

## **Interview with Justice Mohan Bharwaney**

7 April 2025 at Cheng Yu Tung Tower, The University of Hong Kong

Interviewers: Sida Liu, Edward K.F. Chan and Emma Chow

### **Q: Can you tell us a little bit about your family and educational background before you came to Hong Kong University to study law?**

MB: Maybe I should start with the fact that I was very lucky to be born in Hong Kong. I was born in 1953. It was a time when the city started to grow exponentially.

The 1950s were difficult years. Of course, I was too young to really understand it until later. But they were very difficult years because Hong Kong's existence depended on Chinese trade and entrepot trade. Hong Kong wanted to sell Chinese goods to the West. In 1949, the U.S. created an embargo on Chinese goods. So Hong Kong had to reinvent itself. It has gone through many cycles of reinvention.

Back to my own story, I should start by saying that my father came here before the war. He came from a city in British India in the province of Sindh, which is now in Pakistan. The city was Hyderabad. It has a similar connection, like Hong Kong and Canton, to the port city of Karachi. Hyderabad is about a hundred miles upriver on the Indus River. It's quite a famous city. It's where the former prime ministers of Pakistan came from, Benazir Bhutto and her father. It is near one of the cradles of early civilisation: Mohenjo-Daro. Hyderabad was where my family came from.

We were Sindhis. Our clan was known as Bhai Bands. We were traders for a long, long time. Whilst, of course, partition in India was a momentous and extremely traumatic event and caused people to just become refugees overnight, my community had already been all over Southeast Asia as traders. My paternal grandfather, in the 1900s, had a store in Bandung, Indonesia. My maternal grandfather, in the 1900s, had a store in Saigon. And I think it's still there. It's in that old market in Ho Chi Minh City.

My father completed his education after his A-Levels. In those days, students who had completed their A-levels would start working. My father was sent here to work in an export-import firm. The Sindhi community, I think, started to get established in Hong Kong from the 1920s. The Parsi community, which founded HKU much earlier, came with the British in the 1840s. There was another surge in the 1880s. My community started to make a presence as traders in Hong Kong from the 1920s.

My father came here as a young man, at an age of no more than 18 or 19. Unfortunately, his timing was very poor. He was followed very quickly by the Japanese. However, Indians were not interned like Westerners or Portuguese. That was because one of the freedom fighters in India, Subhas Chandra Bose, was in talks with the Japanese leaders to try to help liberate India. Although Indians were not interned, my father told me stories about how difficult conditions were here. There was really no food to be had. Because the community was quite sophisticated, they were able to arrange convoys for the Indians, and not only the Sindhis, but also the Punjabis and all the other communities here, to make their way all the way up to Chongqing.

Why there? Firstly, because it was the only part of India that the Japanese army could not invade by reason of its mountainous terrain. Secondly, because the Royal Air Force would fly off, almost every morning, in their DC-3s from Calcutta, fly over what they called the Hump ("the Himalayas"), and land in Chongqing with relief supplies for the Nationalist Army. And then the Hong Kongers, and I'm sure the people from other parts of the world, happily jumped on the planes and flew back to Calcutta.

In Calcutta, my father took what at that time was the best railway in the world, the Indian Railways. Of course, now we know China has the best railway in the world with its high-speed trains. But that was the 1940s, right? My father went back home to Hyderabad where he married my mother. The marriage was arranged. My older sister was born there. Then he came back to Hong Kong and some years later he brought my mother and my sister here.

That's how it came to be. My other siblings were born in Hong Kong.

I will tell you another story about my youth, which I think might provide some light comic relief. It was this. My elder sister had been admitted to St. Paul's Convent, a famous Catholic school in So Kon Po. At that time, the school was co-educational from Primary 1 to Primary 4. When the boys reached Primary 4, they got a bit too frisky for the nuns, and they were kicked out. They were sent to Diocesan Boys' School or Queen's College or St. Joseph's College or St. Stephen's or La Salle.

My father expected me to also go to St. Paul's Convent. I went for the interview but I did not understand what they were saying to me. I saw a Chinese lady nearby and asked her in Cantonese: "What are they saying to me? She answered: "They are speaking to you in English. Don't you understand English?" No, I just could not understand or speak English. I failed the interview.

My first two languages were Sindhi, which I spoke to my mother, and Cantonese, which I learned from my domestic helper, who was my carer. In those days, they were called "Amahs". I regarded her as my second mother. I couldn't speak a word of English. I ended up in a government school, where I was very happy for six years: Sir Ellis Kadoorie AM School, also in So Kon Po near to the Hong Kong Stadium.

I did well enough in the dreaded examination, the Secondary School Entrance Exam, SSEE. It was the examination that allowed you to get into a much better school if you did well. I did well enough to go to St. Joseph's. I was very, very happy to be in St. Joseph's. It is St. Joseph's College's 150th Anniversary this year. It's an amazing school. The good schooling received there enabled me to do well enough in my A-levels to come to HKU.

Well, I went to my father. As I said, most of our community would finish A-levels and start working. Like my friends, when they finished their A-levels, they packed their suitcases with samples and flew off to Egypt, flew off to Tripoli, flew off to some other city to try to sell Hong Kong garments and other products. I was probably one of the few early pathfinders from my community that went to university.

I went to my father who was a trader and an exporter. I said, “Dad, can you give me a chance to study at a university?” He said, grudgingly, “Okay, but only if you can get into HKU.” He then said, “But I'm not going to send you abroad because you may never come back.”

So that was his condition, and fortunately, I did well enough to go into HKU. And I thought, I'll go in and get a degree in business such as Bachelor of Commerce or Bachelor of Business Administration, or Bachelor of Economics and then start work as a businessman.

I was in the humanities stream in St. Joseph's College, so I could not go into Medicine or Engineering. I didn't have Physics, Chemistry and all the other science subjects. When I looked at the prospectus, I could not see any business degree being offered at HKU. I could see that they offered a Bachelor of Arts in history, geography, literature. I also saw that there was a Faculty of Social Science.

I didn't want to be a social scientist. Then I saw that they had a Department of Law. And I thought Law would be pretty good for business. If you know your Law, you can make good deals. Perhaps I should give it a try. And so I got into the law school.

To cut a long story short, 52 years later, I'm still in the Law. I think it is serendipitous and fortuitous what paths you take. The majority of the paths that we have taken, maybe the road more travelled, or maybe less travelled, it's fortuitous events that happen to you, without preplanning, when you reach a crossroad in your life, that informs the route you take.

**Q: Do you have any family members in the legal community? Did you have any knowledge about the law before you came to HKU?**

MB: I knew that my uncle in Hyderabad, Sindh, where we come from, had been a lawyer there. We were still Hindus so, after the Partition, we left our ancestral home which was going to become Pakistan. My mother's family came down to Bombay, now called Mumbai, and Pune. And my father's family came down to Bangalore, which is later became the first Silicon Valley of India. My uncle, who was a barrister in Hyderabad, Sindh, came to and became a businessman in Hong Kong and Singapore. He's passed away now, as has my father.

So that's the only lawyer I knew, but I only learned about that much later. My choice of studying law was really fortuitous, it was a choice made simply because there was no business degree on offer.

**Q: Let's go back to the wonderful days on Kennedy Road. We know that there are lots of eminent lawyers who also graduated from St Joseph's College.**

MB: We have a long litany of superstars from SJC. There is a bit of rivalry with DBS. We had John Swain. Kumar Ramanathan was my classmate. Lawrence Lok was one class below me. Peter Cheung was one year my senior. Peter Nguyen, Arjan Sakrani, they were from SJC too.

Arjan Sakrani and Peter Nguyen both became High Court Judges. Patrick Fung, also from SJC, is a Senior Counsel as are Lawrence Lok, Benjamin Yue, Kumar Ramanathan and John Yan. My classmate Kumar became Chairman of the Bar, and he's still in practice now.

Peter Cheung, the current Justice of Appeal of the Court of Appeal, does a lot of mentoring work for the students in SJC. He hosts a morning tea session with them and gets the Form Six

lads over to the High Court for a coffee and a chat. He is very much helped by Paul Shieh, who is very active in and supportive of SJC. Paul Shieh is also a former Chairman of the Bar and the current head of Temple Chambers. We have had quite a number of legal luminaries.

**Q: Were you familiar with your future colleagues and fellow judges back then?**

MB: No. When I was in school, I really did not know them except for Kumar, Peter and Lawrence. I only came to know, when I was in practice, that so-and-so who was a barrister and so-and-so, who was a judge, was an alumnus of SJC. Not when I was a student.

I did not have any family who were lawyers in Hong Kong. I did not have any connections with the legal community. When I went into HKU and did well in studies, I decided I would make Law as a career choice. I had initially enrolled in Law School as a stepping stone to business. When I really got into it and enjoyed it, I decided I would stay in the Law. I made that my career choice.

**Q: When you first started the LLB programme, can you describe what the Law Department was like?**

MB: Dafydd Evans was our principal in law school, and he told us, very early on, that if you look to your left and look to your right, one of you will be here at the end of the year. We had a class of 40 to start with in September 1973. In June 1974, we lost 50% of our classmates. 50% failure rate. 20 students left to continue to Year 2. Of the 20 who failed, most of them left, but I think a few did supplemental exams and could continue to second year. I think our numbers increased from 20 to 23. Then, in the second year, we had repeaters from Year 2 who joined our class.

From 40 students, we went down to about 25 in the second year and we stayed at 25 in the third year. I remember, in the summer of 1974, just before the exams, a film came out, based on Harvard Law School, called *Paper Chase*. It was released just before our examinations. The professor in the film said the same thing to the students there that Professor Evans had said to us. Watching that film frightened us immensely.

At that time, the Law Department was fairly young. Our lecturers were themselves just recent graduates from law school. They were only a few years older than us: Peter Wesley-Smith was just a few years older than us, Robert Ribeiro was a demonstrator, Ray Faulkner, God bless him, he's passed away; and Bob Allcock. In my first year, very often, on Friday nights, we would head off to Wan Chai and have some beers together. There was intermingling between us and the lecturers. There was no great wall that divided teachers from students.

Since we were in a small law school, we knew everybody. Rahman Suffiad was doing his PCLL and he became my mentor. He has been a dear friend from that time and we are still constantly in touch. And also with Arjan Sakhrani. We have a judges' lunch group that meets once a month. It was started in 1998 and it still carries on. When I joined the judges' lunch group, all of us were active practising judges. Now, the majority of us have retired. There are only a few practising judges in our lunch group. Anyway, the law school was very collegiate. We were like a family together. I do not have any experience of the first campus on Caine

Road. We were all newbies on the fifth floor of Knowles Building in our first year. When we graduated, we were still in Knowles Building. The Law School went to KK Leung much later.

The reason why the failure rate was so high was because of the transition from studying for exams at school and studying for law exams at university. This was quite a drastic change. Law is very analytical and one had to have the technique of being able to analyse the facts, identify the relevant facts, and apply the appropriate law to them. The transition can be very difficult for some students. I remember there was a student who was a Rhodes Scholar but still failed in first year, even though she had got all A's in her A-levels. But that's the discipline of law. It is a totally different way of looking at things.

**Q: Is there a part of the experience you had in the programme that really impacted your legal career?**

MB: I'm very proud of the fact that HKU Law gave me a fantastic foundation in law. The teaching was first class and the core principles of the different subjects were drilled into us.

I find that if you have a person who has completed a first degree and later enrolls in a two-year law degree and then carries on with his professional exams, more often than not his understanding of the law would be a bit superficial. They do not have the foundations that is on par with what a proper law degree offers. I am very grateful for the foundation in law that I received from HKU's Law of Law.

That foundation has enabled me to fly. Once you have the methodology, once you have your foundation, then you can navigate all sorts of legal areas that you have never charted or seen before.

I'm very, very happy to have read Law at HKU.

**Q: What was your favourite subject back then?**

MB: I had a few. And fortunately for me, Bob Ribeiro was the one teaching me both of them: criminal law in my second year; I loved criminal law; and jurisprudence in my third year.

I liked my contract law. I hated equity as I didn't understand it. Who understands equity and trusts? It's so fluid, isn't it? But we managed.

Company law. Willoughby was a wonderful company law teacher. He was a fabulous teacher. He taught tax as well. Downey was quite dull but he was a good man. He was an impossible judge to appear before. He was extremely irate and unhappy in the courtroom. He was totally a different creature inside the courtroom than outside the courtroom. But God bless him. He's passed away too. I'm just throwing out names that I remember from the past and what they taught us.

Favourite subjects? Yes, jurisprudence and criminal law. But I think I did well across the board.

**Q: It's interesting you didn't mention tort law.**

MB: I did very well in tort law. I enjoyed doing tort. The understanding I had of tort law in law school was not as deep as the understanding that I got as I practised it. I suppose if you ask

what my fields of specialisation are, I would say tort, personal injuries, medical negligence and insurance. But let me tell you about the good old days first.

I was saying that I didn't have any family who were lawyers. So for me, the choice to become a barrister was actually a very easy one to make. Because as a barrister, I would not have the need to find and get clients. I did not have an uncle who owned a law firm and was able to mentor me and keep me under his umbrella. So I decided that I just had to practise as a barrister. I believed that if I did well, I would get work.

**Q: When did you make that decision?**

MB: Probably quite early on. I cannot really say when was the exact time. Obviously not the first year. I think probably in my second year because, in the third year, I had already planned to do my Bar Finals in London after graduation. I just wanted the experience of studying abroad and to complete my education there. After all, at the time when we studied law here in the 70s, our Hong Kong law was almost identical to English law. We had differences in property law and constitutional law: we did not have a developed government system here. We were a colony.

**Q: Did you ever consider studying PCLL here at home?**

MB: Yes, of course, there was a choice. However, I decided that I would like to go to England, which I happily did. Doing so opened up my mind tremendously.

**Q: How would you compare the legal education experience here versus your time in England, while qualified?**

MB: My time in England was all self-study. I had already the essential skillset. So, whilst I attended lectures, in fact I skipped quite a few as well. I attended all my tutorials. I did skip some of the lectures in some subjects and I studied those subjects by myself. I had good technique in studying law.

I subscribed to the All England Law Reports, and I was careful to concentrate on the reports published in the few weeks and months before the final exams. I would look for new judgments that came out around that time because, very often they would set a question based on a new judgment. I did very well in my Bar Finals.

**Q: And you never considered practising elsewhere? You just came back to Hong Kong?**

MB: I did not think of practising anywhere other than Hong Kong.

**Q: Did you ever considered doing LLM or any postgraduate degree?**

MB: I did my Bar Finals at the same time as Audrey Eu and Maria Yuen, who were both one class above me in HKU Law School. Instead of taking the Bar Finals, they did a one-year LLM course at LSE after their LLB. So, when they finished the LLM course, they became my contemporaries in the Bar Final course. That is how I caught up with Audrey and Maria. I also applied to pursue an LLM at LSE after I completed my Bar Finals. But then, in the end, I gave it up. I thought so many people were being called to become barristers. It would be better for

me to get my foot into the legal world as early as possible. So I did not pursue my LLM and I came back to Hong Kong.

**Q: So you did six months of pupillage in London?**

MB: I had completed six months' pupillage there with a wonderful person called John Jarvis, a rather youngish pupil master. Now, he's a King's Counsel. I have a nice story about John Jarvis I want to tell you later.

After six months' pupillage, I came back and continued my pupillage with Arjan Sakhrani in Hong Kong. I was called to the Hong Kong Bar in early 1978. If I remember correctly, I was the 121st barrister to be called to Hong Kong. I think there are about 1,800 today. We were fast growing. Those were wonderful days.

**Q: How did you find your first job? Did you join a barristers' chambers?**

MB: Yes. After pupillage, we tried to get into the big sets of chambers, but it was so difficult to get in.

My colleagues, Corinne Remedios and Kumar Ramanathan, were doing pupillage with Denis Chang. Kumar was also a pupil of Anthony Sedgwick. Corinne's pupil master in London was James Badenoch. None of us could get into established chambers. So we started our own chambers: Kumar Ramanathan, Corinne Remedios, and myself. Three of us. We were the three babies in the chambers and our chambers got a nickname. People called us "The Nursery". We were a fighting nursery. We were all very busy doing our cases and doing quite well.

**Q: But then who gave you the cases originally?**

MB: Legal aid would give us cases, as well as good friends who had become solicitors.

I am so grateful to many of the friends that I made in law school. When I studied in London, I also made friends there who later became solicitors in Hong Kong, and they would give me work. I am very grateful for that.

We did everything and anything. We would start the week doing a shoplifting case or a loitering case in the Magistrate's Court. And the next day we would be in the District Court trying to get possession back for our landlord client who wanted it for his own use. In those days, rented premises were protected. Even if the lease had expired, the landlord could not recover possession unless he could prove that he needed the premises for his own use or there was some serious breach of condition and so on. Then on Wednesday I would be quite nervous, coming before a Master, trying to drum up a defence for my client on his dishonoured cheque so as to avoid summary judgment against him. And then I would be off for a few days to the High Court in a jury trial defending a drug trafficker. We did anything and everything in those days.

Nowadays, people specialise much earlier. In our days, the specialisation was actually ad hoc. We would do everything and anything that came our way. Then, if you conducted a case well in a particular subject, you would start to earn a reputation in that field. Solicitors will start to

instruct you to conduct another case in the same area of law. As you do more and more of those cases, suddenly, you have become a specialist in that area of law. Ad hoc specialisation: it was not by design.

The reason why I did so much legal aid crime in my early years was because it was difficult to get work. The Hong Kong client choosing a barrister would want to engage a Caucasian barrister, or a barrister who was Chinese. They did not want to get somebody from my part of the world. I had to work hard to earn my keep, do a good job at my work, and win cases.

**Q: Did the SJC connection help?**

MB: To get work, I wish it did, but I don't think so. It was just another kind of network. But I do know that the two schools that produced the top lawyers that were in practice in those days were SJC and DBS. No, I wish it did. But I cannot really say, with my hand on my heart, that it did.

**Q: Are there any memorable early cases you did that you still remember?**

MB: It was crazy. We were less than one or two years practice at the Bar, and they were instructing us to do murder cases, rape, and robbery cases. Defending a murder trial was so stressful.

The fees were nothing much. I would rather get \$1,000 and go to work as a Duty Lawyer in North Kowloon for the whole day, defending a few loitering or shoplifting or theft cases, than to be before a jury on a murder trial. On the first day, you get \$1,600 for the Brief, and the Refresher was a less than handsome \$600 but the stress was ten times more.

I was doing crime from 1978 when I started practice, till about the early 1980s. I think probably I did my last jury trial in 1983. The reason for that is the market changed. You know, one's career, one's practice, whether in law or elsewhere, it all depends on market conditions. Just like how the market is changing very quickly these days with Trump as the US President.

**Q: But what about back then?**

MB: In those days, legal aid was having a hard time getting lawyers to do these cases at \$600 a day. They would rather do civil work. What then happened in the early 1980s was that the DPP, the Director of Public Prosecutions, a very flamboyant man called Max Lucas, told his Crown Counsel that if you have been a Crown Counsel in the Attorney General's Chambers of Hong Kong for seven years then, even though you are qualified in Australia or New Zealand, you can join the Hong Kong Bar.

If you had an English qualification, you could join the Hong Kong Bar. If you had an Australian or New Zealand qualification, you could not. Max Lucas established the seven-year rule. There was a huge exodus. Gary Plowman joined the Hong Kong Bar, as did Gary Alderdice and so many others.

And they took away all the legal aid work. They were so experienced. They had been fantastic prosecutors. The market for junior barristers like me suddenly disappeared.

We started to do more civil work. I started to do more personal injury, commercial cases, and then I became a specialist in personal injury cases. The majority of defendants in personal injury cases are insurance companies. I became involved in advising on disputes arising from insurance policies. As I did more and more of such work, I became a specialist in liability insurance law, which is what I teach in the HKU PCLL Personal Injury Elective Course.

Having become in insurance law, I started getting appointed as an arbitrator in insurance cases. Before that, I had been arbitration counsel in many insurance disputes. Most insurance policies will have an arbitration clause. Any dispute will go to arbitration, not to the court.

So that is how my practice evolved. Thank you, Max Lucas. You turned me into a civil lawyer, and we got paid better doing civil work.

**Q: Were you more representing the defendants, the insurance companies, or both sides?**

MB: What has been so wonderful about my practice was that I was able to act for both sides. This is not the case today. Either you are a plaintiff's counsel or you are a defendant's counsel. A defendant's counsel has never done a single plaintiff's case, so he has no idea how to conduct a case for a plaintiff and vice versa for a plaintiff's counsel. But I was blessed. I did both. If you were to ask me if I represented more plaintiffs or more defendants, I would probably say it's 50-50. Doing so gave me objectivity and balance.

**Q: Why did you join the Bench?**

MB: I am a bit of a traditionalist. I always thought that one's career progression should be, firstly, to be a junior counsel and, if you establish yourself well enough and create a reputation of integrity, then you can get appointed as a senior counsel. And then from there, I always had this traditional belief that one should complete one's professional career on the Bench.

That professional idea came together with two other personal beliefs I had. One was that Hong Kong had been so good to me that I should give something back. But becoming a Judge came with a big pay cut. So it was a vocationally driven choice.

I would like to think that every senior counsel has a duty to seriously consider joining the Bench, to give back to the society that has given so much to them. Of course, a lot of them try to discharge that duty by becoming Recorders and becoming Deputy Judges, which is also a way of giving back, isn't it?

The other thing that drove me to the Bench was the state of the Personal Injury List. We had very good judges in charge of the Personal Injury list. One of the first was Peter Cheung. The very first one was Neil Kaplan. However, at that time, there was not a formal Personal Injury List. Neil just went to Chief Justice Roberts and said, "Listen, all these personal injury cases are languishing in the storeroom. Let me just grab a whole load of them and call them up and let's clear them all up." So I would call him the first Personal Injury Judge of Hong Kong and I am very grateful for what he did. Because of the momentum he created, the Personal Injury List came into being. Peter Cheung was formally the first one. And I think Rahman Suffiad was the second. He was followed by Conrad Seagroatt. But after that, I think after Justice Seagroatt retired, somehow the List kind of drifted and, in the meantime, we were still applying old laws, which no longer fit the new ways of the new world. The other reason that

drove me to the Bench was the vocational drive to clear up all the grey areas that existed in personal injury litigation.

When I went in, I had a checklist of issues, more than 20, maybe 30, that I wanted to clarify. As each case came up that raised one or more of them, I wrote a judgment to clarify those grey areas. I am very happy to say that I have been retired now for four years plus. The current judges are still referring to my judgments as precedents. If you resolve a grey area, you resolve an area of dispute. The insurers cannot latch onto those old arguments to try to fight the case. Neither can plaintiffs latch onto an old argument to try to get a higher award. Clearing up grey areas helps to increase settlements.

Settlements are a good thing. You choose yourself what result you want, rather than leave it to the judge, who might find totally against you.

**Q: Do you think you fully accomplished the sense of mission you had when you first joined the Bench, looking back the days?**

MB: Actually, I was supposed to retire at 65. By that time, I knew I had not completed my mission. Chief Judge Andrew Cheung came to me and invited me to work two more years to age 67. I asked my wife if she was happy with me continuing, and she nodded her head. In those two years, I was able to try cases that raised the outstanding issues that allowed me to complete my checklist. When I wrote my top ten list of my most important decisions, at the time of my eventual retirement (see Appendix), I was able to say that I had clarified all the grey areas that I had wanted to.

**Q: Taking one step back, when you were still a junior counsel, at which point did you decide to apply to take SC?**

MB: I had been asked to take silk a long time before I actually applied for silk. I always kept holding back. There were multiple reasons. The reasons also have to do with my personal life. My personal life was in a bit of an upheaval at a certain stage. I just did not think I was ready to take that plunge to become a senior counsel. There is always a concern that when you become an SC, you just might lose all the work that you were getting previously. I am not sure that that was the primary concern that held me back. I was very confident of my abilities.

It probably had more to do with personal situation. I reached another stage of life when I was much happier. I then put in my application.

But the reason, why I thought of the Bench later rather than earlier, was that I was scared that if I joined the bench too early, I would have a sense of being trapped. You burn your bridges when you become a Judge. When you become a High Court Judge or a District Court Judge, you sign an undertaking that you will not return to your former practise as a barrister. So I joined the Bench in my mid-fifties, thinking I could tolerate working for 10 years as a High Court Judge.

**Q: Did it feel like an imprisonment?**

MB: Thank goodness, the fear of being trapped did not materialise in my case. However, it was not easy being a High Court Judge. You know, people complain that, oh, these judges have so many holidays. This is nonsense. The holidays are used for writing judgments. Every day you get thrown so many files, so many interlocutory applications, followed by very difficult trials that you have to hear and decide.

It is always the holiday time that is used for writing judgments. The workload is tremendous. I must say I am very happy about the fact that I did not feel stressed overtly. But I think the stress was innate. It was underlying stress which caused my health to start to deteriorate. A lot of judges have deteriorating health because they undergo so much stress.

**Q: Where does the stress come from?**

MB: Well, it is from the workload. I have got to write this judgment. It is so complex, it has so many issues. It is the workload that is always at the back of your mind. How am I going to do it?

My longest judgment as a Commercial Judge was a judgment that was almost 400 pages long. The case ran for many weeks; we had experts giving evidence from different parts of the world; there were 40,000 documents. Oh, reams and reams of them. The box files occupied a very large part of the corridor outside my Chambers.

So how did I finish that judgment? I would go to Court every Saturday, Sunday and public holiday and sit there and write that judgment until I finally finished it.

**Q: Were there any other challenges you faced as a judge?**

MB: Actually, I was very happy as a judge. Counsel have a lot of stress. They carry on the burden of their own client on their shoulders. If the case goes badly, they know that their client will suffer substantially. So that creates a lot of stress.

Counsel also have stress from temperamental judges. I do not want to name any names, but we know who they are. They also have very belligerent opponents.

But our stress is different. It's not patent, but it is there.

I was a judge for 11 years. I must say that I am very happy looking back at that chapter in my life. All thanks to HKU for not offering a business degree at that time.

**Q: Could you share with us about your time on the Bench?**

MB: My proudest moment as a judge was when I handed down my judgment in *Chan Pak Ting*, which is on my top ten list of judgments I had handed down during my tenure (see Appendix).

In *Chan Pak Ting*, I made an innovation that did not exist in the common law world. I held that we should not have one discount rate for future losses. We should not have two, we should have three. And the discount rate should be set according to the period of future needs. The

longer the period, the more risk you can take in your investment choices. And the shorter the period, the less risk you can take.

So for periods of less than five years, the judgment sum you are awarded should be put in bank deposits or government bonds. But if you have needs for five to ten years, you can afford to widen your reasonable portfolio and invest something in commercial bonds, but of a higher grade.

And if your needs are more than ten years, then you should have about 20% in very high-quality equity stock. And the reason why I said you should have three discount rates is because the returns on these different portfolios are different. For bank deposits, you cannot even beat inflation, so I chose a negative discount rate for future needs not exceeding years.

But for future needs of up to ten years, I chose a positive discount rate of 1% because there was a return my proposed portfolio which was more than inflation. This was based on the economic evidence I received. And then for future needs of more than ten years, I chose a discount rate of 2.5% because there was a higher return on my proposed portfolio for future needs of more than 10 years. And that decision is still being followed.

I handed down that judgment in 2013. Now we're in 2025. In that judgment, I also stated that we must follow the UK path and create an authority to set the discount rate because it was not right for litigants to take on that huge risk as to cost to undertake that exercise, which was an exercise that should be performed for the benefit of the whole society, not just for one or two litigants.

When I was a member of the Law Reform Commission Sub-Committee to debate this issue, we came up with the recommendation that there should be a discount rate authority and, possibly, the Financial Secretary should be that authority. I think legislation is being drafted to bring that and make that a reality.

The other thing that I pushed for in *Chan Pak Ting*, which was also recommended by the Law Reform Commission Sub-Committee as something that we should enact, was to empower the courts to make periodical payment orders.

Our system forces us to give a lump sum judgment because the law says there should be finality between the parties. They bring their problems to court. They bring their dispute to court. Once it has been resolved, they should not have to see each other again and ask each other for money again and again – there should be finality.

Finality is great for past loss because past loss is recorded. It is a fact. It is easily ascertainable. But future loss is a guessing game, particularly in catastrophic cases because if you have got a person who is in a vegetative state or is tetraplegic with a huge loss of mobility, it is very difficult to estimate that person's life expectancy. So the plaintiff's doctor will say that the plaintiff is going to live for another 10 to 15 years; and the defendant's doctor might say that he is not going to live more than three years.

Whatever judgment the court comes up with is bound to be wrong. If the judge finds he is going to live for 10 years and then, two months after the judgment, the plaintiff catches

pneumonia and dies, the huge award becomes a windfall for the family of the deceased. Whereas if the judge says he is not going to live more than three years and, 10 years later, he is still alive, he becomes a burden on the society because his compensation would have been totally depleted long before then.

So periodical payment orders are fantastic in this sense: they force the insurance company to make an annual payment every year for so long as the plaintiff is alive. And that annual payment has to be indexed-linked to cater for inflation and deflation. If there is a 10% inflation that year, the next year's payment has to be increased by 10%. Or, if there is deflation, then you reduce the annual payment accordingly. So that's one huge benefit.

The second benefit is this. The payments stop when the plaintiff dies. Nobody gets a windfall and there has been no shortage of payment to cover his needs when he was alive. The insurers of Hong Kong were quite hostile towards periodical payment orders and I think the Department of Justice will have some work on its hands to try to get that passed as well.

Another thing that made me proud of *Chan Pak Ting* was soon that, after it was published, the UK Parliament amended their Damages Act to follow my innovation. Britain followed a court in China. These are the universal threads of the common law that connect with and contribute to all common law jurisdictions. I am very proud of the fact that Hong Kong has a common law jurisdiction.

**Q: When you first joined the Bench, did you receive any promise from the Chief Justice that you can specialise in what you're good at?**

MB: Yes, he wanted me to be the Personal Injury Judge. I was not joining the Bench to become a Criminal Judge, He later made me the Commercial Judge as well. There was a time when Anselmo Reyes suddenly retired and then there was a lacuna. The then Chief Justice, Geoffrey Ma, invited me to take charge of the Commercial List as well. I was the Personal Injury and Commercial Judge at the same time. I That was a very difficult period for me. There was too much work.

**Q: You said specialisation wasn't a case for you as a young barrister, but as a judge you did enjoy the benefit of specialisation.**

MB: Of course I did. I was able to do my work well in the Personal Injury List. I felt that I had the knowledge and the experience to create good precedents and to reach the right decisions in the cases that came before me. After having handed down all these judgments in my 11 years on the Bench, I can proudly say, without being egotistical, that I have never had a sense of having made a wrong judgment.

**Q: In your opinion, what are the essential qualities of a good judge?**

MB: I wish all the judges were like this hypothetical judge I am going to talk about. One should have both ears opened and both eyes opened to listen and to see all sides and one should give the parties a proper opportunity to present their cases. Be patient and be objective.

Do not shout at them after every third word they speak because they would not be able to present their client's case to you. When the judge's temperament gets in the way, then it is really difficult for the parties to navigate. How do you sail your ship when there is a typhoon number 10 roaring at you?

One thing I am very proud of about Hong Kong is that we have a wonderful Judiciary: very independent, very objective, and a Judiciary that comes to the right decision most of the time.

**Q: Compared to the time you were first appointed to the bench, do you think judges these days face more difficulties, or do you think it's the other way around?**

MB: The cause of the difficulties is the shortage of judges. The work goes up with the increase in our population and our activities. The number of disputes increase. Does the number of our judges increase? It is the quantum of work that weighs us down and I do not think there has been any real change from the time when I was serving and today.

What disappoints me is the fact that there seems to be fewer private practitioners applying to join the Bench. The last appointments were all from the District Court and the DOJ. I am very happy to hear that there is a High Court judge being appointed from the private Bar that would be announced imminently. But I would wish for more members of the Bar to put their hands up.

When I was appointed, the vetting that was done was not as deep as the vetting that is being done now. I know of at least one case where a very capable fellow had applied to become a District Court Judge, but he failed the vetting. Not that he himself was anything but an immaculate, totally upright and wonderful person to be a judge, but maybe he had some relatives who had been in some trouble. The deep vetting can also create an additional obstacle. - It is hard enough already to get them to come in.

**Q: So back in the days when you were appointed, the vetting was not as deep.**

MB: No at all. Besides being the judge in charge of the personal injury and commercial lists, I was also a Panel Judge under the Interception of Communications and Surveillance Ordinance for six years. A candidate has to pass a very vetting before he or she can be appointed to that Panel.

Maybe even more so than the current deep vetting for judges. Rahman Suffiad, who held the position before me, told me afterwards that the police officer who was in charge of vetting me had doubts about my background just because I was a member of the Hong Kong Jockey Club. He even asked Rahman if I was a betting man and if I spent a lot of time betting. Rahman knew me well enough to tell him that I was not a betting man.

**Q: Did serving as a Panel Judge under Interception of Communications and Surveillance Ordinance consume much of your time?**

MB: No. We had a roster system. There were three Panel Judges. So we would be on duty one month in every three months. And because I was not Chinese, I would always offer to be on duty during Chinese New Year and the other PJs reciprocated by ensuring that I was not on duty at Christmas time.

When we were on duty, we were on call 24/7. I had been woken up two, three times in the middle of the night to rush back to Court because of a kidnap case.

**Q: Do you think the nature of the work serving on the Panel is different from typical judicial work?**

MB: Not really. As a High Court Judge you can get an urgent application, an *ex parte* application for an injunction coming to you. You get an affidavit, and then you make a decision whether there is sufficient material to allow the application or not. As a Panel Judge you also get applications on affidavit and you have to satisfy yourself that the conditions for granting an interception or surveillance authorisation are satisfied.

However, the thinking behind appointing judges to that Panel was that you do not want any judges who were conducting criminal trials to be serving on the Panel. This is to avoid a criminal trial judge from previously acquiring knowledge of the case as a Panel Judge. Yet, one must also have sufficient previous experience in criminal cases to be able to work as a Panel Judge. It is the golden standard to have a High Court Judge doing this work.

**Q: Could you also tell us more about your time in the Bar Council?**

MB: I was on the Bar Council under Gladys Li's leadership for one year, but I have been serving their subcommittees for many years.

I am proudest of the work I did in the Insurance Subcommittee. We made it compulsory for all barristers to have professional indemnity insurance. The master policy that I helped create for them is still the one being used today. We worked hard to premium rates low. Those who took over from me are continuing to do a wonderful job.

I think barristers should be quite grateful for the work of the Insurance Subcommittee, the premium that is charged is so low when compared to what other professions pay. They might say the risk of barristers being sued is so low, but that is not the case. The insurers have received and paid some very big claims. It is only right that we should protect society from negligent barristers.

**Q: Since you joined the Bar in the late 1970s, how did you see the Bar change over the years? And how did your own chambers change over the years?**

MB: Look, 120 plus barristers when I was called compared to 1,800 barristers today: that is a very substantial change. There is a newish development of having these huge sets of chambers. Des Voeux Chambers with over 100 barristers. Temple is probably smaller but is still a huge set. Parkside also has a lot of barristers. Those developments have probably been more recent, coming in the last decade or so, compared to my earlier years.

**Q: How did the rise of these big chambers change the character of the barrister's work?**

MB: I remember I was asked to write a chapter in a publication for the 50th anniversary of the Bar. I wrote about the 1980s and I called it the Golden Age. I co-wrote that with Corrine

Remedios. What lovely stories we told in that chapter. We also related some quite hilarious events that occurred in that decade.

The Bar was smaller then. You kind of knew everybody. When we had our Bar Messes in those early years, we had to sit according to our seniority. So I always sat with the same people who were called at around the time I was called to the Bar.

As the Bar grew bigger and as Chambers grew bigger, they dropped that tradition and started to have chambers' tables. The Bar Messes took on a different character. The size of the Bar meant that we did not know each other as well as in previous years, unless, of course, if one was a specialist in a particular field where a specialist cohort of barristers were always fighting cases against each other. For example, in the field of IP where Winnie Tam and John Yan are among the market leaders, the usual suspects come in to court all the time. But in other areas, you could often find yourself against a stranger.

**Q: Back in the day, there were also barristers coming from the UK, right?**

MB: Yes. We still have King's Counsel and, previously, Queen's Counsel being appointed to come and do big cases here on an ad hoc basis. We still do that, which is a great practice. I was very happy to be led by silks from the UK in some of the big cases in which I was instructed to appear.

**Q: Could you tell us more about your pupil master in the UK.**

MB: It was early on in 2024 that Lord Briggs of the Supreme Court of the UK was invited by Temple Chambers to give a talk here at the HKU on the 11th floor. At that time, he was the Treasurer of Lincoln's Inn. I am a member of Lincoln's Inn. So are a number of other judges, Peter Cheung, Frank Stock, Doreen Le Pichon, and Eugene Fung, who was not a judge but a Senior Counsel. We had a Hong Kong Lincoln's Inn Society, and Eugene got in touch with us and organised a lunch for us to meet Lord Briggs.

We hosted that lunch for Lord Briggs at the Hong Kong Club. We had a lovely lunch and our conversation was wide-ranging. The conversation turned to where we read Law and where we did our pupillage. Doreen Le Pichon said she did her pupillage at Andrew Leggatt's Chambers. And I said that I also did my pupillage there. Lord Briggs asked me who my pupil master was. He was surprised when I said John Jarvis. He then asked me when I did pupillage with him. I said in the summer of 1977 from July to December. also did his pupillage at the same place. I am also glad to know that we had the same pupil master, who is John Jarvis. Lord Briggs then said that he was also a pupil of John Jarvis and that he had started pupillage with him in January 1978. We were co-pupils! And I was the senior pupil! What a small world.

Look at the threads of the common law. I look back and I am so happy that I had my stint in the UK. There is a sense of connecting with the origins and the history of the common law.

**Q: And how did your own Chambers grow over time?**

MB: We were together for five years in “The Nursery”. A few people broke away from the old Temple Chambers to start their own chambers, including Francis Eddis, Anthony Sedgwick, Peter Nguyen, and Esther Toh, who is still a judge now.

The four of them started new chambers and they invited the three of us and also Lawrence Lok to join. Lawrence Lok was a friend from SJC and we were always very close. He specialised in criminal work. So we formed a new chambers called Francis Eddis' Chambers. I was in those Chambers for ten years. In the course of ten years, Chambers had grown from ten to about twenty-seven barristers. It just grew too big. We had a lot of criminal practitioners who complained about the cost of the expensive legal periodicals which they never needed to look at. The civil boys wanted to subscribe to Halsbury's and the Law Reports and many more.

Lawrence Lok and his former pupils were the first to splinter off and he started his new Chambers in Printing House. They are still there. I think I was in the second lot who started our own chambers in Ruttonjee Centre, including Michael Ozorio, Josephine Pinto, K.Y. Thong, June Wee and Lisa Wong and Rimsky Yuen who was my former pupil. June Lisa and Rimsky left us later and joined Temple. I think June Wee is retired. Lisa Wong is now a High Court Judge. Rimsky is very active particularly in the arbitration world. I was in those chambers for 18 years until I left to join the Bench.

**Q: During that time there was the 1997 handover. Was there any change before and after?**

MB: As far as my practice was concerned, 1997 did not affect us. But I think we were all worried after the 1984 Joint Declaration was signed.

A lot of my friends, like Peter Cheung, went to live in Canada, the others went to Australia, to get overseas passports. They were called “astronauts” because they were always travelling between Hong Kong and Australia/Canada. I did not take such drastic steps, but I did apply to Singapore for permanent residence, which I was given in principle. However, I never left Hong Kong. Hong Kong was so good after 1997. I would think even better than before. But it was obviously a concern at that time for all of us as to what changes will occur in Hong Kong. Thankfully all was well, and we stayed around. Hong Kong has gone through so many ups and downs. I have always believed that Hong Kong will rise above its challenges and that it will continue to thrive.

**Q: In terms of the line of work you do, had it always been personal injury and some other civil cases over the years, before you became a judge?**

MB: Yes. I did everything and anything during my early years. And then as the years passed, I concentrated more on commercial cases, letters of credit, banking disputes, contract disputes, and then a lot of personal injury cases.

Then from personal injury work, I did a lot of medical negligence cases. I have a lovely story about one of the cases I did, which we won by the skin of our teeth. The case concerned a patient who was himself a doctor, Dr Yu Yu Kai. He sued the anaesthetist who was involved in his radical prostatectomy. His prostate was properly removed. But when he came out of the operating theatre, his left arm was very numb, and they discovered that he had suffered

severe damage to his radial nerve. We sued the anaesthetist for damages for breach of duty as it is the anaesthetist's duty to care for the patient when the latter is under anaesthesia.

From the fact that he had this severe radial injury, we argued that one could infer that the radial nerve was under severe compression for a substantial period of time. An inference could also be drawn that this lengthy severe compression was the cause of the severe injury and that the anaesthetist had failed in his duty. The facts were very simple.

I was before Justice Suffiad, and we lost. Then we took the case on appeal and we won, two to one. Then the defendants took us to the CFA. I did the case myself in the first instance and in the Court of Appeal, but in the CFA, I had my very good friend, James Badenoch KC from UK to come and lead me. It was a scary morning, because it appeared to us, right away from the beginning, that Justice Henry Litton and, together with him, Lord Hoffman, were totally against us. It seemed that Justice Bokhary and Justice Patrick Chan were for us, but we did not know where Justice Ribeiro stood.

They reserved their judgment. Then, much later on, I learned that the court was, indeed, divided like that, and, as a result, the four judges told Justice Ribeiro to read the transcripts and write his judgment first. Ribeiro found for the Plaintiff in his judgment, and Hoffman, in his short judgment, said that he had changed his mind after reading Ribeiro's judgment.

Eventually it became a 4-1 win for us. This just goes to show how the result can hang on such tender hooks; and it also shows that litigation is quite a serious undertaking. Our client was not on legal aid, and his claim was not substantial. The defendant had fought to the hilt. Had our client lost, he would have had to pay the very substantial costs of the hearings at 3 different levels of our courts.

I think the courts are there for the ultra-rich and for the legal-aided client. The middle class seldom have the economic capacity and the financial strength to undertake such a risky exercise.

**Q: But that's not unique to Hong Kong, right?**

MB: That's all over the world. Well, maybe they can invent a new justice system with AI or robots. I am joking. I do not think that will ever happen.

**Q: Are you concerned about AI replacing some of the legal work? It's a very hot topic these days.**

MB: AI is very good at compiling the base material for you, but you still need human judgment. The exercise of judging a case is totally qualitative. One cannot put a scientific measure to that qualitative judgment. It is not a quantitative exercise. However, AI can make life easier, I suppose, by collating the case materials much quicker and efficiently.

**Q: You mentioned earlier that when you were a junior barrister, a lot of clients would potentially go for a Caucasian or a Chinese barrister. So as an ethnic minority barrister, how did you cope with that and thrive over the years?**

MB: Well, like I said, I would take on legal aid work just to keep myself employed. I did that happily. I did a lot of good work for the Legal Aid Department.

I continued to do so in legally aided civil cases for plaintiffs who had suffered injuries. I also did some legal aid work for plaintiffs in pursuing contract claims and other claims.

I remember one of the scariest cases I did before Justice KH Woo. I was acting for the plaintiff who was the subject of severe attacks by loan sharks. He had borrowed money from them and lost it in Macao. They intimidated him by throwing paint at the front door of his home, and they forced him to sign documents signing over his home to the loan shark. Of course, the loan agreement was illegal. I think they were charging interest at the rate of something like 3000 or 4,000 percent per annum. The legally aided plaintiff brought a moneylender's action against the defendant. The defendant was, at that time, serving a prison sentence for attempted murder. He was brought to the court from prison. He was a notorious criminal and a very frightening person. I did not know that at the time I had accepted instruction to fight this case. When I found out who the defendant was, I said to myself, "Oh my God. He is a known kingpin in the underground world, rumoured to have murdered many persons." In the course of the hearing, I discovered that that he was very intelligent. He looked like Lee Ka Shing- he had a huge forehead. He acted in person and was not legally represented. At the end of the case, he even complimented me on the questions I had put to him, saying they were fair questions. Hearing that, I had a huge sense of relief that he was not going to send his henchmen to chop me in the middle of the night. The judge found for the plaintiff. Looking back, I think KH Woo was more frightened of the defendant than I was.

The majority of personal injury victims need legal aid to finance their claims. I have always supported the Legal Aid Department up to the time when I went on to the Bench.

**Q: Any other client who was a character that you remember over the years?**

MB: I also had insurance companies as clients who continuously asked their solicitors to instruct me to handle their cases. When acting for them, you get to work with their claims managers and loss adjustors and you develop a friendship with them after having worked with them for many years.

One of the cases I did, which I enjoyed very much was for Joseph Chow. He's passed away now. He was Selina Chow's husband. He had a company called Brainchild and they had staged a performance at the Hong Kong Coliseum. Joseph had hired a contractor to make the stage for the performance. Unfortunately, the stage collapsed. Thankfully, there were no fatalities but Brainchild suffered losses as a result of the stage collapsing So Joseph's company sued the contractor and I was his counsel. We became very dear friends after that case, which he won. Sometimes, your former client can become your dear friend.

**Q: We asked you earlier about what would be good qualities or important qualities to be a judge. And what about the qualities you think are important for a barrister?**

MB: Hard work. He is like an actor. He will be on stage for an hour or two, but how many hours of work does he put in behind the scene? Same as a barrister. You are in court for an hour or for a day. How many hours do you put in behind the scene to allow you to do what you have to do in court and do it well? You need to put in many hours of hard work to perform well in court.

**Q: Anything else?**

MB: You also need to have good EQ to understand the psyche and motives of witnesses you are going to cross-examine.

**Q: Can that be learned in law school?**

MB: Advocacy is an art, is it not? Cross-examination is also an art. You can learn it, but you first need to have a good sense of the case, especially before cross-examining experts. Experts are very intelligent people, and they can throw you off with a lot of science. You have to be prepared for their attack on you by them throwing out a lot of science to confuse you and to befuddle you. You need to know the subject matter well. You have got to make yourself an expert in the area of his expertise before you can properly cross-examine an expert. Ultimately, there is no substitute to hard work.

**Q: How many hours of work do you usually work for?**

MB: It depends. When the case is going on, one could easily be working 12 hours to 14 hours a day. It is strenuous. I remember, in one case, I stood up at 10 o'clock on Monday morning to start my cross-examination, and I sat down at 4:30 on Friday afternoon. I was thoroughly exhausted by then.

In fact, one of my very proud moments occurred very early in my career. At that time, in the late 1970s, there was an exodus from Vietnam. One of the ships called the "Huey Fong" had come and stranded itself on Hong Kong waters. They prosecuted the captain and some of the senior people, and they also prosecuted my client, for being snakeheads to bring all these refugees on board the ship to Hong Kong.

The trial took place before Judge Hopkinson in the District Court. It went on for four months. At the trial, I cross-examined the main witness who was an accomplice, and I cross-examined him for four days. However, the defendants were all convicted by Hopkinson. He had a reputation for being conviction-minded.

The trial took place at the Western Magistracy, which housed the District Court as well. My co-defending counsel were Anthony Corrigan and John Bleach. John and Anthony were privately instructed, so they would come to court in a taxi, go back in a taxi. I was on legal aid, so I took the tram. My brief was only \$1,200 and my refreshers were \$400 per day. John got his pupil master, Anthony Hidden QC, to lead him on the appeal

I was shivering. I was young and nervous to appear before the Court of Appeal. I hardly said a few words. What made me proud was the fact that Anthony Hidden, throughout his two days of submissions, was just reading out my cross-examination. His submission was that, after that cross-examination, no reasonable tribunal could possibly give any credit to what this witness had said. The Court of Appeal agreed and allowed the appeal.

**Q: That must be an important moment. Any other important turning points in your career, other than becoming the judge, obviously?**

MB: I was very proud of the fact that I had the opportunity to appear before the Privy Council. I was not proud of the fact that we lost in the Privy Council. We had won before Justice Keith in the first instance.

We won before the Court of Appeal, 2-1, Cons and Kempster in our favour and Litton against. But we lost in the Privy Council. The case concerned the pleasure vessel called the Barquentine Osprey. This is 1983 when Typhoon Ellen came to Hong Kong. The captain of Osprey was very ill-equipped to actually be a captain. He made the wrong decision. He was moored in Repulse Bay. He made the decision to up anchor and run for the high seas, which was his undoing because the typhoon was so powerful and so fierce that all hands on deck were lost.

Only one of the crew members, a Japanese man, survived and he was picked up in the South China Sea. He was hallucinating. Everybody else was lost. There was a claim brought for employees' compensation for the fatal injuries suffered by the crew and the claim was made against the insurance company that had issued the employees' compensation policy.

The policy had been issued to insure a company called Richstone and it stated that they were insuring the employees of Richstone who were the crew on the Osprey. But the actual employer of the crew was a different company – Axelson. So we argued that we never insured Axelson, and that Axelson and Richstone are different legal entities so that the insurance company was not liable.

But we all know that it is very difficult to win cases against widows and orphans. So the Privy Council opined that the insurers had to pay up because Axelson was an undisclosed principal.

We had submitted that this is a liability policy which is personal to the named insured. How can you have an undisclosed principal with a liability policy? Because the risks depend on the character and experience of the insured - an insurance company will insure Mr. Chan because he is a reputable contractor. And then Mr. Chan later says that he was the agent for the undisclosed principal, Mr. Wong, who has previous convictions for dangerous work practices.

The Privy Council would not hear it. Sometimes tough cases make bad law. All the authoritative textbooks on agency talk about this case as being a little bit off the beaten path. But that is life, is it not?

The other one I was very proud arose from the fact that more and more people were working in Shenzhen after 1984. Shenzhen and Dongguan had opened up. A lot of Hong Kong people were employed in Hong Kong and being sent to Mainland China to work. This case concerned a man who had to work overtime in the factory in Dongguan and he missed the shuttle bus provided by the company to take him back to Lo Wu. He had to take a taxi. In the course of the journey from the factory in Dongguan to Lo Wu, there was an accident and he died.

In employees' compensation cases, the law is very clear that when you are travelling to and from work, you are not considered to be in the course of employment. There is good reason for that. We already have motor insurance that will cover you when you are travelling to and from work. One does not need motor insurance and employees' compensation insurance

cover. However, at that time in China, the coverage for motor insurance accidents was negligible.

I was able to persuade the Court of Appeal, Peter Cheung and Simon Mayo, to rule that when Hong Kong people are sent to mainland China for work, they should be considered to be in the course of employment when they are travelling in China. And they agreed. The widow I represented was able to get employees' compensation from the Hong Kong insurer. This is a form of social justice. That is what we try to achieve I am very proud of the judgement handed down in that case.

**Q: What's your advice to Hong Kong students nowadays? What are the qualities that Hong Kong law students must have in order to thrive?**

MB: You have to understand that it is always a balance between heart and mind. What does your heart desire? What are your passions? And, on the rational side, what do you need to do?

One of my pupils gave me a shock on the last day of her pupillage when my pupil told me she that would become a solicitor instead of becoming a barrister. I immediately asked her if I had done anything wrong. She told me no; it was the certainty of a pay cheque at the end of the month that made her change her mind.

Your passion may be to be a barrister and to advocate in court. However, if you need that monthly pay cheque, the mind will say, you had better become a solicitor.

That former pupil of mine is a senior partner now in a well-known and international law firm. She is probably earning a lot more than she would have been able to, had she become a barrister. The decision to be one or the other is always finely balanced.

But I would still say that you have to follow your heart as much as possible.

**Q: We know that you have lots of outstanding pupils, such as Rimsky Yuen. Do you think their qualities were shown when they were serving as your pupil?**

MB: My first pupil was Winnie Tam, and I thought I was not ready to have her as a pupil master. Of course, the rest is history. She's a former Chairman of the Bar, and she is top Senior Counsel in IP litigation, and she is also very active in arbitration. She was supposed to be a pupil of Frances Eddis. What happened was that Frances Eddis took silk and, in those days, a Queen's Counsel could not take on a pupil. They only changed that rule later. So the question of who was going to be her pupil master. Unfortunately, or should I say fortunately, I missed that Chambers meeting. When I came back to Chambers, that they had already assigned me to be her pupil master.

I was shocked as I have just been called to the Bar for five years. That was the minimum years of practice required for one to become a pupil master. So that is how she became my first pupil, and I am glad that I did because we have become close friends ever since then. There was another person who had wanted to be her pupil master, and the rest of Chambers was against that person being the pupil master. No names mentioned. I did my best to teach her

whatever little I had learned in my few years of practice. I can truly say that we are more like close friends than pupil and pupil master.

Everyone knows Rimsky Yuen. My other well-known pupils included Grace Wong, who served dutifully and conscientiously as head of the Duty Lawyer Service for many a decade. Kenny Lin, who is a very successful trial lawyer possessing a very sharp legal mind. I must also mention Thelma Kwan who practised for a few years and left the Bar to pursue her career in banking. She returned to the Bar to practice as a family lawyer. She was recently appointed as a Family Judge of the District Court.

**Q: Over the years, do you have any specific training methods for your pupils?**

MB: After I specialised in personal injury work, I would tutor my pupils about tort liability law, quantum of damages and about the insurance work I was doing so that they could get a better and deeper knowledge of that field. I would let them read my advices. Many of them took photocopies of my advices and my draft pleadings to use in future as precedents.

I was very open to them. I know there are some pupil masters who are very distant and would tell their pupils to sit and work somewhere else and, maybe, see them for no more than five minutes in a day.

My pupils always sat with me in my room. I would point them to all my files and the precedents I had stored under different subject headings. They were free to browse those files for anything that they wanted and to ask me any questions they had.

I think learning is best done by seeing and by listening. They would see me and how I conducted myself in court, and they would emulate my example. Many of them have become better lawyers than me. They have risen to even higher heights, and I am so proud of them. I regard all my pupils and all my marshals as my family.

**Appendix**

**Extract from Mr. Mohan Bharwaney's Speech at his Final Sitting on 23 October 2020**

You did not mention it, but I have it in my top 10 list. No. 10 of my top 10 list was a very early case I did in which Ms Josephine Pinto appeared in relation to sanctioned payments under the new sanctioned payment regime. It was such a difficult piece of subsidiary legislation to understand: the rules in Order 22 are very complex. But with the passage of years and the handing down of many decisions, not only of myself but of my brother judges, I think we have managed to come to live with the new Order 22. But one of those early cases I remember was Rai Rana in which Ms Pinto appeared against, I think, Albert Yau, yes. And of course I wrote a few more judgments, Shih Pik Nog, Hung Sau Fung, Fung Man Chun, and Lam Wai Ling Mayne on this subject, and so, that's my No. 10.

My No. 9 is Fong Yau Hei, because Fong Yau Hei is a very unusual case. It's a case of solicitors acting for an MIP and, because the solicitor wanted to get paid very quickly, before the common fund taxation took place, he applied to court to take money out from the settlement sum in court to cover his own fees. So when I found that out, I think I did burst a blood vessel

and had had a very, very sleepless night about that. But, in that case, I provided some guidance, which is already there in our Practice Direction, guidance on solicitors' duties when they acted for MIPs and the proper procedure they should adopt when they wished to recover costs that may not be allowed and paid by a defendant on common fund taxation. So please don't dip into the settlement sum is what I was telling solicitors acting for MIPs. So that's my No. 9.

My No. 8 is a double act, Parsad v Great Wealthy Engineering and Subba Alvin v Houngh Kee. These are very short. One was a practice note but these 2 cases contain a short guidance which I issued on the exercise of the court's discretion, in the light of the CJR, to grant leave to plead a new case or to adduce new expert evidence or to adduce new witness statements late in the day and, of course, how we tackle the injunction against affecting milestone dates. So that's my No. 8.

I had great pleasure with my No. 7, which is Bosco Lam v Chan Yee Shing, in which I disagreed with the previous decision of Deputy High Court Judge Benjamin Yu. I thought he was quite wrong. And I thought, and I held in Bosco, that the regime of sanctioned payments and sanctioned offers ought to apply to parties under disability because if you exempt them, the system doesn't work properly. But in that case, the issue did not come to me in that form and so I could only make obiter observations. But I think, when the suitable case comes up, the matter should be addressed before Madam Justice Marlene Ng and, hopefully, she might agree with what I said in Bosco Lam. But, of course, that will be up to her.

My No. 6, Bibi Bushra, is probably the case that gave me the greatest difficulty because there was this conundrum that I faced with the statute, the Fatal Accidents Ordinance, stating that there can be only one action; and we know from the procedural rules that if there is only one action, then you've got to have plaintiffs represented by the same solicitor, and how can the same solicitors act for plaintiffs that are in conflict with each other. So we have a conundrum with that provision, and with cases where the dependents of the deceased are in conflict, for example, a widow or a cohabitee of the deceased is in conflict with the deceased's mother. So I made some innovations in that case about trying, not so much to have a split trial, but trying to see whether we could split liability and quantum and deal with it in a different way from the norm and, hopefully, that's helped those cases. It's also a case which helps the parties on how to commence cases before grant of letters of administration; and how to get proper carry on orders.

No. 5, well, Mr Leung, you mentioned Fung Man Chun and you mentioned Liu Ka Chun. Yes, the new norm. The new norm is that, for quantum cases, it's a joint approach, but for liability experts you still have your own expert preparing his own report, unless the court otherwise directs because it's not always a given that you should have separate reports on liability. There may be cases where it is appropriate to have a joint report, by a single joint expert or by two experts working jointly, especially when you've got to examine the equipment and whatnot, so it's sensible to have the two experts examining it together. And so, yes, those cases.

But where you have separate reports I have always - and I think that's now become the norm - I've always said that the experts on liability must have a without prejudice meeting to iron

out, you know, their differences, sort out what disputes they still have, what issues they agree on and what remaining issues they disagree on, and setting out the reasons for that.

Yes, No. 4, Kan Wai Ling and before that, Fung Suen Sim, introducing a new method of assessing damages for loss of accumulation of wealth. My former Marshal, Ivan Law, is about to write a paper which he's going to publish in Hong Kong Lawyer saying that I got my calculations wrong. I'm waiting for him to do that, and with that publication, I think, maybe Madam Justice Marlene Ng will make a variation or an addendum to the Kan Wai Ling way of doing things. And I forgot to add, but Raymond Leung did mention that, yes, now we assess multipliers, even in fatal accident cases, from the date of judgment and not from the date of death.

No. 3, sorry you missed this one, Raymond, the trio of cases on adjusting the awards for PSLA on account of inflation by adopting the June values, June being halfway through the year, of the Hong Kong composite consumer price index: Wong Man Kin v. Golden Wheel; Slater v Commissioner of Police; and Ng Tat Kuen.

No. 2, this is the one I enjoyed most. No. 2 of my top 10 list: Chan Pak Ting (No. 1), the first Chan Pak Ting case. The use of actuarial tables was given judicial recognition and helped substantially to increase the sales of the Hong Kong Personal Injury Tables. Unfortunately, no commission was paid to the PI Judge. It's quite sad, isn't it? No, but jokes aside, the importance of that case is that disputes over multipliers have melted away. I don't think we have had a dispute on multipliers since 2013.

And, here it is, and no surprises, No. 1 of my top 10 list: Chan Pak Ting (No. 2). I think that's my seminal judgment. I was inspired by Jonathan Sumption's judgment in *Simon v Helmut*. He created two discount rates, one for price inflation, one for wage inflation. And I took that, and I turned it around a bit, and I created three discount rates depending on the period of future loss. And I must say this is something that Raymond brought to my attention when we were working together on the Law Reform Commission Subcommittee on PI damages. He brought to my attention that the UK Parliament in December 2018 amended the Damages Act and provided for different discount rates for different periods of future needs and, in the consultation papers that came before that amendment, Chan Pak Ting was widely discussed. So I'm quite happy that: you know, the former imperial power has regard to a former colony's continuing common law jurisprudence; so I was quite chuffed about that.

But I'd like to be a bit serious at this point. Is Chan Pak Ting still valid today, given the current Covid-induced ultra-low interest rate regime? When I handed down my judgment in February 2013, HSBC shares were trading at \$85. They're now at about \$30. 10-year Hong Kong Government exchange fund notes, EFNs, in 2013 were achieving a rate of return, net of inflation, of 2.6 per cent. Today they are yielding about 0.5 per cent. How do we even get that one per cent for people with needs of up to 10 years?

I am hopeful that the Law Reform Subcommittee on Personal Injury Future Pecuniary Loss, of which Raymond is the chairman, and of which I'm very happy also to be a member, will make recommendations for the setting up of a statutory mechanism for the review and resetting of the discount rate when appropriate. It's a huge undertaking for a few litigants, even if funded

by Legal Aid, or even if funded by insurance companies, to take on this huge burden for the entire society. So the sooner we get a statutory mechanism in place the better.