## DCPI 1154/2008

**IN THE DISTRICT COURT OF THE**

**HONG KONG SPECIAL ADMINISTRATIVE REGION**

PERSONAL INJURIES ACTION NO. 1154 OF 2008

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| BETWEEN | WU LEUNG KUI JACKY | Plaintiff |
|  | and |  |
|  | LEUNG MING YUN | 1st Defendant |
|  | CHAN SUI HING | 2nd Defendant |
|  | UNIFORMITY SECURITY COMPANY LIMITED (統一警衛有限公司) | 3rd Defendant |
|  | i-CABLE COMMUNICATIONS LIMITED | 4th Defendant |

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Coram : Her Honour Judge Mimmie Chan in Court

Dates of hearing : 22 & 23 April, 2009, 20, 21, 23 & 24 December, 2010

Date of handing down Judgment : 7 March, 2011

# JUDGMENT

**Background**

1. The Plaintiff ("**Mr. Wu**") was employed by the 4th Defendant ("**Cable**") as a Direct Sales Representative. One of Mr. Wu's duties was to carry out door to door promotion and sale of Cable's pay-TV service. Mr. Wu claims that on 7 June 2003, when he was in the course of carrying out door to door promotional activities for Cable at a housing estate known as Serenity Park in Tai Po, he was assaulted by the 1st Defendant ("**Leung**") and the 2nd Defendant ("**Chan**"), who were employed by the 3rd Defendant ("**USC**"). USC were the contractors engaged by the management company of Serenity Park to provide security services for the residents of Serenity Park. Mr. Wu sustained injuries as a result of the assault and these proceedings are instituted by him to seek damages from Leung, Chan, USC and his employer, Cable.
2. Serenity Park is a large residential estate comprising 12 blocks, each with 23 storeys, altogether consisting of about 3,000 residential units. Leung was employed by USC as District Manager of the New Territories, and oversaw USC’s provision of security services for properties within this district, which properties include Serenity Park. Chan was the Security Officer-in-Charge directly responsible for the security services at Serenity Park, and was stationed at Serenity Park at the material time. Chan was under Leung's supervision.
3. The modus operandi adopted by sales representatives employed by Cable and in Mr. Wu's position has not been seriously disputed in these proceedings. They worked in teams under supervisors, and adopted a promotion method known to them and others as "floor washing" in residential buildings, whereby they would distribute and share information of residents who had subscribed to Cable's I-Cable Broadband services, make appointment to visit these subscribers in order to gain entry to a building, and thereafter stay within the building to carry out door to door visits to other residents of the building in order to promote and sell to these residents Cable's pay-television service.
4. According to Mr. Wu, sales representatives would have meetings every morning with their supervisor, in the course of which each sale representative would be allocated the work for the day and be given information of the particular clients to be visited or contacted for that day. They would often go in teams with a supervisor to a designated area for these promotion activities, although the sales representatives would generally work alone when each representative visited clients or potential clients.
5. Mr. Wu has explained, and it can be readily appreciated, that it is generally difficult to gain access to residential buildings for promotion activities without prior arrangement with and the consent of the building management. Promotion by prior arrangement with building management would not be easy to procure. The method of work adopted by Cable's sales representatives was therefore to make use of home visits by appointment with individual subscribers of Cable's broadband services, thereby gaining entry to the building without interference by the building management or security staff, and after the visit to the subscriber in question, to stay within the building instead of leaving immediately, and use the opportunity to make door to door visits to other residents of the building in order to promote and sell their services. To avoid detection by building management and the security staff in the course of such promotion activity, sales representatives like Mr. Wu would use the staircases instead of the lifts to go up and down the building. Inevitably, there would be incidents of residents making complaint to the building management or security about the sales representatives' prolonged presence and activities in the building, and in such cases, they would normally be evicted from the building and would have to terminate their sale activities. According to Mr. Wu, skirmishes had happened before in the course or as a result of such unsolicited "floor washing" activities.
6. It is Mr. Wu's case that on 7 June 2003, he was instructed to visit one Mr. Yu at Room G on 11th floor, Block 2 of Serenity Park, to promote Cable's television services to Mr. Yu and to other tenants and occupiers of Block 2 of Serenity Park (“**Building**”). An appointment had been made for Mr. Wu to visit Mr. Yu, so Mr. Wu successfully gained entry into the Building after speaking to Mr. Yu by intercom on the ground floor. His visit at Mr. Yu's apartment concluded at about 4pm, but Mr. Wu stayed inside the Building and commenced his floor washing in the Building. According to Mr. Wu, he visited about 40 flats from the 23rd floor down to the 12th floor, using the staircases to walk up and down the floors between visits. As is common in Hong Kong, there were no 13th floor and 14th floor in the Building (13 and 14 being inauspicious numbers to the Chinese).

**Mr. Wu’s account of the incident**

1. Mr. Wu's case is that as he was walking down from the 15th floor of the Building to the floor below, which is the 12th floor, he heard Chan shouting from the floor above, telling him to stand still. Chan asked Mr. Wu what he was doing, and Mr. Wu replied that he was "selling things". Mr. Wu then continued to walk down the staircase, when he saw Leung walking up from the floor below, and telling Mr. Wu to stop. When Leung asked again what Mr. Wu was doing, Mr. Wu produced his Cable staff identity card, and explained that he was conducting sales. Mr. Wu claims that Chan tried to push him with his hands at this stage, but Mr. Wu took one step back and avoided Chan. When Leung had joined Chan's side, they both pushed Mr. Wu against the wall. They asked Mr. Wu what he was selling, and Mr. Wu told them that he was "selling Cable TV". Mr. Wu claims that Leung then hit the back of his neck many times, complaining that they had had a hard time tracking Mr. Wu down. Mr. Wu used both his hands to cover his head, but Chan used his fist to hit the back of Mr. Wu's neck. Chan also kicked the back of Mr. Wu's knee, and made Mr. Wu fall to the ground.
2. In the process of the skirmish, Mr. Wu tried to turn on a digital pen recorder which was in his shirt front pocket, but this was detected by Leung, who told Chan to take away his pen recorder and to erase the recording. According to Mr. Wu, Chan took his pen recorder and went down to the 11th floor with it. Leung continued to hit Mr. Wu's back, who was by then squatting on the ground.
3. When Chan returned to the 12th floor landing where the fighting had allegedly taken place, Mr. Wu claims that he opened the fire exit door on the 12th floor when he heard some sound. A couple was outside in the lift lobby. Mr. Wu claims that he asked them for some water, but Chan explained to the couple that Mr. Wu was conducting sales, had fallen down the stairs, and that they had reported the matter to the police. The couple left.
4. According to Mr. Wu, Chan then took Mr. Wu's bag, and emptied its contents on the ground. Mr. Wu retrieved the contents, and asked Chan to return the pen recorder to him as it was Cable's property. Chan then said to Mr. Wu that he had fallen down on his own, dropping his items all over the place, and denied that he had taken his pen recorder. Leung told Mr. Wu that they had reported the matter to the police, and asked Mr. Wu to go down the Building with them. Mr. Wu asked Leung for his pen recorder, but Leung also denied having taken the recorder, and claimed that Mr. Wu had fallen down the stairs and had lost the recorder in the process. Mr. Wu retorted that it was Leung and Chan who had hit him and made him fall to the ground.
5. Mr. Wu was then taken by lift to the ground floor of the Building, and then to the Control Room. On the way, Mr. Wu telephoned his team supervisor, Mr. Ng, to report the matter. He was asked by Mr. Ng to call the police, which he did. The police and the ambulance arrived shortly thereafter. Mr. Wu was taken to the Accident and Emergency section of the North District Hospital, for treatment of injuries sustained to his shoulder, back, leg and right ring finger. Thereafter, Mr. Wu went to the police station to make his statement concerning the assault.

**Leung's and Chan's account of the incident**

1. In their statements, both Leung and Chan emphasized on a number of occasions that a lot of complaints had been received from the residents of Serenity Park on 7 June 2003, to the effect that they had been harassed and disturbed by Cable's sales representatives on the day. They also stressed that there were so many complaints to be dealt with by the Control Room and the security guards on that day, that USC staff at Serenity Park had to stop patrolling the estate, that they did not have sufficient resources to discharge their usual duties and that manpower had to be transferred in order to deal with the complaints from the residents.
2. As the Security Officer-in-Charge taking care of the security service of Serenity Park, Chan was required to report to Leung of special matters which occurred at Serenity Park and if they encountered any difficulties in handling their duties. According to Leung, he received a call from Chan on 7 June 2003, who reported to him the matter of the complaints received from the residents of Serenity Park. Leung claims that prior to 2003, there had already been incidents of Cable's sales representatives carrying out door to door promotion of their services without seeking prior approval from the management of Serenity Park, and that the matters had been reported to the police before. Letters had been sent by the Serenity Park Management to Cable to complain.
3. On the evidence, the police had already been involved earlier on in the day on 7 June 2003 in relation to Cable's promotion activities at Serenity Park. A sales representative of Cable ("**Ho”)** had claimed to the security guards on such occasion that there were over 200 sales representatives of Cable conducting promotion and sales activities within Serenity Park that same evening.
4. USC’s own evidence, as presented, suggests a state of chaos and breakdown of customary routine on 7 June 2003. Chan described the situation as being “out of control”, when he decided to report the matter to Leung at Headquarters.
5. According to Leung, in view of the numerous complaints received from the residents on 7 June 2003, he had to personally visit Serenity Park at about 7 pm in the evening, in order to give assistance to Chan. Chan, who was on day duty, was still working when Leung arrived that evening. Both were working beyond their usual work hours. After reviewing records of the complaints, Leung patrolled the estate and at about 8:24 pm when Leung returned to the Control Room, Chan received a complaint from a resident of flat 16A of the Building, to the effect that Mr. Wu was carrying out door to door promotion there, and was acting suspiciously and creating a nuisance. Security guards were requested to investigate the matter.
6. Leung and Chan therefore went to the Building. They took the lift and it was agreed that Leung would patrol the Building from the 16th floor downwards, whereas Chan was to patrol from the 23rd floor down. According to Leung, when he reached the 11th floor and opened the smoke door leading from the lift lobby to the staircase, he saw Mr. Wu sitting on the floor on the 12th floor, with his back leaning against the wall. Leung also heard Chan shouting from above. He then saw Chan running down from the floors above.
7. Leung claims that Chan told him at this stage that when he was on the 22nd floor, he had seen Mr. Wu and had asked Mr. Wu for his identification. Instead of responding, Mr. Wu had run down the staircase, so Chan had given chase, and when he reached the 15th floor, he heard a big noise, and then saw Mr. Wu sitting on the floor of the 12th floor immediately below the 15th floor.
8. According to Chan, when he had opened the smoke door leading to the staircase on the 22nd floor, he saw Mr. Wu on the 21st floor. Chan called out to Mr. Wu, but he went down the staircase. Chan considered Mr. Wu to be suspicious, and so chased him and demanded Mr. Wu to stop running. Mr. Wu ignored him and continued to run down the staircase. Chan used his "walkie-talkie" to report his position to the Control Room during the chase. He claims that when he was on the 15th floor, he heard a big noise coming from downstairs. When he reached the 12th floor, Chan saw Mr. Wu sitting on the ground, with his back leaning on the wall. There was a bag on the floor, and Mr. Wu's personal belongings were scattered all over the floor.
9. Chan claims that at the same time, he saw Leung coming out from the smoke door leading from the 11th floor lobby to the staircase. Chan reported to Leung that he had chased Mr. Wu from the 22nd floor.
10. On the 12th floor landing, Leung asked Mr. Wu if he was a resident. Mr. Wu ignored Leung's question, and focused instead on picking up the things he had dropped on the floor. Leung claims that as Mr. Wu refused to

disclose his identity, he used Chan's walkie-talkie and reported the incident

and their position to the Control Room, and asked the officer at the Control Room to report the matter to the police.

1. According to Leung and Chan, it was Chan who opened the smoke door leading to the 12th floor lobby. Seeing the couple there, Chan informed them of what had happened.
2. Both Leung and Chan claim that Mr. Wu remained seated on the floor with no intention of getting up. When Leung made inquiry, he was informed by Mr. Wu that he had hurt his hand. Leung used the walkie-talkie to inform the officer at the Control Room to call an ambulance.
3. Leung then asked Mr. Wu what he was doing in the Building, and Mr. Wu produced Cable's staff identity card. Leung asked Mr. Wu to go to the Control Room to wait for the police and the ambulance, and Mr. Wu asked Leung and Chan to help him to get up, explaining that his hand was very painful. Both Leung and Chan claim that they refused to help Mr.Wu, as they "did not want to have any physical contact" with Mr. Wu. Mr. Wu got up by himself, and they went to the lift lobby to return to the Control Room.
4. When the lift arrived, Leung returned the Cable identity card to Mr. Wu. According to Leung and Chan, just as Mr. Wu was about to enter the lift, he told them that he had to return to the staircase as he had lost something. Leung and Chan followed Mr. Wu to the staircase, where Mr. Wu searched for a while, but could not find what he was looking for. They then returned to the lift and went to the Control Room.
5. After Mr. Wu made a report to the police about his having been assaulted by Leung and Chan, Leung and Chan went to the police station at about 1 am. They were asked to make a statement concerning the alleged assault. Both of them declined to do so (as they were perfectly entitled to), saying that they were too tired.

**Issues**

1. Leung and Chan deny that they had assaulted Mr. Wu. They claim that he had received injuries as a result of his falling whilst running down the stairs to avoid Chan. The Defendants all deny that they should in any event be held liable for the disabilities now claimed by Mr. Wu to be the result of the injuries he received, which include psychiatric impairment and necessitate Mr. Wu using a wheelchair. On Cable's part, it is also denied that it was reasonably foreseeable that Mr. Wu would sustain injuries by assault in the course or as a result of the work which he was employed to do.
2. Accordingly, the issues for determination at trial are :
   1. Was Mr. Wu assaulted by Leung and Chan?
   2. Was Cable in breach of its duties to Mr. Wu under their employment contract and/or at common law?
   3. Does Mr. Wu suffer from mental disorder as a result of the assault?
   4. What are the damages recoverable by Mr. Wu?

**Was Mr. Wu assaulted by Leung and Chan?**

1. As pointed out by Mr. Hung, Counsel for Mr. Wu, there are many inconsistencies in the accounts given by Leung and Chan of the incident in the staircase. In considering this case, I have borne in mind that the incident took place as long ago as in 2003, that there would inevitably be difficulties in the witnesses' recollection of small details of the events, and that generally, witnesses would not be able to recount retrospectively the exact details and sequence of their actions.
2. The earliest written accounts of the incident given by Leung and Chan were made on 8 June 2003. They each prepared an Incident Report on that day. According to Leung's Incident Report ("**Leung Report**"), he was in the corridor of the 11th floor of the Building when he heard a sound similar to that of a rubbish bin falling down, whereupon he opened the smoke door leading to the staircase. In the staircase, he saw Mr. Wu sitting on the floor on the 12th floor and leaning against the wall. He also saw someone shouting from the upper floor, and then saw Chan running down from the 15th floor.
3. Leung gave a similar account in the statement which he wrote out for the police on 12 June 2003, 4 days later.
4. According to the Occurrence Report prepared by an unnamed security officer in the Control Room of Serenity Park, the account given by Leung and Chan when they returned to the Control Room with Mr. Wu some time after 8:32pm on 7 June 2003, and as recorded in the Occurrence Report, is that when Leung was on the 11th floor, he heard the sound of the opening of the smoke door. Opening the smoke door, Leung had discovered Mr. Wu sitting on the floor on the 12th floor, and Chan also arrived on the 12th floor subsequently.
5. According to the Incident Report prepared by Chan on 8 June 2003 ("**Chan Report**"), Chan was on the 22nd floor when he first saw Mr. Wu on the 21st floor. Mr. Wu ran down the stairs, and Chan gave chase, shouting to Mr. Wu to stop. According to the Chan Report, he was on the 15th floor when he heard sounds of "Bang", as if someone had fallen. On the 12th floor, Chan saw Mr. Wu sitting on the floor, with items scattered around him. Chan recorded in the Chan Report that at the same time, he saw Leung coming up the staircase from the 11th floor.
6. The Chan Report can be contrasted with the witness statement made by Chan in these proceedings on 12 December 2007, when Chan claimed that at the time when he saw Mr. Wu sitting on the floor on the 12th floor, he saw Leung come out from the smoke door leading from the corridor into the staircase, instead of Leung coming up the staircase from the 11th floor.
7. When Leung was cross-examined as to the entry made in the Occurrence Report that he had reported hearing the sound of the smoke door opening when he was on the 11th floor (instead of hearing the sound of a rubbish bin falling as recorded in the Leung Report), Leung claimed that he had in fact simply reported that he had heard some sound. He also claimed that he had never been shown the entry made in the Occurrence Report, nor had been asked to verify its contents.
8. On the other hand, Chan in his cross-examination claimed that Leung had told him after the incident that he had heard some sound, so he (Leung) had opened the smoke door on the 11th floor to take a look. When Chan was asked about the record in the Occurrence Report that Leung had heard the sound of the opening of the smoke door, Chan claims that that was what Leung had told him, and that Chan had related it to his colleague in the Control Room.
9. A further inconsistency exists in the account given by Chan in the Chan Report and in the statements which Chan and Leung gave to the police on 12 June 2003. In the police statement as well as in his witness statement signed on 12 December 2007, Chan claimed that when Mr. Wu was entering the lift, he had claimed that he had lost something, without specifying what he had lost, and had turned around to go back to the staircase. Leung said the same thing in his witness statement, and more or less the same thing in his police statement. However, a different account was given in the Chan Report, where Chan claimed that as Mr. Wu was entering the lift, he claimed specifically to have lost a recorder pen, and had returned to the staircase to look for it.
10. It is the case of Leung and Chan that Mr. Wu had fallen when he was running down the staircase, and that they had nothing to do with the fall. On their account, it was only when they had arrived at the Control Room that they learned that Mr. Wu had made a complaint to the police of his having been assaulted by Leung and Chan. If that is indeed the truth, I find it extremely odd that both Leung and Chan claim, in their statements made to the police and in their witness statements filed in these proceedings, that when Mr. Wu asked them to help him get up after he had fallen, they had pointedly refused to do so. They emphasized in their statements that they had made no physical contact with Mr. Wu. When cross-examined on this, neither Leung nor Chan could give any convincing explanation why they had to deliberately avoid physical contact with Mr. Wu. If Mr. Wu had indeed suffered a fall when he was running down the staircase, and Leung and Chan had simply come across him and was in no way to be blamed for either his fall or the loss of his pen recorder, I can think of no reason why either Leung or Chan would have good cause to be guarded or suspicious when Mr. Wu asked to be helped up, and to refuse to give him such assistance.
11. The Leung Report, the Chan Report and the statements they gave to the police on 12 June 2003 were all prepared after the incident on 7 June 2003, when Chan and Leung had had the opportunity to review and discuss the matter. In my judgment, they were tailored versions of the events. Bearing in mind the inconsistencies in the evidence presented by Chan and Leung, I do not consider Leung and Chan to be reliable witnesses. Although I consider that Mr. Wu had also exaggerated and embellished the details of the assault in his later accounts to the medical experts, I am persuaded that on a balance of probabilities, Mr. Wu's account that he had been assaulted in the staircase on 7 June 2003 is more likely to be the truth. Whether or not he had been chased down the staircase, I believe that he was assaulted.
12. It was argued that Leung and Chan had no motive to assault Mr. Wu, and that in earlier incidents when security staff at Serenity Park had occasion to deal with sales representatives conducting unauthorized promotion activities, the usual mode of operation would be for them to evict the sales representative in question and to report the matter to the police, without any further skirmish or assault. I have taken this into consideration, but the events of 7 June 2003 with the large number of sales representatives present, the complaints received and the "out of control" situation referred to by Chan and Leung, one can easily appreciate that the security officers involved by the end of the day on 7 June 2003 would have been frustrated, to say the least, from having to deal with the residents' complaints and that tempers might have been fraying on the part of Chan and Leung.
13. Counsel has pointed out that if Mr. Wu had been assaulted, it would have been unlikely that he did not say anything to the couple when the smoke door was opened shortly after the alleged assault. He had only asked for a drink of water. I might clarify at this stage that although I accept, on a balance of probabilities, that Mr. Wu had been assaulted by Leung and Chan, I do not believe that the assault was as vicious as he appeared to suggest to the medical experts at a later stage (that his head had been squeezed between the smoke door and the door frame, etc). This is supported by the medical records maintained by the A&E Department of the North District Hospital when Mr. Wu was first examined. With that in mind, and also considering what Mr. Wu and his fellow sales representatives were doing at the material time, namely remaining within the Building surreptitiously and conducting promotion activities from door to door, Mr. Wu must have known from previous experience that his presence within the Building was not generally well received by the residents, and certainly not welcome by the security staff. I do not find it improbable that Mr. Wu would not have made any immediate protest or petition to the couple for help. It was precisely the unwelcome, large scale promotion activities carried on by Mr. Wu and his colleagues on 7 June 2003 that had caused additional work and trouble for Chan, Leung and their colleagues, and it is unfortunate but probable that Leung and Chan would have ventilated their anger at Mr. Wu when they caught hold of Mr. Wu in the staircase.

**Was Cable in breach of its duties to Mr. Wu under their employment contract and/or at common law?**

1. Mr. Wu's case against his employer is that Cable, its servants or agents knew or ought to have known that by instructing Mr. Wu to carry out door to door promotion activities without notifying or seeking the consent of the management of Serenity Park, there was a risk that Mr. Wu might cause residents to complain, might be evicted by force and might be assaulted. It was argued that Cable was negligent, or in breach of the implied terms of its employment contract with Mr Wu, in failing to make prior arrangements with the management of Serenity Park for Mr. Wu to visit residents there, in failing to take reasonable precautions to reduce the risks faced by Mr. Wu when he was carrying out his duties, and in exposing Mr. Wu to unnecessary risks.
2. From the authorities cited by Counsel, and on the facts of the present case, it is clear that the test in determining Cable's liability is whether there was a real risk, as opposed to a mere possibility, which Cable as the employer ought to have appreciated, that employees such as Mr. Wu might be attacked, assaulted, or be subjected to violence whilst carrying out their promotional activities (*Wong Wai Ming v. Hospital Authority* [2001] 3 HKLRD 209).
3. Whereas Cable must or ought to have appreciated that by instructing or authorizing its sales representatives to carry out "floor washing" promotion activities in the manner described by Mr. Wu, such sales representatives would be creating a nuisance,would very likely cause residents and management of the buildings affected to lodge complaints, and that its sales representatives would very likely be evicted from the buildings affected - even in unpleasant circumstances or involving the police, I am not persuaded that there is a **real risk** that its sales representatives would be assaulted or be subject to violent treatment. Sales promotion, even promotion by persistent means or involving cold calls cannot reasonably be regarded as a dangerous manner of conducting business. It cannot be reasonably foreseeable by Cable that Mr. Wu would be physically assaulted in his work.
4. As Counsel for Cable has highlighted, there is no evidence of any history of violence on the part of the security guards (whether of Serenity Park or any other estate) against Cable's sales representatives who carry out door to door promotion activities. Even on the particular day in question, other sales representatives caught in the floor washing activities within Serenity Park had only been evicted from the estate after alerting the police.
5. Mr. Wu's evidence is that prior to June 2003, there had been an occasion of a female sales representative on his team who was subjected to indecent assault by someone whilst she was carrying out promotion activities. I regard this as different in nature to an attack by a security guard. Mr. Wu also claims that there was an incident of a sales representative being chopped by a drunk customer. The existence of this is denied by Mr. Ng, the immediate superior of the sales representative in question, but even if true, such incident is also of a different nature. Mr. Wu's evidence concerning the incident of a third sales representative being attacked by a security guard of a building is based on multiple hearsay, overheard as a brief and casual conversation between 2 of Mr. Wu’s colleagues, is lacking in particulars, and generally too vague to be given probative value. It is also unclear whether this incident occurred before, or after, the 7 June 2003 incident.
6. If there is no real risk of an assault, then it is not necessary to consider the extent to which Cable should have taken steps by way of precaution to reduce the risk to its employees, as that is more relevant to the question of whether there is a breach of an existing duty.

**Does Mr. Wu suffer from mental disorder as a result of the assault?**

1. When Mr. Wu was admitted to the A&E Department of the North District Hospital on 7 June 2003, he was recorded to have tenderness over the mid-cervical region, with limited range of movement of the neck, tenderness of the lumbosacral spine, peeling of the skin of the right ring finger, redness over the right shoulder and redness over the left leg. He was referred to the Department of Orthopedics and Traumatology, where the doctors found tenderness over the Mr. Wu's mid-cervical region, and the range of his movement being limited by pain.
2. Mr. Wu complains that he has been suffering from persistent neck pain ever since the accident, but the most controversial part of his claim and the evidence relates to the limb numbness of which Mr. Wu first complained in about March 2004, and which eventually developed into walking difficulties in early 2005, and whether Mr. Wu suffers psychiatric illness as a result of the accident, as he claims.
3. To summarize Mr. Wu's psychiatric complaints, he claims that he had nightmares and suffers from a depressive mood since the assault. He experienced anxiety, increased irritability, recurrent flashbacks and nightmares accompanied by avoidance of security guards and police. His concentration and attention are impaired, he could only sleep 4 to 5 hours a day, had made one suicide attempt, and suspects that security guards and the police plan to harm and hit him again. He feels depressed and useless.
4. On 19 January 2005, Mr. Wu was referred for psychiatric assessment and treatment by the Orthopaedic Department of the Prince of Wales Hospital ("**PWH**") for insomnia and recurrent nightmares, but was only able to have an appointment with the Li Ka Shing Psychiatric Outpatient Clinic ("**Clinic**") on 7 October 2005. A mental state examination revealed no psychotic features or major cognitive deficit. He was diagnosed with post traumatic stress disorder by the treating doctors of the Clinic, and was given medication.
5. According to Mr. Wu's own medical expert, Dr. Benjamin Lai, who first examined him on 30 April 2007, he is suffering from an adjustment disorder with mixed anxiety and depressed mood. Patients suffering from such an adjustment order have emotional and /or behavioral symptoms in response to identifiable stressors. Dr. Lai considers that in Mr. Wu's case, the stressors include the accident on 7 June 2003, his inability to return to work, the associated financial pressure, his anger towards the persons who had attacked him, a feeling of injustice, and other matters including his mother's psychiatric illness and an accident in which she was involved, and later his parting with his girlfriend some time after the accident.
6. However, according to the Defendants' expert, Professor Felice Lieh Mak, Mr. Wu did not and does not suffer from any psychiatric disorder due to the incident on 7 June 2003, as Professor Mak considers that Mr. Wu's psychiatric symptoms were all feigned and dramatized.
7. In essence, Professor Mak does not believe that Mr. Wu suffers from any psychiatric disorder, as she found inconsistencies in Mr. Wu's case as presented to her. She referred to the medical notes made by the treating doctors at the various hospitals attended by Mr. Wu, and compared these records with what Mr. Wu related to her and what she could observe in the course of her examinations of Mr. Wu in January 2008, May 2010 and August 2010.
8. Counsel for USC has pointed out that even Mr. Wu's own expert, Dr. Lai, agrees that there is inconsistency in Mr. Wu's presentation of his psychiatric condition, and that it may not be reliable to assess Mr. Wu's condition on the basis of his complaints alone.
9. It is for the trial judge to assess and decide on the credibility of a witness, in the light of all the evidence and as assisted by any expert evidence. I agree, as both experts have pointed out, that there are indeed inconsistencies both in the evidence regarding Mr. Wu's condition and also in his accounts of the accident. I bear these inconsistencies in mind when I review the entirety of Mr. Wu's case, and will consider and assess Mr. Wu's claims of his condition together with and in the light of other independent and objective evidence as is available.
10. From June 2003 until early 2004, Mr. Wu had complained to his treating doctors of neck pain only. According to the public hospital records, Mr. Wu first complained of hand and foot numbness when walking up stairs in March 2004. In September 2004, there were records of his complaint of upper limb numbness and more records in October 2004 of his complaints of left arm numbness and palm numbness - in addition to complaints of his neck pain progressively getting worse. From January 2005, there were records of Mr. Wu's low back pain, numbness or weakness of his upper and lower limbs.
11. According to claims made by Mr. Wu and his father, some time in 2005, Mr. Wu lost consciousness when he was in a bank and heard security guards using walkie-talkies. In May 2005, he was in a wheelchair when he attended the Orthopaedic Clinic at the Prince of Wales Hospital ("**PWH**"), claiming numbness in the left arm and left leg, discomfort in the left neck, neck pain and back pain. He continued to rely on a wheelchair thereafter, walking with a frame at times.
12. According to the hospital records, an MRI was done in March 2004, indicating degenerative changes and small disc protrusions at C5/6 and C6/7, which could not fully explain Mr. Wu's clinical complaints. Despite physiotherapy sessions, his pain persisted, and there was no significant improvement of his reported numbness in the limbs. Mr. Wu was therefore referred for psychiatric assessment and treatment in 2005.
13. Between June 2006 and January 2009, Mr. Wu was hospitalized in the psychiatric unit of the Shatin Hospital for treatment on 6 occasions, the shortest stay lasting one week and the longest stay 7 months. After discharge from the hospital, he continued to be treated as an out-patient and was prescribed with a high dosage of psychiatric drugs.
14. In September 2006, Dr. Edwin Lee of the Department of Psychiatry of PWH considered that Mr. Wu had suffered considerable difficulties due to the psychological consequences of the incident on 7 June 2003 and the injury sustained. According to the report of Dr. Chow of the Department of Psychiatry of PWH in March 2007, Mr. Wu was attending the Psychiatric Clinic once every two weeks. His mental condition was reported to be slowly improving in March 2007 but with residual symptoms including depressed mood, anxiety spells, nightmares and avoidance behaviors. He was put on antidepressants and hypnotic drugs. As at March 2008, Mr. Wu was considered by the resident doctor at the Department of Psychiatry of the Shatin Hospital to have a "fluctuating mental state which required continuous and further management in the hospital".
15. Professor Mak has fairly pointed out the difference in the role played by a treating psychiatrist and a forensic expert. She highlights the fact that in clinical situations, there is an underlying trust between the patient and the treating psychiatrist, who share a common goal in that the patient wants to get well and the psychiatrists helps the patient to get well. When the psychiatrist acts as a forensic expert assisting the Court, the psychiatric expert has an obligation to critically evaluate all the sources of information in order to assess the reliability of the plaintiff and his assertions. Professor Mak explained that as she found inconsistencies in Mr. Wu's case, she concluded that Mr. Wu is unreliable in his accounts of his illness and the symptoms he suffered from. It is on such basis that Professor Mak opined that Mr. Wu had not suffered and does not suffer from any psychiatric disorder, and that he had feigned his symptoms.
16. In the opinion of Professor Mak, the long and frequent periods of treatment of Mr. Wu's psychiatric condition cannot be taken as a measure of the severity of Mr. Wu's condition. She pointed out that Mr. Wu's mood had settled shortly after each admission, and that he was able to engage in social interaction whilst in hospital. Professor Mak set out possible reasons to explain why Mr. Wu was not discharged from the hospital, which include the fact that the treating psychiatrist simply took Mr. Wu's complaints at face value and did not assess his condition critically, as is usual in a treatment situation; that time would not be wasted to confront Mr. Wu; the psychiatrists' reluctance to discharge Mr. Wu in the face of the complaints of suicidal ideas; administrative needs to build up bed occupancy numbers; and psychiatrists taking the easy route to acede to the demand of patients and their relatives.
17. Even accepting the distinction between the role of a clinical psychiatrist and that of the treating psychiatrist, as highlighted by Professor Mak, I would be slow to find that a treating doctor would simply take a patient’s description of his ailments and symptoms at face value, and prescribe medication without being reasonably satisfied that the medication and treatment is appropriate and called for. In Mr. Wu’s case, he was prescribed and took heavy dosages of medication for depression, anxiety and insomnia. I cannot safely conclude that none of the psychiatrists who had treated Mr. Wu from October 2005 to 2008 had critically examined his condition, and that they had hospitalized Mr. Wu and prescribed him with medication for a psychiatric condition which did not exist, out of administrative reasons or in order to save time – as Professor Mak suggests.
18. Having considered the medical records and the expert orthopaedic report of Dr. Chiang and Dr. Wong, I accept that Mr. Wu sustained physical injury to his shoulder, left leg, neck and back as a result of the incident on 7 June 2003. Pain is subjective and pain tolerance differs from individual to individual. As recorded in the consultation notes of Mr. Law of the Orthopaedic Clinic of PWH dated 24 September 2003, Mr. Wu was very apprehensive to pain. The medical evidence is that the deterioration and persistence of the pain and the numbness of the limbs as reported by Mr. Wu cannot be explained by the clinical findings in respect of his physical injury. The pains and numbness of which he complained may be more serious than the physical nature of his injuries could produce, but that may not necessarily be due to malingering. Considering the reports of Mr. Wu's treating psychiatrists and those of Dr. Lai as a whole, I consider that Mr. Wu's severe neck pain and lower limb numbness after late 2004 had a psychological cause.
19. Professor Mak rejected the diagnosis of adjustment disorder, as she considered that Mr. Wu's complaints and alleged emotional symptoms of depression, helplessness, fear, avoidance or distress did not appear until 2005. According to the criteria established by the American Psychiatric Association ("**DSM-IV-criteria**"), emotional or behavioral symptoms in response to an identifiable stressor should develop within 3 months of the onset of the stressor, and once the stressor (or its consequences) has terminated, the symptoms should not persist for more than an additional 6 months.
20. In this regard, I accept Dr. Lai's explanation that although the accident occurred in June 2003, Mr. Wu had been under other stressors flowing from and associated with the accident, which include his inability to return to work, the associated financial problems, anger towards his attackers and feelings of injustice not having been done when his attackers were not charged. Dr. Lai pointed out that these stressors have persisted since the accident and continue to affect Mr. Wu. He explained that until the stressors cease to exist, the criterion for the onset of the symptoms within 3 months is still satisfied. The stress of dealing with the litigation and preparing evidence for the litigation is naturally another stress factor related to the accident, and this stressor materialized shortly before the commencement of these proceedings in May 2006, and has continued to exist up to trial.
21. Dr. Lai has also explained that Mr. Wu might have developed only mild psychiatric symptoms in the early period shortly after the accident but had not complained about these symptoms as he was attending to the treatment of his physical condition at the initial stage. Mr. Wu's father might also have only noticed Mr. Wu's psychiatric symptoms when these symptoms deteriorated after the incident in early 2005, when Mr. Wu lost consciousness in a bank upon encountering security guards using their walkie-talkies.
22. Professor Mak has referred to various matters in support of her dismissal of Mr. Wu's claims as being feigned. She compared Mr. Wu's demonstration of agitation at the time of her first medical examination of him on 20 November 2007, to the hospital records after Mr. Wu had returned to the Shatin Hospital after the visit. According to Professor Mak, no agitation behavior was noted in the hospital notes after Mr. Wu's return, nor on the day before the examination. However, even the notes summarized by Professor Mak in her report record that on 19 November 2007 (the day before Professor Mak's examination) and on 20 November 2007, Mr. Wu was anxious about being interviewed by "lawyer", had a headache, and had "felt upset, not suicidal, low mood". The same hospital notes record that from 21 November 2007 (the day following the medical examination) to 6 January 2008, Mr. Wu had a panic attack, suffered low mood until 23 November 2007, had nightmare once and complained of flashback when he saw the clinical psychologist. This appears to me to be consistent with anxiety and agitation during this relevant period of time.
23. Profesor Mak referred to Mr. Wu's complaints of the intensity of his neck pain, back pain and head pain, but contrasted it with his ability to sit through a 3-hour interview with her in January 2008 without any sign of distress or discomfort. I agree that by this time, Mr. Wu should have recovered from his physical injury, and that his pain was largely psychological in source after 2005.
24. Professor Mak further claims that Mr. Wu's allegations of recurrent nightmares and flashbacks were not corroborated. Counsel for Mr. Wu has referred the Court to, and I agree that there are, continuous and repeated records of Mr. Wu's claims of having nightmares, flashbacks and loss of sleep, and occasionally of suicidal ideas and anxiety, throughout his hospital records from 2006. Counsel for Mr. Wu also pointed out that at other times when there were no such complaints, Mr. Wu had been prescribed with hypnotics by the treating doctors at the hospital.
25. It is fair to say that, as Professor Mak has pointed out, there were times when Mr. Wu was observed during his stay at the Shatin Hospital to be calm, settled and cheerful and at times able to engage in conversation and activity with other inmates, but taking a more balanced and overall view of the hospital notes, there were also times when Mr. Wu was recorded and observed to be anxious (e.g. in June 2006), to be "easily displaced by surrounding environmental disturbances" (on 30 May 2006), and to have suffered from flashbacks and nightmares as mentioned in the preceding paragraph. His mood and condition clearly fluctuated, but I would not consider this to be unusual in patients.
26. Overall, I accept Dr. Lai's evidence that Mr. Wu suffered psychiatric symptoms and psychiatric illness in a mild form, and that this is caused largely by the incident on 7 June 2003 and its consequential effects which constitute stressors for Mr. Wu. The stressors considered by Dr. Lai include Mr. Wu's inability to return to work as a result of the injuries he received, the financial difficulties caused to himself and his family, his feelings of being useless, his anger towards his assaulters and his feelings of injustice, his mother's car accident and psychiatric illness, and his girlfriend leaving him. I would apportion the accident as being 75% to be blamed for his psychiatric illness.

**What are the damages recoverable by Mr. Wu?**

1. I have not lost sight of the fact that both Professor Mak and Dr. Lai have noted inconsistencies in Mr. Wu's presentation of his symptoms. Whilst accepting that Mr. Wu did not feign all his symptoms, I agree, having observed Mr. Wu in court as he gave evidence and having considered all the medical records and the evidence, that Mr. Wu had exaggerated much of his symptoms and the seriousness of his condition, and that the extent of his physical injuries have been magnified in his mind and in his accounts of the same.
2. According to the report of Dr. Kwok of the Department of Orthopaedics and Traumatology of PWH, Mr. Wu had complained of persistent neck and back pain after the incident of 7 June 2003. When Mr. Wu was first assessed on 25 June 2003, there was tenderness in the mid-cervical region and a limited range of movement, but there was no motor or sensory deficit and his reflexes were considered to be normal. X-rays did not show any fracture or dislocation.
3. Mr. Wu's pain symptoms did not improve with physiotherapy. He complained of bilateral upper numbness in July 2003, and magnetic resonance imaging of the cervical spine was arranged in 2004. The imaging only showed degenerative changes with small disc protrusion at C5/6 and C6/7, without any nerve compression. Mr. Wu was in fact advised to resume duty on 24 August 2004, but he claimed that his pain was deteriorating. He could walk independently in November 2003, but thereafter, his symptoms deteriorated with no specific aggravating factor. He started to complain about difficulties in walking and relied on a wheelchair.
4. Magnetic resonance imaging of the lumbar spine was also performed in September 2005. It showed mild degenerative spine condition with small disc protrusion at L4/5 and L5/S1.According to Dr. Kwok, the radiological findings could not explain Mr. Wu's deteriorating physical condition, and he was referred to psychiatric assessment.
5. According to the orthopaedic experts, Dr. Chiang and Dr. Wong, who examined Mr. Wu in April 2006, there was no significant paraspinal muscle spasm in the lumbar area noted. The straight leg raising test result was normal. The motor power of Mr. Wu's right lower limb was normal, with mild weakness noted in the left ankle dorsiflexion which might be due to pain. Alignment of the cervical spine was normal with no significant muscle wasting or asymmetry. The active range of movement of the neck was less than 10° in all directions during the test, but the experts noted that the observable range of movement of the neck in right rotation appeared to be better.
6. At the time of the examination by the orthopaedic experts, Mr. Wu still complained of severe neck and back symptoms, with marked weakness and numbness in the limbs, and still relied on the use of a wheelchair for outdoor ambulation. In the opinion of Dr. Chiang and Dr. Wong, Mr. Wu only suffered soft tissue injury of the neck and back. Dr. Chiang and Dr. Wong pointed out that the back symptoms had seldom been mentioned in the orthopaedic follow-up records of the hospitals. They concluded that it was likely that the soft tissue injury of the back had been resolved at an early stage. They further considered that the injury to Mr. Wu's right shoulder, left leg and right ring finger should have been well healed soon after the injury in June 2003, as these had not been mentioned again after the initial treatment.
7. Dr. Chiang and Dr. Wong further considered that, based on the MRI findings, the marked deterioration of Mr. Wu's condition to the state of requiring the use of the wheelchair was unlikely to be related to the neck injury sustained in 2003. They pointed out that it is uncommon for neck problems of the type suffered by Mr. Wu to cause loss of consciousness such as that suffered by Mr. Wu in 2005.
8. In the opinion of Dr. Chiang and Dr. Wong, the observable range of movement of Mr. Wu's neck and back was reasonably satisfactory. The tone of the muscles and the muscle bulk in both upper and lower limbs were also satisfactory. They did not consider these findings to support the diffuse weakness of the limbs, as Mr. Wu complains. They agree that Mr. Wu had suffered neck pain for a period of time, as there were objective signs such as loss of cervical lordosis in the x-rays taken at the early stage after the injury. They agree that the soft tissue injury of the neck had been resolved in a satisfactory manner. Dr. Chiang considered that an appropriate period of sick leave in respect of the physical aspects of Mr. Wu's injury is one year, although Dr. Wong considered that Mr. Wu needed no more than 4 weeks.
9. I accept the orthopaedic experts' conclusions that Mr. Wu had suffered soft tissue injury in the neck which had been resolved by 2006, and that the minor injuries to the low back, shoulder, leg and finger had all been resolved at a much earlier stage.

***Pain and suffering and loss of amenities***

1. Mr. Wu was 30 years old at the time of the accident in 2003. He commenced his employment with Cable in January 2003. From January 2003 to May 2003, his average monthly earnings (which included a basic monthly salary and commission and bonuses) were $9,929.60 (Cable's Answer to the Revised Statement of Damages).
2. In relation to the relatively minor physical injuries sustained by Mr. Wu, I consider that an appropriate award for PSLA would be **$90,000**.
3. In respect of his psychiatric disorder, Dr. Edwin Lee of the Department of Psychiatry of PWH considered in September 2006 that Mr. Wu had made progress in having less anxiety and more activity in terms of rehabilitation. In March 2007, Dr. Chow of the Department of Psychiatry of PWH considered that Mr. Wu's mental condition was slowly improving, with only residual symptoms including depression, anxiety spells, nightmares and avoidance behaviour. He continued to receive outpatient treatment, and in June 2007, Dr. Lai was of the opinion that Mr. Wu was only suffering from residual symptoms of the disorder.
4. Mr. Wu's psychiatric condition apparently deteriorated to some extent after his first court appearance for the trial in April 2009, necessitating an adjournment. Dr. Lai considered in August 2010 that Mr. Wu continued to be exposed to a number of stressors, but that the cessation of the litigation may assist Mr. Wu to move on in life. In Dr. Lai's opinion, it is necessary for Mr. Wu to receive rehabilitation treatment.
5. In the light of all the evidence, and bearing in mind that even Dr. Lai accepts that the adjustment disorder suffered by Mr. Wu arose from various stressors in Mr. Wu's life which are unrelated to the incident in June 2003 (such as his mother's illness and his parting with his girlfriend), I consider that an appropriate award for Mr. Wu's mild adjustment disorder would be **$125,000**.
6. The total award for PSLA is **$215,000**.

***Pre-trial loss of earnings***

1. I only accept Mr. Wu's monthly earnings at the time of the accident to be $9,929.60. Inclusive of MPF, the figure amounts to $10,426.
2. In respect of Mr. Wu's physical injuries, Dr. Chiang considered that the appropriate sick leave period is one year. In Dr. Lai's opinion, an additional period of 6 months for his psychiatric condition is adequate.
3. On the basis of the opinions of Dr. Chiang and Dr. Lai, Mr. Wu's pre-trial loss of earnings should be 1 ½ years from 7 June 2003, giving a sum of $187,668($10,426 x 18).
4. Mr. Wu suffered depression after the initial hearing on 22 April 2009, and was admitted to the psychiatric unit of Shatin Hospital from 23 April 2009 to 7 May 2009 for management of his deterioration of mood. He was diagnosed to have Acute Stress Reaction, and continued to receive medication and physiotherapy. He was discharged on 7 May 2009 in view of his stable mental state, but was granted sick leave until 25 May 2009. Dr. Gregory Mak of the Shatin Hospital considered in May 2009 that Mr. Wu was unfit to give evidence in court in view of his propensity to develop acute mood deterioration if he was being questioned and reminded of the accident.
5. Mr. Wu continued to attend the Clinic for out-patient treatment, claiming symptoms of anxiety, depression, loss of concentration and flashbacks. In June 2010, Dr. Arthur Mak of PWH considered that Mr. Wu was still suffering from impairing, although milder, symptoms of post-traumatic stress disorder. On 6 August 2010, Mr. Wu was again admitted to the psychiatric unit of Shatin Hospital for depressed mood, fleeting suicidal ideas and low mood for 3 days after attending the joint examination by Professor Mak and Dr. Lai. His mood improved gradually after the admission, and he was discharged on 26 August 2010. He has been on sick leave until the resumed hearing of the trial in December 2010.
6. In the joint report of August 2010, Dr. Lai's opinion was that Mr. Wu was still under a lot of stressors as he had not been at work, is leading the life of a disabled person with little social activity or outdoor leisure activity, and that the court hearing is a stress for Mr. Wu. Dr. Lai considered that Mr. Wu should receive rehabilitation treatment to attain full recovery in terms of returning to a normal life and the job market.
7. Mr. Wu therefore seeks loss of earnings from 22 April 2009 when the trial first commenced until December 2010, when the trial resumed, a period of 21 months. Counsel for Mr. Wu has also asked for an additional period of 6 months to be included in the compensation for loss of earnings, to provide for an adjustment period for Mr. Wu.
8. Dr. Lai has not revised the opinion stated in his report of 29 June 2007 that the appropriate period of sick leave for what he regarded to be Mr. Wu's psychiatric condition is a period of 6 months in addition to the appropriate sick leave for his physical condition. According to the DSM-IV-criteria for adjustment disorders, once the stressor (or its consequences) has terminated, the symptoms should not persist for more than an additional 6 months. The deterioration in Mr. Wu's condition leading to his hospitalization in late April to May 2009 and in August 2010 was due to his attendance in Court for the trial in April 2009, and his examination by the psychiatric experts in August 2010 as a result of his inability to attend trial in April 2009.
9. Now that the trial and the incidental stress associated with the litigation is over, there should be no further cause for Mr. Wu’s relapse, and his chances of further recovery should improve with proper rehabilitation and counseling. No further medical examination by experts in preparation for trial would be required to create stress for Mr. Wu. Based on the recorded history of Mr. Wu's psychiatric illness and symptoms, I am only prepared to allow a further period of 12 months in total as reasonable and appropriate sick leave in respect of the relapse of or the deterioration in Mr. Wu's psychiatric condition after April 2009. This brings the loss of pre-trial earnings to $312,780 ($187,668 + ($10,426 x 12)).
10. It has now been 2 months since the conclusion of the trial on 24 December 2010. I will allow Mr. Wu 2 more months to adjust and to look for work, and make a total award of **$333,632.00**.

***Loss of Earning Capacity***

1. Even in Dr. Lai's opinion, Mr. Wu is only suffering from residual symptoms of the adjustment disorder. All the experts are of the view that Mr. Wu should be able to resume his pre-accident job of a salesman. The trial concluded on 24 December 2010, which is 2 months ago. With proper rehabilitation, and putting the litigation behind him, Mr. Wu should now be able to cope with returning to gainful and useful employment which should no doubt improve his perceptions of life and of himself. It can be observed even from his performance at trial that he can be attentive and focused, when not going into details of the accident. I am not satisfied that an award for loss of earning capacity is warranted.

***Special damages***

1. I will allow the sum of **$39,000** under this head.

**Summary of award**

1. The award for damages comprises :
   1. PSLA $215,000.00
   2. Pre-trial loss of earnings $333,632.00
   3. Special damages $ 39,000.00

Total : **$587,632.00**

1. Giving credit for the sum of $473,199.80 received by way of employees' compensation, the net award is **$114,432.20**, to be paid by Leung, Chan and USC (which has not disputed its vicarious liability for the acts of Leung and Chan).
2. I will award interest on the award of PSLA at 2% per annum from the date of service of the writ to the date of judgment, and on the award of total special damages at half the judgment rate from the date of the accident to the date of judgment.

1. I will further make an order nisi that the costs of the action (including the costs reserved on 3 June 2009, 11 August 2009 and 23 November 2009) are to be paid by Leung, Chan and USC to Mr. Wu, with certificate for Counsel, to be taxed if not agreed.
2. Mr. Wu's claims against Cable are dismissed, and I will make a further order nisi that Cable’s costs of the action (including the costs reserved on 3 June 2009, 11 August 2009 and 23 November 2009) are to be paid by Mr. Wu, to be taxed if not agreed, with certificate for Counsel.
3. Mr. Wu's own costs are to be taxed in accordance with the Legal Aid Regulations. All costs are to be taxed on the District Court scale.

(Mimmie Chan)

District Judge

*Mr. Andy Hung, instructed by Messrs. Au Yeung, Cheng, Ho & Tin, assigned by the Director of Legal Aid, for the Plaintiff*

*Mr. Ashok Sakhrani, instructed by Messrs. Munros, for the 1st, 2nd & 3rd Defendants*

*Mr. Samuel Chan, instructed by Messrs. Deacons, for the 4th Defendant*