourable Court deems just.

P22.23 Claim for breach of contract of indemnity

[Donaldson & Burkinshaw]

1. By a contract dated [date] entered into in writing between the Plaintiff and the Defendant, it was agreed that in consideration of the Plaintiff transferring his shares in a company called KL Ltd to the Defendant, the Defendant would, *inter alia*, indemnify the Plaintiff and keep him indemnified from and against all liability, loss or damage incurred or to be incurred by the Plaintiff under the terms of a personal guarantee dated [date] executed by the Plaintiff, as director of KL Ltd, in favour of CD Bank Limited in connection with a loan facility granted to KL Ltd by CD Bank Limited pursuant to a Letter of Offer dated [date].
2. Pursuant to the contract, the Plaintiff's shares in KL Ltd were duly transferred to the defendant on or about [date].
3. On or about [date], CD Bank Limited demanded payment of the sum of S\$[amount] from the Plaintiff as his liability under and pursuant to his said personal guarantee and the Plaintiff, as he was obliged to do, paid the same to CD Bank Limited.
4. By a letter dated [date], the Plaintiff's solicitors demanded that the Defendant indemnify the Plaintiff against liability by making payment of the said sum of S\$[amount].
5. In breach of the contract and the indemnity given therein, the Defendant has failed, neglected and/or refused to make payment of the said sum of S\$[amount] or any part thereof to the Plaintiff.

AND the Plaintiff claims:

- (1) Payment of the said sum of S\$[amount], or alternatively damages;
- (2) Interest;
- (3) Costs; and
- (4) Such further or other relief as this Honourable Court deems just.

P22.24 Claim on contract to indemnify plaintiff against defending action

[Donaldson & Burkinshaw]

1. On or about [date], AB brought an action against the Plaintiff in the Singapore High Court in Suit No [number] to recover the sum of S\$[amount] which was then in the hands of the Plaintiff.
2. The said sum of S\$[amount] was also claimed by the Defendant.
3. On or about [date], the Plaintiff and the Defendant met in [location] at the premises known as [address] and entered into an oral agreement whereby, in consideration of the Plaintiff agreeing to defend the said action, the Defendant agreed that he would indemnify and hold the Plaintiff harmless from all loss and damage by reason of his defending the same.
4. The Plaintiff accordingly defended the said action. Notwithstanding the Plaintiff taking steps to defend the action, judgment was awarded against the Plaintiff in favour of AB on or about [date] for the sum of S\$[amount], interest thereon and costs to be taxed if not agreed.
5. On or about [date], the Plaintiff paid to AB the sum of S\$[amount], being the full judgment sum and interest thereon as at that date.
6. Further, the Plaintiff has incurred a further sum of S\$[amount], being the party-and-party costs payable to AB as taxed by the Court on a standard basis on or about [date], and a further sum of S\$[amount], being the legal fees paid by the Plaintiff to his solicitors for defending the action.
7. In breach of the oral agreement and the indemnity and despite numerous reminders from the Plaintiff to the Defendant, the Defendant has to-date failed, neglected and/or refused to indemnify the Plaintiff for any of the loss and damages incurred by him in defending the action.

AND the Plaintiff claims:

- (1) Payment of the said sum of S\$[amount], or alternatively damages;
- (2) Interest;
- (3) Costs; and
- (4) Such further or other relief as this Honourable Court deems just.

P22.25 Defence denying contract of indemnity

[Donaldson & Burkinshaw]

The Defendant denies that he agreed to indemnify the Plaintiff as alleged in the Statement of Claim or at all.

P22.26 Defence alleging that contract is not indemnity but guarantee which is unenforceable under s 6(b) of Civil Law Act

[Donaldson & Burkinshaw]

1. The agreement sued on, upon its proper construction, is not a contract of indemnity but a contract of guarantee.
2. The said agreement, being a contract of guarantee and not being in writing [*or there being no note or memorandum in writing signed by the Defendant and/or his agents*] as required by Section 6(b) of the Civil Law Act (Cap 43), the Defendant denies that the said agreement is enforceable by the Plaintiffs against the Defendant.

P22.27 Defence denying that plaintiff was indemnified

[Donaldson & Burkinshaw]

The Plaintiff did not incur the alleged or any liability [*or* sustain the alleged or any loss, *or* suffer the alleged or any damage, *or* incur the alleged or any expense].

P22.28 Defence denying that loss and damage resulted from matter indemnified against

[Donaldson & Burkinshaw]

1. The Defendant admits that he had agreed to indemnify the Plaintiff in consideration of his agreeing to defend the action by AB but denies that the alleged liability [*or loss, or damage*] suffered by the Plaintiff in connection with Suit No [number] arose from or by reason of the Plaintiff defending the action, for which the Defendant had indemnified the Plaintiff.
2. The alleged loss [*or damage*] was occasioned by the Plaintiff's own wrong or default.

Particulars

[The Plaintiff wrongfully and/or negligently failed to file his Defence in Suit No [number] despite AB's solicitors sending a 48-hour notice to the Plaintiff's solicitors and AB had obtained a judgment in default of defence against the Plaintiff. The Plaintiff had, in fact, failed to defend the action, as agreed, and is not entitled to claim an indemnity from the Defendant.]

INTEREST

PRECEDENTS

P22.29 Claim for interest under contract

[Donaldson & Burkinshaw]

1. The Plaintiff's claim is for interest due from the Defendant to the Plaintiff pursuant to an agreement dated [date] entered into between the Plaintiff and the Defendant.

Particulars

Interest as agreed at the rate of [amount] per cent per annum on the sum of S\$[amount] from [date] to [date] S\$[amount]

2. The Plaintiff also claims further interest at the said rate of [amount] per cent per annum on the said sum of S\$[amount] from the date herein until payment or judgment.

P22.30 Claim for interest under Civil Law Act

[Donaldson & Burkinshaw]

[Body of statement of claim]

AND the Plaintiff claims:

- (1) The said sum of S\$[amount] *[or damages, or as the case may be]*;
- (2) Interest, pursuant to Section 12 of the Civil Law Act (Cap 43), on the amount found to be due to the Plaintiff at the rate of [amount] per cent per annum from [date] to the date of issue of the writ herein, being the sum of S\$[amount];
- (3) Interest, pursuant to Section 12 of the Civil Law Act (Cap 43), on the amount found to be due to the Plaintiff at the rate of [amount] per cent per annum from the date of issue of the writ herein to the date of judgment or payment;
- (4) Costs; and
- (5) Such further and other relief as this Honourable Court deems just.

LACHES

PRECEDENTS

P22.31 Defence of laches

[Donaldson & Burkinshaw]

1. The Plaintiff was at all material times fully aware of the facts relied on in the Statement of Claim.
2. The Defendant avers that the Plaintiff is guilty of inordinate and inexcusable delay in bringing this action and that the Plaintiff acquiesced in the matters complained of, and thereby caused or permitted the Defendant to believe, as in fact he did, that the Plaintiff did not intend to make the claim herein or any claim against the Defendant, such that the Defendant acted to his prejudice [*or had suffered injustice*].

Particulars

[Full particulars of all the facts relied on, including the date when the Plaintiff was first aware of all relevant facts necessary for him to commence his claim and the extent of the Plaintiff's delay]

3. In the premises, the Plaintiff is barred by the doctrine of laches from claiming the alleged or any relief against the Defendant and/or it is inequitable and unjust to grant the Plaintiff the alleged or any relief.

LEAVE AND LICENCE

PRECEDENTS

P22.32 Defence of leave and licence of plaintiff

[Donaldson & Burkinshaw]

[If, which is denied, the Defendant did the alleged or any acts complained of in the Statement of Claim,] the Defendant did so by and with the Plaintiff's leave [and/or licence].

Particulars

[Particulars showing when and how the leave was granted]

LIMITATION

PRECEDENTS

P22.33 Defence of Limitation Act to action on simple contract debt

[Donaldson & Burkinshaw]

The alleged debt [*or, cause of action*] did not accrue within 6 years before this action, and was and is barred by Section 6(1)(a) of the Limitation Act (Cap 163) [*or the alleged debt was and is barred by Section 6(1)(a) of the Limitation Act (Cap 163)*].

P22.34 Defence of Limitation Act to action to recover damages for personal injuries resulting from negligence, nuisance or breach of duty

[Donaldson & Burkinshaw]

The alleged cause of action did not arise within 3 years before this action and is barred by Section 24A of the Limitation Act (Cap 163).

P22.35 Defence of Limitation Act to an action for money due under covenant in mortgage deed

[Donaldson & Burkinshaw]

The alleged debt or cause of action did not accrue within 12 years immediately preceding the commencement of this action, and was and is barred by Section 21 of the Limitation Act (Cap 163).

P22.36 Defence in respect of latent damage

[TSMP Law Corporation]

1. The Plaintiff's cause of action accrued on [date] or alternatively, not later than [date], more than 6 years prior to the commencement of these proceedings. The Plaintiff's claim is therefore barred under Section 6(1) of the Limitation Act (Cap 163).
2. Without prejudice to the foregoing, if the damages claimed by the Plaintiff is in respect of latent damage (which is denied), the Plaintiff had the requisite knowledge both for bringing an action for damages in respect of the relevant loss and of a right to bring such an action more than 3 years prior to the commencement of these proceedings. The Plaintiff's claim is therefore barred under Section 24A of the Limitation Act (Cap 163).

P22.37 Reply of concealed fraud to defence of Limitation Act

[Donaldson & Burkinshaw]

1. The Plaintiff joins issue on the Defence.
2. As to paragraph [number] of the Defence, the Plaintiff avers:
 - (1) that the cause of action relied on is the fraud and/or misrepresentation of the Defendant;
 - (2) that the Plaintiff did not discover the existence of the fraud until within 6 years before the commencement of this action;
 - (3) that the Plaintiff did not discover that the Defendant had been a party to or was guilty of the said fraud until [date], which was within the 6 years immediately preceding the commencement of this action;
 - (4) that the Plaintiff could not by the exercise of reasonable diligence have discovered and had not the means of discovering the matters stated in sub-paragraphs (b) and (c) hereof until [date], which was within the 6 years immediately preceding the commencement of this action;
 - (5) that the existence of and the means of discovering such frauds was concealed by the Defendant until [date], which was within the 6 years; and/or
 - (6) that the Defendant, in order to prevent the Plaintiff from discovering his said fraud, actively and deliberately concealed the same until [date], which was within 6 years immediately preceding the commencement of this action, and so prevented and delayed the Plaintiff from discovering the same and bringing this action in respect thereof.
3. In the premises, the Plaintiff's claim is not barred by virtue of Section 29 of the Limitation Act (Cap 163).

Particulars

[Particulars]

MISTAKE

PRECEDENTS

P22.38 Defence alleging mistake in entering into agreement

[Donaldson & Burkinshaw]

1. The agreement [*or, deed*] referred to in the Statement of Claim was entered into [*or, made*] by common [*or mutual, or unilateral, as the case may be*] mistake.

Particulars

[Particulars of the mistake relied on]

2. In the premises, the Defendant was not and is not bound by the alleged agreement [*or deed*].

P22.39 Defence of mistake, with counterclaim for rectification

[Donaldson & Burkinshaw]

1. The Defendant denies that he made the written contract referred to in the Statement of Claim.
2. On or about [date], it was orally agreed between the Plaintiff and the Defendant that [terms of agreement actually made].
3. The written contract referred to in paragraph [number] of the Statement of Claim was [prepared by the agents of the Plaintiff and was] intended to embody the agreement made as stated in paragraph 2 herein, which was the only agreement entered into by the Plaintiff and the Defendant.
4. The said written contract was signed by the Plaintiff and the Defendant in the mistaken belief that it embodied the aforesaid agreement.
5. The said written contract, in fact, did not contain or embody the aforesaid agreement. It was drawn up and signed under a common mistake of fact and the Defendant did not agree to the terms contained in it. [Particulars of the differences between the written contract and the oral agreement]
6. The Defendant is now and always has been ready and willing to sign any written contract which correctly embodies the terms of his agreement, but no such contract has ever been tendered to him for signature.
7. In the premises, the written contract is not binding or enforceable as against the Defendant.

Counterclaim

8. The Defendant repeats paragraphs 2, 3, 4 and 5 of the Defence above, and counterclaims to have the said written contract rectified, so as to embody the agreement actually made or to have it treated as being so rectified.
9. Alternatively, the Defendant counterclaims that the agreement may be rescinded.

SET-OFF

PRECEDENTS

P22.40 Defence admitting plaintiff's claim subject to set-off

[Donaldson & Burkinshaw]

1. The Defendant admits the Plaintiff's claim herein subject to the set-off hereinafter pleaded.
2. [Facts giving rise to set-off]
3. The Defendant will seek to set off against the Plaintiff's claim [to the extent of S\$[amount]] the sums due from the Plaintiff to the Defendant as is hereinbefore set out.

P22.41 Defence alleging set-off against insolvent plaintiff

[Donaldson & Burkinshaw]

1. Prior to the winding up of the Plaintiff company, there were mutual dealings between the Plaintiff and the Defendant, namely [particulars of the mutual credits, debts or other dealings relied on].
2. As a result of the aforesaid mutual dealings, there is due from the Plaintiff to the Defendant the sum of S\$[amount]. By virtue of Section 88 of the Bankruptcy Act (Cap 20), the Defendant is entitled to set off such sum against the Plaintiff's claim.

STATE AND DIPLOMATIC IMMUNITY

PRECEDENTS

P22.42 Defence relying on State immunity

[Donaldson & Burkinshaw]

1. The Defendant State enters a defence to this action for the sole purpose of claiming immunity.
2. The Defendant State is immune from the jurisdiction of the courts of Singapore by virtue of Section 3(1) of the State Immunity Act (Cap 313) (“the Act”).
3. By certificate issued by the Ministry of Foreign Affairs, the Defendant State is a State for the purpose of the Act.
4. Without in any way derogating from the generality of the plea set forth in paragraphs 1 to 3 hereof and without in any way thereby submitting to the jurisdiction of this Honourable Court, if any only if contrary to the contention of the Defendant State, it should be held that this Honourable Court has or should exercise jurisdiction over the Defendants in this action, the Defendant State further says that the transaction the subject-matter of these proceedings was not a [commercial transaction within the meaning of Section 5 of the Act or, as the case may be].

P22.43 Defence relying on diplomatic immunity

[Donaldson & Burkinshaw]

1. At the time of the matters complained of, the Defendant was and still is [a foreign national and] a member [*or* the wife of a member, *or* other member of the family of a member] of the diplomatic [*or* administration, *or* technical, *or* domestic] [staff of the Embassy *or* the High Commission] of [Defendant's sending State] in Singapore.
2. In the circumstances, the Defendant is entitled to immunity from the proceedings herein brought by the Plaintiff pursuant to the Diplomatic and Consular Relations Act (Cap 82A).
3. Without in any way derogating from the generality of the plea set forth in paragraphs 1 and 2 hereof and without in any way thereby submitting to the jurisdiction of this Honourable Court, if and only if contrary to the contention of the Defendant, it should be held that this Honourable Court has or should exercise jurisdiction over the Defendant in this action, the Defendant further says that he is not personally liable for the [rent of the premises at [address of premises] as the premises was leased to him for use on behalf of the government of [Defendant's sending State] for the purposes of a diplomatic mission, and in so acting he acted in the course of his diplomatic duties].

UNDUE INFLUENCE

PRECEDENTS

P22.44 Claim for rescission of contract or return of property procured by actual undue influence

[Harry Elias Partnership]

1. The Plaintiff was at all material times the shareholder of 60 per cent shares in XYZ Pte Ltd, which is in the business of [type of business the company was involved in].
2. The Defendant is and was at all material times a director and shareholder of 40 per cent shares in XYZ Pte Ltd.
3. Pursuant to clause [number] of the Shareholders Agreement between the Plaintiff and the Defendant, it was provided that if either of the shareholders are to sell their shares in XYZ Pte Ltd, the price to be paid for the shares shall be as valued by [M/s AA – a reputable accounting firm in Singapore].
4. On or about [date], the Plaintiff transferred all his shares in XYZ Pte Ltd at a substantial undervalue to the Defendant. The said transfer was procured by the undue influence of the Defendant over the Plaintiff.

Particulars

- [(1) On or about [date], the Defendant met with the Plaintiff at his home at [address] and told him that:
- (a) The Plaintiff's long time friend, AB, who was an Accounts Manager with XYZ Pte Ltd had embezzled a sum of S\$[amount] from the company's bank account with XX bank.
 - (b) The defendant would report AB to the police unless the Plaintiff 'covers' the loss for AB by transferring all his shares in XYZ Pte Ltd to the defendant at S\$[amount], which was at a substantial undervalue.
 - (c) The Defendant made this demand knowing that the Plaintiff would agree to the demand by reason of his close friendship with AB for many years.
- (2) By reason of the Defendant's undue influence, the Plaintiff signed the transfer forms and a sale and purchase agreement

for all his shares in XYZ Pte Ltd at S\$[amount] on the same day.

- (3) The Plaintiff was not given an opportunity to speak to AB nor to seek legal or financial advice prior to the execution of the said documents.
- (4) Further, the Plaintiff who was 55 years old at the material time was at home that particular day as he was ill.]
5. By reason of the Defendant's undue influence, the Plaintiff had signed the said documents and transferred his shares in XYZ Pte Ltd to the Defendant at a substantial undervalue.
6. The Defendant had on [date] filed the transfer forms with the Registry of Companies and had purported to tender the sum of S\$[amount] being the consideration at a substantial undervalue for the 60 per cent shares in XYZ Pte Ltd.

AND the Plaintiff claims:

- (1) A declaration that the sale and transfer of the 60 per cent shares in XYZ Pte Ltd from the Plaintiff to the Defendant ought to be set aside as it was procured by the undue influence of the Defendant over the Plaintiff;
- (2) An order that the said shares be transferred back into the name of the Plaintiff;
- (3) Costs; and
- (4) Any other order as this Honourable Court deems fit.

P22.45 Claim for rescission of security on ground of presumed undue influence

[Harry Elias Partnership]

1. The Plaintiff is and was at all material times the owner of a freehold property at [address] ("the Property"). The Plaintiff has lived at the Property for the last 40 years.
2. On [date], the Defendant, AB, who is the Plaintiff's son, procured the transfer of the Property from the Plaintiff to the Defendant free of consideration. At the time of the signing of the transfer documents, there existed between the Plaintiff and the Defendant a presumed relationship of undue influence by the Defendant over the Plaintiff.

Particulars

- (1) The Plaintiff was 75 years old at the material time.
- (2) The Plaintiff did not receive any independent legal advice.
- (3) The Defendant had demanded that the Plaintiff sign the transfer documents for the transfer for the Property immediately as, according to AB, he was being harassed by loan sharks to whom he owed S\$[amount].
3. The transaction entered into was manifestly unfair to the Plaintiff in that he received no or no valuable consideration in return for transferring Property to the Defendant.
4. In the premises, the transfer is to be presumed to have been obtained by the undue influence of the Defendant over the Plaintiff.

AND the Plaintiff claims:

- (1) A declaration that the transfer dated [date] be set aside;
- (2) Delivery up of the transfer documents for cancellation;
- (3) Rectification of the register of the title of the Property by deleting the transfer filed by the Defendant;
- (4) Costs; and
- (5) Any other order as this Honourable Court deems fit.

P22.46 Claim for rescission of security on ground of undue influence by third party

[Harry Elias Partnership]

1. The Plaintiff is and was at all material times the owner of a freehold property at [address] ("the Property"). The said property was a gift from the Plaintiff's parents prior to her marriage to AB.
2. The Defendant is a bank incorporated under the laws of Singapore [or if a foreign bank, registered in Singapore under the Banking Act and rules and regulations established thereunder].
3. On or about [date], AB came home in the middle of the day and asked the Plaintiff to sign a Mortgage, mortgaging the Property to the Defendant for credit facilities for AB's company, XYZ Pte Ltd in the sum of S\$[amount].
4. The Plaintiff's execution of the Mortgage on [date] was procured by the undue influence of AB and the Defendant had actual or constructive notice of the same.

Particulars

- (1) The Plaintiff signed the Mortgage at home in front of AB and the Defendant's representative, Mr CD.
- (2) It was never explained to the Plaintiff that it was an open mortgage and not a closed mortgage.
- (3) The Plaintiff was not given an opportunity to read the Mortgage document.
- (4) The Plaintiff did not receive independent legal advice.
- (5) AB had threatened to commit suicide if she did not agree to mortgage the Property to obtain the credit line for his business.
- (6) The Defendant's representative, Mr CD was in the living room when AB and the Plaintiff, who were in the next room, were quarrelling loudly and AB made the threat to the Plaintiff.

AND the Plaintiff claims:

- (1) A declaration that the Mortgage dated [date] be set aside;
- (2) Delivery up of the Mortgage for cancellation;
- (3) Rectification of the register of the title of the Property by deleting the charge filed by the defendants;
- (4) Costs; and
- (5) Any other order as this Honourable Court deems fit.

P22.47 Defence of undue influence

[Harry Elias Partnership]

The Defendant admits that he entered into the contract referred to in the Statement of Claim but avers that he was induced to do so by the influence of the Plaintiff. [Particulars of the undue influence and the parties involved]

WAIVER

PRECEDENTS

P22.48 Reply alleging waiver of condition making time of delivery or completion of the essence of the contract

[Donaldson & Burkinshaw]

1. If, which is denied, the contract provided that the Plaintiff was to engage XY Courier Co Pte Ltd to deliver the said goods by overnight express, as alleged in paragraph [number] of the Defence, the Plaintiff will contend that the Defendant waived this condition and is not entitled to rely thereon.

Particulars

The waiver is contained in or is to be inferred from the letter dated [date] sent by the Defendant to the Plaintiff or alternatively from the conduct of the Defendant, in that the Defendant accepted various consignments of the said goods which were shipped by various courier companies other than XY Courier Co Pte Ltd and thereafter duly made payment for each consignment of the said goods, save for the last consignment which is the subject-matter of this action. The Plaintiff was thereby induced to believe that the contract still subsisted, and acting upon that belief, the Plaintiff made further deliveries of the goods to the Defendant through various other courier companies which he accepted, and the Defendant did not at a time prior to the date when he refused to accept further deliveries of the said goods [*or the date when he purported to cancel the said contract*], give the Plaintiff any notice requiring delivery to be made by XY Courier Co Pte Ltd.

2. Further or in the alternative, by reason of the matters set out in paragraph 1 above, the Defendant is estopped from saying that the said goods were to be delivered by XY Courier Co Pte Ltd, or from asserting that the contract ceased to be valid by the Plaintiff arranging delivery through other courier companies.
3. Further or in the alternative, a new agreement between the parties was to be implied from the letter and the conduct of the parties referred to in paragraph 1 above that delivery of the goods may be made by any courier company, and until the Defendant had

given a notice to the Plaintiff requiring delivery to be made by XY Courier Co Pte Ltd. No such notice was given by the Defendant to the Plaintiff [*or alternatively the notice given by the defendant dated [date], was not a reasonable notice in the circumstances*].

CHAPTER 23

PERSONAL INJURY, FATAL ACCIDENTS AND NON-INJURY MOTOR ACCIDENT CLAIMS

PERSONAL INJURY AND FATAL ACCIDENTS

Precedents

- P23.01** Claim for damages for personal injuries (running down by vehicle)
- P23.02** Claim for damages for personal injuries (collision between two vehicles)
- P23.03** Claim against employer for damages for personal injuries
- P23.04** Claim against employer for damages for breach of statutory duties under Workplace Safety and Health Act
- P23.05** Claim by delivery man for injuries caused whilst delivering beer to hotel
- P23.06** Claim by customer in restaurant for injuries caused by defects in premises (occupier's liability)
- P23.07** Claim by lady against spa for personal injuries and damage caused by treatment chemicals (negligence and breach of contract)
- P23.08** Claim by representative of estate and dependants (fatal accident)
- P23.09** Defence and counterclaim to claim for damages for personal injuries (collision between two vehicles)

NON-INJURY MOTOR ACCIDENT CLAIMS (NIMA)

Incidental documents

- P23.10** Form 1 – Sample letter of claim to defendant
- P23.11** Form 2 – Sample acknowledgment of letter of claim
- P23.12** Form 3 – Sample letter by claimant before issue of writ of summons
- P23.13** Form 7 – Writ of summons (as per the form prescribed in the Rules of Court)
- P23.14** Form 5 – Pre-action Protocol Checklist
- P23.15** Appendix G – Benchmark rates for costs of rental and loss of use

CHAPTER 23

**PERSONAL INJURY, FATAL
ACCIDENTS AND NON-INJURY
MOTOR ACCIDENT CLAIMS**

**PERSONAL INJURY AND FATAL
ACCIDENTS**

PRECEDENTS

P23.01 Claim for damages for personal injuries (running down by vehicle)

[Rodyk & Davidson LLP]

1. On [date] the Plaintiff was crossing [road and location], when the Defendant drove, managed and/or controlled his [type of] motor car along the said road in a manner that caused the said motor car to come into contact and/or collide with the Plaintiff and knock him to the ground.
2. The matters referred to in paragraph 1 hereof were caused by the negligence of the Defendant.

Particulars of negligence

- (1) Driving the said motor car while intoxicated with alcohol and in an unfit state to drive, manage and/or control a motor car;
- (2) Driving at a speed which was excessive under road traffic regulations and/or excessive in the circumstances;
- (3) Failing to keep any or any proper lookout or otherwise have any or any sufficient regard for pedestrians crossing the road;
- (4) Failing to notice the presence of the Plaintiff while he was crossing the said road;
- (5) Failing to stop, slow down, to swerve or take other steps or evasive action to avoid contact or collision between the said motor car and the Plaintiff;
- (6) Failing to give the Plaintiff any or any adequate warning of his approach.

3. The Plaintiff will rely on the conviction of the Defendant on [date] by the Magistrate's Court of the Republic of Singapore for driving whilst under the influence of alcohol at the time of the said accident as evidence of negligence herein.
4. By reason of the matters aforesaid, the Plaintiff sustained severe injuries and has suffered loss and damage.

Particulars of Injury

The Plaintiff who was born on [date] and aged [age] at the date of the said accident suffered a fracture of the left femur, 2 broken ribs, a fracture of the left wrist, cuts bruising and swelling to his chest and abdomen and severe shock. He was taken to hospital by ambulance where he was detained for 6 weeks for treatment of the said injuries. Since his discharge the Plaintiff has had to attend outpatient appointments for physiotherapy. He now walks with a limp in his left leg, and his left wrist is still very painful and he has difficulty in lifting it. The Plaintiff was unable to return to his job as a steeplejack because of the said injuries and is now unemployed. He is unable to participate in his favourite pastimes of playing football and squash.¹

Particulars of Special Damage

Loss of earnings from [date] to [date]	
(24 weeks) at \$200 net per week and continuing	S\$4,800
Damage to clothing and personal effects	S\$800
Cost of medical treatment and prescriptions	S\$200
Cost of travel for outpatient appointments	S\$120
<hr/>	
Total	S\$5, 920

5. Further, the Plaintiff claims interest on all damages awarded by the Court at the rate of 5.33 per cent per annum from the date of the accident to date of award or on such sums at such rate and for such period as the Court thinks fit pursuant to Section 12 of the Civil Law Act (Cap 43).

AND the Plaintiff claims:

- (1) Damages;

1 A medical report should also be served with the statement of claim: ROC, Ord 18 r 12(1A)(a).

- (2) The aforesaid interest pursuant to Section 12 of the Civil Law Act (Cap 43);
- (3) Costs; and
- (4) Such further or other relief as this Honourable Court deems just.

P23.02 Claim for damages for personal injuries (collision between two vehicles)²

[Rodyk & Davidson LLP]

1. On [date], the Plaintiff was driving his Mazda 323 motor car along the [road], when the Defendant drove, managed and controlled his Mercedes-Benz motor car travelling in the same direction in a manner that caused the said Mercedes-Benz motor car to come into contact or to collide with the said Mazda 323 motor car and to cause the said Mazda 323 motor car to come into contact or to collide with a crash barrier or road divider in the middle of the said road.
2. The matters referred to in paragraph 1 hereof were caused by the negligence of the Defendant.

Particulars of negligence

- (1) Driving at a speed that was excessive under road traffic regulations and/or excessive in the circumstances;
 - (2) Attempting to overtake the said Mazda 323 motor car on the left-hand side of the said motor car;
 - (3) Driving too close to the said Mazda 323 motor car;
 - (4) Failing to properly control the said Mercedes-Benz motor car;
 - (5) Failing to keep any or any proper lookout or to have any or any sufficient regard for other traffic travelling in the same direction on the said road;
 - (6) Failing to take account of the path of the said Mazda 323 motor car on the said Expressway or otherwise notice the presence of the said motor car;
 - (7) Failing in the circumstances to exercise or maintain any or any proper or effective or cautious control of the said Mercedes-Benz motor car.
3. By reason of the matters aforesaid, the Plaintiff sustained severe injuries and has suffered loss and damage.

Particulars of injury

[Full particulars, preferably from the medical report,³ if available]

² Also see P23.09.

³ A medical report should also be served with the statement of claim: ROC, Ord 18 r 12(1A)(a).

Particulars of special damage

[Each head of special damage claimed together with the sum claimed therefor]

4. Further, the Plaintiff claims interest on all damages awarded by the Court at the rate of 5.33 per cent per annum from the date of the accident to date of award or on such sums at such rate and for such period as the Court thinks fit pursuant to Section 12 of the Civil Law Act (Cap 43).

AND the Plaintiff claims:

- (1) Damages;
- (2) The interest as aforesaid pursuant to Section 12 of the Civil Law Act (Cap 43);
- (3) Costs; and
- (4) Such further or other relief as this Honourable Court deems just.

P23.03 Claim against employer for damages for personal injuries

[Rodyk & Davidson LLP]

1. At all material times the Plaintiff was employed by the Defendant as a motor mechanic at their premises at [address] where they carried on business as motor car accident repairers, and for the purpose of which they provided the Plaintiff with certain equipment, including an electric welder.
2. On [date], the Plaintiff in the course of his said employment was using the said electric welder, when the same suddenly showered the Plaintiff with sparks.
3. The said incident was caused by the negligence of the Defendants, their servants or agents.

Particulars of negligence

- (1) Failing to ensure that the Plaintiff would be reasonably safe in using the said welder for his work;
 - (2) Exposing the Plaintiff to an unreasonable risk of damage and/or injury of which they knew or ought to have known;
 - (3) Providing the Plaintiff with equipment for him to use, namely a welder, which was defective;
 - (4) *Res ipsa loquitur*.
4. By reason of the matters aforesaid, the Plaintiff suffered injuries, loss and damage.

Particulars of injuries

The Plaintiff who was born on [date] and aged [age] at the date of the said accident lost 80 per cent of the vision of his left eye and suffered burns to his hands and face. He was in hospital for three weeks and underwent two operations to his eye and two operations involving skin grafts to the burns on his hands. The Plaintiff has suffered much pain as a result of the said injury and is unable to resume his work as a welder and is presently unemployed. The Plaintiff is unable to pursue his hobbies of playing snooker and football.⁴

4 A medical report should also be served with the statement of claim: ROC, Ord 18 r 12(1A)(a).

Particulars of special damage

Loss of earnings from [date] to [date] at \$160 per week net (17 weeks) and continuing	S\$ 2,720
Damage to clothing	S\$ 120
Medical expenses	S\$ 200
Travel expenses to and from out patient appointments	S\$ 65
Total	\$ 3,105

5. Further, the Plaintiff claims interest on all damages awarded by the Court at the rate of 5.33 per cent per annum from the date of the accident to date of award or on such sums at such rate and for such period as the Court thinks fit pursuant to Section 12 of the Civil Law Act (Cap 43).

AND the Plaintiff claims:

- (1) Damages;
- (2) Interest as aforesaid pursuant to Section 12 of the Civil Law Act (Cap 43);
- (3) Costs; and
- (4) Such further or other relief as this Honourable Court deems just.

P23.04 Claim against employer for damages for breach of statutory duties under Workplace Safety and Health Act

[Rodyk & Davidson LLP]

1. At all material times the Defendant was the occupier of factory premises at [address], being the premises to which the provisions of the Workplace Safety and Health Act (Cap 354A) applied, and the Plaintiff was an employee of the Defendant acting in the course of his employment.
2. On [date] and in the course of his aforesaid employment at the Defendant's said premises, the Plaintiff was instructed by his foreman, one [A], to fetch a steel drum from the storage bay of the said factory, and to convey it to the processing section. The said drum weighed approximately fifteen kilograms.
3. As the Plaintiff was carrying the said drum along the gangway which connects the storage bay to the processing section, he slipped on a substance present on the floor and fell to the ground.
4. The Plaintiff's said fall was caused by a breach of the Defendants, their servants or agents, of their duty under Section 12(3)(a) of the Workplace Safety and Health Act (Cap 354A).

Particulars of breach of duty

The Defendants failed to provide the Plaintiff with a safe place of work without risk to health, which is contrary to Section 12(3)(a) of the said Act.

5. Further and in the alternative, the Defendants, their servants or agents were in breach of their duty to the Plaintiff under Section 12(3)(b) of the said Act.

Particulars of breach of duty

The Defendants, their servants or agents failed to keep the floor or gangway upon which the Plaintiff was walking free of a substance likely to cause persons to slip, contrary to Section 12(3)(b) of the said Act. The Plaintiff cannot until after Discovery in this action identify with precision the nature and/or amount of the said substance present at the site of his fall.

6. Further and in the alternative, the Plaintiff's said fall was caused by a breach by the Defendants, their servants or agents, of their duty under Sections 12(3)(c) and 12(3)(d) of the said Act.

Particulars of breach of duty

The Defendants by their servant or agent, the said [A], required the Plaintiff to transport a load, namely a steel drum weighing approximately 15 kilograms, along the gangway that connects the storage bay to the processing section.

7. Further and in the alternative, the Plaintiff's said fall was caused by the negligence of the Defendants, their servants or agents, and/or by their breach of the duty owed to the Plaintiff, their lawful visitor.

Particulars of negligence and breach of statutory duty

- (1) The Plaintiff repeats the allegations made under paragraphs 4, 5 and 6 above;
 - (2) Failing to provide the Plaintiff with a safe place of work;
 - (3) Failing to operate any or any adequate system of cleaning the said floor or gangway;
 - (4) Failing to heed previous accidents occurring to workmates of the Plaintiff in similar circumstances;
 - (5) Failing to warn the Plaintiff of the danger of carrying heavy objects along narrow gangways;
 - (6) Failing adequately or at all to supervise the Plaintiff and/or provide him with an assistant and/or hand trolley on which to carry loads;
 - (7) Causing or permitting the Plaintiff to walk across a slippery floor;
 - (8) Failing to warn the Plaintiff of the condition of the said floor or gangway;
 - (9) In the premises, failing to provide the Plaintiff with a safe place of work and/or a safe system of work, and failing to make him reasonably safe for the purposes of his visit to the premises;
 - (10) The Plaintiff will also say *res ipsa loquitur*.
8. By reason of the matters aforesaid, the Plaintiff sustained severe injuries and has suffered loss and damage.

Particulars of injury

[Full particulars, preferably from the medical report, if available]

Particulars of special damage

[Each head of special damage claimed together with the sum claimed therefor]

9. Further, the Plaintiff claims interest on all damages awarded by the Court at the rate of 5.33 per cent per annum from the date of the accident to date of award or on such sums at such rate and for such period as the Court thinks fit pursuant to Section 12 of the Civil Law Act (Cap 43).

AND the Plaintiff claims:

- (1) Damages;
- (2) The interest as aforesaid pursuant to Section 12 of the Civil Law Act (Cap 43);
- (3) Costs; and
- (4) Such further or other relief as this Honourable Court deems just.

P23.05 Claim by delivery man for injuries caused whilst delivering beer to hotel

[Rodyk & Davidson LLP]

1. At all material times the Defendant was the occupier of premises situate and known as [name of premises] at [address].
2. At all material times the Plaintiff was a lawful visitor to the said premises in the course of his employment as a delivery driver by [name of company].
3. At about [time] in the morning of [date] the Plaintiff was delivering barrels of beer to the said premises when he slipped on the staircase leading from the bar of the hotel into the cellar and sustained the injuries hereinafter described.
4. The Plaintiff's said fall was caused by negligence by the Defendant, its servants or agents.

Particulars of negligence

- (1) Failing to keep the staircase free of substances likely to cause the Plaintiff to slip;
 - (2) Failing adequately or at all to light the said staircase;
 - (3) Failing adequately or at all to maintain and/or repair the staircase;
 - (4) Failing to provide the Plaintiff with a safe means of access to the cellar;
 - (5) Failing to warn the Plaintiff of the insecurity and/or condition of the staircase;
 - (6) Failing to provide a handrail for the staircase;
 - (7) Allowing the Plaintiff to descend the staircase when it was unsafe for him to do so;
 - (8) In all the circumstances of the case, failing to make the Plaintiff reasonably safe for the purposes of his visit to the premises.
5. By reason of the matters aforesaid the Plaintiff sustained severe injuries and has suffered loss and damage.

Particulars of injuries

[Full particulars of the injuries sustained and also the Plaintiff's age or date of birth]

Particulars of special damage

[Full particulars of special damages]

6. Further, the Plaintiff claims interest on all damages awarded by the Court at the rate of 5.33 per cent per annum from the date of the accident to date of award or on such sums at such rate and for such period as the Court thinks fit pursuant to Section 12 of the Civil Law Act (Cap 43).

AND the Plaintiff claims:

- (1) Damages;
- (2) Interest as aforesaid pursuant to Section 12 of the Civil Law Act (Cap 43);
- (3) Costs; and
- (4) Such further or other relief as this Honourable Court deems just.

P23.06 Claim by customer in restaurant for injuries caused by defects in premises (occupier's liability)

[Rodyk & Davidson LLP]

1. The Defendants are and were at all material times the owners and occupiers of premises situate at [address] where they carry on business as a Chinese restaurant.
2. On [date], the Plaintiff entered the said restaurant as a customer for the purpose of purchasing and consuming a meal therein from the Defendants, and accordingly she was at all material times a visitor of the Defendants in the said premises.
3. On the said date, while the Plaintiff was walking to the lavatory in the said premises, her foot caught in a hole in the carpet on the floor of the said restaurant and she tripped and fell.
4. The matters complained of were caused by the negligence and/or breach of their duty of care on the part of the Defendants, their servants or agents.

Particulars

- (1) Failing to take any or any reasonable care to see that the Plaintiff was or would be reasonably safe in using the premises for the purpose for which she was permitted to be there;
 - (2) Failing to inspect the said floor to ascertain the presence of the said hole in the carpet;
 - (3) Failing to remove, replace, patch, or cover the said hole in the carpet in order to prevent the Plaintiff tripping on the same;
 - (4) Failing to warn the Plaintiff of the presence of the said hole in the carpet;
 - (5) Permitting the Plaintiff to walk over the said hole in the carpet when they knew it was unsafe and dangerous for her to do so;
 - (6) In the premises failing to discharge their duty of care owed to the Plaintiff.
5. By reason of the matters aforesaid the Plaintiff sustained severe injuries and has suffered loss and damage.

Particulars of injuries

[Full particulars of the injuries sustained and also the Plaintiff's age or date of birth]

Particulars of special damage

[Full particulars of special damages]

6. Further, the Plaintiff claims interest on all damages awarded by the Court at the rate of 5.33 per cent per annum from the date of the accident to date of award or on such sums at such rate and for such period as the Court thinks fit pursuant to Section 12 of the Civil Law Act (Cap 43).

AND the Plaintiff claims:

- (1) Damages;
- (2) Interest as aforesaid pursuant to Section 12 of the Civil Law Act (Cap 43);
- (3) Costs; and
- (4) Such further or other relief as this Honourable Court deems just.

P23.07 Claim by lady against spa for personal injuries and damage caused by treatment chemicals (negligence and breach of contract)

[Rodyk & Davidson LLP]

1. The Defendant carries on business as a health spa for ladies at [address].
2. On [date], at the Plaintiff's request and for reward the Defendant supplied spa services to the Plaintiff including the application of chemicals to the face of the Plaintiff in the process of a spa treatment.
3. By reason of undertaking the said process and applying the said chemical to the Plaintiff's face the Defendant impliedly represented and/or warranted to the Plaintiff that the same was safe and harmless and/or it was the duty of the Defendant to ensure that the said process was safe and harmless to the Plaintiff.
4. The Defendant was in breach of the said warranty and/or the said duty and/or negligent in applying the same.

Particulars of negligence

- (1) Applying the said chemical to the Plaintiff's face so as to cause the injuries hereinafter complained of;
- (2) Failing to take any or any adequate and/or effective precautions before, during, or after applying the said process to ensure that the same would not harm or injure the Plaintiff;
- (3) Allowing the Plaintiff's face to be harmed by the said process;
- (4) Failing to take any or any adequate steps to avoid damage to the Plaintiff's face.
5. By reason of the matters aforesaid the Plaintiff suffered injury loss and damage.

Particulars of injury

On application of the said treatment chemical the Plaintiff experienced a sharp burning pain which became unbearable, her face began to peel and change in colour to a brownish-red with spots and patches of pink. Two days later, all hair from the Plaintiff's face fell out. The Plaintiff was disfigured by the same. She has suffered considerable pain and mental anguish. She is embarrassed and consequently unable to enjoy the usual amenities of life.

Particulars of special damage

Loss or earnings for two weeks	S\$700
Cost of medical treatment	S\$300
Prospective cost of cosmetic surgery	S\$6,000
Total	S\$7,000

6. Further, the Plaintiff claims interest on all damages awarded by the Court at the rate of 5.33 per cent per annum from the date of the accident to date of award or on such sums at such rate and for such period as the Court thinks fit pursuant to Section 12 of the Civil Law Act (Cap 43).

AND the Plaintiff claims:

- (1) Damages;
- (2) The aforesaid interest pursuant to Section 12 of the Civil Law Act (Cap 43);
- (3) Costs; and
- (4) Such further or other relief as this Honourable Court deems just.

P23.08 Claim by representative of estate and dependants (fatal accident)

[Rodyk & Davidson LLP]

1. The Plaintiff is the widow and administratrix of the estate of AB, deceased, and she brings this action for the benefit of the dependents of the deceased under the provisions of the Civil Law Act (Cap 43). Letters of administration were granted to the Plaintiff on [date] and the grant was extracted on [date].
2. On [date] the said deceased was driving his Vauxhall Cavalier motor car along [road], at a point outside a [name] petrol station, when the 2nd Defendant, the servant or agent of the 1st Defendant, so drove, managed and controlled a Ford Transit motor van in coming out of the driveway of the said petrol station that he caused or permitted the same violently to collide with the said motor car.
3. The matters referred to in paragraph 2 hereof were caused by the negligence of the 1st Defendant or his servant or agent, the 2nd Defendant.

Particulars of negligence

- (1) Failing to keep any or any proper lookout or to have any or any sufficient regard for traffic that was or might reasonably be expected to be on the said road;
 - (2) Emerging onto the said road without first ascertaining or ensuring that it was safe to do so and when it was unsafe and dangerous to do so;
 - (3) Failing to give way to traffic on the said road;
 - (4) Failing to see the Plaintiff in sufficient time or at all in order to avoid colliding with him or at all;
 - (5) Driving his said motor van into the path of the Plaintiff;
 - (6) Failing to stop, to slow down, to swerve, or in any other way so to manage or control the said motor van as to avoid the said collision.
4. By reason of the matters aforesaid, the said deceased sustained severe injuries from which he died 14 days later on [date].

Particulars of injuries

Fracture of the skull, fracture of left arm, fracture of thumb and index finger on right hand, four broken ribs. Numerous cuts and bruises to face, neck and chest. Pneumothorax on left hand side.

5. Particulars pursuant to the Civil Law Act (Cap 43) are as follows:

(1) the names of the persons for whose benefit this action is brought are as follows:

CD, the widow of the deceased, [age and date of birth].

ED, a son of the deceased, [age and date of birth].

FD, a daughter of the deceased, [age and date of birth].

(2) the nature of the claim in respect of which damages are sought is as follows:

The deceased was [number] years of age at the time of his death. He enjoyed good health and lived a happy and vigorous life. He was employed as a [designation and employer] and his income after deduction of all taxes was S\$[amount] per annum. He had good prospects of further advancement in his career as a banker and his income was likely to increase progressively over the next ten years and it is estimated that in three years' time it would have risen to S\$[amount] net of taxes and in ten years to S\$[amount] net of taxes. The deceased paid the mortgage and all the outgoings on the family home at [address], he paid for all the household and other expenses, including clothing, holidays, school fees and other outgoings for the family.

6. The widow and children of the deceased were wholly dependent upon him for support, and by his death they have lost the said means of support and have suffered loss and damage and further the widow has suffered bereavement.

7. Further, by reason of the matters aforesaid, the deceased during his lifetime suffered from the said injuries sustained by him, his said motor-car was damaged, and by his death his estate has suffered loss and damage.

Particulars of special damage

Loss of earnings from [date] to [date] at \$[amount] per week =	\$[amount]
Funeral expenses	\$[amount]
Damage to motor car	\$[amount]
Damage to clothing, watch, glasses, and hearing aid	\$[amount]
Total	\$[amount]

8. Further, the Plaintiff claims interest on all damages awarded by the Court at the rate of 5.33 per cent per annum from the date of the accident to date of award or on such sums at such rate and for such period as the Court thinks fit pursuant to Section 12 of the Civil Law Act (Cap 43).

AND the Plaintiff claims:

- (1) Damages under Section 20 of the Civil Law Act (Cap 43) for the benefit of herself and the aforesaid children of the deceased;
- (2) Damages for the pain, suffering and loss of amenities;
- (3) Damages for bereavement under Section 21 of the Civil Law Act (Cap 43);
- (4) Special damages as aforesaid;
- (5) Interest as aforesaid pursuant to Section 12 of the Civil Law Act (Cap 43);
- (6) Costs; and
- (7) Such further or other relief as this Honourable Court deems just.

P23.09 Defence and counterclaim to claim for damages for personal injuries (collision between two vehicles)⁵

[Rodyk & Davidson LLP]

Defence

1. The Defendants admit paragraph 1 of the Statement of Claim.
2. Save that the Defendants admit the accident referred to therein, paragraph 2 of the Statement of Claim is denied.
3. The Defendants deny that they or either of them was negligent as alleged in paragraph 3 of the Statement of Claim or at all.
4. Further or in the alternative the said accident was caused or contributed to by the negligence of the deceased.

Particulars

- (1) Driving at an excessive speed in the circumstances;
 - (2) Failing to slow down at a dangerous bend in the road;
 - (3) Failing to slow down, swerve, stop or in any other manner so to control or manage his said motor car as to avoid hitting the 2nd Defendant;
 - (4) Failing to pay any or any sufficient heed to the signal given by one, [name], a servant or agent of the 1st Defendant, to stop or slow down.
5. The Defendants deny the alleged loss or damage referred to in paragraphs 4, 5, 6 and 7 of the Statement of Claim or any loss or damage.
 6. Save as hereinbefore specifically admitted, the Defendants deny each and every allegation in the Statement of Claim as if the same were specifically set out herein and traversed seriatim.

Counterclaim

7. The Defendants repeat paragraph 4 hereof, and say that by reason of the matters therein the 1st Defendant has suffered loss and damage and the 2nd Defendant has suffered injuries, loss and damage.

⁵ Also see P23.02.

Particulars of injuries

The 2nd Defendant who was born on [date] and aged [age] at the date of the accident suffered a fracture of the right femur and a fracture of the right wrist, numerous cuts to his face and bruises to his chest and abdomen. He was detained in hospital for 5 days and his leg and wrist were in plaster for 2 months. The 2nd Defendant now walks with a limp and his wrist has been considerably weakened and he has lost 50 per cent of his grip and cannot lift heavy weights. He has had to give up his pastimes of tennis and football.

Particulars of special damages of first defendant

Damage to Ford Transit van	S\$1,375
Cost of hire of replacement van for three weeks from [date] at \$100 per week	S\$ 300
Damage to textbooks and stationery in van at time of accident	S\$1,125
Total	S\$2,800

Particulars of special damages of second defendant

Damage to clothing and personal effects	S\$ 215
Loss of earnings from [date] to [date] (30 weeks at \$150 per week net)	S\$4,500
Medical expense	S\$ 250
Total	S\$4, 965

The 2nd Defendant will give credit for unemployment and sickness benefits received.

8. Further, the Defendants claim interest pursuant to Section 12 of the Civil Law Act (Cap 43) on such sums as may be found due to them at such rate and for such period as the Court thinks fit.

AND the Defendants counterclaim:

- (1) Damages;
- (2) Interest as aforesaid pursuant to s 12 of the Civil Law Act (Cap 43);
- (3) Costs; and
- (4) Such further or other relief as this Honourable Court deems just.

NON-INJURY MOTOR ACCIDENT CLAIMS (NIMA)⁶

INCIDENTAL DOCUMENTS

P23.10 Form 4 – Sample letter of claim to defendant

[Withers KhattarWong LLP]

To: [Defendant's Name]

[Address]

Dear Sir

[Claimant's full name]

[Claimant's address]

We are instructed by the above named to claim damages against you in connection with a road traffic accident on [date] at about [time] at [place of accident which must be sufficiently detailed to establish location] involving our client's vehicle registration number [number] and vehicle registration number [number] driven by you at the material time.

We are instructed that the accident was caused by your negligent driving and/or management of your vehicle. As a result of the accident, our client's vehicle was damaged and our client has been put to loss and expense, particulars of which are as follows:

[Set out the loss and expenses claimed.]

A copy each of the following supporting documents is enclosed:

[List the documents as required in the pre-action protocol.]

[We have also sent a letter of claim to [name of other defendant] and a copy of that letter is enclosed. We understand that his insurer is [name and address of insurer if known].]

We have on [date of notification] notified your insurer [name of insurer] of the accident and [a pre-repair inspection of your vehicle

⁶ This relates to motor accidents wherein only property damage is caused. These claims are mostly for a liquidated sum, i.e. only special damages. The items of damages claimed are usually cost of repairs of the damaged vehicle as well as loss of use for the period of repairs. If the claimant had rented a replacement vehicle for the duration of repairs, rental costs are claimable as well.

was carried out by your insurers on [date]] [To the best of our knowledge, your insurer has waived the need for pre-repair inspection.]

Please note that if you are insured and you wish to claim under your insurance policy, you should immediately pass this letter and all the enclosed documents to your insurer.

Please note that you or your insurer should send to us an acknowledgement of receipt of this letter within 14 days of your receipt of this letter, failing which our client will have no alternative but to commence proceedings against you without further notice to you or your insurer.

Please also note that if you have a counterclaim against our client arising out of the accident, you are also required to send to us a letter giving full particulars of the counterclaim together with all relevant supporting documents within 8 weeks of your receipt of this letter.

Yours faithfully

encs

cc [Defendant's insurer]

[Other defendant and his insurer]

(Note: This sample letter, with the necessary modifications, can also be used as a sample letter to the defendant's insurer.)

P23.11 Form 5 – Sample acknowledgment of letter of claim

[Withers KhattarWong LLP]

To: [Claimant]

[Address]

Dear Sir

[Heading, e.g. as per letter of claim]

We acknowledge receipt of your letter dated [date] and the enclosures on [date of receipt].

[We are investigating your/your client's claim and will reply to you substantively soon.]

[Or, if the defendant is ready to take a position on the claim, to state his position, e.g. We admit both liability and quantum and will be making full payment of your/your client's claim within 14 days.]

or

We admit liability and are investigating quantum and will reply to you on the quantum soon.

or

We admit quantum and are investigating liability and will reply to you on liability soon.

Yours faithfully

Cc [Other defendants and their insurers]

P23.12 Form 6 – Sample letter by claimant before issue of writ of summons

[Withers KhattarWong LLP]

To: [Defendant or his insurer as the case may be]

[Address]

Dear Sir

[Heading, e.g. as per letter of claim]

We regret that despite reasonable effort having been made to settle our client's claim, there does not appear to be any reasonable prospects of settlement.

We hereby give you 10 clear days' notice that our client intends to proceed with the issue of a writ of summons against you/your insured. In this regard, please let us know if you are instructing solicitors to accept service of process on your/your insured's behalf.

[Please note that our client will also be joining [names of other defendants] as co-defendants in the intended action.]

Yours faithfully

cc [Other defendants and their insurers]

P23.13 Form 7 – Writ of summons (as per the form prescribed in the Rules of Court)

[Withers KhattarWong LLP]

Sample Statement of Claim

1. On [date] at about [time] at [place of accident], the motor vehicle registration number [] was involved in a collision with the motor vehicle registration number [] driven by the defendant. [If there are other defendants joined, for example on grounds of contributory negligence or vicarious liability, to give brief particulars, without giving particulars of negligence.]
2. [On [date], the plaintiff and the defendant agreed that the defendant will bear [full liability] for the accident.]
3. As a result of the accident, the plaintiff's vehicle was damaged and the plaintiff was put to loss and expense.

Particulars

[set out the loss and expenses claimed.]

And the plaintiff claims:

- (1) damages to be assessed;
- (2) interest;
- (3) costs; etc.

P23.14 Form 8 – Pre-action Protocol Checklist⁷

1. Has the defendant or his insurer acknowledged receipt of the plaintiff's letter of claim?

Ans. Yes/No.

2. Have attempts been made to settle the matter?

Ans. Yes/No.

If no, please give reasons.

3. Is the question of liability agreed?

Ans. Yes/No.

4. Is the question of quantum agreed?

Ans. Yes/No.

5. Has the defendant indicated that he has a counterclaim?

Ans. Yes/No.

6. The following documents/information have been exchanged between the plaintiff and the defendant (please tick accordingly):

- ☐ Full and complete GIA reports and type-written transcripts of the factual accounts of all persons involved in the accident, including a sketch plan.
- ☐ Repairer's bill and evidence of payment.
- ☐ Surveyor's report.
- ☐ Excess bill/receipt.
- ☐ Vehicle registration card.
- ☐ COE/PARF certificates.
- ☐ Names and addresses of witnesses.
- ☐ Photographs of damage to all vehicles.
- ☐ Photographs of accident scene.
- ☐ Invoice and receipt for rental of alternative vehicle.
- ☐ Whether the insurer has been notified of the accident and allowed to carry out a pre-repair inspection of the claimant's vehicle.

Remarks (if any)

⁷ To be filed with the writ of summons.

7(a) Did the accident involve a chain collision or more than 2 vehicles?

Ans. Yes/No.

7(b) If yes, has the defendant indicated that he intends to bring in a third party?

Ans. Yes/No.

7(c) If yes, has the third party indicated that he intends to bring in a fourth party?

Ans. Yes/No.

7(d) Were there any other parties involved in the accident?

Ans. Yes/No.

If yes, please provide details.

P23.15 Appendix F – Benchmark rates for costs of rental and loss of use⁸

TYPE	BENCHMARK RATES		FACTORS TO BE CONSIDERED
	RENTAL (Per day) \$	LOSS OF USE (Per day) \$	
PRIVATE CARS			
Under 1800 cc	100	50-60	1. Usage, e.g. travelling salesman 2. Rental receipts, consider possibility that they may be inflated 3. Luxury cars, e.g. Porsche, Ferrari 4. Above 1800, e.g. Mercedes, BMWs 5. No of days: To refer to surveyor's reports
1800 cc & above	120-180	80-100	
Luxury cars	200 or more	120-180	
MOTOR CYCLES			
Under 1400 cc	-	20-30	
Above 1400 cc	-	30-40	
TAXIS			
Normal Taxis	Included	110-120	*Inclusive of driver's income. If income tax returns show more than \$60 per day, rates can be increased.
London/Mercedes Cab	Included	150-170	*Inclusive of driver's income. If income tax returns show more than \$60 per day, rates can be increased.

⁸ The Benchmark rates are a good guide to both insurers and litigators when negotiating settlement with claimants. It also prevents runaway awards made by claimants for loss of use and rental.

COMMERCIAL OPERATORS			
Vans + pick ups	60-100	60-100	Consider the size of vehicle and type of usage.
Private Non hire Bus	200-250	90-150	
Lorry	200-250	90-150	
TIBS BUSES			
Bendy Bus	-	325-350	Official rates are usually higher but these rates are generally accepted.
Single deck (air con)	-	250-275	
Bus Plus	-	150	
SBS BUSES			
Single deck (air con)	-	250	Rates may change from year to year depending on earnings of the company.
Single deck (non air con)	-	200	
Double deck (non air con)	-	170	
Double deck (air con)	-	200 - 350	

CHAPTER 24

PROFESSIONAL NEGLIGENCE

PRECEDENTS

- P24.01** Claim for damages for negligence against architect
- P24.02** Claim for damages for negligence against financial adviser
- P24.03** Claim for damages for negligence against medical practitioner and hospital
- P24.04** Claim for damages for negligence against medical practitioner
- P24.05** Claim for damages for negligence against solicitor
- P24.06** Defence and counterclaim to statement of claim against architect
- P24.07** Defence to claim against financial adviser
- P24.08** Defence to claim for damages for negligence against medical practitioner and hospital
- P24.09** Defence, relying on limitation, to claim for damages for negligence against medical practitioner
- P24.10** Defence to claim against a solicitor
- P24.11** Defence of contributory negligence

CHAPTER 24

PROFESSIONAL NEGLIGENCE

PRECEDENTS

P24.01 Claim for damages for negligence against architect¹

[Allen & Gledhill LLP]

1. The Plaintiff is and was at all material times the owner of a house situated at [address of the property] (“the Property”).
2. The Plaintiff was interested in constructing an extension to the Property (“the Works”).
3. The Defendant is and was at all material times an architect carrying on his profession at [address of business].
4. By an oral contract made on or about [date] during a conversation at the Property between the Plaintiff and the Defendant, the Plaintiff engaged the Defendant to obtain planning permission to design and supervise the construction of the Works for the sum of S\$50,000 (“the Agreement”).
5. It was an implied term of the Agreement, implied as a matter of law and/or to give business efficacy to the Agreement, that the Defendant would carry out its duties with the reasonable skill and care to be expected of a competent architect.
6. Further or alternatively, the Defendant owed the Plaintiff a like duty of care in tort.
7. In pursuance of the Agreement, the Defendant produced design drawings and a Specification in or about [state date].
8. On or about [state date], the Plaintiff engaged [X & Y Builders Pte Ltd] to carry out the Works pursuant to a Works Contract in which the Defendant was named as architect. Practical completion occurred on [state date].
9. On [state date], the Plaintiff received a letter from the Ministry of [X] informing him that planning permission had not been sought or obtained for the Works.
10. The Plaintiff immediately made an application for planning permission but this was refused by way of a letter from the

¹ Also see P24.06.

Ministry dated [state date]. The Plaintiff had to have the Works demolished.

11. The Defendant was in breach of the express and/or implied terms of the Agreement and or/was negligent.

Particulars

- (a) The Defendant failed to obtain planning permission from the Ministry of [X] either before the commencement of the Works or at all;
 - (b) The Defendant failed to notify the Plaintiff of the failure to obtain planning permission from the Ministry of [X];
 - (c) The Defendant allowed the Works to proceed and be completed without obtaining and/or notifying the Plaintiff of the failure to obtain permission.
12. By reason of the matters aforesaid, the Plaintiff has suffered loss and damage.

Particulars

(a) Cost of carrying out the Works	S\$80,000
(b) Cost of demolishing the Works	S\$50,000
Total	S\$130,000

AND the Plaintiff claims:

- (1) The sum of S\$130,000;
- (2) Or alternatively, damages to be assessed;
- (3) Interest under Section 12 of the Civil Law Act (Cap 43);
- (4) Costs; and
- (5) Any such further or other relief that this Honourable Court deems fit.

P24.02 Claim for damages for negligence against financial adviser²

[Allen & Gledhill LLP]

1. The Defendant carried on business at all material times as an independent financial adviser at [address].
2. On or about [date], the Plaintiff met the Defendant at [place] and instructed the Defendant that he wished to invest the sum of S\$[amount]. The Defendant agreed to advise and obtain for the Plaintiff an investment plan that would suit his risk profile.
3. The Plaintiff instructed the Defendant:
 - (1) That he wanted an investment that would guarantee a return of his principal at the maturity date;
 - (2) To advise the Plaintiff in respect of the most suitable financial investment plan, bearing in mind the degree to which the Plaintiff was risk adverse.
4. In the premises, it was an express or implied term of the agreement between the Plaintiff and the Defendant that:
 - (1) The Defendant would advise the Plaintiff as to the most suitable investment for him on the basis that the Plaintiff wanted his principal to be fully returned upon maturity date;
 - (2) The Defendant would exercise reasonable care and skill throughout.
5. Further, or in the alternative, the Defendant owed the Plaintiff a duty of care at common law in like terms to the contractual duties pleaded in paragraph 4 above.
6. On or about [date], the Defendant expressly advised that:

The Plaintiff should invest S\$[amount] in the government bonds of [XYZ country], which matured in [date] with a projected maturity value of S\$[amount].
7. In reliance on the advice by the Defendant as set out above, on [date], the Plaintiff:

Bought government bonds of [XYZ country] of the value S\$[amount] which matured on [date] with a projected maturity value of S\$[amount].

² Also see P24.07.

8. The said advice was negligent and the Defendant is in breach of contract and/or duty of care as follows.

Particulars

- (1) The Defendant failed to advise the Plaintiff that the maturity value of the investment was subject to the rate of currency exchange;
 - (2) The Defendant failed to advise the Plaintiff that he was not guaranteed of a 100% return of the principal on his investment.
9. In the premises, the Plaintiff has suffered loss and damage.

Particulars of loss and damage

Loss of S\$[amount] being the difference between the principal sum of S\$[amount] and the return of S\$[amount] upon maturity date of the bonds.

AND the Plaintiff claims:

- (1) Damages as aforesaid;
- (2) Interest under Section 12 of the Civil Law Act (Cap 43);
- (3) Costs; and
- (4) Any such further or other relief that this Honourable Court deems fit.

P24.03 Claim for damages for negligence against medical practitioner and hospital³

[Allen & Gledhill LLP]

1. The Plaintiff is a [gender] aged [age].
2. At all material times the 1st Defendant provided hospital services and maintained the [name of the hospital] at [address] ("the Hospital").
3. At all material times, the 2nd Defendant was a Consultant Orthopaedic Surgeon in the Department of Orthopaedics at the Hospital. The 2nd Defendant was at all times an employee/agent of the 1st Defendant.
4. On or about [date], the Plaintiff sought treatment from the 1st Defendant for Anterior Cruciate Ligament reconstruction ("the Procedure") of the right knee.
5. The Procedure was performed on [date] at the Hospital and the surgery was carried out by the 2nd Defendant.
6. The Plaintiff was discharged from the Hospital on the following day.
7. Sometime on or about [date], the Plaintiff developed a fever and pain and swelling in the right knee.
8. The fever, pain and swelling failed to subside within a few days and the Plaintiff returned to the Hospital to seek further treatment from the 1st Defendant on [date].
9. The Plaintiff was examined by the 2nd Defendant and informed him that she was concerned that the right knee was infected.
10. The 2nd Defendant reassured the Plaintiff that it was a normal reaction to the surgery and that it would be resolved on its own. The Plaintiff was subsequently discharged from the Hospital.
11. On or about [date], the Plaintiff noticed severe redness on and around the right knee wound and yellow exudate from the wound. The Plaintiff decided to consult Dr X of [name of hospital] instead of returning to the 1st and 2nd Defendants. On [date] she was diagnosed by Dr X as having an infection of the wound.
12. On or about [date], the Plaintiff underwent arthroscopic knee washout, conducted by Dr X, to treat the infection. At the same

³ Also see P24.08.

time, the screws in the Plaintiff's knee were removed due to infection.

13. The Plaintiff was an inpatient at [name of hospital] for 1 month while the infection in the right knee was treated.
14. The 1st and 2nd Defendants negligently advised and provided inadequate and/or improper medical treatment to the Plaintiff and were negligent in allowing the Plaintiff's right knee to be infected during surgery and/or medical treatment at the Hospital.

Particulars of negligence of the first defendant

- (1) The 1st Defendant was negligent in allowing the Plaintiff's knee to be infected while she was undergoing surgery and/or during medical treatment at the Hospital;
- (2) The 1st Defendant was negligent in failing to carry out the necessary tests and/or failing to detect that the Plaintiff's right knee was infected;
- (3) The 1st Defendant was negligent in failing to ensure that infection control standards at the Hospital were effective, sterile and safe.

Particulars of negligence of the second defendant

- (1) The 2nd Defendant was negligent in allowing the Plaintiff's right knee to be infected while she was undergoing surgery and/or in the course of medical treatment at the Hospital on [date of Procedure to date of discharge];
 - (2) The 2nd Defendant was negligent in failing to carry out the necessary tests and/or failing to detect that the Plaintiff's right knee was infected when she consulted him on [2nd consultation date] regarding the fever, pain and swelling that she was experiencing after the Procedure;
 - (3) The 2nd Defendant was negligent in failing to have adequate regard to the symptoms of the Plaintiff when he knew or ought reasonably to have known that they were or might be caused by an infection.
15. As a result of the negligence of the 1st and/or 2nd Defendant(s), the Plaintiff has suffered injury, loss and damage.

Particulars of injury

- (1) The Plaintiff has undergone arthroscopic knee washout to treat the infection;

- (2) As a result of the infection, the Plaintiff suffers from septic arthritis associated with pain and limited range of movement in her right knee;
- (3) Further details of the Plaintiff's injuries are set out in the medical report of Dr X, a copy of which is enclosed herewith as Schedule A pursuant to Order 18 Rule 12(1A)(a) of the Rules of Court.

Particulars of special damage

- (1) The Plaintiff has also suffered Special Damages, the particulars of which are enclosed herewith as Schedule B pursuant to Order 18 Rule 12(1A)(b) of the Rules of Court.

AND the Plaintiff claims:

- (1) Damages to be assessed;
- (2) Interest under Section 12 of the Civil Law Act (Cap 43);
- (3) Costs; and
- (4) Any such further or other relief that this Honourable Court deems fit.

P24.04 Claim for damages for negligence against medical practitioner⁴

[Allen & Gledhill LLP]

1. The Defendant is and was at all material times a medical practitioner carrying on practice at [address].
2. On or about [date], the Plaintiff sought treatment from the Defendant for symptoms of productive cough, blood-stained phlegm, shortness of breath, night sweats and chest pain which had been ongoing for about 3 months.
3. The Defendant conducted an examination of the Plaintiff and diagnosed chronic bronchitis. The Defendant administered oral antibiotics and other medications to treat the chronic bronchitis.
4. The Plaintiff sought further treatment from the Defendant on or about [date] as her symptoms did not resolve.
5. The Defendant again examined the Plaintiff and reassured her that she was still suffering from chronic bronchitis. The Defendant advised the Plaintiff to continue taking the oral antibiotics and get more rest.
6. On or about [date] the Plaintiff sought treatment from X Hospital for shortness of breath and chest pain, and was subsequently diagnosed with non-small cell carcinoma of the lung.
7. The Defendant failed to exercise all reasonable care, skill and diligence in his treatment of the Plaintiff.

Particulars of negligence

The Defendant was negligent and in breach of his duty of care to the Plaintiff in that he:

- (1) Failed to correctly diagnose the medical condition of the Plaintiff on [1st consultation date];
- (2) Failed to correctly diagnose the medical condition of the Plaintiff on [2nd consultation date];
- (3) Failed to take any or all reasonable steps to investigate the Plaintiff's symptoms;
- (4) Failed to carry out all or any appropriate investigations, examinations, tests to ascertain the correct diagnosis;
- (5) Failed to perform sputum cytology;

⁴ Also see P24.09.

- (6) Failed to refer the Plaintiff for chest X-ray, CT Scan or Magnetic Resonance Imaging;
 - (7) Failed to refer the Plaintiff for bronchoscopy;
 - (8) Failed to refer the Plaintiff to an appropriate specialist for further investigation of her symptoms;
 - (9) Failed to properly re-examine the Plaintiff on [date of 2nd consultation] so as to ensure that the initial diagnosis was correct and that the treatment prescribed was appropriate in the circumstances;
 - (10) Failed to treat the Plaintiff in a proper and professional manner.
8. By reason of the Defendant's negligence, the Plaintiff has sustained injury, loss and damage.

Particulars of injury

- (1) But for the negligence of the Defendant, the Plaintiff's condition would have been diagnosed earlier and she would have had a better prognosis;
- (2) The Plaintiff has undergone increased pain and suffering by reason of the delay in diagnosing her condition;
- (3) The Plaintiff has a poor prognosis as a result of the delay in diagnosing her condition;
- (4) The Plaintiff has a reduced life expectancy as a result of the delay in diagnosing her condition;
- (5) Further details of the Plaintiff's injuries are set out in the medical report of [Dr X], a copy of which is enclosed herewith as Schedule A pursuant to Order 18 Rule 12(1A)(a) of the Rules of Court.

Particulars of special damage

- (1) The Plaintiff has also suffered Special Damages, the particulars of which are enclosed herewith as Schedule B pursuant to Order 18 Rule 12(1A)(b) of the Rules of Court.

AND the Plaintiff claims:

- (1) Damages to be assessed,
- (2) Interest under Section 12 of the Civil Law Act (Cap 43);
- (3) Costs; and

- (4) Any such further or other relief that this Honourable Court deems fit.

P24.05 Claim for damages for negligence against solicitor⁵

[Allen & Gledhill LLP]

1. The Defendants are and were at all material times a firm of solicitors practicing at [address].
2. On or about [date], the Plaintiff consulted Mr X of the Defendants for professional advice about the recovery of a sum of S\$[amount] owing to him by [Y]. The Plaintiff retained the Defendants and the Defendants agreed to act for him in relation to the recovery of the monies. The retainer is contained in a letter from the Defendants to the Plaintiff dated [date].
3. It was an implied term of the retainer that the Defendants owed the Plaintiff a duty to exercise reasonable skill and care in the performance of their duties. Further or alternatively, the Defendants owed the Plaintiff a duty of care at common law to act with reasonable care and skill.
4. On or about [date], the Plaintiff instructed the Defendants to act for him to recover the sum owing to the Plaintiff by [Y] by commencing proceedings in the High Court of Singapore.
5. In breach of the term of the retainer and/or negligently, the Defendants failed to take any action to protect the Plaintiff's position prior to the Plaintiff's claim becoming statute-barred by virtue of Section 5 of the Limitation Act (Cap 163).

Particulars

- (1) The Defendants failed to issue a Writ on behalf of the Plaintiff within the statutory period under the Limitation Act;
- (2) The Defendants failed to inform the Plaintiff that they had not lodged a Writ on his behalf within such statutory time limit;
- (3) The Defendants failed to disclose to the Plaintiff the possible consequences of any failure to lodge such claim within the statutory time limit;
- (4) The Defendants failed to act for the Plaintiff in a proper and professional manner.
6. By reason of the Defendants' breach of contract and/or negligence, the Plaintiff has lost the right to recover the said sum from [Y] and has thereby suffered loss and damage.

⁵ Also see P24.10.

Particulars of loss and damage

- (1) S\$[Amount] was paid to the Defendants on account of legal costs and disbursements;
- (2) The Plaintiff had good prospects of recovering the said sum of \$[amount] from [Y] plus statutory interest from [date].

AND the Plaintiff claims:

- (1) Damages to be assessed;
- (2) Interest under Section 12 of the Civil Law Act (Cap 43);
- (3) Costs; and
- (4) Any such further or other relief that this Honourable Court deems fit.

P24.06 Defence and counterclaim to statement of claim against architect⁶

[Allen & Gledhill LLP]

1. The Defendant admits paragraphs 1, 2 and 3 of the Statement of Claim.
2. As to paragraph 4 of the Statement of Claim:
 - (a) It is admitted that by an oral contract made on or about during a conversation at the Property between the Plaintiff and the Defendant, the Plaintiff engaged the Defendant to design and supervise the construction of the works for the sum of S\$50,000.
 - (b) It is denied that the Defendant was engaged by the Plaintiff to obtain planning permission for the Works from the Ministry of [X] as alleged or at all.
 - (c) It is averred that during the aforesaid conversation, the Plaintiff informed the Defendant that planning permission had been sought and granted by the Ministry of [X].
3. Save as aforesaid, paragraph 4 of the Statement of Claim is denied.
4. The Defendant admits paragraphs 5 and 6 of the Statement of Claim.
5. Paragraphs 7 and 8 of the Statement of Claim are admitted.
6. No admissions are made as to paragraphs 9 and 10 of the Statement of Claim.
7. It is denied that the Defendant was in breach of the Agreement and/or negligent as alleged at paragraph 11 of the Statement of Claim or at all.
8. As to paragraph 12 of the Statement of Claim, no admissions are made as to the alleged or any loss and damage and it is denied that the same were caused by the Defendant.

Counterclaim

9. Paragraphs 1 to 8 of the Defence are repeated.
10. In breach of the terms of the Agreement, the Plaintiff has failed to pay the Defendant the sum of S\$50,000 or any sum despite numerous requests for same.

⁶ Also see P24.01.

11. Further or alternatively, the said sums are due and owing.

AND the defendant claims:

- (1) Damages;
- (2) Alternatively, sums due pursuant to the Agreement;
- (3) Interest; and
- (4) Costs.

P24.07 Defence to claim against financial adviser⁷

[Allen & Gledhill LLP]

1. Paragraphs 1 and 2 of the Statement of Claim are admitted.
2. Paragraphs 3 – 5 of the Statement of Claim are denied. The Defendant avers that the Plaintiff expressed a preference for an investment that would guarantee his capital but did not insist of this as an absolute condition of the investment. The Defendant further avers that the Plaintiff requested for an investment that would bring a relatively high rate of return.
3. Paragraphs 6 – 7 of the Statement of Claim are admitted.
4. Paragraph 8 of the Statement of Claim is denied. The Defendant avers that he had informed the Plaintiff of all the attendant risks of investing in government bonds of [XYZ country].
5. Paragraph 9 of the Statement of Claim is not admitted.
6. Further and/or in the alternative, if the Plaintiff had suffered loss and damage as claimed (which is not admitted), such loss and damage was caused or contributed to by the negligence of the Plaintiff.

Particulars of negligence

- (1) On or about [date], the Defendant forwarded to the Plaintiff the investment portfolio and terms of the government bonds of [XYZ country];
- (2) The Plaintiff failed to read the express terms either adequately or at all, because had he done so, it would have been readily apparent that the principal sum of the investment was not 100% guaranteed upon maturity of the bonds.
7. Save as hereinbefore expressly admitted, the Defendant denies each and every allegation in the Statement of Claim as if the same had been expressly set out herein and traversed seriatim.

⁷ Also see P24.02

P24.08 Defence to claim for damages for negligence against medical practitioner and hospital⁸

[Allen & Gledhill LLP]

1. Paragraphs 1 to 3 of the Statement of Claim are admitted.
2. Paragraph 4 of the Statement of Claim is not admitted and the Defendants aver that the Plaintiff sought treatment from the 1st Defendant on [date] for left anterior cruciate ligament (“ACL”) tear. The Plaintiff informed the 2nd Defendant that the injury was sustained playing tennis.
3. The 2nd Defendant explained and advised the Plaintiff that ACL reconstruction (“the Operation”) was the appropriate treatment and informed the Plaintiff of the risks and benefits of the Operation, including the possibility of infection of the surgical site during and/or after the Operation. The Plaintiff consented to the operation.
4. Paragraph 5 of the Statement of Claim is admitted and the 2nd Defendant further adds that the technique used during the Operation was sterile and aseptic, hence minimising the chances of any bacterial infection. In addition, prior to and during the Operation, the Plaintiff was administered intravenous antibiotics to prevent infection.
5. Paragraph 6 of the Statement of Claim is admitted.
6. Paragraphs 7, 8, 9 and 10 of the Statement of Claim are not admitted and the Defendants aver as follows.
7. On or about [date], the 2nd Defendant was informed that the Plaintiff had presented herself at the 1st Defendant’s Accident and Emergency Department with complaints of fever and pain in her left knee. The 2nd Defendant examined the Plaintiff. The Plaintiff was afebrile, no pus or discharge from the surgical site was seen.
8. The 2nd Defendant ordered, *inter alia*, blood cultures for detection of bacterial infection and oral antibiotics for prophylactic purposes.
9. The 2nd Defendant informed the Plaintiff that some fever and pain is common in the early post-operative phase and as there were no visible signs of infection, discharged the Plaintiff. The Plaintiff was given an appointment for the 2nd Defendant to review her on [date] but she subsequently defaulted on treatment.

⁸ Also see P24.03.

10. The 2nd Defendant followed-up the blood culture results on or about [date]. The blood culture results showed no bacterial growth for 48 hours.
11. By reason of the above matters, the 2nd Defendant avers that his clinical management and advice to the Plaintiff was reasonable and proper in the circumstances.
12. Paragraphs 11 to 13 of the Statement of Claim are not admitted.
13. Paragraph 14 of the Statement of Claim is denied and the Plaintiff is put to strict proof thereof. The Defendants aver that the proper procedures had been observed prior to the Operation to prevent the Plaintiff from sustaining an infection during the Operation and/or during her medical treatment at the Hospital. The Defendants further aver that on [2nd consultation date], the 2nd Defendant made a reasonable and competent diagnosis of the Plaintiff's condition.
14. Paragraph 15 of the Statement of Claim is denied.
15. Save as hereinbefore expressly admitted, the Defendants deny each and every allegation in the Statement of Claim as if the same had been expressly set out herein and traversed seriatim.

P24.09 Defence, relying on limitation, to claim for damages for negligence against medical practitioner⁹

[Allen & Gledhill LLP]

1. Paragraphs 1 to 5 of the Statement of Claim are admitted.
2. Paragraph 6 of the Statement of Claim is not admitted.
3. Paragraphs 7 to 8 of the Statement of Claim are denied and the Plaintiff is put to strict proof thereof.
4. Further and/or in the alternative, the injury complained of occurred, if at all, on [date], such date being more than three years before the issue of the Statement of Claim herein.
5. In the premises, the claim is barred by Section 24A of the Limitation Act (Cap 163).
6. Save as hereinbefore expressly admitted, the Defendant denies each and every allegation in the Statement of Claim as if the same had been expressly set out herein and traversed seriatim.

⁹ Also see P24.04.

P24.10 Defence to claim against a solicitor¹⁰

[Allen & Gledhill LLP]

1. Paragraph 1 of the Statement of Claim is admitted.
2. Paragraphs 2 and 3 of the Statement of Claim are admitted and the Defendants further add that Mr X told the Plaintiff:
 - (1) That the sum of S\$[amount] would, in light of the correspondence passing between the Plaintiff and [Y] and shown to the Defendants, be held to be a gift to [Y] by the Plaintiff;
 - (2) That it would be a waste of money for the Plaintiff to commence proceedings to recover the sum;
 - (3) That the Plaintiff should think about the Defendants' advice and if he still wished to commence proceedings, he should return to the Defendants and provide further written instructions.
3. Paragraph 4 of the Statement of Claim is denied and the Defendants aver that pursuant to the Defendants' advice, the Plaintiff went away and did not return or provide the Plaintiff with further written or any instructions.
4. In the premises, whilst it is admitted that the Defendants did not issue a Writ, it is denied that they acted in breach of the terms of the said agreement or negligently as alleged in paragraphs 5 and 6 of the Statement of Claim.
5. It is denied that the Plaintiff has suffered loss and damage as alleged or at all and the Defendants aver that the Defendants' costs were a reasonable sum for the work carried out and the Plaintiff would not have recovered the alleged or any sum from [Y].
6. In the premises, it is denied that the Plaintiff is entitled to the relief claimed or any relief.
7. Save as hereinbefore expressly admitted, the Defendants deny each and every allegation in the Statement of Claim as if the same had been expressly set out herein and traversed seriatim.

¹⁰ Also see P24.05.

P24.11 Defence of contributory negligence

[Providence Law Asia LLC]

1. Further and/or in the alternative, if the Plaintiff had suffered loss and damage as claimed (which is not admitted), such loss and damage was caused or contributed to by the negligence of the Plaintiff.

Particulars of negligence

- (1) On several occasions, the Defendant had requested from the Plaintiff, material information relating to the proposed transaction;
 - (2) The Plaintiff failed to provide the Defendant with such information, and continually insisted that the information was unimportant;
 - (3) The Plaintiff thereafter insisted that the transaction proceed without reference to the information requested for, thereby resulting in the loss caused to himself.
2. Save as hereinbefore expressly admitted, the Defendant denies each and every allegation in the Statement of Claim as if the same had been expressly set out herein and traversed seriatim.

CHAPTER 25

REMEDIES

ACCOUNT

Precedents

- P25.01 Claim for an account and an order for payment
- P25.02 Defence denying obligation to account
- P25.03 Defence that defendant has fully accounted
- P25.04 Defence that account had been settled

DAMAGES

Precedents

- P25.05 Claim for breach of contract – general damages and special damages in foreign currency

DECLARATION

Precedents

- P25.06 Claim for declaration on adverse possession
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INJUNCTION

Precedents

- P25.09 Claim for mandatory and prohibitory injunctions (indorsement on writ)
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RECEIVERS

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P25.16 Affidavit supporting application for appointment of receiver for partnership

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RESCISSION

Precedents

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P25.20 Claim for rescission of contract for sale of shares (indorsement on writ)

P25.21 Claim for rescission of agreement for sale of property (indorsement on writ)

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RECTIFICATION

Precedents

P25.23 Claim for rectification of written agreement

SPECIFIC PERFORMANCE

Precedents

P25.24 Claim by purchaser to enforce sale of land (indorsement on writ)

P25.25 Claim by purchaser to enforce sale of shares (indorsement on writ)

P25.26 Claim to enforce grant or acceptance of lease (indorsement on writ)

P25.27 Claim by purchaser to enforce sale of land

P25.28 Claim by purchaser to enforce sale of shares

P25.29 Claim by tenant to enforce grant of lease

P25.30 Claim by landlord to enforce acceptance of grant of lease

P25.31 Defence that not all terms in the agreement

- P25.32** Defence that contract avoided by mistake and plea of hardship
- P25.33** Defence that contract voidable for misrepresentation and counterclaim for declaration or rescission

CHAPTER 25

REMEDIES

ACCOUNT

PRECEDENTS

P25.01 Claim for an account and an order for payment

[Tan Kok Quan Partnership]

1. By an agreement in writing (“the Agreement”) dated [date] between the Plaintiff and the Defendant, it was agreed:
 - (1) that the Defendant would sell [goods] supplied by the Plaintiff for and on behalf of the plaintiff;
 - (2) that the Defendant was entitled to a 5 per cent commission on the gross sale price; and
 - (3) that the Defendant would:
 - (a) render the Plaintiff a true and full account of all sales of the [goods]; and
 - (b) pay to the Plaintiff the gross sale price (less the commission that the Defendant was entitled to retain).
2. On or about [date], the Plaintiff supplied [quantity of goods] to the Defendant.
3. In a telephone conversation on or about [date], the Defendant informed the Plaintiff that he had sold most of the goods.
4. By a letter dated [date], the Plaintiff requested the Defendant:
 - (1) to render to the Plaintiff a true and full account of all sales of the [goods]; and
 - (2) to pay what was due to the Plaintiff.
5. In breach of the Agreement, the Defendant failed, refused and/or neglected to do so.
6. By reason of the matters aforesaid, the Plaintiff has suffered loss and damage.

AND the Plaintiff claims:

- (1) An account of all sales of [goods] by the Defendant, of the proceeds of those sales and of the [goods] remaining unsold by the Defendant;
- (2) An order for payment by the Defendant to the Plaintiff of all sums found to be due from the Defendant to the Plaintiff on the taking of the account under prayer (1) above;
- (3) Damages;
- (4) Interest; and
- (5) Such further or other relief as this Honourable Court deems fit.

P25.02 Defence denying obligation to account

[Tan Kok Quan Partnership]

1. The Defendant denies that he agreed to render the Plaintiff an account as alleged or at all.
2. The Defendant denies that he was or is an accounting party to the Plaintiff in respect of the matters alleged in the Statement of Claim or at all. [Particulars of why there is no relationship with the Plaintiff which gives rise to an obligation to account]
3. In the premises, the Defendant denies that the Plaintiff is entitled to the relief claimed or any relief.

P25.03 Defence that defendant has fully accounted

[Tan Kok Quan Partnership]

1. By an account (“the Account”) dated [date] sent by the Defendant to the Plaintiff on or about [date] and prior to the commencement of these proceedings, the Defendant duly and fully accounted to the Plaintiff in respect of the matters alleged by the Plaintiff.
2. The Account showed a balance of S\$[amount] owing from the Defendant to the Plaintiff. The Defendant paid the said amount to the Plaintiff by [method] on or about [date] and prior to the commencement of these proceedings.
3. There is no further account or sum due from the Defendant to the Plaintiff.
4. In the premises, the Defendant denies that the Plaintiff is entitled to the relief claimed or any relief.

P25.04 Defence that account had been settled

[Tan Kok Quan Partnership]

1. On or about [date], the Plaintiff and the Defendant stated and settled in writing an account (“the Account”) of all the Plaintiff’s claims against the Defendant and of the Defendant’s counterclaims against the Plaintiff [particulars of the contents of the Account].
2. Under the Account, after settling the claims of the Plaintiff against the counterclaims of the Defendant, there was found to be due from the Defendant to the Plaintiff a sum of S\$[amount].
3. On or about [date] by [method] the Defendant duly paid S\$[amount] to the Plaintiff.
4. On or about [date], by [method] the Plaintiff acknowledged receipt of and accepted payment of the said sum of S\$[amount].
5. In the premises, the Defendant denies that the Plaintiff is entitled to the relief claimed or any relief.

DAMAGES

PRECEDENTS

P25.05 Claim for breach of contract – general damages and special damages in foreign currency

[Tan Kok Quan Partnership]

1. The Plaintiffs employed the Defendant as their sales manager under a written contract of employment dated [date] (“the said Contract”). His employment was terminated with effect from [date].
2. Clause [number] of the said Contract provided that the Defendant shall exercise due care and reasonable skill in the performance of his duties.
3. In breach of the said clause [number], on or about [date], the Defendant for and on behalf of the Plaintiffs, agreed to buy the raw material [goods] notwithstanding the fact that the general manager had informed him [method] on or about [date] that no further purchases of the said raw material were to be made.
4. To mitigate loss and damage, the Plaintiffs sold the said raw material but suffered a loss in any event.

Particulars

Original purchase price	[\$foreign currency]
Less: Sale Price	[\$foreign currency]
Net loss	[\$foreign currency]

5. Clause [number] of the said Contract provided that for a period of 6 months from the date of termination of the Defendant’s employment with the Plaintiffs, the Defendant was prohibited from being employed as a sales personnel in Singapore in the same business as the Plaintiffs.
6. In breach of the said clause [number], the Defendant was engaged by company X as their sales manager with effect from [date]. Company X is in the same business as the Plaintiffs which is that of [type of business].
7. By reason of the matters aforesaid, the Plaintiffs have suffered loss and damage.

AND the Plaintiffs claim:

- (1) \$[foreign currency] under paragraph 4 above;
- (2) General damages under clause 6 above;
- (3) Interest; and
- (4) Such further or other relief as this Honourable Court deems fit.

DECLARATION

PRECEDENTS

P25.06 Claim for declaration on adverse possession

[Tan Kok Quan Partnership]

1. The Plaintiff is the registered proprietor of Lot [Number] Mukim [Number] ("the Plaintiff's land").
2. The Defendant is the registered proprietor of the land comprised in Lot [Number] to Mukim No [Number] ("the Defendant's land"). At all material times, the Defendant's land is not and was not governed by the Land Titles Act.
3. The physical boundary between two aforesaid properties should have been along the legal boundary dividing the Plaintiff's land and the Defendant's land. However, the physical boundary was on the Defendant's land as shown in the plan attached hereto. The strip of land between the legal boundary and the physical boundary ("the said strip of land") is shaded in the said plan and is about 50 square metres.
4. Since 1960 until the present day, which is more than 12 years prior to 1 March 1994,¹ the said strip of land has been treated as part of the Plaintiff's, and the Plaintiff has maintained the said strip of land and used it to the exclusion of all others.
5. Hence, the Plaintiff has acquired a right to the said strip of land by way of adverse possession.
6. However, the Defendant refuses to recognise the Plaintiff's said right and threatens to sue the Plaintiff for trespass.

AND the Plaintiff claims:

- (1) A declaration that the Plaintiff is entitled to the said strip of land as shaded in the plan attached hereto;
- (2) A declaration that the Defendant's title to the said strip of land is extinguished;
- (3) Costs; and
- (4) Such further or other relief as this Honourable Court deems fit.

1 The effective date from which a new Land Titles Act came into force that year, under which adverse possession was generally abolished subject to exceptions.

P25.07 Claim for declaration in respect of validity of cheques

[TSMP Law Corporation]

Let all parties concerned attend before the Judge (or Registrar) on the day of , [Year], at a.m/p.m on the hearing of an application by the Plaintiffs for the following:

1. A declaration by this Honourable Court that the Plaintiffs' cheques to be signed by DEFENDANT A (NRIC No.) for payment to:
 - 1.1 the Plaintiffs' immediate creditors (as set out at Appendix A annexed hereto);
 - 1.2 the Plaintiffs' long-term recurring creditors (as set out at Appendix B annexed hereto); and
 - 1.3 the Plaintiffs' solicitors [Law Firm] for legal services rendered to the Plaintiffs,are valid, binding and are to be honoured by the Plaintiffs' banks (as set out at Appendix C annexed hereto) notwithstanding that these cheques are not accompanied by a supporting payment voucher signed by DEFENDANT B (NRIC No.);
2. A determination by this Honourable Court as to the costs of and incidental to this Originating Summons application and by and to whom such costs are to be paid;
3. Such further and/or other relief as this Honourable Court deems fit or just; and
4. Liberty to apply.

P25.08 Claim for declaration under section 392 of the Companies Act

[TSMP Law Corporation]

Let all parties concerned attend before the Judge (or Registrar) on the day of [year] at a.m./p.m. on the hearing of an application by the Plaintiffs for the following orders:

1. A declaration that the resolution passed at the board meeting held on [date] resolving that [specify content of resolution] is valid.
2. Costs of this application to be paid by the Defendants to the Plaintiffs.
3. Such further and/or other order as this Honourable Court deems fit.

The grounds of this Originating Summons are set out in the 1st Affidavit of [Witness] filed herein.

INJUNCTION

PRECEDENTS

P25.09 Claim for mandatory and prohibitory injunctions (indorsement on writ)

[Tan Kok Quan Partnership]

The Plaintiff's claim is for:

- (1) An order that the Defendant do remove the fence he erected on the Plaintiff's land as comprised in Lot [number] Mukim [number];
- (2) An injunction to restrain the Defendant by himself, his agents or servants or otherwise howsoever from trespassing on the Plaintiff's land as comprised in Lot [number] Mukim [number];
- (3) Damages;
- (4) Interest;
- (5) Costs; and
- (6) Such further or other relief as this Honourable Court deems fit.

P25.10 Claim for mandatory and prohibitory injunctions (statement of claim)

[Tan Kok Quan Partnership]

1. The Plaintiff is the registered proprietor of the land comprised in Lot [number] Mukim [number] ("the Plaintiff's land").
2. The Defendant is the registered proprietor of the adjoining land comprised in Lot [number] Mukim [number] ("the Defendant's land").
3. On or about [date], the Defendant removed the fence which was along the legal boundary between the Plaintiff's land and the Defendant's land, and the Defendant erected a new fence on the Plaintiff's land. The strip of land between the said legal boundary and the new fence is delineated and marked in [colour] in the plan annexed hereto ("the said strip of land").
4. The Defendant took possession of the said strip of land, which is about [number] sq metres and trespassed upon it by using it for the purposes of [purpose].
5. Notwithstanding demands, the Defendant alleges that the said strip of land belongs to him and refuses to remove the new fence and cease the trespass.
6. Unless restrained, the Defendant threatens and intends to continue the trespass.

AND the Plaintiff claims:

- (1) An order that the Defendant do remove the fence he erected on the Plaintiff's land;
- (2) An injunction to restrain the Defendant by himself, his agents or servants or otherwise howsoever from trespassing on the Plaintiff's land;
- (3) Damages;
- (4) Interest;
- (5) Costs; and
- (6) Such further or other relief as this Honourable Court deems fit.

P25.11 Defence of laches and acquiescence; counterclaim

[Tan Kok Quan Partnership]

1. [Deny, not admit or admit allegations in Statement of Claim as may be appropriate]
2. On or about [date], the surveyors appointed by the Plaintiff and the Defendant respectively conducted a joint inspection of the Plaintiff's land and the Defendant's land and the legal boundary demarcating the said lands. At the said inspection, the Plaintiff's surveyor admitted that his survey was inaccurate. A copy of his survey is annexed hereto marked "P". Further, the Plaintiff's surveyor accepted the survey done by the Defendant's surveyor with regard to the position of the legal boundary.
3. Hence, the Defendant proceeded to erect a new boundary wall on the legal boundary based on the survey done by his surveyor, a copy of which is annexed hereto marked "D". The new wall was completed by [date].
4. On or about [date], which was more than 6 months after the new wall was completed, the Plaintiff wrote to the Defendant to allege that the construction should have been based on the survey of the Plaintiff's surveyor.
5. The Defendant pleads the acquiescence of the Plaintiff to the construction and position of the new wall. Further or in the alternative, the Defendant pleads the laches and delay of the Plaintiff. Hence, no mandatory or prohibitory injunction should be granted against the Defendant.
6. Even, if which is denied, the Plaintiff's surveyor is correct in his survey, the Defendant avers that by reason of the matters aforesaid, no mandatory or prohibitory injunction should be granted against the Defendant.
7. [General traverse]

Counterclaim

8. The Defendant repeats paragraphs 1 to 7 above.

AND the Defendant counterclaims:

- (1) A declaration that the legal boundary between the Plaintiff's land and the Defendant's land is as demarcated in the annexure marked "D";

- (2) A declaration that the Plaintiff is not entitled to assert that the boundary wall should be along the legal boundary as demarcated in the annexure marked “P”;
- (3) Costs; and
- (4) Such further or other relief as this Honourable Court deems fit.

P25.12 Defence alleging damages adequate remedy

[Tan Kok Quan Partnership]

If, which is denied, the Defendant is liable to the Plaintiff, then the Defendant avers that damages are an adequate remedy. Hence, the Plaintiff is not entitled to the injunctive relief sought.

P25.13 Defence that undertaking given not to repeat alleged default

[Tan Kok Quan Partnership]

If, which is denied, the Defendant is liable to the Plaintiff, then the Defendant avers that he has in any event in his letter dated [date] to the Plaintiff undertaken not to commit any of the acts complained of. Further, the Defendant has not committed any of the said acts since the said letter of undertaking. Hence, the Plaintiff is not entitled to the injunctive relief sought.

RECEIVERS

PRECEDENTS

P25.14 Claim in partnership action (indorsement on writ)

[Tan Kok Quan Partnership]

The Plaintiff claims:

- (1) An Order that the partnership between the Plaintiff and the Defendants known as [name] which operates a business at [address] be dissolved and that the affairs thereof be wound up by the Court with all necessary and proper accounts, inquiries and directions;
- (2) The appointment of a Receiver and Manager;
- (3) Further or alternatively an injunction to restrain the Defendants from disposing of or otherwise dealing, whether by themselves or by their servants or agents or otherwise howsoever, with the partnership assets;
- (4) Costs; and
- (5) Such further or other relief as this Honourable Court deems fit.

P25.15 Claim in administrative action (indorsement on writ)

[Tan Kok Quan Partnership]

The Plaintiff claims:

- (1) That a Receiver of the estate of Mr X, deceased, be appointed until letters of administration are granted;
- (2) That when the said letters of administration are granted, the said estate may be administered by the Court with all necessary and proper accounts, inquiries and directions;
- (3) Costs; and
- (4) Such further or other relief as this Honourable Court deems fit.

INCIDENTAL DOCUMENTS

P25.16 Affidavit supporting application for appointment of receiver for partnership

[Tan Kok Quan Partnership]

1. On [date] I entered into partnership with the Defendant. A Partnership Agreement dated [date] was executed (“the Agreement”).
2. As provided in clause [number] of the Agreement, the Defendant was to be in charge of, *inter alia*, debt collection and accounts.
3. In the months [months], I successfully secured sales in excess of S\$[amount]. The said sum would have been payable by [date] at latest.
4. Hence, I was surprised when on [date], the Defendant alleged that there was insufficient cash to repay XYZ company a debt of only S\$[amount]. He even suggested selling our stocks at depressed prices to his relative to get quick cashflow.
5. The Defendant further alleged that he had duly collected amounts due from debtors. However, when I perused the accounts, it was clear that he had failed to do so.
6. The Defendant has made no reasonable effort to collect the very substantial sums of money due to the partnership promptly. Hence, the risk of their remaining unpaid increases by the day.
7. Further, the Defendant’s suggestion to sell stocks at depressed prices, to his relative at that, puts the partnership assets at considerable jeopardy.
8. Hence, I respectfully request this Honourable Court to appoint a Receiver accordingly.

P25.17 Alternative orders which may be sought further to appointment of receiver

[Tan Kok Quan Partnership]

1. That Mr. X is appointed as Receiver of [name of business] to receive the rents and profits of [...] without giving security until [date] or until further Order;
2. That the Defendant do deliver over to the Receiver possession of the accounts, stocks, the business premises and other assets so far as is necessary for the purpose of the said receivership;
3. That the said Receiver do on or before [date] give security to the satisfaction of the Court and do render his Accounts and pay the balances which may be due as the Court shall direct;
4. That the Plaintiff and the Defendant shall disclose to the Receiver such information as the Receiver shall reasonably require regarding the assets and liabilities of the said business and file and serve affidavits confirming the same when requested to by the Receiver;
5. That the Plaintiff and the Defendant do forthwith deliver to the Receiver all the stock in trade and effects of the partnership and securities for the partnership together with all accounts, books and papers relating thereto;
6. The Receiver do pay the debts due from the said partnership in priority to claims by the Plaintiff and/or Defendant;
7. The Receiver be at liberty for the purpose of carrying on the said business to borrow as may be necessary such sum or sums not exceeding S\$[amount] in the aggregate.

RESCISSION

PRECEDENTS

P25.18 Claim by purchaser for rescission of contract (indorsement on writ)

[Tan Kok Quan Partnership]

The Plaintiff claims:

- (1) Rescission of a contract in writing dated [date] made between the Plaintiff and the Defendant for the sale of [property] by the Defendant to the Plaintiff;
- (2) Repayment by the Defendant to the Plaintiff of S\$[amount] being the deposit amount;
- (3) Interest;
- (4) Costs; and
- (5) Such further or other relief as this Honourable Court may deem fit.

**P25.19 Claim for rescission of contract and damages
(indorsement on writ)**

[Tan Kok Quan Partnership]

The Plaintiff claims:

- (1) Rescission of an agreement in writing dated [date] made between the Plaintiff and the said Defendant on the ground of [fraud or mistake];
- (2) Repayment of all sums paid by the Plaintiff to the said Defendant under the said agreement;
- (3) Further or in the alternative damages for the fraudulent misrepresentation which induced the Plaintiff to enter into the said agreement;
- (4) Interest;
- (5) Costs; and
- (6) Such further or other relief as this Honourable Court may deem fit.

**P25.20 Claim for rescission of contract for sale of shares
(indorsement on writ)**

[Tan Kok Quan Partnership]

The Plaintiff claims:

- (1) Rescission of an agreement in writing dated [date] made between the Plaintiff and the Defendant for the sale to the Plaintiff of [number] fully paid ordinary shares of \$1.00 each in ABC Ltd;
- (2) An account of all amounts received by the Defendant in respect of the said shares since the said agreement;
- (3) An order for payment by the Defendant to the Plaintiff of all sums found to be due on the taking of the account;
- (4) Interest;
- (5) Costs; and
- (6) Such further or other relief as this Honourable Court may deem fit.

P25.21 Claim for rescission of agreement for sale of property (indorsement on writ)

[Tan Kok Quan Partnership]

The Plaintiff claims:

- (1) A declaration that the agreement dated [date] made between the Defendant and the Plaintiff for the sale of the property is rescinded;
- (2) A declaration that the transfer of the said property be set aside;
- (3) Repayment by the Defendant to the Plaintiff of amounts paid by the Plaintiff pursuant to the said agreement;
- (4) Accounts and inquiries following from the rescission of the said agreement;
- (5) An order for payment by the Defendant to the Plaintiff of all sums found to be due on the taking of the account;
- (6) Interest;
- (7) Costs; and
- (8) Such further or other relief as this Honourable Court may deem fit.

P25.22 Claim for rescission of agreement based on fraud

[Tan Kok Quan Partnership]

1. By an agreement in writing dated [date] made between the Plaintiff and the Defendant, it was agreed that [agreement].
2. Pursuant to the said agreement the Plaintiff paid the Defendant S\$[amount] on or about [date].
3. Prior to the said agreement, on or about [date], the Defendant orally represented to the Plaintiff that [representation].
4. The said representation was untrue and was made by the Defendant fraudulently with the intention that the Plaintiff would be induced and the Plaintiff was induced thereby to enter into the agreement.

Particulars of fraudulent misrepresentation

[Particulars]

AND the Plaintiff claims:

- (1) Rescission of the agreement;
- (2) Accounts and inquiries following from the rescission of the agreement;
- (3) An order for payment by the Defendant to the Plaintiff of all sums found to be due on the taking of the account;
- (4) Interest;
- (5) Costs; and
- (6) Such further or other relief as this Honourable Court may deem fit.

RECTIFICATION

PRECEDENTS

P25.23 Claim for rectification of written agreement

[Tan Kok Quan Partnership]

1. By an oral agreement made on or about [date] between the Plaintiff and the Defendant, it was agreed that the Plaintiff would supply [number] kg of [the goods] to the Defendant at the rate of S\$100.00 per kg subject to the Plaintiff's standard terms and conditions.
2. On or about [date], the Plaintiff and the Defendant signed an agreement in writing which was to have set out all the express terms agreed upon orally and which they believed contained all the said express terms.
3. However, the said agreement in writing differed from the oral agreement, as there was a typographical error and the unit rate for the price of [the goods] was stated as S\$10.00 per kg instead of S\$100.00 per kg.
4. The said agreement in writing was under a mutual mistake of fact as to the unit rate for the price of [the goods].
5. Notwithstanding demands, the Defendant has wrongfully failed, refused and/or neglected to sign a rectified version of the agreement in writing which rectified version the Plaintiff has already signed.

SPECIFIC PERFORMANCE

PRECEDENTS

P25.24 Claim by purchaser to enforce sale of land (indorsement on writ)

[Tan Kok Quan Partnership]

The Plaintiff's claim is for:

- (1) Specific performance of an agreement in writing between the Plaintiff and the Defendant dated [date] for the sale by the Defendant to the Plaintiff of the land at Lot [number] Mukim [number] and known as [address];
- (2) All necessary and consequential accounts, directions and inquiries;
- (3) Further or alternatively, damages for breach of contract and interest thereon;
- (4) A declaration that the Plaintiff is entitled to a lien on the said property for the deposit he paid (together with interest thereon) and any damages and costs awarded in this action;
- (5) Interest;
- (6) Costs; and
- (7) Such further or other relief as this Honourable Court deems fit.

P25.25 Claim by purchaser to enforce sale of shares (indorsement on writ)

[Tan Kok Quan Partnership]

The Plaintiff's claim is for:

- (1) Specific performance of an oral agreement made on [date] for the sale by the 1st Defendant to the Plaintiff of [number] [ordinary] shares of S\$[amount] each in the 2nd Defendant Company;
- (2) An injunction restraining the 1st Defendant, whether by himself or by his servants or agents or otherwise howsoever, from parting or dealing with, or disposing of any of the said shares otherwise than to the Plaintiff;
- (3) An injunction restraining the 2nd Defendant Company from registering the transfer of any ordinary shares of S\$[amount] each now registered in the name of the 1st Defendant to any person other than the Plaintiff;
- (4) Damages for breach of contract;
- (5) Interest;
- (6) Costs; and
- (7) Such further or other relief as this Honourable Court deems fit.

**P25.26 Claim to enforce grant or acceptance of lease
(indorsement on writ)**

[Tan Kok Quan Partnership]

The Plaintiff's claim is for:

- (1) A declaration that an agreement in writing between the Plaintiff and the Defendant [made on or dated] [date] whereby the Defendant agreed to [grant or take] a lease of property at [address] for a term of [number] years at S\$[amount] per month from [date] is valid and binding upon the Defendant;
- (2) An order for specific performance by the Defendant of the said agreement;
- (3) Damages;
- (4) Interest;
- (5) Costs; and
- (6) Such further or other relief as this Honourable Court deems fit.

P25.27 Claim by purchaser to enforce sale of land

[Tan Kok Quan Partnership]

1. By an agreement in writing made between the Plaintiff and the Defendant on [date] (“the agreement”), the Defendant agreed to sell and the Plaintiff agreed to buy the land at Lot [number] Mukim [number] known as [address] at the price of S\$[amount].
2. Under clause [number] of the agreement, completion of the sale was to take place on [date].
3. On or about [date] in compliance with clause [number] of the agreement, the Plaintiff paid to the Defendant the sum of S\$[amount] by way of deposit.
4. Notwithstanding requests by the Plaintiff the Defendant on [date] [oral and written requests as case may be] has failed, neglected and/or refused to take any steps to complete the said agreement.
5. The Plaintiff has been at all material times been and remains ready willing and able to fulfil all his obligations under the agreement.
6. By reason of the Defendant’s breach the Plaintiff has suffered loss and damage.

Particulars of loss

[Particulars]

AND the Plaintiff claims:

- (1) An order for specific performance by the said Defendant of the agreement;
- (2) Damages of S\$[amount];
- (3) Interest;
- (4) Costs; and
- (5) Such further or other relief as this Honourable Court deems fit.

P25.28 Claim by purchaser to enforce sale of shares

[Tan Kok Quan Partnership]

1. By an agreement in writing dated [date] and made between the Plaintiff and the 1st Defendant, it was agreed that the Plaintiff would buy and the 1st Defendant would sell [number] ordinary shares of S\$[amount] each in the 2nd Defendant Company for the sum of S\$[amount] (“the agreement”).
2. Under clause [number] of the agreement, completion was to take place by [date].
3. Notwithstanding requests on [date] [oral and written requests as case may be], the Plaintiff has failed, refused and/or neglected to take any steps towards completion.
4. The 2nd Defendant Company has declared and paid the following dividends on [date] to which the Plaintiff is accordingly entitled, namely [list them], and has granted to its members the following rights: [full particulars].
5. The Plaintiff has been and remains ready willing and able to fulfil his obligations under the said agreement.
6. By reason of the Defendant’s breach, the Plaintiff has suffered loss and damage.

Particulars of loss

[Particulars]

AND the Plaintiff claims:

- (1) An order for specific performance by the said 1st Defendant of the agreement;
- (2) An injunction to restrain the 1st Defendant from dealing with or disposing of the shares which are the subject of the agreement to any other party except the Plaintiff;
- (3) An injunction to restrain the 2nd Defendant from registering the transfer of the said shares to any other party except the Plaintiff;
- (4) Damages of S\$[amount];
- (5) Interest;
- (6) Costs; and
- (7) Such further or other relief as this Honourable Court deems fit.

P25.29 Claim by tenant to enforce grant of lease

[Tan Kok Quan Partnership]

1. By an agreement in writing dated [date] between the Defendant of the one part and the Plaintiff of the other part, the Defendant agreed to grant to the Plaintiff a lease of the premises known as [address] for a term of [number] years from [date] at the monthly rent of S\$[amount].
2. In breach of the said agreement, the Defendant has wrongfully refused and continues to refuse to grant the aforesaid lease.
3. The Plaintiff at all material times has been and remains ready, willing and able to perform his part of the said agreement but the Defendant has failed neglected or refused to perform his part.
4. By reason of the Defendant's breach, the Plaintiff has suffered loss and damage.

AND the Plaintiff claims:

- (1) An order for specific performance by the said Defendant of the agreement;
- (2) Damages;
- (3) Interest;
- (4) Costs; and
- (5) Such further or other relief as this Honourable Court deems fit.

P25.30 Claim by landlord to enforce acceptance of grant of lease

[Tan Kok Quan Partnership]

1. By an agreement in writing dated [date] and made between the Plaintiff of the one part and the Defendant of the other part the Plaintiff agreed to grant to the Defendant and the Defendant agreed to take a lease of the premises known as [address] for a term of [number] years from [date] at a monthly rental of S\$[amount] upon the terms and conditions mentioned. The Plaintiff will refer at the trial to the said agreement for the full terms and effect.
2. Pursuant to clause [number] of the said agreement S\$[amount] was duly paid by the Defendant to the Plaintiff as the security deposit.
3. The Plaintiff has been at all times and remains ready, willing and able to perform his part of the said agreement and to grant a lease. However, the Defendant by letter dated [date] from his solicitors to the Plaintiff's solicitors wrongfully repudiated the said agreement. The Defendant has requested the return of the deposit and continues to fail refuse and/or neglect to perform his part of the said agreement.
4. By reason of the said wrongful repudiation and refusal on the part of the Defendant to take the said lease the Plaintiff has suffered loss and damage.

AND the Plaintiff claims:

- (1) An order for specific performance by the said Defendant of the agreement;
- (2) Damages;
- (3) Interest;
- (4) Costs; and
- (5) Such further or other relief as this Honourable Court deems fit.

P25.31 Defence that not all terms in the agreement

[Tan Kok Quan Partnership]

1. The Defendant denies that any such agreement as is alleged in paragraph [number] of the Statement of Claim herein or any other agreement relating to the property therein mentioned was ever made between the Plaintiff and the Defendant on [date] or any other date.
2. The Defendant avers that the agreement set out in the Statement of Claim did not incorporate all the terms expressly agreed between the Plaintiff and the Defendant.

Particulars

[Omitted terms]

3. The Defendant admits the receipt of the sum of S\$[amount] referred to in paragraph [number] of the Statement of Claim save that it is denied that the same was paid by way of a deposit. The said sum was paid by the Defendant to repay the Plaintiff for [...].
4. In the premises, it is denied that the Plaintiff is entitled to the relief claimed or any relief at all.
5. Save as is hereinbefore expressly admitted, the Defendant denies each and every allegation in the Statement of Claim as if the same had been set forth herein and specifically traversed.

P25.32 Defence that contract avoided by mistake and plea of hardship

[Tan Kok Quan Partnership]

1. The Defendant does not admit the contract alleged in paragraph [number] of the Statement of Claim herein, or alternatively says that the said contract is void for mistake.
2. The price for the said [goods] was given in error as \$10.00 instead of \$1,000.00. The said mistake was due to a printer's error, and upon discovering it the Defendant immediately notified the Plaintiff thereof by letter dated [date].
3. The Plaintiff must have known or reasonably have known that the said price of \$10.00 was a mistake and that the correct price was \$1,000.00 as advertised on [date] in the newspapers.
4. If the said alleged contract is valid and binding upon the Defendant (which is denied), then the Defendant avers that to enforce the said contract against him specifically would cause hardship.

[Particulars]

5. Save as is hereinbefore expressly admitted, the Defendant denies each and every allegation in the Statement of Claim as if the same had been set forth herein and specifically traversed.

P25.33 Defence that contract voidable for misrepresentation and counterclaim for declaration or rescission

[Tan Kok Quan Partnership]

1. It is admitted that the Plaintiff and the Defendant entered into the agreement referred to in the Statement of Claim.
2. The Defendant avers that the said agreement was induced by the misrepresentation of the Plaintiff.

Particulars

The Plaintiff orally represented to the Defendant on [date] that [representations made] whereas in fact [facts]. The Plaintiff made the said representation fraudulently either well knowing or recklessly not caring whether it was true or false. By means of the said fraudulent representation, the Plaintiff intended and did induce the Defendant to sign the said agreement.

3. Hence, the said agreement is not binding on the Defendant.
4. The Defendant admits that he has failed to complete the said agreement but says that in the circumstances he is under no obligation so to do.
5. By reason of the misrepresentation, the Defendant has suffered loss and damage.

Counterclaim

6. The Defendant repeats paragraphs 1 to 5 above.

AND the Defendant counterclaims:

- (1) A declaration that he is not bound by the said agreement;
- (2) Rescission of the said agreement;
- (3) Damages;
- (4) Interest;
- (5) Costs; and
- (6) Such further or other relief as this Honourable Court deems fit.

CHAPTER 26

SETTLEMENT

PRECEDENTS

- P26.01** Claim for breach of settlement agreement
- P26.02** Claim for breach of settlement agreement (personal injuries claim)
- P26.03** Defence to claim for breach of settlement agreement alleging misrepresentation
- P26.04** Defence to claim for breach of settlement agreement alleging mistake

INCIDENTAL DOCUMENTS

- P26.05** Offer to settle
- P26.06** Without prejudice offer to settle
- P26.07** Acceptance of offer to settle
- P26.08** Confirmation of acceptance of offer to settle
- P26.09** Settlement agreement
- P26.10** Deed of settlement
- P26.11** Consent order for instalment payments
- P26.12** Consent order for instalment payments
- P26.13** Consent order for damages and delivery of goods/possession of land
- P26.14** Consent judgment for delivery up of vacant possession of mortgaged property
- P26.15** Consent order for stay of proceedings
- P26.16** Consent order for stay of proceedings upon terms
- P26.17** Confidential consent order for stay of proceedings upon terms
- P26.18** SIMC Mediation Clause
- P26.19** SIMC Arb-Med-Arb Clause
- P26.20** Letter informing court of settlement

CHAPTER 26

SETTLEMENT

PRECEDENTS

P26.01 Claim for breach of settlement agreement

[Rodyk & Davidson LLP]

1. By an agreement in writing dated [date] between the Plaintiff and the Defendant, the Plaintiff agreed to [terms of agreement].
2. The Plaintiff duly [acts done by Plaintiff] and the Defendant paid the sum of S\$[amount] in respect thereof.
3. Thereafter on [date] the Defendant intimated to the Plaintiff that the Defendant could not abide by the terms of the settlement for the following reasons [reasons].
4. In view of the dispute between them, the parties entered into a further agreement ("the Compromise Agreement") whereby it was orally agreed between them that in full and final settlement and compromise of the dispute:
 - (1) The Plaintiff would [Plaintiff's obligations].
 - (2) The Defendant would thereupon pay the Plaintiff the further sum of S\$[amount].
5. The Plaintiff duly [acts done by Plaintiff].
6. In breach of the Compromise Agreement the Defendant has failed to pay the sum of S\$[amount] to the Plaintiff.
7. Further or in the alternative, by reason of the aforesaid, the Plaintiff has suffered loss and damage.

AND the Plaintiff claims:

- (1) S\$[amount];
- (2) Interest.

P26.02 Claim for breach of settlement agreement (personal injuries claim)

[Rodyk & Davidson LLP]

1. At all material times CD was employed by the Defendant as a painter. On [date] during the course of this employment the Plaintiff was involved in an accident caused by the collapse of a scaffold erected by the Defendant, his servant or agents. The Plaintiff sustained severe injuries.
2. On or about [date] solicitors instructed by the Plaintiff intimated to the Defendant by a letter of the said date that the Plaintiff held him responsible for the accident and that damages in respect of his injuries arising therefrom were claimed.
3. Thereafter the Defendant's insurers entered into negotiations with the Plaintiff's solicitors and by an agreement contained in and/or evidenced by the letter from the Defendant's insurers to the Plaintiff's solicitors dated [date] and their reply dated [date] the said claim was settled on the basis that the Defendant, by this insurers, would pay to the Plaintiff S\$[amount] in full and final settlement of his claim and costs.
4. In breach of the said agreement the Defendant has, by this insurers, failed to pay the said sum by reason whereof the Plaintiff has suffered loss and damage, namely, the sum, of S\$[amount].
5. Further and in the alternative, by reason of the aforesaid, the Plaintiff has suffered loss and damage.

AND the Plaintiff claims:

- (1) S\$[amount];
- (2) Interest on the sum of S\$[amount].

P26.03 Defence to claim for breach of settlement agreement alleging misrepresentation

[Rodyk & Davidson LLP]

1. Paragraphs [numbers] of the Statement of Claim are denied.
2. Save that it is admitted that negotiations took place between the Defendant's insurers and the Plaintiff's solicitors, paragraph [number] of the Statement of Claim is denied. It is denied that the letters referred to therein contain or evidence a concluded agreement of settlement or compromise between the parties, the letter from the Defendant's insurers merely invited the Plaintiff's solicitors to indicate whether an offer of S\$[amount] inclusive of costs would be acceptable to their client.
3. Further or alternatively, if, which is denied, the said letters constitute or evidence a concluded agreement of settlement or compromise to the effect alleged, the same agreement was procured by a material misrepresentation made by or on behalf of the Plaintiff.

Particulars of misrepresentation

- (1) The Plaintiff claimed, or it was claimed [misrepresentation].
- (2) The said representation was made in a letter from the Plaintiff's solicitors to the Defendant's insurers dated [date].
- (3) The representation was untrue in that, [reasons].
4. In each or either of the foregoing premises the Plaintiff's claim is denied.

P26.04 Defence to claim for breach of settlement agreement alleging mistake

[Rodyk & Davidson LLP]

1. The Defendant admits paragraphs [number] of the Statement of Claim [*or as the case may be*].
2. The Defendant admits the agreement referred to in paragraph [number] of the Statement of Claim but, by reason of the matters referred to in paragraphs 3, 4 and 5 below, it is denied that the same is of any effect and/or that the Plaintiff is entitled to rely upon it.
3. The said agreement was concluded on the basis of a mutual mistake of fact, namely, that the painting which the Plaintiff proposed to transfer to the Defendant as part of the settlement was a composition by [name]. In fact it was the work of an artist known only as [name] and, as such, is of no significant value.
4. Further or in the alternative, the Defendant's acceptance of the Plaintiff's offer herein was made pursuant to a threat made by the Plaintiff to the Defendant at [address], on or about [date], to the effect that unless the Defendant accepted the offer the Plaintiff would not pay him anything. The Plaintiff made the said threat knowing that the Defendant was in a very serious financial position in that [name], had the day previously obtained judgment for S\$[amount] against the Defendant which the Defendant was unable to meet.
5. For the reasons set out herein, the Plaintiff's claim is denied.

INCIDENTAL DOCUMENTS

P26.05 Offer to settle

[Rodyk & Davidson LLP]

The Defendant offers full and final settlement of the claim herein and all claims arising out of and/or connected with the action herein on the following terms:

1. The Defendant pays the Plaintiff the sum of S\$[amount] only.
2. This offer is made strictly on the basis of there being no admission of liability whatsoever on the part of the Defendant.
3. The offer if accepted is to be kept confidential by the Plaintiff and is not to be disclosed unless prior written consent is obtained from the Defendant or if disclosure is required by law or by an Order of Court.
4. Each party is to bear its own costs save that if this offer is not accepted within the next 14 days, the Defendant reserves the right to seek costs on an indemnity basis from the Plaintiff from the date of service of this offer at the conclusion of these proceedings.

P26.06 Without prejudice offer to settle

[Rodyk & Davidson LLP]

WITHOUT PREJUDICE

[Date]

To [name]

Attention :

Dear Sirs

MC / DC / SUIT NO

TERMS OF SETTLEMENT

Our clients' terms of settlement are as follows:

- (1) Our clients will make an ex gratia payment of S\$[amount] to your clients;
- (2) Payment will be made on or before [date];
- (3) This payment will be made on a without prejudice basis and will in no way constitute an admission of liability by our clients and is made solely on an ex gratia, goodwill basis;
- (4) This payment will be made in full and final settlement and/or discharge of any and all claims your clients may have arising out of or connected with this [dispute] and your clients hereby waive any and all rights they may have to make any further claims and further confirm for the avoidance of doubt that they have no further claims, howsoever arising, whether accrued, contingent or otherwise, whether directly or indirectly out of [the dispute], of whatsoever nature against our clients;
- (5) The terms of this settlement are to be kept confidential and are not to be disclosed unless prior written consent is obtained from our clients or if disclosure is required by law or by an Order of Court;
- (6) The action commenced by your clients is to be discontinued against our clients within 4 days from receipt of payment from our clients; and
- (7) Each party is to bear its own legal costs.

Please confirm that the terms herein are agreeable to your clients.

Yours faithfully

Solicitors for the Defendant

P26.07 Acceptance of offer to settle

[Rodyk & Davidson LLP]

[Date]

To [name]

Attention :

Dear Sirs

MC / DC / SUIT NO

TERMS OF SETTLEMENT

We write to confirm that our clients accept the terms of settlement as set out in your letter of [date].

Please let us have the settlement sum of S\$[amount]. Payment is made in favour of [name].

Yours faithfully

Solicitors for the Plaintiff

P26.08 Confirmation of acceptance of offer to settle

[Rodyk & Davidson LLP]

[Date]

To [name]

Attention :

Dear Sirs

MC / DC / SUIT NO

TERMS OF SETTLEMENT

We refer to your fax dated [date].

We confirm that your clients have accepted the terms of settlement as set out in our letter of [date]. We further confirm that our said letter of [date] and your fax of [date] document the parties' agreement to the terms of settlement, subject to the fact that the settlement sum will be made payable by cheque to [the Plaintiff's solicitor] directly.

Yours faithfully

Solicitors for the Defendant

P26.09 Settlement agreement

[Rodyk & Davidson LLP]

THIS SETTLEMENT AGREEMENT is made on [date]

BETWEEN

XYZ of the first part

AND

ABC of the second part.

WHEREAS:

- (A) XYZ have commenced proceedings against ABC in Suit No [number].
- (B) The parties are desirous of settling all claims between each other amicably without admission of any liability whatsoever on the part of any of the parties.

NOW IT IS HEREBY AGREED as follows:

1. ABC shall pay to XYZ an ex gratia sum of S\$[amount] of [name's] claims for (1) damages (together with interest thereon) to be agreed or assessed by the Court and (2) party and party costs incurred up to the date of this settlement agreement, including the costs of the assessment, if any, in Suit No [number] and which costs are to be agreed to or taxed by the Court PROVIDED ALWAYS that the said ex gratia sum shall not exceed S\$[amount].
2. The settlement agreement herein is entered into between the parties strictly on a "without any admission of liability basis" by either party.
3. The quantum of damages in Suit No [number] shall be agreed to or sent for assessment by the Court within 3 months of the date hereof. The party and party costs shall also be agreed to or sent for taxation by the Court within 3 months from the date hereof.
4. XYZ shall allow ABC to make payment of the said ex gratia sum within 21 days from the date when both damages and costs are agreed to or when both damages and costs have been assessed and taxed by the Court, whichever is the later date.
5. This settlement agreement shall be in full and final settlement of all claims whatsoever, present or future, that XYZ and/or the estate of [name] have or may have against ABC, its employees, agents and servants (save for [names]) for all injury, loss, damage and/or expense directly or indirectly and howsoever caused, arising from

and in relation to the [details of accident] on [date] resulting in the death of [name] ("the said accident").

6. XYZ hereby RELEASE AND DISCHARGE ABC, its employees, agents and servants (save for [names]) from all claims whatsoever, present or future, that they and/or the estate of [name] may have arising out of the said accident against ABC, its employees, agents and/or servants save for [names].
7. XYZ also hereby ABANDON, WAIVE AND RENOUNCE all their rights and the rights of the estate of [name] howsoever arising as a result of the said accident against ABC, its employees, agents and/or servants save for [names].
8. XYZ shall forthwith file the Notice of Discontinuance in Suit No [number] against ABC.
9. Both parties hereby UNDERTAKE to keep this settlement agreement on a strictly confidential basis including, but not limited to, not disclosing or divulging to any party whatsoever, or causing or allowing anyone to do likewise, details of this settlement including, but not limited to, the ex gratia payment, and anything whatsoever relating to and connected with the said accident. In the event of a breach of this clause by any party, then the party in breach of the said clause shall indemnify the innocent party for all losses, damages, expenses and/or costs whatsoever and howsoever arising that the innocent party may incur and/or suffer as a result of the said breach.
10. In the event any party is asked about the Suit No [number] and/or its result or outcome, then that party shall only be at liberty to reply or respond that the "Plaintiffs have discontinued the action against the [...] Defendants (ABC)" save that ABC, being a statutory board shall be at liberty to inform and respond to the relevant authorities and/or professional advisers as ABC may deem necessary.

IN WITNESS WHEREOF this Settlement Agreement has been entered into by the parties on the date stated at the beginning.

Signed by:

NRIC No:

Address:

Witnessed by

Name

NRIC No:

Address:

Signed by:

NRIC No:

Address:

Witnessed by

Name:

NRIC No:

Address:

Signed by:

Designation:

for and on behalf of ABC

Witnessed by

Name:

NRIC No:

Address:

P26.10 Deed of settlement

[Rodyk & Davidson LLP]

This DEED OF SETTLEMENT is made [date]

Between

ABC, INC, a company registered in [details] ("ABC");

DEF PTE LTD, a company incorporated in the Republic of Singapore (Company Registration No [number]) and having its registered office at [address] ("DEF"); and

XYZ, a company incorporated in [details] ("XYZ").

Whereas:

- (A) On [date], ABC commenced legal proceedings against DEF in Singapore High Court Suit No. [number] to recover, *inter alia*, payment of the total sum of US\$[amount] being the balance of the US\$[amount] subscription fee and US\$[amount] for the first year technical support due from DEF to ABC pursuant to the [type of] Agreement between ABC and DEF dated [date] ("the Agreement").
- (B) Whereas, on the other hand, DEF and XYZ are claiming, *inter alia*, that (1) the Agreement was entered into between ABC and XYZ and not between ABC and DEF and (2) the product delivered by ABC under the Agreement was, *inter alia*, so inadequate and quite unusable so as to amount to a complete and fundamental breach of the Agreement ("the Dispute").
- (C) ABC, DEF and XYZ have agreed to resolve the issues between them as stated above on terms and conditions stated herein.

Now this Deed witnesses as follows:

1. XYZ shall pay ABC the total sum of US\$[amount] within [number] weeks upon execution of this Deed of Settlement in consideration of ABC foregoing its claim against DEF for US\$[amount] in Singapore High Court Suit No. [number]. The said sum of US\$[amount] shall be paid by XYZ to ABC by way of telegraphic transfer to ABC's bank account as follows:
[details]
2. Time of payment shall be of the essence. In the event that XYZ defaults in making payment of the sum of US\$[amount] upon execution of this Deed of Settlement, the whole of the sum of US\$[amount] or the balance then remaining shall immediately become due and payable from XYZ and/or DEF to ABC.

3. Upon the signing of this Deed of Settlement:
 - (1) Both ABC and DEF shall have no further claims against each other in respect of the matters in dispute in Singapore High Court Suit No. [number].
 - (2) ABC shall file a Notice of Discontinuance within two weeks from the time payment of the said sum of US\$[amount] under this Deed of Settlement is cleared into ABC's account. Both parties shall bear their own costs in the said Suit.
 - (3) Subject to its rights under this Deed of Settlement, both DEF and XYZ hereby release and forever discharge ABC, and each of its past and present officers, directors, employees, agents, attorneys, affiliates, shareholders, and predecessors in interests ("the ABC Releasees"), and each of them, jointly and severally of and from any and all causes of action, damages, claims, liabilities, debts, obligations, attorneys' fees, costs and demands of whatever kind or nature, in law or in equity, both known and unknown, whether contingent or fixed, that DEF and/or XYZ have had in the past or now has against the ABC Releasees, whether related or unrelated to the Dispute and/or the Agreement.
 - (4) Subject to its rights under this Deed of Settlement, ABC hereby releases and forever discharges both DEF and XYZ, and each of its past and present officers, directors, employees, agents, attorneys, affiliates, shareholders, and predecessors in interests ("the DEF/XYZ Releasees"), and each of them, jointly and severally of and from any and all causes of action, damages, claims, liabilities, debts, obligations, attorneys' fees, costs and demands of whatever kind or nature, in law or in equity, both known and unknown, whether contingent or fixed, that ABC have had in the past or now has against the DEF/XYZ Releasees, whether related or unrelated to the Dispute and/or the Agreement.
4. All parties shall take all proper steps to keep confidential the terms of this Deed of Settlement and will not disclose the same to any third party. In the event of any breach of this clause, it is hereby expressly agreed and declared by both parties that damages are not an adequate remedy for such breach for the purposes of any application for injunctive relief.
5. This Deed of Settlement shall constitute the entire settlement agreed to between the parties and shall supersede all previous agreements between the parties.

6. This Deed of Settlement shall be construed and governed by the laws of Singapore and the parties hereby irrevocably submit to the non-exclusive jurisdiction of the courts of Singapore.

In witness whereof the parties have set their respective hands and seals the day and year first abovewritten.

ABC

Signed sealed and delivered by)

)

for and on behalf of)

ABC, INC)

in the presence of:)

DEF

Signed sealed and delivered by)

)

for and on behalf of)

DEF PTE LTD)

in the presence of:)

XYZ

Signed sealed and delivered by)

)

for and on behalf of)

XYZ LIMITED)

in the presence of:)

P26.11 Consent order for instalment payments

[Rodyk & Davidson LLP]

ORDER OF COURT

BEFORE THE HONOURABLE

JUSTICE [name]

IN CHAMBERS

UPON HEARING [Counsel for the parties *or as the case may be*]

AND UPON READING [*complete as appropriate*]

AND UPON the parties having agreed terms of settlement

BY CONSENT IT IS ORDERED:

1. The Defendant shall pay to the Plaintiff the sum of S\$[amount] in 5 equal monthly instalments of S\$[amount] each commencing from [date];
2. The Defendant shall provide the Plaintiff with [number] post-dated cheques for the above instalments within [number] weeks from today;
3. A sum of S\$[amount] that was previously overpaid by the Defendant to the Plaintiff shall be retained by the Plaintiff;
4. In default of any payment in paragraph (1) above, the full sum outstanding up to a maximum of S\$[amount] shall become due and payable forthwith; and
5. No order as to costs.

Dated this [day] day of [month] 20xx

ASSISTANT REGISTRAR

P26.12 Consent order for instalment payments

[Rodyk & Davidson LLP]

ORDER OF COURT

BEFORE THE HONOURABLE

JUSTICE [name] IN CHAMBERS

UPON HEARING [Counsel for the parties *or as the case may be*]

AND UPON READING (*complete as appropriate*)

AND UPON the parties having agreed terms of settlement

BY CONSENT IT IS ORDERED:

- (1) That upon payment by the Defendant to the Plaintiff of the agreed sum of S\$[amount] (being the amount agreed to be paid by the Defendant in respect of the Plaintiff's claim and costs herein) by instalments of S\$[amount] per month payable on the first day of each month, the first payment to be made on the first day of [month and year] all further proceedings in this action be and are hereby stayed;
- (2) That in the event of default on the part of the Defendant in payment of any of the said instalments or any part thereof on the due date, the Plaintiff shall have permission to sign final judgment against the Defendant forthwith upon such default for the whole of the outstanding balance of the agreed sum;
- (3) That each party have permission to apply.

P26.13 Consent order for damages and delivery of goods/ possession of land

[Rodyk & Davidson LLP]

CONSENT ORDER

BEFORE THE HONOURABLE

JUSTICE [name]

IN CHAMBERS

UPON THE PARTIES having agreed terms of settlement

BY CONSENT IT IS ORDERED:

[Terms agreed in which the judgment should be given, for example payment of liquidated sum]

1. That the Defendant do [by no later than [date] or within [number] days of service hereof] pay the Plaintiff the sum of S\$[amount] (being the amount claimed together with interest agreed in the sum of S\$[amount] thereon [*or as the case may be*]) with costs to be assessed, if not agreed [any other term agreed, for example, that the Counterclaim be dismissed without costs].
2. That upon payment by the Defendant to the Plaintiff of the said sum of S\$[amount] and the said costs he be discharged from any further liability in respect of the Plaintiff's claim in this action [*or as the case may be*].

[Delivery of goods]

3. [That the Defendant do deliver to the Plaintiff the goods described in the Claim Form as [full description of goods] or pay the Plaintiff [the value of the said goods to be assessed and S\$[amount] damages *or* damages to be assessed.

Or:

That the Defendant do pay the Plaintiff [S\$[amount] the agreed value or the value of the goods described in the Statement of Claim to be assessed] and also damages and interest thereon to be assessed.

Or:

That the Defendant do [forthwith *or* on or before [date]] deliver up to the Plaintiff the goods described in the Statement of Claim and damages and interest thereon to be assessed].

[Possession of land]

[That the Defendant do give the Plaintiff possession of the land described [as the warehouse premises situate at [address]] and pay the Plaintiff the sum of S\$[amount] agreed costs *or the case may be*].

[AND IT IS FURTHER ORDERED that the costs of the [Plaintiff or Defendant] be taxed or fixed at S\$[amount].]

[AND IT IS FURTHER ORDERED that each party shall have permission to apply.]

Dated [day] of [month] 20xx.

We consent to the making of an order in the above terms

Solicitors for the Plaintiff

We consent to the making of an order in the above terms

Solicitors for the Defendant

P26.14 Consent judgment for delivery up of vacant possession of mortgaged property

[Rodyk & Davidson LLP]

ORDER OF COURT

BEFORE THE ASSISTANT REGISTRAR

MR [name]

IN CHAMBERS

UPON THE APPLICATION of the abovenamed Plaintiffs made by way Originating Summons No [number] filed on [date] coming on for hearing this [date] AND UPON READING the Affidavit of [name] filed herein on [date] and the exhibits referred to therein AND UPON HEARING Counsel for the Plaintiffs and the 1st and 2nd Defendants appearing in person, BY CONSENT IT IS ORDERED that:

1. The 1st and 2nd Defendants do deliver up vacant possession of the mortgaged property more particularly described to in the Schedule herein.
2. Execution of orders above be stayed until [date], [time] p.m.
3. The 1st and 2nd Defendants do pay to the Plaintiffs:
 - (1) The sum of S\$[amount] (being the amount owing as at [date]);
 - (2) Default interest on the sum of S\$[amount] at the rate of [amount] per cent per annum above the Plaintiffs' prevailing Prescribed Rate (1 per cent per annum above the Plaintiffs' Prime Rate) charged for Facilities granted in Singapore Dollars calculated on a daily basis with monthly rests from [date] until the date of full payment.
 - (3) Costs on an indemnity basis fixed at S\$[amount].

THE SCHEDULE ABOVE REFERRED TO

The whole of Lot No [number] of Mukim [number] known as [address].

P26.15 Consent order for stay of proceedings

[Rodyk & Davidson LLP]

CONSENT ORDER

BEFORE THE HONOURABLE

JUSTICE [name]

IN CHAMBERS

UPON HEARING [Counsel for the parties *or as the case may be*]

AND UPON READING (*complete as appropriate*)

AND UPON the parties having agreed terms of settlement

BY CONSENT IT IS ORDERED that:

- (1) All further proceedings in this action be stayed;
- (2) [[insert agreed order as to cost] *or* the costs of the [Plaintiff *or* Defendant] be taxed]; and
- (3) [That each party have liberty to apply].

P26.16 Consent order for stay of proceedings upon terms

[Rodyk & Davidson LLP]

CONSENT ORDER

BEFORE THE HONOURABLE

JUSTICE [name]

IN CHAMBERS

UPON hearing Counsel for the parties

AND UPON reading (*if appropriate*)

AND the parties having agreed to the terms set out in the attached Schedules

BY CONSENT

IT IS ORDERED that all further proceedings herein be stayed upon the terms set out in Schedule 1 except for the purpose of carrying such terms into effect.

And for that purpose the parties have permission to apply.

AND IT IS FURTHER ORDERED that the Defendant do pay to the Plaintiff the sum of S\$[amount] in respect of his costs [*or other costs provision*].

SCHEDULE 1

1. The Plaintiff will on or before [date] deliver to the Defendant who will accept delivery of the goods described in Schedule 2, which the Defendant has seen, inspected and approved.
2. The Plaintiff will on or before [date] deliver to Messrs XY of [address] for the account of the Defendant [description of the goods].
3. The Defendant will pay the Plaintiff as and for the price of [quantity of goods] the sum of S\$[amount] by giving the Plaintiff a series of post-dated cheques each for the sum of S\$[amount], the first dated [date] and each dated a month subsequent to the next preceding one.
4. If any of the cheques shall not be met on due presentation thereof the whole outstanding balance of the price shall become immediately due and payable, notwithstanding the currency of the cheques representing the same.

5. The above terms shall be in full and final settlement of all claims that either party shall have or may have against the other arising out of the matters in this action.

SCHEDULE 2

[Description of goods]

P26.17 Confidential consent order for stay of proceedings upon terms

[Rodyk & Davidson LLP]

CONSENT ORDER

BEFORE THE HONOURABLE

JUSTICE [name]

IN CHAMBERS

UPON hearing Counsel for the parties

AND UPON reading (*if appropriate*)

AND the parties having agreed to the terms set out in the attached Schedules

IT IS BY CONSENT ORDERED that all further proceedings in this claim be stayed upon the terms set out in Schedule 1 except for the purpose of carrying such terms into effect.

And for that purpose the parties have permission to apply.

AND IT IS FURTHER ORDERED that the Defendant do pay to the Plaintiff the sum of S\$[amount] in respect of his costs [*or other costs provision*].

Schedule 1

1. The Defendant shall pay or cause to be paid to the Plaintiff the sum of S\$[amount] [on or before [date]].
2. The aforesaid payment of S\$[amount] is to be in full and final satisfaction of any claims which the Plaintiff has or may have against the Defendant in connection with damage caused or alleged to have been caused by the tree roots referred to in paragraph 3 below.
3. The Defendant shall remove or cause to be removed at his own expense [on or before [date]] the [describe action to be taken].
4. The parties acknowledge that the provisions in the Schedule(s) are confidential to the parties and each party undertakes in favour of the other(s) not to disclose any of these provisions to any person not a party save as may be necessary for the purposes of implementation of this Agreement and save if compelled to do so by any court or authority of competent jurisdiction.

P26.18 SIMC Mediation Clause

[SIMC]

For use before a dispute arises:

All disputes, controversies or differences arising out of or in connection with this contract, including any question regarding its existence, validity or termination, shall be first referred to mediation in Singapore in accordance with the Mediation Rules of the Singapore International Mediation Centre for the time being in force.

For use after a dispute has arisen:

All disputes, controversies or differences arising out of or in connection with this contract, including any question regarding its existence, validity or termination, may, notwithstanding the commencement of any other proceedings, be referred to mediation in Singapore in accordance with the Mediation Rules of the Singapore International Mediation Centre for the time being in force.

P26.19 SIMC Arb-Med-Arb Clause

[SIMC]

All disputes, controversies or differences ("Dispute") arising out of or in connection with this contract, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration in Singapore in accordance with the Arbitration Rules of the Singapore International Arbitration Centre ("SIAC") for the time being in force.

The parties further agree that following the commencement of arbitration, they will attempt in good faith to resolve the Dispute through mediation at the Singapore International Mediation Centre ("SIMC"), in accordance with the SIAC-SIMC Arb-Med-Arb Protocol for the time being in force. Any settlement reached in the course of the mediation shall be referred to the arbitral tribunal appointed by SIAC and may be made a consent award on agreed terms.

P26.20 Letter informing court of settlement

[Rodyk & Davidson LLP]

[Date]

To State Courts / Supreme Court

Dear Sir

MC / DC / SUIT NO

AB v CD

We act for the Plaintiff in this matter while M/s [name of firm] act for the Defendant.

We write to inform the Court that parties have amicably settled this dispute.

Parties desire to have the terms of this settlement embodied in a consent judgment. [We will as such be appearing before his Honour [name], tomorrow to have the terms of settlement recorded. A copy of the parties proposed consent order is enclosed herein.]

[The Plaintiff's Notice of Discontinuance will be filed shortly].

We are writing this letter with the approval of the Solicitor[s] for the Defendant [who will be writing to you in similar terms].

Yours faithfully

Solicitors for the Plaintiff

CHAPTER 27

EQUITY AND TRUSTS

PRECEDENTS

- P27.01** Statement of claim for breach of express trust
- P27.02** Defence for breach of express trust
- P27.03** Statement of claim for mistaken payment
- P27.04** Statement of claim for beneficial interest in property
- P27.05** Defence denying claim for beneficial interest in property

CHAPTER 27

EQUITY AND TRUSTS

PRECEDENTS

P27.01 Statement of claim for breach of express trust

[TSMP Law Corporation]

1. The Plaintiff is a businessman and is the director of ABC Co Ltd at all material times. The Plaintiff makes this claim in his personal capacity.
2. The Defendant is an acquaintance of the Plaintiff and was previously a director of ABC Co Ltd.

The XYZ Trust

3. On or about [date], the Plaintiff and the Defendant purchased in aggregate 1,000,000 shares in XYZ Co Pte Ltd.
4. All 1,000,000 shares in XYZ Co Pte Ltd were held by the Defendant. Of these 1,000,000 shares, 500,000 shares were beneficially owned by the Plaintiff and settled under a trust created by the Plaintiff in his favour as sole beneficiary with the Defendant appointed as the sole trustee (the “XYZ Trust”).

The Defendant’s breach of trust

5. As a trustee of the XYZ Trust, the Defendant stood as a fiduciary in relation to the Plaintiff and owed the Plaintiff a duty to account for all the shares under the XYZ Trust in his possession, custody and/or control which he received and continues to receive on behalf of the Plaintiff.
6. By a letter dated [date], the Plaintiff’s solicitors wrote to the Defendant, instructing the Defendant to give a complete account in writing of the number of XYZ Co Pte Ltd shares held under the XYZ Trust as at [date], and a reconciliation of the monies and/or monies worth under the XYZ Trust since its constitution.
7. Despite the Plaintiff’s request, the Defendant has failed, refused and/or neglected to account for the XYZ Trust and/or the monies and/or the monies worth under the XYZ Trust to the Plaintiff. The Defendant has thereby breached his duty as a trustee to account for the XYZ Trust upon demand.

8. By reason of the matters set out above, the Plaintiff is entitled to a declaration that the Defendant holds the XYZ Co Pte Ltd shares on trust for the Plaintiff.
9. The Plaintiff is also entitled to an account of:
 - (a) the XYZ Trust or such money or funds representing the value of the XYZ Trust as have been possessed or received by the Defendant or by any person on his behalf or to his order;
 - (b) the Defendant's dealings with and investments of such money or funds;
 - (c) the Defendant's application and disposition of such money or funds; and
 - (d) the annual dividends, interests and any other benefits the Defendant has derived under the XYZ Trust.

AND THE PLAINTIFF CLAIMS:

- (1) A declaration that the Defendant holds the shares in XYZ Co Pte Ltd and/or monies and/or monies worth from the sale thereof on trust for the Plaintiff;
- (2) An order that the Defendant does within 14 days transfer free from encumbrances, the shares of XYZ Co Pte Ltd and/or its monies worth (including any and all accretions in value thereto) to the Plaintiff;
- (3) An order that the Defendant does give an account of the XYZ Trust or such money or funds representing the value of the XYZ Trust as have been possessed or received by the Defendant or by any person on his behalf or to his order;
- (4) An order for payment by the Defendant to the Plaintiff of all sums found to be due to the Plaintiff on the taking of the account;
- (5) All necessary and consequential accounts, inquiries and directions;
- (6) Interest;
- (7) Costs; and
- (8) Such further or other relief as this Honourable Court deems fit.

P27.02 Defence for breach of express trust

[TSMP Law Corporation]

1. Paragraphs 1 and 2 of the Statement of Claim are admitted.

Co-Investment in XYZ Co Pte Ltd Shares

2. Paragraph 3 of the Statement of Claim is not admitted.
3. On or about [date], the Defendant orally offered the Plaintiff the opportunity to co-invest in the shares of XYZ Co Pte Ltd ("XYZ Shares"). The Plaintiff accepted the Defendant's offer to co-invest in the XYZ shares with the Defendant on a "50-50" basis ("Co-investment Agreement").

[Particulars]

4. After the Co-investment Agreement was entered into, the Defendant paid the purchase price for all the XYZ Shares.
5. There was an agreement between the Plaintiff and Defendant, that subject to reimbursement by the Plaintiff, the Defendant would pay for the Plaintiff's half share of the XYZ Shares on the Plaintiff's behalf. However, to date the Plaintiff has not reimbursed the Defendant the said half share of the purchase price for the XYZ Shares.
6. Paragraph 4 of the Statement of Claim is denied. The co-investment XYZ Shares allegedly belonging to the Plaintiff ("Disputed XYZ Shares") were not beneficially owned by the Plaintiff and were not settled under a trust created by the Plaintiff in his favour as sole beneficiary with the Defendant as the sole trustee.
7. Further and/or in the alternative, the Defendant did not create a trust with himself as the trustee and the Plaintiff as a beneficiary.
8. The Defendant never had an intention to create a trust between himself and the Plaintiff over the Disputed XYZ Shares. The Plaintiff and Defendant had entered into the Co-investment Agreement, which was contractual in nature.
9. Even if the Defendant had an intention to create a trust in favour of the Plaintiff over the Disputed XYZ Shares at the time the Co-investment Agreement was entered into, which is denied, a valid trust could not be created over the Disputed XYZ Shares.
 - (a) At the time when the Co-investment Agreement was entered into, the Disputed XYZ Shares and/or rights over the Disputed XYZ Shares were not yet vested in the Defendant and were future property.

- (b) In the alternative, the Defendant only had equitable rights in the Disputed XYZ Shares before the Defendant became the legal owner of the said shares, and the formal requirements for a disposition of an equitable interest and/or creation of a trust under section 7(2) of the Civil Law Act (Cap 43) were not satisfied.
10. Further and/or in the alternative, the Plaintiff, pending reimbursement of the purchase price to the Defendant, only had the mere expectancy of receiving the Disputed XYZ Shares and/or the profits and/or other proceeds from the Disputed XYZ Shares. The Plaintiff did not have any beneficial interest in the Disputed XYZ Shares and/or profits and/or other proceeds from the same and cannot now claim the same from the Defendant.

No breach of Trustee's duty

11. Paragraph 5 of the Statement of Claim is denied. The Defendant was not a trustee in respect of the Disputed XYZ Shares and therefore did not owe any fiduciary duty and/or obligations to the Plaintiff in respect of the Disputed XYZ Shares. The Defendant is not in breach of any duty to account and/or other duties to the Plaintiff whatsoever.
12. Save that by a letter dated [date] the Plaintiff's solicitors wrote to the Defendant to require a complete account of the Disputed XYZ Shares, Paragraph 6 of the Statement of Claim is denied. The Defendant did not owe any duty to the Plaintiff to account for the Disputed XYZ Shares and/or monies or monies worth and any accretions in value thereto.
13. By reasons hereinbefore mentioned, paragraphs 7 to 9 of the Statement of Claim are denied.

Equitable Set-off

14. In the event that the Plaintiff has a valid claim for payment in trust, which is denied, the Defendant asserts set-off.
15. Under the Co-investment Agreement, the Plaintiff had an obligation to reimburse the Defendant the Plaintiff's half share of the purchase price for the XYZ Shares.
16. To date, the Plaintiff has not reimbursed the Defendant.
17. By reason of the foregoing, the Plaintiff is liable to the Defendant for the Plaintiff's half share of the purchase price for the XYZ Shares. The Defendant is therefore entitled to set off against the

sum claimed, the Plaintiff's half share of the purchase price for the XYZ Shares.

18. Save as hereinbefore expressly admitted, the Defendant denies each and every allegation set out in the Statement of Claim as if the same were set out herein and specifically traversed.

P27.03 Statement of claim for mistaken payment¹

[TSMP Law Corporation]

1. On or about [date], the Plaintiff paid the sum of S\$[amount] to the Defendant.
2. The said sum of S\$[amount] (the “Moneys”) was paid by the Plaintiff to the Defendant as a result of a mistake.

[Particulars of Mistake]

3. At all material times, there was no basis for the payment and the Plaintiff had no intention to benefit the Defendant.
4. By a letter dated [date], the Plaintiff notified the Defendant of the mistaken payment. Thereinafter, the Defendant acquired knowledge of the Plaintiff’s mistake underlying the payment.
5. At all material times, the Moneys remained identifiable and were not mixed with other funds of the Defendant.²

[Particulars of Identification of the Fund]

6. By reason of the matters set out above, the Plaintiff is entitled to a declaration that the Defendant holds the Monies on trust for him.

AND THE PLAINTIFF CLAIMS:

- (1) A declaration that the Defendant holds the Moneys on trust for the Plaintiff;
- (2) An order that the Defendant does within 7 days transfer the Moneys to the Plaintiff;
- (3) Costs; and
- (4) Such further or other relief as this Honourable Court deems fit.

1 See also precedent on claim for the recovery of a payment made under mistake at P21.01.

2 Where moneys have been mistakenly paid into an active bank account of the Defendant, it may be difficult to establish that the moneys have not been mixed and remain identifiable. This may pose a significant obstacle to the pleading of any trust over the moneys. However, the Plaintiff is likely to have an alternative *in personam* claim under the law of unjust enrichment.

P27.04 Statement of claim for beneficial interest in property

[TSMP Law Corporation]

1. The Plaintiff is a businessman and director of ABC Co Pte Ltd.
2. The Defendant works as [nature of job] and is the wife of the Plaintiff.

The Trust Property

3. By a sale and purchase agreement dated [date], the Plaintiff and the Defendant purchased a property at [address] (the "Property").
4. At the time of the acquisition of the Property, the Plaintiff and the Defendant contributed equally towards the purchase price, but agreed to register the Property under the sole name of the Defendant.

[Particulars of Circumstances of Purchase]

5. At all material times, the Plaintiff did not intend to give the Property to the Defendant. Instead, the parties had agreed to make the Defendant the sole legal owner of the Property so as to conceal the interest of the Plaintiff in the Property.

[Particulars of the Agreement between Parties]

6. In the circumstances, the Defendant held, and continues to hold, the Property on trust for herself and the Plaintiff.

Breach of Trust obligations

7. By a letter from the Plaintiff's solicitors to the Defendant dated [date], the Plaintiff demanded the sale of the Property and that the proceeds of sale be distributed in accordance to the respective beneficial interest of the parties.
8. By a letter from the Defendant's solicitors dated [date], the Defendant stated that the Property was owned absolutely by her, and wilfully refused to recognise the Plaintiff's beneficial interest in the Property.
9. By reason of the matters set out above, the Plaintiff is entitled to a declaration that the Defendant holds the Property on trust for herself and him in equal share.

AND THE PLAINTIFF CLAIMS:

- (1) A declaration that the Defendant holds the Property on trust in equal share for the Plaintiff;

- (2) An order that the Defendant does within 3 months sell the Property and to account for and pay half of the sale proceeds to the Plaintiff;
- (3) Interest;
- (4) Costs; and
- (5) Such further or other relief as this Honourable Court deems fit.

P27.05 Defence denying claim for beneficial interest in property

[TSMP Law Corporation]

1. Paragraphs 1 and 2 of the Statement of Claim are admitted.

Gift of Property to Defendant

2. Paragraphs 3 and 4 of the Statement of Claim are admitted.
3. Paragraph 5 of the Statement of Claim is denied. The Property was registered in the sole name of the Defendant, as the Plaintiff had intended the Property as a gift for the Defendant.
4. The Plaintiff and Defendant were married in [year] and, at the material times leading up to the time of acquisition of the Property, were in a very loving relationship.

[Particulars of nature and state of relationship between parties]

5. As the Plaintiff had a stronger earning capacity than the Defendant, she depended on him to maintain their luxurious lifestyle. Further, the Plaintiff would also express his love for the Defendant by showering her with extravagant gifts from time to time. Likewise, the Plaintiff had expressed to the Defendant that the Property was a gift to her as a token of his love.

[Particulars of Dependency and Affection Between Parties]

6. Paragraph 6 of the Statement of Claim is denied. As the Plaintiff had gifted his share of the Property to the Defendant, she owned the Property absolutely in her own name and had liberty to deal with the Property in any manner that she deems fit.

Common Intention of parties for Defendant to own the Property absolutely

7. Further and/or in the alternative, there was a common agreement, common understanding and/or common intention between the parties from the outset that the Property was to be solely owned, both legally and beneficially, by the Defendant.

[Particulars of common agreement,
common understanding and/or
common intention at and subsequent to the
time of acquisition of the property]

8. The conduct of the parties after the acquisition of the Property was also entirely consistent with the common agreement, common

understanding and/or common intention that the Defendant was the absolute owner of the Property.

[Particulars of conduct of parties at and subsequent to the time of acquisition of the property]

No basis for Plaintiff to demand sale of the Property

9. Save insofar as the Plaintiff purports to set out the contents of the letter from the Plaintiff's solicitor dated [date] and that of the letter from the Defendant's solicitors dated [date], paragraphs 7 and 8 are denied. For the reasons set out above, the Defendant is the absolute owner of the Property and the Plaintiff had no basis to demand the sale of the Property and to claim a share of the sale proceeds.
10. Paragraph 9 of the Statement of Claim is denied.
11. Save as hereinbefore expressly admitted, the Defendant denies each and every allegation set out in the Statement of Claim as if the same were set out herein and specifically traversed.